

THIS INSTRUMENT PREPARED BY:

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STATE OF ALABAMA

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MORTGAGE AND SECURITY AGREEMENT

COUNTY OF JEFFERSON

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THIS INDENTURE (herein called "**Mortgage**") made this 17th day of September, 1996, between **FOREST PARKS, L.L.C.**, an Alabama limited liability company (hereinafter called "**Borrower**"), Mortgagor, and **First Commercial Bank**, Birmingham, Alabama (hereinafter called "**Bank**"), Mortgagee.

THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" AS DEFINED IN SECTION 7-9-313(1)(C) OF THE CODE OF ALABAMA, AND SECURES, AMONG OTHER OBLIGATIONS, AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.

THIS MORTGAGE IS FILED AS, AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9-402(6) OF THE CODE OF ALABAMA.

W I T N E S S E T H

WHEREAS, Borrower is justly indebted to Bank on a loan in the principal sum of **Four Million Two Hundred and Forty Thousand and No/100 Dollars** (\$4,240,000.00) (the "**Loan**"), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note of even date;

WHEREAS, this is a **FUTURE ADVANCE MORTGAGE** and the Note evidences a construction loan (the "**Loan**"), the proceeds of which are to be advanced by the Lender to the Borrower pursuant to a construction loan agreement of even date herewith (the "**Construction Loan Agreement**"), and, in addition to the indebtedness evidenced by the Note, this mortgage shall also secure all other indebtedness, obligations and liabilities of the Borrower to the Lender, whether now existing or hereafter arising; and

WHEREAS, the Borrower, in order to secure the Note, and in order to induce the Lender to extend credit to the Borrower under the Construction Loan Agreement on the strength of the security provided by this mortgage and in order to convey the property

Inst # 1996-31157

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SHELBY COUNTY JUDGE OF PROBATE
033 MCD 6448.50

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described herein to the Lender as hereinafter set forth, has agreed to execute and deliver this mortgage to the Lender.

WHEREAS, Borrower may hereafter become indebted to Bank or to a subsequent holder of this Mortgage on loans or otherwise (the Bank and any subsequent holder of this Mortgage being referred to herein as "**Lender**"); and

WHEREAS, the parties desire to secure the principal amount of the Note with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Note and any and all other additional indebtedness of Borrower to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement guaranty, pledge or otherwise (herein "**Other Indebtedness**").

NOW, THEREFORE, the Borrower, in consideration of making the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys' fees, and any and all Other Indebtedness as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and set forth in all other documents evidencing, securing or executed in connection with the Loan, including, without limitation, when executed, a loan agreement (the "**Loan Documents**"), and as may be set forth in instruments evidencing or securing Other Indebtedness (the "**Other Indebtedness Instruments**") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of the Lender or hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is herein-after sometimes referred to as the "**Mortgaged Property**") to wit:

(a) All that tract or parcel or parcels of land and estates particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "**Land**");

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Borrower and used or intended to be used in connection with or with

the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property are actually located on or adjacent to the Land or not and whether in storage or otherwise wheresoever the same may be located;

(c) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:

(i) All rents, royalties, profits, issues and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created; and

(ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender is hereby authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

(d) All Construction Contracts (between the Contractors and Borrower providing for the construction of the Project, or any portion

thereof), the Architect Contracts (between the Architects and the Borrower providing for the design of the Project, the preparation of the Plans and Specifications, the supervision and inspection of the construction of the Project and the provision of any other architectural services or projects related to the Project), the Plans and Specifications (all plans and specifications for the Project, or any portion thereof), and other Construction documents ((1) all contracts (including the Architect Contracts) with architects and engineers (including the Architects and the Engineers) responsible for the design of any of the Project, the preparation or evaluation of any of such plans and specifications or the supervision of the construction of any of the Project; (2) all contracts to which the Borrower is a party (including the Construction Contracts) providing for the construction of any of the Project or the furnishing of labor or materials in connection therewith or the furnishing or installation of any equipment or other personal property in connection therewith; (3) all contracts to which the Borrower is a party providing for the management of the construction of any of the Project; (4) all rights of the Borrower as a third party beneficiary under all contracts and subcontracts pertaining to the Project as to which the Borrower is not a party; (5) all payment and performance bonds relating to any of the Project; (6) all other contracts and agreements related to the design, management, construction, equipping and development of any of the Project; and (7) all contracts with public utilities, Governmental Authorities and other persons for the furnishing of roads or utilities to the Project and all deposits thereunder).

(e) The Borrower's books and records relating to the Mortgaged Property or construction of the improvements thereon or any part thereof, all contracts now or hereafter made by Borrower relating to the Mortgaged Property or the construction of the improvements thereon or any part thereof, and all bonds and other guarantees of performance in favor of Borrower or with respect to any such contracts, all sales contracts for the purchase of lots in the proposed subdivision, and the proceeds therefrom, including Borrower's right to the earnest money deposits made pursuant to the sales contracts provided by the Borrower in favor of others;

(f) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a), (b), (c), (d), (e) or (f), above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a), (b), (c), (d), (e) or (f) above.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall fully pay or cause to be fully paid to the Lender the principal and interest payable in respect to the Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, attorneys' fees, and shall pay any and all Other Indebtedness of Borrower to Lender, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of the Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed, shall cease, terminate and be void, but shall otherwise remain in full force and effect.

AND the Borrower covenants and agrees with the Lender as follows:

ARTICLE I

GENERAL

1.01 Performance of Mortgage, Note and Loan Documents. The Borrower shall perform, observe and comply with all provisions hereof, and of the Note, and of the Loan Documents, and of the Other Indebtedness Instruments, and shall duly and punctually pay to the Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, of the Loan Documents, and of the Other Indebtedness Instruments, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02 Warranty of Title. Borrower hereby warrants that, subject to any exceptions shown on **Exhibit "A"** it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is described on **Exhibit "A"** hereto, and has good and absolute title to all existing personal property hereby granted as security and has good right, full power and lawful authority to sell, convey and mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto and the quiet use and

enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Future Advances, Revolving and Open-End Loans, and Other Debts.

It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of the Borrower to the 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. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

1.04 Monthly Tax Deposit. If required by Lender, Borrower shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, as estimated by Lender, in addition to each regular installment of principal and interest. Such sums shall not draw interest, and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums may be applied by the Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Note, any of the Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by the Lender in writing, no application of tax deposits to the Note, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note, the Other Indebtedness, or any such other obligations.

1.05 Other Taxes, Utilities and Liens.

(a) The Borrower shall pay promptly, when and as due, and, if requested, will exhibit promptly to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

(b) The Borrower promptly shall pay and will not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Mortgaged Property.

- (c) **Record Owner of Real Estate described on Exhibit "A" hereto:**

FOREST PARKS, L.L.C, an Alabama limited liability company

5.10 Rider. Additional provisions of this Mortgage, if any, are set forth below or on a Rider attached hereto and made a part hereof.

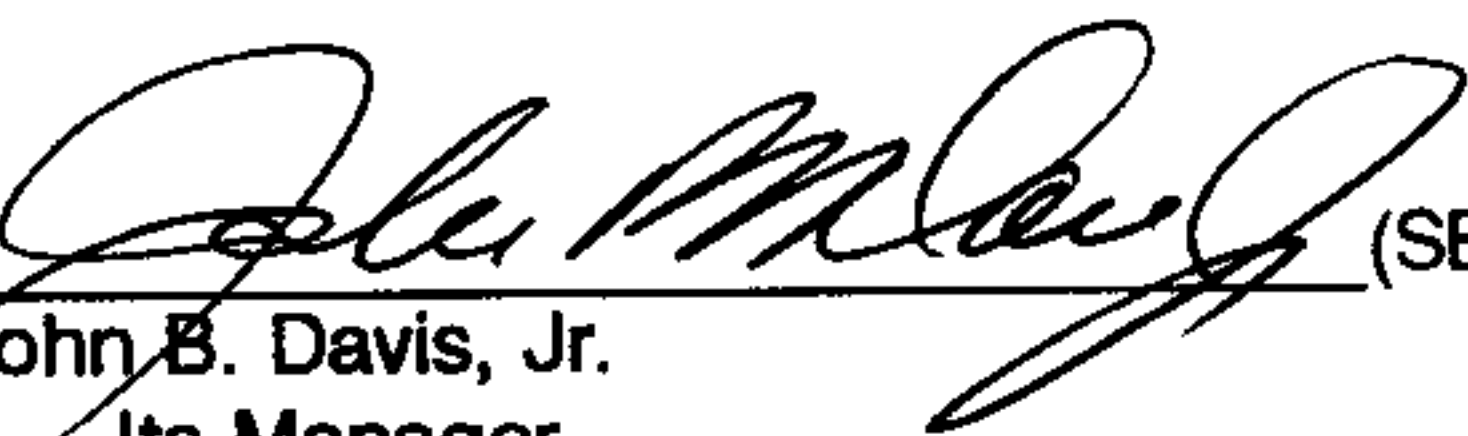
5.11 Release of Lots. Provided Borrower is not in default under the terms of this Mortgage, the Note and/or the Loan Documents, Lender agrees to release lots described in **Exhibit "A"** attached hereto, upon the payment to the Lender, as set forth in the Construction Loan Agreement executed by Borrower of even date herewith, as amended from time to time.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed and effective as of the day and year first above written, although actually executed on the date or dates reflected below.

Borrower (Mortgagor, Debtor)

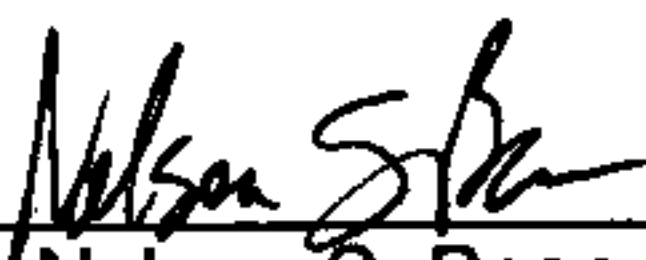
FOREST PARKS, L.L.C., an Alabama
limited liability company

By:  (SEAL)
Kenneth B. Weyand
Its Manager

By:  (SEAL)
John B. Davis, Jr.
Its Manager

LENDER (Mortgagee, Secured Party)

FIRST COMMERCIAL BANK

BY:  (SEAL)
Nelson S. Bean
Its Senior Vice-President

State of Alabama
County of Jefferson

I, the undersigned, a notary public in and for said County and State, hereby certify that **Nelson S. Bean**, whose name as Senior Vice-President of First Commercial Bank, a State Bank, is signed to the foregoing document 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 with full authority, executed the same voluntarily for and as the act of said bank.

Given under my hand and seal this 18th day of September, 1996.


NOTARY PUBLIC
My Commission Expires: 12/28/99

