

THIS INSTRUMENT PREPARED BY:

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**STATE OF ALABAMA)
SHELBY COUNTY)**

PURCHASE MONEY MORTGAGE

THIS PURCHASE MONEY MORTGAGE (this "Mortgage"), made as of the 6th day of January, 2000, is from **D.R. HORTON, INC. - BIRMINGHAM**, an Alabama corporation, whose address is 2090 Columbiana Road, Suite 4000, Birmingham, Alabama 35216 (the "Mortgagor"), in favor of **SHERMAN HOLLAND, JR.**, a resident of the State of Alabama, whose address is P.O. Box 1008, Alabaster, Alabama 35007 (the "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to the Mortgagee for a loan in the principal amount of Eight Hundred Fourteen Thousand Six Hundred Fifty-Five and 10/100 Dollars (\$814,655.10), together with interest thereon (the "Loan"), which such Loan is evidenced by that certain Promissory Note of even date herewith from the Mortgagor in favor of Mortgagee (together with all extensions, modifications, or amendments thereto, the "Note").

WHEREAS, Mortgagee has required the execution and delivery of this Mortgage by Mortgagor in order to secure the Secured Indebtedness (as hereinafter defined).

NOW, THEREFORE, for and in consideration of the foregoing recitals, the sum of Ten Dollars, and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of the Borrower hereunder and under the Note (all of such indebtedness and obligations secured hereby being referred to herein as the "Secured Indebtedness"), Mortgagor has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto the Mortgagee, its successors and assigns, all of the following described land and interests in land (which property is hereinafter referred to collectively as the "Mortgaged Property"):

(a) All those certain tracts or parcels of land situated and Shelby County, Alabama which are more particularly described on Exhibit A attached hereto (the "Land"); and

(b) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Land or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Mortgagee, its heirs and assigns forever, subject however to the terms and conditions herein set forth.

PROVIDED, HOWEVER, that, if the Mortgagor shall pay to the Mortgagee the principal and interest payable in respect to the Note, 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.

AND the Mortgagor and Mortgagee hereby agree with one another as follows:

1. **Taxes, Utilities and Liens.** The Mortgagor will pay promptly, prior to the delinquency thereof, all taxes, assessments, water rates, dues, charges, fines 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 any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage. Mortgagor shall have the right, before any such tax, assessment, fee, or charges become delinquent, to contest or object to the amount or validity of any such tax, assessment, fee, or charge by appropriate legal proceedings.

2. **Events of Default; Remedy.** Upon (i) the failure of the Mortgagor to make any payment of principal and/or interest within ten (10) days of Mortgagee's written demand therefor, or (ii) the failure by the Mortgagor duly to observe any covenant, condition, or agreement set forth herein, which failure continues for thirty (30) days or more after written notice to Mortgagor, an Event of Default shall occur hereunder, whereupon Mortgagee shall be entitled to proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy to foreclose this Mortgage and to sell the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable law. Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property 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 said county, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid at said sale and purchase said premises, or any part

thereof, if the highest bidder therefor. At the 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 Mortgagee may elect.

3. **Purchase by Mortgagee.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

4. **Application of Proceeds of Sale.** In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees (attorneys fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Mortgagee hereunder, and interest thereon; then to payment of the Secured Indebtedness and accrued interest thereon, in such order of priority as Mortgagee shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Mortgagor, or to the person or entity lawfully entitled thereto.

5. **Mortgagor as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Mortgagor (if Mortgagor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

6. **Waiver of Appraisement, Valuation, Etc.** Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

7. **Discontinuance of Proceedings.** In case Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred.

8. **Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of the Secured Indebtedness by the Borrower and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and it may pursue inconsistent remedies.

9. **No Waiver.** No delay or omission by Mortgagee or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver expressed or implied by Mortgagee to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies of Mortgagee hereunder.

10. **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Mortgagor, and Mortgagee and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns.

11. **Severability.** If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

12. **Applicable Law.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Alabama.

13. **Notice.** All notices and other communications provided for hereunder shall be in writing and shall be deemed received upon delivery in person or, if mailed, shall be deemed received

three (3) days after depositing the same in U.S. certified mail, return receipt requested, postage prepaid, and, if sent by overnight courier, shall be deemed received on the next business day following delivery to said courier, and in any case addressed as set forth in the heading of this Mortgage. Either party may change its address to another single address by notice given as herein provided, except any change of address notice must be actually received in order to be effective.

14. **Assignment.** This Mortgage is assignable by Mortgagee and any assignment hereof by Mortgagee shall operate to vest in the assignee all rights and powers and obligations herein conferred upon and granted to Mortgagee.

15. **Partial Releases.**

(a) Mortgagor intends to develop the Land, together with certain contiguous land which is not subject to this Mortgage, into a residential subdivision to be known as High Ridge Village (the "Subdivision"). Mortgagor's preliminary plans for the Subdivision specify that there will be approximately 127 residential lots which will constitute the "Phase I" of the Subdivision and 105 residential lots which will constitute the "Phase II" of the Subdivision. This Mortgage encumbers ONLY Phase II of the Subdivision. Mortgagor will file for record a subdivision plat for the Land subsequent to the date hereof (the "Plat"). By its acceptance of this Mortgage, provided that the Plat contains at least 105 lots, Mortgagee agrees with Mortgagor that (i) it will join in the Plat in order to subordinate this Mortgage to the Plat, and (ii) at such time as the Plat is recorded, it will amend this Mortgage to encumber only the platted lots as designated on the Plat, and any Land which is not part of a platted lot will be released from this Mortgage.

(b) Mortgagee agrees that it will release each platted lot which is subject to this Mortgage from the lien and effect of this Mortgage upon payment to Mortgagee of a release price in the amount of Seven Thousand Seven Hundred Fifty-Eight and 62/100 Dollars (\$7,758.62) per lot (the "Release Funds"). The Release Funds should be sent to the Mortgagee at the address noted above. The provisions of this Section 15 may be relied upon by the Mortgagor, by the party purchasing such lot from the Mortgagor, by the title company providing title insurance with respect to such lot, and by the closing attorney handling the sale of such lot by the Mortgagor.

(c) Notwithstanding any provision contained in this Mortgage to the contrary, Mortgagee agrees that it will release any of the Land which is conveyed or dedicated as an easement, street, right-of-way, or is conveyed as a common areas to the homeowner's association to be formed for the Subdivision, from the lien and effect of this Mortgage for no consideration (\$0).

IN WITNESS WHEREOF, Mortgagor and Mortgagee have duly executed this Mortgage as of the day and year first above written.

MORTGAGOR:

D.R. HORTON, INC. - BIRMINGHAM
an Alabama corporation

BY: Michael R. Inman
Michael R. Inman
as Vice President of the Company
and Division President

MORTGAGEE:

Sherman Holland, Jr.
SHERMAN HOLLAND, JR.

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Michael R. Inman, whose name as Vice President of the Company and Division President of D.R. Horton, Inc. - Birmingham, an Alabama 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 foregoing conveyance, he, as such officer, executed the same voluntarily and with full authority for and as the act of said corporation.

Given under my hand and official seal this 6th day of January, 2000.

Haile L. Meik
NOTARY PUBLIC
My Commission Expires: 2-28-02

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Sherman R. Holland, Jr., whose name 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 foregoing conveyance executed the same voluntarily.

Given under my hand and official seal this 6th day of January, 2000.

Hail A. Miller
NOTARY PUBLIC
My Commission Expires: 2-28-02

EXHIBIT A

A parcel of land located in the NE $\frac{1}{4}$ -SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ -NW $\frac{1}{4}$ of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

COMMENCE at the SE corner of the NE $\frac{1}{4}$ -SW $\frac{1}{4}$ of said Section 25; thence N $0^{\circ}08'19''$: E along the east line of said Section for a distance of 1139.28' to the Point of Beginning; thence leaving said $\frac{1}{4}$ - $\frac{1}{4}$ line, N $72^{\circ}27'58''$ W a distance of 531.29'; thence S $24^{\circ}19'31''$ W a distance of 114.27'; thence N $73^{\circ}08'52''$ W a distance of 554.45' to a point lying on the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence N $88^{\circ}56'54''$ W along said $\frac{1}{4}$ - $\frac{1}{4}$ line a distance of 147.37'; thence leaving said $\frac{1}{4}$ - $\frac{1}{4}$ line N $15^{\circ}16'25''$ E a distance of 445.17'; thence S $74^{\circ}43'35''$ E a distance of 130.0'; thence N $23^{\circ}26'16''$ E a distance of 660.03'; thence S $88^{\circ}08'06''$ E a distance of 728.62' to a point lying on the east line of the SE $\frac{1}{4}$ -NW $\frac{1}{4}$ of said Section 25; thence S $0^{\circ}4'30''$ W a distance of 999.67' to the SE corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence S $0^{\circ}08'19''$ W along the east line of the NE $\frac{1}{4}$ -SW $\frac{1}{4}$ of said Section 25 a distance of 196.76' to the POINT OF BEGINNING. Containing 25.25 acres, more or less.

Inst # 2000-00912

697064.2

Exhibit A-
01/10/2000-00912
09:00 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
008 CJ1 1248.05