

Inst # 1994-27795

This Instrument Prepared by:
Gail L. Mills, Esquire
BURR & FORMAN
420 North 20th Street
3000 SouthTrust Tower
Birmingham, Alabama 35203

MORTGAGE

09/20/1994-27795
STATE OF ALABAMA
SHELBY COUNTY
SHELBY COUNTY JUDGE OF PROBATE
18.50
KNOW ALL MEN BY THESE PRESENTS:

THIS MORTGAGE is made and entered into on this the 2nd day of September, 1994, by and between the undersigned, **REGENCY DEVELOPMENT, INC.**, an Alabama corporation (hereinafter referred to as the "Mortgagor"), and **METROPOLITAN CONTRACTORS, INC.**, an Alabama corporation (hereinafter referred to as the "Mortgagee"); to secure the payment of Fifty-Nine Thousand Seven Hundred Seventy-Four and no/100 Dollars (\$59,774), which represents a fee payable by the Mortgagor to the Mortgagee pursuant to that certain Consulting Agreement of even date herewith (the "Consulting Agreement").

NOW, THEREFORE, in consideration of the premises, the Mortgagor, and all others executing this Mortgage, do hereby grant, bargain, sell and convey unto the Mortgagee the following described real estate situated in Shelby County, Alabama, to-wit:

See Exhibit "A" attached hereto and made a part hereof

together with all and singular the rights, privileges, hereditaments, easements, and appurtenances thereunto belonging or in anywise appertaining (hereinafter collectively sometimes referred to as the "mortgaged premises," the "real estate," and/or the "premises");

TO HAVE AND TO HOLD FOREVER, unto the said Mortgagee, Mortgagee's successors, heirs and assigns.

This Mortgage is subject and subordinate to that certain mortgage dated August 5, 1994, from Metropolitan Contractors, Inc. in favor of Mortgagee (the "First Mortgage") in the principal sum of \$557,963, such First Mortgage being recorded as Instrument Number 1994-25148 in the Office of the Judge of Probate of Shelby County, Alabama. The above-described property is warranted free from all encumbrances and against adverse claims, except for the First Mortgage and any other matters set forth on Exhibit "B" hereto.

If the Mortgagor shall sell, encumber or otherwise transfer the mortgaged property or any part thereof or any interest therein without the prior written consent of the Mortgagee, the Mortgagee shall be authorized to declare at Mortgagee's option all or any part of such indebtedness immediately due and payable.

Mortgagee covenants with Mortgagor that Mortgagee shall join in the execution of a plat, subdividing the real estate in the manner described and anticipated in that certain contract for the purchase of real estate entered into by and between Mortgagor and Mortgagee concurrently with the execution of this Mortgage.

For the purpose of further securing the payment of the indebtedness, the Mortgagor agrees to pay all taxes or assessments when imposed legally upon the real estate, and should default be made in the payment of same, the Mortgagee may at Mortgagee's option pay off the same; and to further secure the indebtedness, Mortgagor agrees to keep the improvements on the real estate insured against loss or damage by fire, lightning, and tornado for the fair and reasonable insurable value thereof, in companies satisfactory to the Mortgagee, with loss, if any, payable (subject to the terms of the First Mortgage) to Mortgagee as Mortgagee's interest may appear, and to promptly delivery said policies, or any renewal of said policies to Mortgagee; and if the undersigned fails to keep the property insured as above specified,

option, insure the real estate for said sum, for Mortgagee's own benefit, the policy if collected to be credited on the indebtedness, less cost of collecting same. All amounts so expended by Mortgagee for taxes, assessments or insurance, shall become a debt to Mortgagee or Mortgagee's assigns, additional to the debt hereby specially secured, and shall be covered by this Mortgage, and bear interest at the same interest rate as the indebtedness secured hereby from the date of payment by Mortgagee or Mortgagee's assigns and be at once due and payable.

UPON CONDITION, HOWEVER, that if the Mortgagor pays the indebtedness, and reimburses Mortgagee or Mortgagee's assigns for any amounts Mortgagee may have expended, then this conveyance shall be null and void; but should default be made in the payment of any sum expended by the Mortgagee or Mortgagee's assigns, or should the indebtedness hereby secured, or any part thereof, or the interest thereon remain unpaid at maturity, or should the interest of Mortgagee or Mortgagee's assigns in the real estate become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the debt hereby secured, then in any one of said events, the whole of the indebtedness hereby secured, at the option of Mortgagee or Mortgagee's assigns, shall at once become due and payable, and this Mortgage be subject to foreclosure as now provided by law in case of past due mortgages, and the Mortgagee, Mortgagee's agents or assigns shall be authorized to take possession of the premises hereby conveyed, and with or without first taking possession, after giving notice of the time, place and terms of sale, by publication once a week for three consecutive weeks, in some newspaper published in the county and state, sell the same in lots or parcels or en masse as Mortgagee, Mortgagee's agents or assigns deem best, in front of the courthouse door of the county (or the division thereof), where the real estate is located, at public outcry, to the highest bidder for cash, and apply the proceeds of sale: First, to the expense of advertising, selling and conveying, including such attorney's fees as are allowed by law; Second, to the payment of any amounts that may have been expended, or that it may then be necessary to expend, in paying insurance, taxes, or the other encumbrances, with interest thereon; Third, to the payment of the indebtedness in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; and Fourth, the balance, if any, to be turned over to the Mortgagor. The undersigned further agrees that Mortgagee, Mortgagee's agents or assigns may bid at said sale and purchase the real estate, if the highest bidder therefor. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Notwithstanding the foregoing, the failure of Mortgagor to make any required payment shall not be a default hereunder unless and until the Mortgagee shall have given written notice to Mortgagor of such nonpayment, and Mortgagor shall have failed to make such payment within ten (10) days of such notice.

In any action or proceeding brought on this Mortgage or the indebtedness evidenced hereby, no deficiency or other money judgment shall be sought or obtained against the Mortgagor or its shareholders as the indebtedness evidenced hereby shall be non-recourse.

Mortgagee agrees that it will release the first twenty-two (22) "lots" of the Property (such "lots" meaning the lots which will be created by virtue of the recording of the Subdivision Plat of Cahaba Beach Place, a Preliminary Plat thereof having been prepared by R.L. Farmer & Associates, Inc.) simultaneously with the release of the foregoing twenty-two (22) lots from the First Mortgage, irrespective of whether or not the fees owed under the Consultant Agreement have been paid.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage on the date first above written.

REGENCY DEVELOPMENT, INC.

By: _____

Dwight A. Sandlin
Its President

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Dwight A. Sandlin, as President of Regency Development, Inc., an Alabama corporation, whose name is signed to the foregoing instrument, and who is known to me, acknowledge before me on this day that being informed of the contents of said instrument, he executed the same voluntarily.

Given under my hand and seal on this the 2nd day of September, 1994.

Hail L. Mith
NOTARY PUBLIC

My Commission expires: 1-28-98

EXHIBIT "A"

PARCEL 1

COMMENCE at the NW corner of the NW 1/4 of Section 31, Township 18 South, Range 1 West, THENCE South 0 degrees 38 minutes 52 seconds West along the West line of said Section 31, a distance of 1007.73 feet to the POINT OF BEGINNING; THENCE South 88 degrees 01 minutes 36 seconds East, a distance of 132.25 feet to a point; THENCE Easterly along last stated course, a distance of 676.41 feet to a point on the Northwest right-of-way line of Cahaba Beach Road, Shelby County Highway No. 17; THENCE along said right-of-way, around a curve in a clockwise direction having a delta angle of 14 degrees 05 minutes 50 seconds, an arc distance of 134.97 feet, a radius of 548.56 feet, and a chord of South 18 degrees 20 minutes 07 seconds West, a distance of 134.63 feet to a point; THENCE along said right-of-way, around a curve in a clockwise direction having a delta angle of 08 degrees 38 minutes 18 seconds, an arc distance of 154.54 feet, a radius of 1025.00 feet, and a chord of South 29 degrees 42 minutes 11 seconds West, a distance of 154.39 feet to a point; THENCE along said right-of-way, South 34 degrees 01 minutes 20 seconds West, a distance of 262.27 feet to a point; THENCE along said right-of-way, around a curve in a clockwise direction having delta angle of 04 degrees 19 minutes 28 seconds, an arc distance of 388.35 feet, a radius of 5145.21 feet, and a chord of South 36 degrees 11 minutes 04 seconds West, a distance of 388.26 feet to a point; THENCE along said right-of-way, around a curve in a clockwise direction having a delta angle of 11 degrees 53 minutes 59 seconds, an arc distance of 111.91 feet, a radius of 538.82 feet, and a chord of South 44 degrees 24 minutes 22 seconds West, a distance of 111.71 feet to a point; THENCE along said right-of-way, South 50 degrees 21 minutes 22 seconds West, a distance of 171.94 feet to a point; THENCE along said right-of-way, around a curve in a counterclockwise direction having a delta angle of 08 degrees 13 minutes 37 seconds, an arc distance of 158.70 feet, a radius of 1105.22 feet, and a chord of South 46 degrees 14 minutes 33 seconds West, a distance of 158.56 feet to a point on the West line of said Section 31; THENCE North 0 degrees 35 minutes 59 seconds East along said Section line, a distance of 1119.71 feet to the POINT OF BEGINNING and containing 12.1884 acres more or less.

PARCEL 2

COMMENCE at the NW corner of the NW 1/4 of Section 31, Township 18 South, Range 1 West; THENCE South 0 degrees 38 minutes 52 seconds West, along the West line of said Section 31, a distance of 680.09 feet to the POINT OF BEGINNING; THENCE Southerly along last stated course, a distance of 327.64 feet to a point; THENCE South 88 degrees 01 minutes 36 seconds East, a distance of 132.25 feet to a point; THENCE North 0 degrees 40 minutes 46 seconds East, a distance of 329.20 feet to a point; THENCE North 88 degrees 42 minutes 09 seconds West, a distance of 132.41 feet to the POINT OF BEGINNING and containing 1.00 acres more or less.

LESS AND EXCEPT THE FOLLOWING:

PARCEL 33:

Commence at the NW Corner of the NW 1/4 of Section 31, Township 18 South, Range 1 West; thence S 0deg-38'-52" W a distance of 1007.73'; thence S 0deg-35'-59" W a distance of 881.72' to the POINT OF BEGINNING; thence continue along the last described course a distance of 85.71'; thence N 68deg-46'-53" E a distance of 123.15' to a point on a curve to the right (concave northeasterly) having a radius of 200.00' and a central angle of 15deg-16'-44"; thence along the arc of said curve a distance of 53.33', said arc subtended by a chord which bears N 13deg-34'-45" W a distance of 53.18', to the curve's end; thence S 84deg-03'-37" W a distance of 101.96' to the Point of Beginning. Said parcel contains 7,524 square feet, more or less.

PARCEL 34:

Commence at the NW Corner of the NW 1/4 of Section 31, Township 18 South, Range 1 West; thence S 0deg-38'-52" W a distance of 1007.73'; thence S 0deg-35'-59" W a distance of 967.43' to the POINT OF BEGINNING; thence continue along the last described course a distance of 152.28' to a point on the northwesterly right-of-way of Shelby County Highway # 17 (60' R.O.W.); said point being on a curve to the right (concave southeasterly) having a radius of 1105.22' and a central angle of 8deg-13'-38"; thence along said right-of-way and the arc of said curve a distance of 158.70', said arc subtended by a chord which bears 46deg-14'-33" E a distance of 158.56' to the end of said curve; thence along said right-of-way N 50deg-21'-22" E a distance of 9.72' to a point on a curve to the left having a radius of 40.00' and a central angle of 81 deg-03'-51"; thence leaving said right-of-way and along the arc of said curve a distance of 56.59', said arc subtended by a chord which bears N 9deg-49'-26" E a distance of 51.99' to a point on a reverse curve to the right having a radius of 200.00' and a central angle of 9deg-29'-22"; thence along the arc of said curve a distance of 33.12', said arc subtended by a chord which bears N 25deg-57'-48" W a distance of 33.09' to the end of said curve; thence S 68deg-46'-53" W a distance of 123.15' to the Point of Beginning. Said parcel contains 14,596 square feet, more or less.

PARCEL 351

Commence at the NW Corner of the NW 1/4 of Section 31, Township 18 South, Range 1 West; thence S 0deg-38'-52" W a distance of 1007.73'; thence S 0deg-35'-59" W a distance of 967.43'; thence continue along the last described course a distance of 152.28' to a point on the northwesterly right-of-way of Shelby County Highway # 17 (60' R.O.W.); said point being on a curve to the right (concave southeasterly) having a radius of 1105.22' and a central angle of 8deg-13'-38"; thence along said right-of-way and the arc of said curve a distance of 158.70', said arc subtended by a chord which bears 46deg-14'-33" E a distance of 158.56' to the end of said curve; thence along said right-of-way N 50deg-21'-22" E a distance of 143.31' to the POINT OF BEGINNING; thence continue along the last described course a distance of 28.62' to a point on a curve to the left having a radius of 538.82' and a central angle of 9deg-49'-27"; thence along said right-of-way and the arc of said curve a distance of 92.39', said arc subtended by a chord which bears N 45deg-26'-38" E a distance of 92.28'; thence N 89deg-24'-01" W a distance of 159.68'; thence S 0deg-35'-59" W a distance of 14.98' to a point on a curve to the left having a radius of 150.00' and a central angle of 20deg-26'-01"; thence along the arc of said curve a distance 53.50', said arc subtended by chord which bears S 9deg-37'-02" E a distance of 53.21' to a point on a compound curve to the left having a radius of 40.00' and a central angle of 109deg-48'-36"; thence along a arc of said curve a distance of 76.66', said arc subtended by a chord which bears S 74deg-44'-20" E a distance of 65.46' to the curve's end, said point being the Point of Beginning. Said parcel contains 10,354 square feet, more or less.

PARCEL 361

Commence at the NW Corner of the NW 1/4 of Section 31, Township 18 South, Range 1 West; thence S 0deg-38'-52" W a distance of 1007.73'; thence S 0deg-35'-59" W a distance of 967.43'; thence continue along the last described course a distance of 152.28' to a point on the northwesterly right-of-way of Shelby County Highway # 17 (60' R.O.W.); said point being on a curve to the right (concave southeasterly) having a radius of 1105.22' and a central angle of 8deg-13'-38"; thence along said right-of-way and the arc of said curve a distance of 158.70', said arc subtended by a chord which bears 46deg-14'-33" E a distance of 158.56' to the end of said curve; thence along said right-of-way N 50deg-21'-22" E a distance of 171.93' to a point on a curve to the left having a radius of 538.82' and a central angle of 9deg-49'-27"; thence along said right-of-way and the arc of said curve a distance of 92.39', said arc subtended by a chord which bears N 45deg-26'-38" E a distance of 92.28' to the curve's end, said point being the POINT OF BEGINNING; thence leaving said right-of-way N 27deg-08'-20" W a distance of 67.79'; thence N 89deg-24'-01" W a distance of 128.13'; thence S 0deg-35'-59" W a distance 60.00'; thence S 89deg-24'-01" E a distance of 159.68' to the Point of Beginning. Said parcel contains 8,654 square feet, more or less.

The above real estate is one and the same as lots 33, 34, 35, and 36 of the preliminary plat prepared by R.C. Farmer & Associates. Said plat to be recorded.

EXHIBIT "E"

Ad valorem taxes and assessments, a lien but not due and payable.

Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, as recorded in Deed Book 327, Page 553 (PARCEL II).

Right-of-way granted Alabama Power Company recorded in Deed Book 126, Page 183 (PARCEL II).

Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto as recorded in Deed Book 256, Page 192; and in Deed Book 262, Page 254 (PARCEL I).

Right-of-way granted Alabama Power Company recorded in Deed Book 126, Page 185; Real Volume 105, Page 868; Deed Book 142, Page 481, and in Deed Book 185, Page 130.

Mortgage from Metropolitan Contractors, Inc., an Alabama corporation, to Nakos Realty Company, Inc., an Alabama corporation, dated August 5, 1994, as recorded in Instrument No. 1994-25148, in the Office of the Judge of Probate of Shelby County, Alabama.

Inst # 1994-27795

09/09/1994-27795
12:36 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
005 SNA 18.50