

THIS IS A FUTURE ADVANCE MORTGAGE

MORTGAGE AND SECURITY AGREEMENT

MORTGAGOR:

Shades Ridge, Ltd.
1031 21st Street South
Birmingham, AL 35205

MORTGAGEE:

FIRST COMMERCIAL BANK
Post Office Box 11746
Birmingham, AL 35202

STATE OF ALABAMA)
SHELBY COUNTY)

THIS MORTGAGE AND SECURITY AGREEMENT is made this 5th day of May, 1993, by SHADES RIDGE, LTD., an Alabama limited partnership, as Mortgagor ("Borrower"), to FIRST COMMERCIAL BANK, an Alabama banking corporation (herein, together with its successors and assigns, called "Lender").

Simultaneously with the execution hereof, Lender is making a loan to Borrower in the principal amount of Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00) (the "Loan"), evidenced by a Promissory Note of even date (the "Note"). In consideration of the Loan, and as security therefor, Borrower has this day executed various documents in favor of Lender including, without limitation, the Note, a Development Loan Agreement and other security agreements (all the foregoing, together with this Mortgage and Security Agreement and all loan and security documents hereafter executed by Borrower and others in favor of Lender with

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respect to the Loan, being sometimes referred to collectively herein as the "Loan Documents").

NOW, THEREFORE, in consideration of the Loan and the promises and covenants contained herein, and in order to secure the payment of the Loan with the interest thereon, and any extensions or renewals thereof, and as security for all other indebtedness, including future advances, now or hereafter owed by Borrower to Lender, whether such indebtedness is primary or secondary, direct or indirect, contingent or absolute, matured or unmatured, joint or several, and whether or not otherwise secured (herein, together, "Other Indebtedness"), and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, Borrower does hereby irrevocably GRANT, BARGAIN, SELL, CONVEY, ASSIGN, ALIEN, REMISE, RELEASE AND CONFIRM UNTO LENDER, and to its successors and assigns, in fee simple, with right of entry and possession as provided below, and grants to Lender the following described property (herein called, collectively, the "Mortgaged Property"):

(a) The land described in Exhibit A attached hereto and made a part hereof (the "Land"), as well as all development rights, air rights, water, water rights and water stock relating to the Land, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating, or appertaining to any of the Land, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest,

property, possession, claim and demand whatsoever at law and in equity of Borrower, in and to the same, including but not limited to the other rights herein enumerated.

(b) All present and future structures, buildings, improvements and appurtenances of any kind now or hereafter situated on the Land (the "Improvements") and all fixtures, fittings, apparatus, equipment and appliances of every kind and character now or hereafter attached or appertaining to the Improvements and all extensions, additions, improvements, betterments, renewals, substitutions, accessions, attachments and replacements to any of the foregoing, including, without limitation, all plumbing fixtures, ornamental and decorative fixtures, elevators, gas, steam, electric, solar and other heating, lighting, ventilating, air-conditioning, refrigerating, cooking and washing equipment and appliances and sprinkling, smoke, fire and intrusion detection devices, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Mortgage, whether or not attached or affixed to the Land.

(c) All appurtenances to the Land and all rights of Borrower in and to any streets, roads, public places, easements or rights of way relating to the Land, including, without limitation, all rights of Borrower to any septic systems, sewer line, agreements, permits, easements, equipment, licenses, resolutions and related rights pertaining to any sewer and septic system on the Land.

(d) All the rents, revenues, receipts, royalties, issues, income and profits of the Land and the Improvements and all rights of Borrower under all present and future leases and subleases affecting the Land and the Improvements.

(e) All proceeds and claims arising on account of any damage to or taking of the Land or any Improvements thereon or any part thereof and all causes of action and recoveries for any loss or diminution in the value of the Land or any Improvements.

(f) All building materials, equipment, fixtures, fittings and appliances of every kind and character now owned or hereafter acquired by Borrower for the purpose of being used for or in connection with the Improvements, whether such building materials, equipment, fixtures, fittings and appliances are actually located on or adjacent to the Land and whether in storage or otherwise, wheresoever the same may be located, including, without limitation, all lumber and lumber products, bricks, building stones and blocks, sand, cement, roofing and flooring material, paint, doors, windows, hardware, nails, insulations, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures and all gas, steam, electric, solar and other heating, lighting, ventilating, air conditioning, refrigerating, cooking and washing equipment and appliances.

(g) All general intangibles relating to the development or use of the Land, including, without limitation, all governmental

permits relating to construction on the Land, all names under or by which the Land or any Improvements on the Land may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Land.

(h) All shares of stock or other evidence of ownership of any part of the Land that is owned by Borrower in common with others and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Land; and

(i) All furniture, furnishings, machinery, equipment, appliances and other personal property of every kind and character now owned or hereafter acquired by Borrower located on or used in connection with the Land and the Improvements and all extensions, additions, improvements, betterments, renewals, substitutions, accessions, attachments and replacements to any of the foregoing, including, without limitation, all furniture (including desks, tables, chairs, sofas, shelves, lockers, cabinets), office furnishings, appointments and supplies, office machines, equipment, appliances and apparatus, gas, steam, electric, solar and other heating, lighting, ventilating, air conditioning, refrigerating, cooking, washing and cleaning equipment and appliances, floor and window coverings and treatments (including rugs, carpets, draperies, shades, curtains and awnings), building maintenance equipment, appliances and apparatus, tools, implements and instruments, and machinery, equipment and apparatus used or useful

in the manufacture, fabrication, production, processing, assembly, handling, conversion, repair, treatment, storage and distribution of goods, raw materials, products, merchandise, articles, stock, wares and commodities.

This instrument secures:

(1) The payment and performance of Borrower's indebtedness and obligations under the Note, including not only repayment of the Loan, but also Future Advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of Borrower to Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise.

(2) The payment and performance of the obligations of Borrower under this Mortgage and the obligations of Borrower under the other Loan Documents.

(3) The payment of all sums advanced or paid out by Lender under any provision of this Mortgage or the other Loan Documents or to protect the security of this Mortgage.

(4) The payment of the principal and interest on all other future loans or advances made by Lender to Borrower (or any successor in interest to Borrower as the owner of all or any part of the Mortgaged Property) ("FUTURE ADVANCES"), including all

extensions, renewals, substitutions, modifications and replacements of any Future Advances.

(5) The payment and performance of Borrower's obligations under all other present and future agreements executed by Borrower or other parties in favor of Lender and relating to the Note or any one or more of the Loan Documents.

(6) The payment of all other indebtedness, obligations and liabilities of Borrower to Lender of every kind and description whatsoever, whether arising directly between Borrower and Lender or acquired outright, as a participation or as collateral security from another by Lender, and whether primary or secondary, direct or indirect, absolute or contingent, matured or unmatured, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument, and whether they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, and any and all extensions, renewals, substitutions, modifications and replacements of any of the same.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender and to its successors and assigns forever, subject, however, to the terms and conditions contained herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, if Borrower shall pay or cause to be paid to Lender the principal and interest payable in respect to the Note, at the times

and in the manner stipulated therein and herein, and shall pay and discharge, or cause to be paid and discharged, all other indebtedness secured hereby, and shall perform and observe or cause to be performed and observed all the covenants and promises contained in the Note, this Mortgage and all the other Loan Documents, and any extension, renewal, substitution, modification or replacement thereof, expressed to be performed and observed by Borrower and the other parties thereto, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, terminate and be void; but shall otherwise remain in full force and effect.

ARTICLE I

WARRANTIES AND COVENANTS OF BORROWER

In addition to covenants contained elsewhere herein, Borrower covenants and agrees with Lender as follows:

1.1 Performance Under Loan Documents. Borrower covenants and agrees to pay, perform and observe all covenants, terms, conditions and obligations contained herein and in other Loan Documents in accordance with their respective terms and to duly and punctually pay the principal and interest due under the Note and all Other Indebtedness secured hereby.

1.2 Warranty of Title. Borrower covenants that it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage

the same in the manner and form aforesaid; that the same is free and clear of all liens, charges and encumbrances whatsoever except as shown in Commonwealth Land Title Insurance Company Commitment No. 93-25851-R, including, as to personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements and anything of a similar nature; and that Borrower will warrant and forever defend the title thereto unto Lender and its successors and assigns against the claims of all persons whomsoever.

1.3 Further Assurances; After Acquired Property. Borrower covenants and represents that all the Loan Documents executed by Borrower have been duly executed and delivered and are valid and enforceable obligations of Borrower in accordance with the terms thereof. Borrower agrees to execute and deliver to Lender on demand and at Borrower's expense any documents, additional mortgages and instruments of further assurance required or desired by Lender to effectuate, complete, enlarge, perfect, continue and preserve (a) the obligations of Borrower under Note, this Mortgage and the other Loan Document and (b) the lien of this Mortgage as a first and prior lien upon all the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure of Borrower to execute and deliver any such instruments, Lender may execute and record any such instruments for and in the name of Borrower, and Borrower, irrevocably appoints Lender the agent and the attorney-in-fact of Borrower for such purpose. The lien hereof will automatically attach, without further act, to all after-

acquired property attached to, made a part of, or substituted for any of the Mortgaged Property.

1.4 No Further Encumbrances. Without the prior written consent of Lender (a) Borrower shall not mortgage or encumber in any way whatsoever any interest in any part of the Mortgaged Property, and (b) no general partner of Borrower shall sell, convey, assign, mortgage, hypothecate, pledge or transfer all or any part of his or its interest in Borrower. Lender shall not be obligated to consent to any such encumbrance, sale, contract, lease, assignment or other transfer [all encumbrances, sales, contracts, leases, assignments and other transfers described above being herein together called "Prohibited Transfers"], and Lender's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Lender's security or whether or not it may or may not be reasonable (commercially or otherwise) for Lender to consent to any Prohibited Transfer. Without limiting the foregoing, Lender's consent may, if given in Lender's sole discretion, be conditioned upon (by way of illustration only and not being limited to): an increase in the interest rate on the Note, an approval of the credit of any such grantee, vendee, optionee or transferee, a management contract acceptable to Lender of any security given to Borrower in connection with the transaction, including without limitation, any purchase money second mortgage, and/or a change in any of the other terms and conditions of this Mortgage or any of the other Loan Documents.

Any Prohibited Transfer made without the consent of Lender shall be void.

1.5 Compliance with Laws. Borrower will promptly comply with all present and future laws, ordinances, rules, regulations and requirements of all governmental authorities having jurisdiction over the Mortgaged Property or any part thereof. Without the prior written consent of Lender, Borrower will not seek, make or consent to any change in the zoning or conditions of use of the Mortgaged Property. Borrower will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property, including but not limited to, those contained in any declaration and constituent documents of any condominium, cooperative or planned development project on the Mortgaged Property.

1.6 Books and Records; Financial Statements. Borrower will keep true and correct financial books and records in which it will make full and correct entries of all its business activities and financial affairs and the operation of the Mortgaged Property sufficient to reflect correctly the results of all operations, leasing and other income-producing activities by Borrower on the Mortgaged Property, and to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender will have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. Borrower will deliver to Lender at such times and in such form and containing such information as shall be required by

Lender, financial statements for Borrower, including, without limitation, balance sheets, profit-and-loss statements, income and expense statements and all schedules and exhibits thereto as are customarily required by sound accounting practice, including financial statements respecting the operation of the Mortgaged Property. Such statements and information shall be prepared in accordance with generally accepted accounting principles by Borrower or, at Lender's option, by an independent certified public accountant approved by Lender in advance of delivery of such statements and information.

1.7 Performance by Lender. Borrower will, at its own expense, appear in and defend any action or proceeding that might affect Lender's security or the rights or powers of Lender or that purports to affect any of the Mortgaged Property. If Borrower fails to perform any covenant, condition, term or agreement contained in this Mortgage, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceeding) is commenced which might affect Lender's interest in the Mortgaged Property or Lender's right to enforce its security, then Lender may, at its option, take any actions and disburse any sums as may be necessary or desirable to protect or enforce this Mortgage or to remedy the failure of Borrower to perform its covenants (without, however, waiving any default of Borrower). Borrower agrees to pay all reasonable expenses of Lender thus incurred (including, without limitation, fees and disbursements of counsel). Any such expenses

incurred by Lender will be additional indebtedness of Borrower to Lender secured by this Mortgage, will bear interest at the after-maturity rate specified in the Note and will be payable by Borrower upon demand. Lender shall be the sole judge of the necessity for any such actions and of the amount to be paid or expended in connection therewith. Lender is hereby empowered to enter and to authorize others to enter upon the Land or any part thereof for the purpose of performing or observing any defaulted covenant, condition, term or agreement hereof, without thereby becoming liable to Borrower or any party in possession holding under Borrower. This paragraph will not be construed to require Lender to incur any expenses or take any actions.

1.8 Personal Property.

(a) This Mortgage constitutes a SECURITY AGREEMENT with respect to all personal property in which Lender is granted a security interest hereunder and constitutes a lien on such property, and Lender shall have all the rights and remedies of a secured party under the Alabama Uniform Commercial Code as well as other rights and remedies available at law or in equity. Borrower hereby agrees to execute and deliver on demand and to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Lender may require in order to impose or perfect, or continue the perfection of, the lien or security interest created hereby. Upon any failure of Borrower to execute and deliver any such instruments, Lender may execute and record any such instruments for

and in the name of Borrower, and Borrower irrevocably appoints Lender the agent and the attorney-in-fact of Borrower for such purpose. Upon the occurrence of an event of Default hereunder, Lender shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of Lender hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Lender shall further have all other rights and remedies, whether at law, in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Lender. Any person, including both Borrower and Lender, shall be eligible to purchase any part or all of such property at such disposition.

(b) The expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Borrower and shall include Lender's attorney's fees and legal expenses. Upon demand of Lender Borrower shall assemble such personal property and make it available to Lender at the Land, a place which is hereby deemed to be reasonably convenient to Lender and Borrower. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other intended disposition, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower.

1.9 Expenses. Borrower will pay or reimburse Lender for all costs and expenses (including, without limitation, attorneys' fees)

incurred by Lender in connection with the closing of the Loan (whether or not collected at closing and including, without limitation, all title, recording, survey, and legal fees and expenses), in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which Lender is involved or is made a party, or appears as party plaintiff or defendant, affecting the Note, Mortgage, the other Loan Documents, Borrower or the Mortgaged Property, including, without limitation, the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property or any action to protect the security hereof or to enforce any provision hereof and in any situation where Lender employs an attorney to protect Lender's rights hereunder, whether or not legal proceedings are commenced or involved. Any such expenses incurred by Lender will be additional indebtedness of Borrower to Lender secured by this Mortgage, will bear interest at the after-maturity rate specified in the Note and will be payable by Borrower on demand.

1.10 Monthly Tax Deposits. If requested by Lender at any time, Borrower will pay to Lender on the first day of the month, together with and in addition to the regular installment of principal and interest on the Note, an amount equal to one-twelfth (1/12/) of the yearly taxes and assessments as estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, all taxes, assessments and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be deemed to be trust funds but may be

commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Such amounts shall be used by Lender to pay ad valorem taxes and assessments when due. Upon demand of Lender Borrower agrees to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges. In the event of a default or an Event of Default under any of the Loan Documents, Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any such amount remaining to Borrower's credit.

1.11 Other Taxes, Utilities and Liens.

(a) Borrower will pay promptly when and as due, and will promptly deliver to Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever levied, assessed or imposed upon or against the Mortgaged Property or any part thereof, or upon the interest of Lender in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, district or other taxing authority upon Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority over or

equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) Borrower will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) Borrower will promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of the Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to materially and adversely alter Lender's rights with respect to the Loan, the entire balance of the principal sum secured by the Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of Lender.

1.12. Insurance.

(a) Borrower will procure, deliver to and maintain for the benefit of Lender during the life of this Mortgage, insurance policies in such amounts as Lender shall require, but in no event less than the full replacement cost of all the Improvements and with no more than \$5,000 deductible from the loss payable for any casualty, with extended coverage endorsement, insuring the Mortgaged Property against fire, flood, liability, vandalism and malicious mischief, tornado, war damage (if available), collapse, loss of rents or rental value (with coverage in an amount to cover

a minimum of twelve months, of fair rental value or projected gross annual rentals at 100% occupancy of the Mortgaged Property), business interruption and/or such other insurable hazards, casualties and contingencies as Lender may reasonably require. If the Land is located in a flood hazard area, flood insurance in an amount acceptable to Lender shall also be provided by Borrower. The policies shall include, without limitation, a "Replacement Cost Endorsement," a "Difference in Conditions" endorsement, boiler and machinery insurance covering pressure vessels, sewage treatment facilities, air tanks, boilers, machinery, pressure piping, heating, air-conditioning and elevator equipment and insurance against loss of occupancy or use arising from any such breakdown. All such policies and the companies issuing them shall be acceptable to Lender. All policies shall contain (i) a standard, non-contributory mortgagee endorsement making losses payable to Lender, and (ii) an obligation of the insurer to notify Lender in writing not less than ten (10) days prior to any cancellation or change in coverage. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) Lender is hereby authorized and empowered to adjust or compromise any loss under any insurance policies on the Mortgaged Property and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender instead of to Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of such proceeds, Lender may apply the net proceeds, in its sole discretion, either toward restoring the Improvements or to construct new improvements in their place or for any other purpose or object satisfactory to Lender without affecting the lien of the Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) If requested by Lender at any time, Borrower will pay to Lender on the first day of each month, together with and in addition to the regular installment of principal and interest of the Note, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be deemed to be trust funds but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agrees to deliver to Lender such additional moneys as are necessary to make up

deficiencies in the amounts necessary to enable Lender to pay such insurance premiums. In the event of a default or an Event of Default under any of the Loan Documents, Lender may apply to the payment of the indebtedness secured hereby, in such manner as Lender shall determine, any such amount remaining to Borrower's credit.

1.13 Condemnation. If all or any part of the Land or the Improvements shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of Lender become immediately due and payable. Lender shall be entitled to all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute in its own or Borrower's name any action or proceeding relating to any condemnation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, which, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Lender shall determine to the payment of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to Borrower. Borrower agrees to execute such further assignments of

any compensations, awards, damages, claims, rights of action and proceeds as Lender may require.

1.14 Care of the Property; Inspection.

(a) Borrower will preserve and maintain the Mortgaged Property in good condition and repair and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof or which might invalidate any insurance carried on the Mortgaged Property.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of Lender. Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, appliances, machinery, fixtures or appurtenances which are subject to the lien hereof and which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof One Thousand Dollars (\$1,000.00) for any single transaction, or a total of Five Thousand Dollars (\$5,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, appliances, machinery, fixtures or appurtenances not necessarily of the same character but of at least equal value to Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, and such replacement or substitute property

shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice of same to Lender.

(d) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available or are sufficient. If any part of the Mortgaged Property shall be physically damaged through condemnation, Borrower will promptly restore, repair or alter the remaining property in a manner satisfactory to Lender.

1.15 Estoppel Affidavits. Within ten (10) days after written request from Lender, Borrower shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Note and stating whether or not any offsets or defenses exist against such principal and interest, specifying the nature of the same.

1.16 Environmental Laws.

(a) The Mortgaged Property is now in compliance with all applicable zoning and environmental statutes and regulations, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §§ 9601 et seq., as amended) (the "Superfund Act") and regulations thereunder.

(b) Borrower will comply with all environmental and zoning laws, including, without limitation, the Superfund Act and will indemnify and hold Lender harmless against any losses, claims, expenses or liabilities arising under or from any violation of or non-compliance with any such law or regulation.

ARTICLE II

EVENTS OF DEFAULT AND REMEDIES

2.1 Events of Default. The following shall be "Events of Default" hereunder, and the term "Event of Default" as used herein shall mean any one or more of the following events:

(a) The failure by Borrower to make any payment required by the Note or by the other Loan Documents or the failure to pay any other indebtedness secured hereby;

(b) The failure by Borrower to perform any other covenant, condition or agreement contained in this Mortgage or in the other Loan Documents and the continuation of such failure for a period of ten (10) days after receipt of notice of such default;

(c) The termination or suspension by Borrower of his or its business, or an attachment or judicial seizure of any substantial part of the assets of Borrower;

(d) The filing by Borrower of a voluntary petition in bankruptcy or Borrower's adjudication as a bankrupt or insolvent, or the filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or

regulation relating to bankruptcy, insolvency or other relief for debtors, or Borrower's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Borrower or of all or any substantial part of the Mortgaged Property or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due;

(e) The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Borrower or of all or any substantial part of the Mortgaged Property without the consent or acquiescence of Borrower as the case may be, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(f) The occurrence of a breach of or default or an Event of Default under, or the failure to perform or the violation of any term, covenant, agreement, condition, provision, representation or warranty contained in, any of the Loan Documents or under any

agreement which guarantees any part of the indebtedness or obligations secured by this Mortgage;

(g) Any warranty, representation, disclosure or other statement made to Lender by Borrower in any of the Loan Documents or in any loan application being false or misleading in any material respect at the time made;

(h) The occurrence of any other event which under the Note or under any other Loan Document constitutes a default or an Event of Default by Borrower or which gives Lender the right to accelerate the maturity of all or any part of the indebtedness secured by this Mortgage;

(i) The occurrence of a breach of or a default or Event of Default under, or the failure to perform or the violation of any term, covenant, agreement, condition, provision, representation or warranty applicable to, (i) any other indebtedness of Borrower to Lender as described in clause (6) of the opening portions of this Mortgage or any mortgage, loan agreement, security agreement or other security instrument applicable to any such indebtedness, (ii) any indebtedness other than the Note applicable to the Land or any part of any thereof and any mortgage, loan agreement, security agreement or other security instrument applicable to any such indebtedness, or (iii) all extensions, renewals, substitutions, modifications and replacements of any of the foregoing;

(j) The declaration or determination by a court of competent jurisdiction that any term, condition, covenant or agreement contained in the Note, this Mortgage, any of the other Loan

Documents or any document evidencing or securing any indebtedness secured hereby is invalid or unenforceable;

(k) The occurrence of a default by Borrower in the payment of any indebtedness to any other party or a default by Borrower under any loan, mortgage, or other security agreement or material lease obligation; or

(l) The entry of a judgment against Borrower for the payment of money which shall remain unsatisfied for more than thirty (30) days without a stay of execution.

2.2 Remedies. Upon the occurrence and continuation of an Event of Default, Lender may, at its continuing option, and without notice to or demand upon Borrower:

(a) Declare all or any part of the indebtedness secured by this Mortgage and the interest accrued thereon to be due and payable immediately;

(b) Enter onto and take possession of the Mortgaged Property and manage and operate the same, all as more particularly provided hereafter;

(c) Collect the Rents as more particularly provided hereinafter;

(d) Cause all or any part of the Mortgaged Property to be sold under the power of sale granted by this Mortgage in any manner permitted by applicable law as more particularly provided hereinafter; or

(e) Exercise any other right or remedy granted hereunder or any of the other Loan Documents or available at law or equity.

2.3 Right of Lender to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Borrower shall forthwith upon demand of Lender surrender to Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Lender may enter and take possession of all or any part of the Mortgaged Property and may exclude Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking possession, Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof and, from time to time, (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property, (ii) insure or keep the Mortgaged Property insured, (iii) manage and operate the Mortgaged Property and exercise all rights and powers of Borrower in its name or otherwise with respect to the same, and (iv) enter into any and all agreements with respect to the exercise by others of any powers herein granted Lender, all as Lender from time to time may determine to be to its best advantage.

(c) Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Mortgaged Property to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur.

2.4 Power of Sale. If an Event of Default shall have occurred and be continuing, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Land is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county. Upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser a deed to the property so purchased. Lender may bid at the sale and purchase the Mortgaged Property or any part thereof if the highest bidder therefor. At any foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion.

2.5 Application of Sale Proceeds. The proceeds of any sale under this Mortgage will be applied in the following Manner:

First, to the payment of costs and expenses of the sale, including but not limited to Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Lender, together with interest at the rate provided under the Note on all advances made by Lender.

Second, to the payment of all sums expended by Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the rate provided herein.

Third, to the payment of the indebtedness and obligations secured by this Mortgage, whether due or to become due, in whatever order and proportions Lender elects in its

absolute discretion and without regard to the adequacy of its security.

Fourth, to the remainder, if any, to the person or persons appearing of record to be owner of the property sold.

2.6 Lender's Option on Foreclosure. At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be (and may not be asserted to be by Borrower) a defense to any proceedings instituted by Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.7 Receiver.

(a) If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice to Borrower and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the Rents.

(b) Borrower will pay to Lender upon demand all expenses, including receiver's fees, attorney's fees, costs and agent's

compensation, incurred pursuant to the provisions of this paragraph. All such expenses will be additional indebtedness of Borrower to Lender secured by this Mortgage, will bear interest at the after-maturity rate specified in the Note and will be payable by Borrower upon demand.

2.8 Waiver of Manner of Sale. Borrower waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Mortgaged Property marshalled upon any sale. Lender may in its discretion sell any real and personal property, together or in parts, in one or more sales and in any sequence Lender selects.

2.9 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or the taking of possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell the Mortgaged Property as an entirety or in separate lots or parcels as provided by law, and (c) to pursue any other remedy available to it, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession as Lender may determine.

2.10 Suits to Protect the Mortgaged Property. Lender shall have power (a) to institute and maintain such suits and proceedings

as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

ARTICLE III

GENERAL PROVISIONS

3.1 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

3.2 Delay or Omission No Waiver. No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

3.3 No Waiver of One Default to Affect Another.

(a) No Waiver of any Event of Default hereunder shall extend to or shall affect any subsequent or any other Event of Default or shall impair any rights, powers or remedies consequent thereto.

(b) If Lender (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security for the payment thereof, (iii) waives or does not exercise any right granted herein or in the Note, (iv) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage, (v) consents to the filing of any map, plat or replat of the Land, (vi) consents to the granting of any easement of the Land, (vii) makes or consents to any agreement subordinating the lien hereof, or (viii) enters into any agreement with Borrower changing any terms of the Note or the other Loan Documents or releasing any security or respecting any matter whatsoever, then any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; neither shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted upon an Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law

or otherwise of all or any part of the Mortgaged Property, Lender, without notice to any party is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

3.4 Discontinuance of Proceedings; Positions of Parties Restored. In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding has been taken.

3.5 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.6 Notices. All notices given under this Mortgage must be in writing and will be effectively served by personal delivery or by certified United States mail, postage prepaid, to Lender and Borrower at the addresses appearing above. Such addresses may be changed by either party by written notice to the other party. The service of any notice of default or notice of sale under this Mortgage as required by law will be effective on the date of mailing.

3.7 Inspection.

(a) Lender and its respective agents and representatives will have the right at any reasonable time to enter the Mortgaged Property and inspect all parts thereof. Lender will also have the right to examine, copy and audit the books, records, accounting data and other documents of Borrower relating to the Mortgaged Property.

(b) Lender is under no duty to supervise or inspect the Mortgaged Property or the operation of the Mortgaged Property or to examine any books and records. Any inspection or examination by Lender is for the sole purpose of protecting Lender's security and preserving Lender's rights under this Agreement. No default of Borrower will be waived by any inspection by Lender.

3.8 Status and Authority. Borrower warrants that it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents and to execute and deliver the Loan Documents and to perform and observe the provisions thereof.

3.9 Successors. The terms of this Mortgage will bind and benefit the successors and assigns of Borrower and Lender.

3.10 Amendments. This mortgage may not be modified or amended except by a written agreement signed by the parties.

3.11 Applicable Law. This Mortgage shall be governed by the laws of the State of Alabama.

3.12 Counterparts. This Mortgage may be executed in counterparts; but all counterparts shall constitute but one (and the same) document.

3.13 Entire Agreement. This Mortgage and the other Loan Documents constitute the entire agreement between the parties and supersede all prior agreements and understandings including, without limitation, any loan commitment letter from Lender to Borrower.

3.14 Severability. The provisions of this Mortgage are severable, and the invalidity or unenforceability of any one or more provisions of this Mortgage will in no way affect any other provision.

3.15 Interpretation. The term "Borrower" includes both the original Borrower and any subsequent owner or owners of any of the Mortgaged Property, and the term "Lender" includes the original Lender, and also any future owner or holder, including pledgees, assignees and participants, of the Note or any interest therein. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the

paragraphs of this Mortgage are for convenience only and do not define or limit any terms or provisions.

IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage and Security Agreement to Lender on the day and year first above written.

WITNESS:

SHADES RIDGE, LTD., an Alabama limited partnership

By: 
John B. Davis, Jr.
As its General Partner

By: 
Steven L. Davis
As its General Partner

By: 
Kenneth B. Weygand
As its General Partner

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John B. Davis, Jr., Stephen L. Davis, and Kenneth B. Weygand, whose names as General Partners of Shades Ridge, Ltd., an Alabama limited partnership, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day, that, being informed of the contents of such instrument, they, in their capacity as General Partners of Shades Ridge, Ltd., an Alabama limited partnership, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 5th day of May, 1993.

[NOTARIAL SEAL]


Notary Public

My Commission Expires: 25 May 95

EXHIBIT "A"

PARCEL I:

The Southwest Quarter of the Northeast Quarter of Section 17, Township 19 South, Range 2 West, situated in Shelby County, Alabama.

LESS AND EXCEPT the following:

(a) Less and except that part conveyed to Thomas E. York and Helen H. York as described in Real Book 11, Page 421.

(b) Less and except that part platted in Helen Crow Mills Addition to Sandpiper Trail Subdivision, as recorded in Map Book 11, Page 91, Probate Office Shelby County, Alabama.

(c) Less and except that part platted in Sandpiper Trail Subdivision Sector 1 as recorded in Map Book 12, Page 43, in the Probate Office of Shelby County, Alabama.

PARCEL II:

The northwest diagonal half of the Southeast Quarter of the Northeast Quarter of Section 17, Township 19 South, Range 2 West, situated in Shelby County, Alabama.

PARCEL III:

All that part of the Northwest Quarter of the Southeast Quarter of Section 17, Township 19 South, Range 2 West situated in Shelby County, Alabama, which lies north of the north lot lines of Lots 4, 5, 6, 7, 8, 9, 10, 11, and 12, of Southlake First Addition as recorded in Map Book 14, Page 31, Probate Office Shelby County, Alabama.

SUBJECT TO: (1) Current taxes; (2) Reservation of all oil and gas and rights incident therein as set forth in Deed Book 233, Page 505; (3) Right of way in favor of Alabama Power Company recorded in Deed Book 161, Page 488; (4) Easement agreement with the Five D's, Inc. recorded in Misc. Volume 1, Page 534, and as modified by modification of easement agreement recorded in Real Book 144, Page 335; (5) Easement agreement dated 11-26-1984 by and between Helen Crow Mills, as Trustee, and Robert H. Carlson, III, Geraldine C. Belt and Richard D. Reese recorded in Real Volume 24, Page 565.

Inst # 1993-13186

05/10/1993-13186
10:31 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
039 MCD 3701.50