

This Instrument Prepared By:
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MORTGAGE 1998-33944
12:55 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
012 CRH 740.55

08/31/1998

State of Alabama)
County of Shelby)

This indenture, made this 1st day of JAN., 1998, between **TIMBER RIDGE GOLF, INC., AN ALABAMA CORPORATION** hereinafter called "Mortgagor," and **FIRST BANK OF CHILDERSBURG, AN ALABAMA CORPORATION**, hereinafter called Mortgagee.

Witnesseth:

Whereas, Mortgagor is justly indebted to Mortgagee in the sum of FOUR HUNDRED SIXTY NINE THOUSAND SEVEN HUNDRED DOLLARS (\$469,700.00) in lawful money of the United States, and has agreed to pay the same, with interest thereon, according to the terms of a certain note (the "Note") given by Mortgagor to Mortgagee, bearing even date herewith, with final payment being due on or before February 2, 2003;

Now, Therefore, in consideration of the premises and the sum hereinabove set forth, Mortgagor has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto Mortgagee property situated in Talladega County, Alabama, more particularly described as follows:

See attached Exhibit A

Together with all buildings, structures and other improvements now or hereafter located on the property hereinbefore described, or any part and parcel thereof; and

Together with all rights, title and interest of Mortgagor in and to the minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter on said property or under or above the same or any part or parcel thereof; and

Together with all and singular the tenements, hereditaments, easements, riparian and littoral rights, and appurtenances thereunto belonging or in any wise appertaining, whether now owned or hereafter acquired by Mortgagor, and including all rights of ingress and egress to and from adjoining property (whether such rights now exist or subsequently arise) together with the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, claim and demand whatsoever of Mortgagor of, in and to the same and of, in and to every part and parcel thereof; and

Together with all machinery, apparatus, equipment, fittings, fixtures, whether actually or constructively attached to said property and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever (hereinafter collectively called "Equipment"), now or hereafter located in, upon or under said property or any part thereof and used or usable in connection with any present or future operation of said property and now owned or hereafter acquired by Mortgagor, including, but without limiting the generality of the foregoing, all heating, air-conditioning, freezing, lighting, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges, furnaces, oil burners or units thereof; appliances; air-cooling and air-conditioning apparatus; vacuum cleaning systems; elevators; escalators; shades; awnings; screens; storm doors and windows; stoves; wall beds; refrigerators; attached cabinets; partitions; ducts and compressors; rugs and carpets; draperies; furniture and furnishings; together with all building materials and equipment now or hereafter delivered to the premises and intended to be installed therein; together with all additions thereto and replacements thereof (Mortgagor hereby agreeing with respect to all additions

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and replacements to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the conveyance, transfer and assignment of any of the foregoing); and

Together with Mortgagor's interest as lessor in and to all leases of the premises, or any part thereof, heretofore made and entered into, and in and to all leases hereafter made and entered into by Mortgagor during the life of this mortgage or any extension or renewal hereof, reserving to Mortgagor its statutory equity and redemption rights therein, provided and hereby intending that in case of foreclosure sale, the lessor's interest in any such leases then in force shall, upon expiration of Mortgagor's right of redemption, pass to the purchaser at such sale as a part of the mortgaged premises; subject to election by the purchaser to terminate or enforce any of such leases hereafter made; and

Together with any and all awards or payments, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to taking of, or decrease in the value of, the premises, to the extent of all amounts which may be secured by this mortgage at the date of receipt of any such award or payment by Mortgagee and of the reasonable attorney's fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment. All the foregoing encumbered by this Mortgage being collectively referred to herein as the "Premises."

To have and to hold the Premises hereby granted to the use, benefit and behoof of the Mortgagee, forever.

It is Agreed that if any of the property herein mortgaged is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a Security Agreement and Mortgagor agrees to join with the Mortgagee in the execution of any financing statements and to execute any other instruments that may be required for the perfection or renewal of such security interest under the Uniform Commercial Code.

Conditioned, however, that if Mortgagor shall pay or cause to be paid to Mortgagee, at its office located at P.O. Box 329, Childersburg, Alabama 35044, or at such other place which may hereafter be designated by Mortgagee, its or their successors or assigns, the principal sum of **FOUR HUNDRED SIXTY NINE THOUSAND SEVEN HUNDRED DOLLARS (\$469,700.00)**, with final maturity if not sooner paid, no later than **February 2, 2003** unless amended or extended according to the terms of a promissory note of even date herewith executed by Mortgagor and payable to the order of Mortgagee, as well as all future advances and all other sums, indebtedness, obligations and liabilities for which this instrument is security, and shall also fully perform all the covenants, conditions and terms of this Mortgage, then these presents shall be void, otherwise to remain in full force and effect.

It is understood and agreed that the Note may be prepaid at any time without penalty.

Mortgagor warrants that Mortgagor has good, absolute and marketable title to the Premises, and is lawfully seized and possessed of the Premises and every part thereof, and has the right and authority to mortgage and give security upon all Premises; that the Premises are unencumbered except as may be herein expressly provided; and that Mortgagor will forever warrant and defend the title to the Premises unto Mortgagee against the claims of all persons whomsoever.

It is the intent hereof to secure payment of the aforesaid Note and obligation whether the entire amount shall have been advanced to the Mortgagor at the date hereof, or at a later date, and to secure any other amount or amounts that may be added to the mortgage indebtedness under the terms of this instrument (all of which are collectively referred to herein as the "Secured Indebtedness"), the entire Secured Indebtedness being equally secured with and having the same priority as any amounts advanced at the date hereof.

It is agreed that any additional sum or sums advanced by the then holder of the Note secured hereby to or for the benefit of Mortgagor, whether such advances are obligatory or are made at the option of Mortgagee, or otherwise, shall be equally secured with and have the same priority as the original indebtedness and be subject to all of the terms and provisions of this mortgage, whether or not such additional loan or advance is evidenced by a promissory note of the borrowers and whether or not identified by a recital that it is secured by this mortgage; provided that it is understood and agreed that this future advance provision shall not be construed to obligate the Mortgagee to make any such additional loans or advances. It is further agreed that any additional note or notes executed and delivered under this future advance provision shall be

included in the word "note" wherever it appears in the context of this mortgage.

This mortgage and the property described herein are also given as security for any and all other sums, indebtedness, obligations and liabilities of any and every kind now or hereafter during the term hereof owing and to become due from the Mortgagor to the Mortgagee or to the holder of the Note, or to the assignees thereof, howsoever created, incurred, evidenced, acquired or arising, whether under Mortgagor's promissory note aforesaid, this mortgage, or any other instrument, obligations, contracts, or agreements or dealings of any and every kind now or hereafter existing or entered into between the Mortgagor and the Mortgagee, or otherwise, as amended or modified or supplemented from time to time, and whether direct, indirect, primary, secondary, fixed or contingent, and any and all renewals, modifications or extensions of any or all of the foregoing.

And Mortgagor Further Covenants and Agrees With Mortgagee as follows:

1. Mortgagor shall pay to Mortgagee the Secured Indebtedness with interest thereon as in the Note and this mortgage provided.

2. Mortgagor shall pay, when due and payable, (a) all taxes, assessments, general or special, and other charges levied on, or assessed, placed or made against the Premises, this instrument or the Secured Indebtedness or any interest of the Mortgagee in the Premises or the obligations secured hereby; (b) premiums on policies of fire and other hazard insurance covering the Premises, as required in paragraph 3 herein; (c) premiums on all collaterally pledged life insurance, if this mortgage and the Note are so insured; and (d) ground rents or other lease rentals, if any, payable by Mortgagor. Mortgagor shall promptly deliver to Mortgagee receipts showing payment in full of all of the above items.

Upon notification from Mortgagee, Mortgagor shall pay to Mortgagee, together with and in addition to the payments of principal and interest payable under the terms of the Note secured hereby, on the dates when any payment on either principal or interest must be made by the terms of the Note, until said Note is fully paid or until notification from Mortgagee to the contrary, an amount reasonably sufficient (as estimated by Mortgagee) to provide Mortgagee with funds to pay such taxes, assessments, insurance premiums, rents and other charges next due so that Mortgagee will have sufficient funds on hand to pay same thirty (30) days before the date on which they become past due. In no event shall Mortgagee be liable for any interest on any amount paid to it as herein required, and the money so received may be held and commingled with its own funds, pending payment or application thereof as herein provided.

Mortgagor shall furnish to Mortgagee, at least thirty (30) days before the date on which the same will become subject to any interest, delinquency charge, penalty, fine or cost, an official statement of the amount of said taxes, assessments, insurance premiums and rents next due, and Mortgagee shall pay said charges to the amount of the then unused credit therefor as and when they become severally due and payable. An official receipt therefor shall be conclusive evidence of such payment and of the validity of such charges. Mortgagee may, at its option, pay any of these charges when payable, either before or after they become past due, without notice, or make advances therefor in excess of the then amount of credit for said charges. The excess amount advanced shall be immediately due and payable to Mortgagee and shall become part of the Secured Indebtedness and bear interest at the rate of fifteen (15%) percent per annum from date of advancement. Mortgagee may apply credits held by it for the above charges, or any part thereof, on account of any delinquent installments of principal or interest or any other payments maturing or due under this instrument, and the amount of credit existing at any time shall be reduced by the amount thereof paid or applied as herein provided. The amount of the existing credit hereunder at the time of any transfer of the Premises shall, without assignment thereof, inure to the benefit of the successor-owner of the Premises and shall be applied under and subject to all of the provisions hereof. Upon payment in full of the Secured Indebtedness, the amount of any unused credit shall be paid over to the person entitled to receive it.

In the event of the passage, after the date of this instrument, of any law or ordinance of the United States, the State or any political subdivision thereof, wherein the Premises are situated, or any decision by a court of competent jurisdiction, creating or providing for any tax, assessment or charge against the premises, this instrument or the Secured Indebtedness or any interest of the Mortgagee in the Premises or the obligations secured hereby, that is to be paid by Mortgagee, the Secured Indebtedness shall, at the option of Mortgagee, become immediately due and payable and, in the event payment thereof is not made by Mortgagor forthwith, Mortgagee may take, or cause to be taken, such action or proceeding as may

be taken hereunder in the case of any other default in the payment of the indebtedness.

3. Mortgagor shall keep the Premises insured for the benefit of Mortgagee against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke and such other hazards, including business interruptions insurance covering loss of rents, revenues, income, profits or proceeds from leases, franchises, concessions or licenses of or on any part of the Premises, or as Mortgagee may from time to time require, all in amounts approved by Mortgagee not exceeding one hundred percent (100%) of full insurable value; all insurance herein provided for shall be in form and companies approved by Mortgagee; and, regardless of the types or amounts of insurance required and approved by Mortgagee, Mortgagor shall assign and deliver to Mortgagee, as collateral and further security for the payment of the Secured Indebtedness, all policies of insurance which insure against any loss or damage to the Premises, with loss payable to Mortgagee, without contribution by Mortgagee, pursuant to New York Standard or other mortgagee clause satisfactory to Mortgagee. The delivery of the insurance policies shall constitute an assignment, as further security, of all unearned premiums existing from time to time thereon. If Mortgagee, by reason of such insurance, receives any money for loss or damage, such amount may, at the option of Mortgagee, be retained and applied by Mortgagee toward payment of the Secured Indebtedness, or be paid over, wholly or in part, to Mortgagor for the repair or replacement of the Premises or any part thereof, or for any other purpose or object satisfactory to Mortgagee, but Mortgagee shall not be obligated to see to the proper application of any amount paid over to Mortgagor.

In the absence of written direction from Mortgagee, the insurance amount required herein shall not be less than such amount as may be required to prevent Mortgagor from becoming Co-insurers under the terms of any applicable policy, or the amount of the Secured Indebtedness, whichever is greater.

Not less than 10 days prior to the expiration date of each policy of insurance required of Mortgagor pursuant to this paragraph, and of each policy of insurance held as additional collateral to secure the Secured Indebtedness, Mortgagor shall deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee.

In the event of a foreclosure of this mortgage, the purchaser of the Premises shall succeed to all the rights of Mortgagor, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to Mortgagee, with respect to all property herein encumbered.

4. Mortgagor shall maintain the Premises in good condition and repair, shall not commit or suffer any waste to the Premises, and shall comply with, or cause to be complied with, all statutes, ordinances and requirements of any governmental authority relating to the Premises or any part thereof. Mortgagor shall promptly repair, restore, replace or rebuild any part of the Premises, now or hereafter encumbered by this mortgage which may be affected by any proceeding of the character referred to in paragraph 7 herein. No part of the Premises, including, but not limited to, any building, structure, parking lot, driveway, landscape scheme, timber or other ground improvement, equipment or other property, now or hereafter mortgaged, shall be removed, demolished or materially altered without the prior written consent of Mortgagee. Mortgagor shall complete, within a reasonable time, and pay for any building, structure or other improvement at any time in the process of construction on the property herein mortgaged. Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Premises or any part thereof. Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

5. Mortgagor shall faithfully perform the covenants of Mortgagor as lessor under any present and future leases, affecting all or any portion of the Premises, and neither do nor neglect to do, nor permit to be done, anything which may cause the termination of said leases, or any of them, or which may diminish or impair their value, or the rents provided for therein, or the interest of Mortgagor or Mortgagee therein or thereunder. Mortgagor, without first obtaining the written consent of Mortgagee thereto, shall not (a) assign the rents, or any part thereof, from the Premises, (b) consent to the cancellation or surrender of any lease of the Premises, or any part thereof, now existing or hereafter to be made, (c) modify any such lease so as to shorten the unexpired term thereof, or so as to decrease the amount of the rent payable thereunder, (d) collect rents from the Premises for more than two months in advance, or (e) sell, transfer, assign, or remove any personal property now or hereafter located on the above described Premises, unless such action results in substitution or replacement

with similar items, owned by Mortgagor and not otherwise encumbered, of equal value. Mortgagor shall procure and deliver to Mortgagee at the time of executing this mortgage, or at any time within thirty (30) days after notice and demand, estoppel letters or certificates from each lessee, tenant or occupant in possession of the Premises, as required by, and in form and substance satisfactory to, Mortgagee and deliver to Mortgagee a recorded assignment of all of the lessor's interest in such leases, in form and substance satisfactory to Mortgagee (in addition to the assignment and mortgage herein), and proof of due service of copy of such assignment on each lessee, either personally or by prepaid registered mail, return receipt requested.

6. Mortgagor shall execute and deliver (and pay the costs of preparation and recording thereof) to Mortgagee and to any subsequent holder from time to time, upon demand, any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured and the legal security title of Mortgagee to all or any part of the Premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this mortgage and extensions or modifications thereof. Mortgagor, upon request, made either personally or by mail, shall certify by a writing, duly acknowledged, to Mortgagee or to any proposed assignee of this mortgage, the amount of principal and interest then owing on the Secured Indebtedness and whether or not any offsets or defenses exist against the Secured Indebtedness, within six (6) days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail.

7. Notwithstanding any taking of any property, herein mortgaged and agreed to be mortgaged, by eminent domain, alteration of the grade of any street or other injury to, or decrease in value of, the Premises by any public or quasi-public authority or corporation, Mortgagor shall continue to pay principal and interest on the Secured Indebtedness, and any reduction in the Secured Indebtedness resulting from the application by Mortgagee of any award or payment for such taking, alterations, injury or decrease in value of the Premises, as hereinafter set forth, shall be deemed to take effect only on the date of such receipt; and such award or payment may, at the option of Mortgagee, be retained and applied by Mortgagee toward payment of the Secured Indebtedness, or be paid over, wholly or in part, to Mortgagor for the purpose of altering, restoring or rebuilding any part of the Premises which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the Premises, or for any other purpose or object satisfactory to Mortgagee, but Mortgagee shall not be obligated to see to the application of any amount paid over to Mortgagor. If, prior to the receipt by Mortgagee of such award or payment, the Premises shall have been sold on foreclosure of this mortgage, Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and of the reasonable counsel fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

8. Mortgagor shall deliver to Mortgagee, at any time within thirty (30) days after notice and demand by Mortgagee but not more frequently than once in every twelve (12) month period, (i) a statement in such reasonable detail as Mortgagee may request, certified by Mortgagor or an executive officer of a corporate Mortgagor, of the leases relating to the Premises, and (ii) a statement in such reasonable detail as Mortgagee may request certified by a certified public accountant or, at the option of Mortgagee, by the Mortgagor or an executive officer or treasurer of a corporate Mortgagor, of the income from and expenses of any one or more of the following: (a) the conduct of any business on the Premises, (b) the operation of the Premises, or (c) the leasing of the Premises or any part thereof, for the last twelve (12) month calendar period prior to the giving of such notice, and, on demand. Mortgagor shall furnish to Mortgagee executed counterparts of any such leases and convenient facilities for the audit and verification of any such statement.

The Mortgagor shall advise the holder promptly of any adverse change in its financial condition and of any pending or threatened suit or proceeding before any court, administrative agency or other tribunal for or on account of any claim which is not adequately covered by liability insurance

9. If the Mortgagor herein shall sell, convey, or alienate, or further encumber said property, or any part thereof, or any interest therein, Mortgagee shall have the option and may elect to declare the entire principal indebtedness hereby secured with all accrued interest thereon immediately due and payable.

10. Upon the occurrence of any one of the following events (herein called an "Event of Default"):

(i) should Mortgagor fail to pay the Secured Indebtedness, or any part thereof, or the periodic deposits for taxes, insurance and other charges, as hereinbefore provided, when and as the same shall become due and payable;

(ii) should any warranty of Mortgagor herein contained, or contained in any instrument, document, transfer, conveyance, assignment or loan agreement given with respect to the Secured Indebtedness, prove untrue or misleading in any material aspect;

(iii) should the Premises be subject to actual or threatened waste, or any part thereof, be removed, demolished or materially altered so that the value of the Premises be diminished except as provided for in paragraph 7 herein;

(iv) should any federal tax lien or claim of lien for labor or material be filed of record against Mortgagor or the Premises and not be removed by payment or bond within thirty (30) days from date of recording;

(v) should any claim of priority to this mortgage by title, lien or otherwise be asserted in any legal, administrative or equitable proceeding;

(vi) should Mortgagor make any assignment for the benefit of creditors, or should a receiver, liquidator or trustee of Mortgagor or of any of Mortgagor's property be appointed, or should any petition for the bankruptcy, reorganization or arrangement of Mortgagor, pursuant to the Federal Bankruptcy Act or any similar statute, be filed, or should Mortgagor be adjudicated a bankrupt or insolvent, or should Mortgagor if a corporation, be liquidated or dissolved or its charter expire or be revoked, or, if a partnership or business association, be dissolved or partitioned, or, if a trust, be terminated or expire;

(vii) should Mortgagor fail to keep, observe, perform, carry out and execute in every particular the covenants, agreements, obligations and conditions set out in this mortgage, or in the Note, or in any other instrument securing this loan or related thereto;

(viii) should foreclosure proceedings (whether judicial or otherwise) be instituted on any mortgage or any junior lien of any kind secured by any portion of the Premises;

(ix) should Mortgagor default in any other loan from Mortgagee to Mortgagor.

Then and thereupon Mortgagee may immediately do any one or more of the following, time expressly being made of the essence herein:

(i) enter upon and take possession of the Premises without the appointment of a receiver, or an application therefor, employ a managing agent of the Premises and let the same, either in its own name, or in the name of Mortgagor, and receive the rents, incomes, issues and profits of the Premises and apply the same, after payment of all necessary charges and expenses, on account of the Secured Indebtedness, but only with the consent of Mortgagor, which consent shall be conclusively presumed from Mortgagor's abandonment of the Premises, and any such abandonment or consent shall constitute an assignment to Mortgagee of Mortgagor's interests in any lease now or hereafter affecting the whole or any part of the Premises;

(ii) pay any sums in any form or manner deemed expedient by Mortgagee to protect the security of this instrument or to cure any event of default other than payment of interest or principal on Secured Indebtedness; make any payment hereby authorized to be made according to any bill, statement or estimate furnished or procured from the appropriate public officer or the party claiming payment without inquiry into the accuracy or validity thereof, and the receipt of any such public officer or party in the hands of Mortgagee shall be conclusive evidence of the validity and amount of items so paid, in which event the amounts so paid, with interest thereon from the date

of such payment at the rate of fifteen (15%) percent per annum, shall be added to and become a part of the Secured Indebtedness and be immediately due and payable to Mortgagee; and Mortgagee shall be subrogated to any encumbrance, lien, claim or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security to this instrument;

(iii) declare the note and the whole indebtedness secured by this mortgage, including all payments for taxes, assessments, insurance premiums, liens, costs, expenses and attorney's fees herein specified, without notice to Mortgagor (such notice being hereby expressly waived), to be due and collectible at once, by foreclosure or otherwise;

(iv) pursue any and all remedies available under the Uniform Commercial Code; it being hereby agreed that fifteen (15) days' notice as to the time, date and place of any proposed sale shall be reasonable;

(v) surrender any or all of the insurance policies maintained pursuant to paragraph 3 hereof, and receive and apply the unearned premiums as a credit on the Secured Indebtedness, and, in connection therewith, Mortgagor hereby appoints Mortgagee as the agent and attorney-in-fact for Mortgagor to collect such premiums;

(vi) sell the said property hereby conveyed at auction for cash, at the County Courthouse door in the County in which the property is located, first having given notice thereof for three (3) weeks by publication in any newspaper then published in said County, and execute proper conveyance to the purchaser and out of the proceeds of said sale the Mortgagee shall first pay all expenses incident thereto, together with a reasonable attorney's fee, then retain enough to pay said note and interest thereon, any sums advanced by Mortgagee for taxes, insurance or assessments or any other advances by Mortgagee as authorized under this mortgage or the note, and the balance, if any, pay over to the Mortgagor.

In the event of such sale, the said Mortgagee, its successors, assigns, agents, or attorneys are hereby authorized and empowered to purchase said property the same as if they were strangers to the conveyance, and the auctioneer or person making the sale is hereby empowered and directed to make and execute a deed to the purchaser in the name of the Mortgagor.

It is hereby agreed that the said Mortgagee, or his successor or substitute, may sell said mortgaged property either as a whole, or in lots or parcels as may seem expedient to the Mortgagee (all rights to a marshaling of the assets of Mortgagor, including the property hereinabove described, being expressly and specifically waived herein by Mortgagor, on behalf of itself, its heirs, assigns and legal representatives) and after said sale as aforesaid, said Mortgagee, or his successor or substitute, shall make, execute and deliver to the purchaser or purchasers thereof, good and sufficient deed or deeds to the property so sold in fee simple, and shall receive the proceeds of said sale and out of same shall make application thereof as herein before provided, whether said property be sold as a whole or in lots or parcels. It is further specifically agreed that should the said Mortgagee, his successor or substitute, elect to sell said property in lots or parcels separately, in any such event the effect and validity of this instrument shall remain in full force and effect as to the remaining unsold portion or portions of said property, and the said Mortgagee, his successor or substitutes, shall have the right to exercise his privileges and powers under this instrument to advertise or readvertise any remaining unsold lots or parcels of said property on any subsequent sale date from time to time until the property herein mortgaged has all been sold, or until the entire indebtedness secured hereby is fully paid.

If at any time in the discretion of Mortgagee a receivership may be necessary to protect the Premises, whether before or after maturity of the indebtedness hereby secured, or at the time of or after the institution of suit to collect such indebtedness or to enforce this mortgage, Mortgagee shall, as a matter of strict right and regardless of the value of the security for the amounts due hereunder or secured hereby or of the solvency of any party bound for the payment of such indebtedness, have the right to the appointment on ex parte application, by any court having jurisdiction, of a receiver to take charge of, manage, preserve, protect and operate the Premises and any business or businesses located thereon, to collect the rents, issues, profits, and income thereof, to make all necessary and needed repairs, and to pay all taxes and assessments

against the Premises and insurance premiums for insurance thereon and after the payment of the expenses of the receivership, including reasonable attorney's fees to Mortgagee's attorney, and after compensation for management of the property, to apply the net proceeds in reduction of the indebtedness hereby secured or in such manner as the court shall direct. All such expenses shall be secured by the lien of this Mortgage until paid.

The receiver or its agents shall be entitled to enter upon and take possession of any and all of the Premises, together with any and all businesses conducted and all business assets used therewith or thereon, or any part or parts thereof, and operate and conduct the business or businesses to the same extent and in the same manner as Mortgagor might lawfully do. The receiver, personally or through its agents or attorneys, may exclude Mortgagor, and its subsidiaries, agents, servants and employees wholly from the Premises, and have, hold, use, operate, manage and control the same and each and every part thereof, and in the name of Mortgagor, its subsidiaries, or agents, exercise all of their rights and powers and use all of the then existing items of security and collateral, materials, current supplies, stores and assets and, at the expense of the Premises, maintain, restore, insure and keep insured, the properties, equipment, and apparatus provided or required for use in connection with such business or businesses, and make all such necessary and proper repairs, renewals and replacements and all such useful alterations, additions, betterments and improvements as receiver may deem judicious.

Such receivership shall, at the option of Mortgagee, continue until full payment of all sums hereby secured, or until title to the property shall have passed by foreclosure sale under this mortgage.

11. Mortgagor, for himself and family, hereby waives and renounces all homestead exemption rights provided for by the Constitution and Laws of the United States or the State of Alabama in and to the Premises as against the collection of the Secured Indebtedness, or any part thereof; and Mortgagor agrees that where, by the terms of the conveyance or the Note secured hereby, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the time stated enters into the consideration and is of the essence of the whole contract.

12. Mortgagor shall keep the premises free from all prior liens and, upon demand of Mortgagee, pay and procure release of any lien which in any way may impair the security of this mortgage.

13. Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of this mortgage, as the same become due, without regard to whether or not all of the Secured Indebtedness shall be due on demand, and without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against the Mortgagor, including an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced. Any payments to or on account of Mortgagor of insurance or eminent domain proceeds, pursuant to paragraphs 3 and 7 hereof, shall not affect the lien of this Mortgage for the full amount secured hereby before such payment.

14. The rights of Mortgagee, granted and arising under the clauses and covenants contained in this mortgage, the Note, or any other instrument securing this loan, shall be separate, distinct and cumulative of other powers and rights herein granted and all other rights which Mortgagee may have in law or equity, and none of them shall be in exclusion of the others; and all of them are cumulative to the remedies for collection of indebtedness, enforcement of rights under mortgages, and preservation of security as provided at law. No act of Mortgagee shall be construed as an election to proceed under any one provision herein or under the Note to the exclusion of any other provision, or an election of remedies to the bar of any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

15. Every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request personally served on one or more of the persons who shall at the time hold the record title to the Premises, or on their heirs or successors, or mailed by depositing it in any post office station or letter box enclosed in a postpaid envelope (a) addressed to such person or persons, or their heirs or successors, at his, their or its address last known to Mortgagee or (b) addressed to the street address of the Premises hereby mortgaged.

16. Any indulgence or departure at any time by the Mortgagee from any of the provisions hereof, or of any obligation hereby secured, shall not modify the same or relate to the future or waive future compliance therewith by the Mortgagor.

17. Mortgagor will defend, at its own cost and expense, and indemnify and hold Mortgagee harmless from, any action, proceeding or claim affecting the Premises, the Note or any other instrument securing payment of the Secured Indebtedness. Costs and expenses will include all reasonable attorneys' fees.

If Mortgagor neglects or refuses to act pursuant to this paragraph 17, Mortgagee, at its option, (whether electing to declare the entire Secured Indebtedness due and collectible or not, or to pursue other remedies for an Event of Default) may pay for all reasonable attorneys' fees, costs and expenses incurred in any such action. All such payments, bearing interest thereon from the time of payment at fifteen percent (15%), shall be deemed a part of the Secured Indebtedness and shall be immediately due and payable by Mortgagor to Mortgagee.

18. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of the note, and without notice or consent: (a) release any person liable for payment of all or any part of the indebtedness or for performance of any obligation; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation or subordinating, modifying otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; or (e) release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property mortgaged hereby.

19. Mortgagee shall be subrogated to the lien of any and all prior encumbrances, liens or charges paid and discharged from the proceeds of the note hereby secured, and even though such prior liens have been released of record, the repayment of the note shall be secured by such liens on the portions of the premises affected thereby to the extent of such payments, respectively.

20. *Mortgagor represents, warrants and covenants as follows:*

a. *No Hazardous Materials (hereinafter defined) have been, are, or will be while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, located on, discharged from, or disposed of on, or constitute a part of, the Premises. As used herein, the term "Hazardous Materials" include without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Sections 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601 et seq.), and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to asbestos, as amended, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;*

b. *No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Premises;*

c. *All of the Premises complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;*

d. *There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Premises; and*

e. *Mortgagor shall give immediate oral and written notice to Mortgagee of its receipt of any*

notice of a violation of any law, rule or regulation covered by this Mortgage, or of any notice of other claim relating to the environmental condition of the Premises, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Mortgagor shall comply with all applicable present and future local, state and federal environmental laws and regulations. Mortgagor shall notify Mortgagee immediately of any Hazardous Materials is released, discharged, disposed of, stored, or discovered on the Premises. Mortgagor shall notify Mortgagee in writing within three (3) days after receiving written notice from any governmental authority or any individual or entity claiming violation of any environmental protection law or regulation related to the Premises, or demanding compliance with any environmental protection law or regulation, or demanding payment, indemnity, or contribution for any environmental damage or injury to natural resources. Mortgagor will permit Mortgagee from time to time to observe Mortgagor's operation and to perform tests (including soil and ground water tests) for Hazardous Materials on the Premises. Mortgagor will provide additional evidence of compliance with all environmental laws with respect to each Phase of the Project for which Mortgagee is requested to make a loan.

Mortgagor hereby agrees to indemnify and hold harmless from all loss, cost, damage, claim and expense incurred by Mortgagee on account of (i) the violation of any representation, warranty or covenant set forth in this Environmental Hazard Mortgage section of this Mortgage, (ii) Mortgagor's failure to perform any obligations of this Mortgage, (iii) Mortgagor's or the Premises's failure to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions on, under or affecting the Premises. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, any subsequent sale or transfer of the Premises, and all similar or related events or occurrences.

21. The words "Mortgagor" and "Mortgagee" whenever used herein shall include all individuals, corporations (and if a corporation, its officers, employees or agents) and any and all other persons or entities, and the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under either of them, and the pronouns used herein shall include when appropriate, either gender and both singular and plural, and the word "Note" shall also include one or more notes and the grammatical construction of sentences shall conform thereto.

22. If any provision of this Mortgage, the Note, or any other instrument securing this loan, or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained, nor the application of the provision to other persons, entities or circumstances, nor any other instrument referred to hereinabove shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

23. This mortgage is executed and delivered in, and its terms and provisions are to be governed by, the laws of the State of Alabama.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument.

In Witness Whereof, the Mortgagor has caused this instrument to be executed as of the day and year first above written.

TIMBER RIDGE GOLF, INC.

By: Andrew P. Smith, Jr.
Its: President

STATE OF ALABAMA)
COUNTY OF Tallahassee)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Andrew P. Smith Jr, whose name as President of Timber Ridge Golf, Inc., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 13 day of August, 1998.

Jean M. Moore
Notary Public
My Commission Expires: 7-1-2000

EXHIBIT A

GOLF COURSE: Commence at the Northwest Corner of Section 25, Township 18 South, Range 5 East, Talladega County, Alabama; thence proceed South 02 degrees 26 minutes 54 seconds West along the West boundary of said Section for a distance of 542.67 feet to its point of intersection with the Southerly boundary of the S.C.L. abandoned railroad; thence proceed North 73 degrees 01 minutes 23 seconds East along the Southerly boundary of said abandoned railroad for a distance of 463.83 feet to a corner in place and the point of beginning. From this beginning point proceed South 05 degrees 35 minutes 48 seconds East for a distance of 910.06 feet to a corner in place; thence proceed South 76 degrees 33 minutes 32 seconds East for a distance of 1217.74 feet to a corner in place; thence proceed South 13 degrees 27 minutes 02 seconds West for a distance of 249.95 feet to a corner in place; thence proceed South 42 degrees 12 minutes 28 seconds East for a distance of 489.78 feet to a corner in place; thence proceed South 76 degrees 30 minutes 01 seconds East for a distance of 820.60 feet to a concrete monument in place; thence proceed South 33 degrees 29 minutes 25 seconds East for a distance of 277.06 feet to a corner in place; thence proceed North 45 degrees 43 minutes 38 seconds East for a distance of 364.58 feet to a corner in place; thence proceed North 58 degrees 02 minutes 10 seconds West for a distance of 163.21 feet to a corner in place; thence proceed North 38 degrees 41 minutes 52 seconds East for a distance of 385.65 feet to a corner in place; thence proceed South 75 degrees 46 minutes 53 seconds East for a distance of 915.97 feet to a corner in place being located on the Northwesterly boundary of a Talladega County Road (Ironaton Road); thence proceed North 57 degrees 55 minutes 08 seconds East along the Northwesterly boundary of said road for a distance of 1091.27 feet to its intersection with the Southerly right-of-way line of S.C.L. Railroad; thence proceed Northwesterly along the Southerly right-of-way line of said railroad for a distance of 4449.81 feet (chord bearing and distance of North 73 degrees 11 minutes 46 seconds West 4552.97 feet) to a concrete monument in place being located on the Southerly boundary of the aforementioned abandoned railroad; thence proceed South 73 degrees 01 minutes 23 seconds West along the aforementioned abandoned railroad for a distance of 326.84 feet to the point of beginning.

The above described land is located in the Northwest one-fourth and the Northeast one-fourth of Section 23, Township 18 South, Range 5 East, Talladega County, Alabama, and contains 133.37 acres.

LESS AND EXCEPT: A 50 foot right-of-way being 1091.27 feet in length commencing at the Southwest intersection of the South boundary of the S.C.L. railroad and the North boundary of Ironaton road and proceed Southwesterly a distance of 1091.27 feet, which said right-of-way shall be nonexclusive, said right-of-way being a part of Tract No. 1.

ROADWAY: A 60 foot roadway being 30 feet in equal width on each side of the following described line: Commence at the Northwest corner of Section 25, Township 18 South, Range 5 East, Talladega County, Alabama; thence proceed South 02 degrees 26 minutes 54 seconds West along the West boundary of said section for a distance of 542.67 feet to its point of intersection with the Southerly boundary of the S.C.L. abandoned railroad; thence proceed North 73 degrees 01 minutes 23 seconds East along the Southerly boundary of said abandoned railroad for a distance of 463.83 feet to a corner in place; thence proceed South 05 degrees 34 minutes 48 seconds East for a distance of 910.06 feet to a corner in place; thence proceed South 76 degrees 33 minutes 32 seconds East for a distance of 1217.74 feet to a corner in place; thence proceed South 13 degrees 27 minutes 02 seconds West for a distance of 249.95 feet to a corner in place; thence proceed South 42 degrees 12 minutes 28 seconds East for a distance of 489.78 feet to a corner in place; thence proceed South 76 degrees 30 minutes 01 seconds East for a distance of 440.33 feet to the centerline of said roadway. From this beginning point proceed South 2 degrees 15 minutes 49 seconds West along the centerline of said road for a distance of 74.88 feet to the P.C. of a concave curve left having a tangent of 51 feet and a delta angle of 29 degrees 44 minutes 58 seconds; thence proceed Southerly along the centerline of said road and along the curvature of said curve for a distance of 99.71 feet to the P.T. of said curve; thence proceed South 24 degrees 22 minutes 18 seconds East along the centerline of said road for a distance of 339.81 feet to the P.C. of a concave curve right having a tangent of 49 feet and a delta angle of 33 degrees 42 minutes 41 seconds; thence proceed Southerly along the centerline of said road and along the curvature of said curve for a distance of 95.16 feet to the P.T. of said curve; thence proceed South 12 degrees 00 minutes 37 seconds West along the centerline of said road for a distance of 131.59 feet to its point of intersection with the Northerly right-of-way line of Ironaton Road.

The above described land is located in the Northeast one-fourth of the Southwest one-fourth, the Southeast one-fourth of the Northwest one-fourth, the Southwest one-fourth of the Northeast one-fourth and the Northwest one-fourth of the Southeast one-fourth of Section 25, Township 18 South, Range 5 East, Talladega County, Alabama.

08/31/1998-33944
12:55 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
012 CRH 740.55

Inst # 1998-33944