

THIS INSTRUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO THE CODE OF ALABAMA, AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF BORROWER, AS DEBTOR, AND LENDER, AS SECURED PARTY.

**PURCHASE MONEY MORTGAGE  
AND  
SECURITY AGREEMENT**

**ASHLEY BLOOM CURRY and BRIAN CHRISTOPHER CURRY**

**as Borrowers**

**and**

**COED PROPERTIES, LLC  
as Lender**

**Dated as of January 25<sup>th</sup>, 2002**

**This instrument was prepared by:**

**F. Don Siegal  
Leitman, Siegal & Payne, P.C.  
600 North 20th Street, Suite 400  
Land Title Building  
Birmingham, Alabama 35203**

**Inst # 2002-05641**

**02/01/2002-05641  
02:28 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
026 CH 422.00**

## **TABLE OF CONTENTS**

### **Page**

### **ARTICLE I**

#### **REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF BORROWER**

<b>SECTION 1.01</b>	<b>Payment of Secured Obligations</b>	<b>3</b>
<b>SECTION 1.02</b>	<b>Title of Borrower</b>	<b>3</b>
<b>SECTION 1.03</b>	<b>Maintenance, Repair, Alterations</b>	<b>3</b>
<b>SECTION 1.04</b>	<b>Required Insurance</b>	<b>3</b>
<b>SECTION 1.05</b>	<b>Delivery of Insurance Policies; Payment of Premiums</b>	<b>4</b>
<b>SECTION 1.06</b>	<b>Insurance Proceeds</b>	<b>5</b>
<b>SECTION 1.07</b>	<b>Assignment of Policies Upon Foreclosure</b>	<b>5</b>
<b>SECTION 1.08</b>	<b>Indemnification; Subrogation; Waiver of Offset</b>	<b>6</b>
<b>SECTION 1.09</b>	<b>Taxes and Impositions</b>	<b>7</b>
<b>SECTION 1.10</b>	<b>Utilities</b>	<b>8</b>
<b>SECTION 1.11</b>	<b>Actions Affecting Mortgaged Estate</b>	<b>8</b>
<b>SECTION 1.12</b>	<b>Actions by Lender to Preserve Mortgaged Estate</b>	<b>8</b>
<b>SECTION 1.13</b>	<b>Survival of Warranties</b>	<b>8</b>
<b>SECTION 1.14</b>	<b>Eminent Domain</b>	<b>8</b>
<b>SECTION 1.15</b>	<b>Additional Indebtedness</b>	<b>9</b>
<b>SECTION 1.16</b>	<b>Successors and Assigns</b>	<b>9</b>
<b>SECTION 1.17</b>	<b>Inspections</b>	<b>9</b>
<b>SECTION 1.18</b>	<b>Liens</b>	<b>10</b>
<b>SECTION 1.19</b>	<b>Restrictions Affecting Title</b>	<b>10</b>
<b>SECTION 1.20</b>	<b>Further Assurances</b>	<b>10</b>
<b>SECTION 1.21</b>	<b>No Event of Default Under Loan Documents</b>	<b>10</b>
<b>SECTION 1.22</b>	<b>Enforceability</b>	<b>10</b>
<b>SECTION 1.23</b>	<b>Pending Litigation</b>	<b>10</b>
<b>SECTION 1.24</b>	<b>Transfer of Interests in Borrower or Mortgaged Estate</b>	<b>10</b>

## **ARTICLE II**

<b>LENDER'S POWERS</b>	<b>11</b>
------------------------	-----------

## **ARTICLE III**

### **SECURITY AGREEMENT**

<b>SECTION 3.01</b>	<b>Creation of Security Interest</b>	<b>11</b>
---------------------	--------------------------------------	-----------

## **ARTICLE IV**

### **EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT**

<b>SECTION 4.01</b>	<b>Events of Default</b>	<b>12</b>
<b>SECTION 4.02</b>	<b>Acceleration Upon Default; Additional Remedies</b>	<b>13</b>
<b>SECTION 4.03</b>	<b>Appointment of Receiver</b>	<b>13</b>
<b>SECTION 4.04</b>	<b>Mortgagee's Power of Enforcement</b>	
<b>SECTION 4.05</b>	<b>Power of Sale</b>	<b>14</b>
<b>SECTION 4.06</b>	<b>Application of Foreclosure Proceeds</b>	<b>14</b>
<b>SECTION 4.07</b>	<b>Lender's Option on Foreclosure</b>	<b>14</b>
<b>SECTION 4.08</b>	<b>Waiver of Exemption</b>	<b>15</b>
<b>SECTION 4.09</b>	<b>Delay or Omission No Waiver</b>	<b>15</b>
<b>SECTION 4.10</b>	<b>No Waiver of One Default to Affect Another, etc.</b>	<b>15</b>
<b>SECTION 4.11</b>	<b>Discontinuance of Proceedings - Position of Parties, Restores</b>	<b>15</b>
<b>SECTION 4.12</b>	<b>Remedies Not Exclusive</b>	<b>15</b>

## **ARTICLE V**

### **MISCELLANEOUS**

<b>SECTION 5.01</b>	<b>Governing Law</b>	<b>15</b>
<b>SECTION 5.02</b>	<b>Waiver of Rights</b>	<b>16</b>
<b>SECTION 5.03</b>	<b>Limitation of Interest</b>	<b>16</b>
<b>SECTION 5.04</b>	<b>Statements by Borrower</b>	<b>16</b>
<b>SECTION 5.05</b>	<b>Notices</b>	<b>17</b>
<b>SECTION 5.06</b>	<b>Captions</b>	<b>17</b>
<b>SECTION 5.07</b>	<b>Invalidity of Certain Provisions; Conflicting Provisions</b>	<b>17</b>
<b>SECTION 5.08</b>	<b>Change in Ownership</b>	<b>17</b>
<b>SECTION 5.09</b>	<b>Assignment of Lender's Interest</b>	<b>18</b>
<b>SECTION 5.10</b>	<b>Time Is of the Essence</b>	<b>18</b>
<b>SIGNATURE</b>		<b>18</b>
<b>ACKNOWLEDGMENT</b>		<b>19</b>
<b>Exhibit A-Legal Description</b>		
<b>Exhibit B-Permitted Encumbrances</b>		

## **PURCHASE MONEY MORTGAGE AND SECURITY AGREEMENT**

THIS PURCHASE MONEY MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of the \_\_\_\_\_ day of January, 2002 by and between ASHLEY BLOOM CURRY and BRIAN CHRISTOPHER CURRY, individual residents in the State of Alabama, (known herein as the "Borrower") and COED PROPERTIES, LLC, an Alabama limited liability company ("Lender").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Borrower hereby irrevocably grants, bargains, sells, transfers, conveys and assigns to Lender, for the benefit and security of Lender, under and subject to the terms and conditions hereinafter set forth, all of the following-described estate, property and interest of Borrower now or hereafter acquired, together with all cash and noncash proceeds thereof, which may be referred to herein as the "Mortgaged Estate":

### **Land, Rents and Derivative Interests**

The real property, located in the County of Shelby, State of Alabama, described in Exhibit A attached hereto and by this reference incorporated herein (the "Property"); all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "rents"); all right, title and interest of Borrower in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired; all interests, estate or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Property; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto;

### **Improvements**

Any and all improvements now or hereafter erected on the Property, including, but not limited to, the fixtures, attachments, appliances, and other articles attached to such buildings and improvements (the "Improvements");

### **Claims and Awards**

All the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto,



which Borrower now has or may hereafter acquire in the Mortgaged Estate, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Estate, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages, and Borrower hereby authorizes, directs and empowers Lender, at its option, on Borrower's behalf, or on behalf of the successors or assigns of Borrower, to adjust, compromise, claim, collect and receive such proceeds and to give proper receipts and acquittances therefor.

TO HAVE AND TO HOLD the Mortgaged Estate hereby granted or mortgaged or intended to be granted or mortgaged, unto Lender, its successors and assigns, in fee simple forever.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the indebtedness secured hereby shall be paid when due, and if the Borrower shall keep, perform and observe all and singular the obligations, covenants, agreements and provisions in this Mortgage expressed to be kept, performed by and observed by or on the part of the Borrower, then this Mortgage and the estate and rights hereby granted shall cease, determine and be void, but otherwise shall be and remain in full force and effect.

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS:

(i) Payment of indebtedness evidenced by that certain Note dated of even date herewith (the "Note") executed by Borrower in favor of Lender in the aggregate principal amount of \$224,000.00 bearing interest and being payable as provided therein;

(ii) Payment of all other indebtedness and performance of all other obligations and covenants of Borrower contained in any Loan Document (including, without limitation, the Note, the Mortgage, any pledge agreement or other document extended by Borrower in favor of Lender), together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and

(iii) Payment of all other sums, with interest thereon, which may hereafter be owed by Borrower or its successors or assigns pursuant to the Loan Documents to Lender or its successors or assigns.

The indebtedness and the obligations secured by this Mortgage, which are described in (i) through (iii) above, may be referred to herein as the "Secured Obligations."

This Mortgage, the Note, and any other instrument given to evidence or further secure the payment and performance of any of the several Secured Obligations are hereafter referred to as the "Loan Documents."

All capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Note.

## ARTICLE I

### REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF BORROWER

Borrower hereby represents, warrants, covenants and agrees:

Section 1.01 Payment of Secured Obligations. Borrower hereby grants this Mortgage to secure the payment and performance when due of the Secured Obligations. The consideration received by Borrower to execute and deliver this Mortgage and the liens and security interests created herein is sufficient and will provide a direct economic benefit to Borrower.

Section 1.02 Title of Borrower. Borrower has, subject to Permitted Encumbrances set forth in Exhibit B hereto, in its own right, good, marketable and indefeasible title in fee simple to the Mortgaged Estate, which is free from encumbrance superior to the encumbrance created by this Mortgage and has full right to make this conveyance.

Section 1.03 Maintenance, Repair, Alterations. Borrower shall: (i) keep the Mortgaged Estate in good condition and repair, subject to reasonable and ordinary wear and tear; (ii) complete promptly and in good and workmanlike manner any improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, subject to the provisions of Section 1.06, and to pay when due all claims for labor performed and materials furnished therefor; (iii) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Estate or any part thereof; not to commit or permit any waste or deterioration of the Mortgaged Estate; and (iv) not commit, suffer or permit any act to be done in or upon the Mortgaged Estate in violation of any law, ordinance or regulation.

Section 1.04 Required Insurance. Borrower shall provide, maintain and keep at all times in force the following policies of insurance:

- (a) Insurance against loss or damage to the Improvements by fire, seepage, backup of sewers and drains and any of the risks covered by insurance of

the type now known as "fire and extended coverage," in an amount not less than the original amount of the Note or the full replacement cost of the Improvements and Personal Property, whichever is greater; and with a deductible from the loss payable for any casualty in amounts acceptable to Lender. The policies of insurance carried in accordance with this subparagraph (a) shall contain the "Replacement Cost Endorsement;"

(b) Such other insurance, including, without limitation, liability insurance, as may from time to time be required by Lender in such amounts and against such hazards and risks as is commonly obtained by prudent owners of property similar in use to the Mortgaged Estate and located in the same area in which the Property is located.

All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Borrower.

Section 1.05 Delivery of Insurance Policies; Payment of Premiums. All policies of insurance shall be issued by companies and in amounts as required by the provisions of the Loan Documents and as otherwise satisfactory to Lender. All policies of insurance shall name Lender as a named insured, and shall have attached thereto a lender's loss payable endorsement for the benefit of Lender, which endorsement indicates that all insurance proceeds are payable directly to Lender, and shall be otherwise in form satisfactory to Lender. Borrower shall furnish Lender with an original or certified copy of all policies of required insurance.

Thirty (30) days prior to the expiration of each such policy, Borrower shall furnish Lender with evidence satisfactory to Lender of the reissuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be canceled or materially amended in any manner, including, without limitation, amended to reduce the scope or limits of coverage, without twenty (20) days' prior written notice to Lender and shall provide that no claims shall be paid thereunder without at least ten (10) days' prior written notice to Lender. In all cases, Borrower shall immediately give notice to Lender of any notice received by Borrower of any expiration, cancellation or modification of, or material reduction of coverage under, any such policy.

In the event insurance premiums are not paid to Lender monthly, Borrower shall pay all insurance premiums at least thirty (30) days prior to their due dates and shall, within ten (10) days of such payment, deliver proof thereof to Lender.



Upon occurrence of an Event of Default, Lender may, at any time at Lender's option, apply any sums or amounts received pursuant hereto, or as rents or income of the Mortgaged Estate or otherwise, upon any Secured Obligation in such manner and order as Lender may elect. The receipt, use or application of any such sums by Lender hereunder shall not be construed to affect the maturity of any Secured Obligation or any of the rights or powers of Lender under the terms of the Loan Documents or any of the obligations of Borrower under the Loan Documents.

Section 1.06 Insurance Proceeds. After the occurrence of any casualty to the Mortgaged Estate or any part thereof, Borrower shall give prompt written notice thereof to Lender and each insurer and promptly submit a claim to insurer for payment of insurance proceeds; Borrower shall provide Lender with a copy of such claim.

(a) All proceeds of insurance paid or payable under any insurance policy (the "Insurance Proceeds") with respect to the Mortgaged Estate shall be paid to Lender, each insurer is hereby authorized and directed to make payment for any such loss directly to Lender instead of payment to Borrower. Any Insurance Proceeds shall be applied first to the payment of all costs and expenses incurred by Lender in obtaining such proceeds. The balance of the proceeds, if any, may be applied at the option of Lender, against sums secured hereby in such order as Lender may in its absolute discretion elect. Such damage or destruction shall not affect the lien of this Mortgage or the obligations of Borrower hereunder, and Lender is authorized at Lender's option to compromise and settle all loss claims on said policies if not adjusted promptly by Borrower.

(b) Notwithstanding the application of Insurance Proceeds to the payment of a portion of the Secured Obligations, any unpaid portion of the Secured Obligations shall remain in full force and effect, and Borrower shall not be excused in the payment thereof.

Section 1.07 Assignment of Policies Upon Foreclosure. In the event of the foreclosure of this Mortgage, or other transfer of title to the Mortgaged Estate, or any part thereof, by nonjudicial foreclosure sale or deed in lieu of foreclosure, the purchaser of the Mortgaged Estate, or such part thereof, shall succeed to all of Borrower's rights, including any rights to unexpired insurance and unearned or returnable premiums, in and to all insurance policies required by Section 1.04, subject to limitations on assignment of blanket policies, and limited to such rights as relate to the Mortgaged Estate or such part thereof. If Lender acquires title to the Mortgaged Estate, or any part thereof, in any manner, it shall thereupon (as between Borrower and Lender) become the sole and absolute owner of the insurance policies, and all proceeds payable thereunder with respect to the Mortgaged Estate, or such part thereof,

required by Section 1.04, with the sole right to collect and retain all unearned or returnable premiums thereon with respect to the Mortgaged Estate, or such part thereof, if any.

**Section 1.08 Indemnification; Subrogation; Waiver of Offset.**

(a) If Lender is made a party defendant to any litigation concerning this Mortgage or the Mortgaged Estate or any part thereof or interest therein, or the occupancy thereof by Borrower, then Borrower shall indemnify and hold Lender harmless from all liability by reason of such litigation, including all attorneys' fees and expenses incurred by Lender in any such litigation, whether or not any such litigation is prosecuted to judgment. Upon an Event of Default, Lender may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following an Event of Default, Borrower shall pay all attorneys' fees and expenses incurred by Lender, whether or not an action is actually commenced against Borrower by reason of an Event of Default.

(b) Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Mortgaged Estate, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

(c) All sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Secured Obligations of Borrower hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Borrower, or any action taken with respect to this Mortgage by any trustee or receiver of Borrower, or by any court, in any such proceeding; or (v) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Borrower shall have notice or knowledge of any of the foregoing. To the extent permitted by law, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any Secured Obligation.

**Section 1.09 Taxes and Impositions.**

(a) Subject to paragraph (d) of this Section 1.09, Borrower agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon the Mortgaged Estate, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Estate, or any part thereof, or upon any Personal Property (all of which taxes, assessments and other governmental and nongovernmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Borrower may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Estate in lieu of or in addition to the Impositions payable by Borrower pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or assessment imposed on Lender and measured by or based in whole or in part upon the amount of the outstanding Secured Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Borrower shall pay and discharge the same as herein provided with respect to the payment of Impositions. In addition to the other remedies of Lender under Article V of this Mortgage, at the option of Lender, all Secured Obligations together with all accrued interest thereon, shall become due and payable thirty (30) days after Borrower receives written notice thereof in the event that Borrower shall not be permitted to pay such fees, taxes or assessments on behalf of Lender.

(c) Subject to the provisions of subparagraph (d) of this Section 1.09, Borrower covenants to furnish Lender within thirty (30) days after the date upon which any such Imposition is due and payable by Borrower, official receipts of the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payment thereof.

(d) Subject to the applicable state law provisions, Borrower shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Borrower's covenant to pay any such Imposition at the time and in the manner provided in this Section



1.09, unless Borrower has given prior written notice to Lender of Borrower's intent to so contest or object to an Imposition, and unless, at Lender's sole option, (i) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Estate, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; (ii) Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender; and (iii) Borrower shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

Section 1.10 Utilities. Borrower shall pay when due all utility charges or deposits related thereto which are incurred for the benefit of the Mortgaged Estate or which may become a charge or lien against the Mortgaged Estate for gas, electricity, water and sewer services furnished to the Mortgaged Estate and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Estate or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

Section 1.11 Actions Affecting Mortgaged Estate. Borrower shall appear in and contest any action or proceeding purporting to affect the title of Borrower in the Mortgaged Estate or security hereof or the rights or powers of Lender; and Borrower shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Lender may appear.

Section 1.12 Actions by Lender To Preserve Mortgaged Estate. Should Borrower fail to make any payment or to do any act as and in the manner provided in this Mortgage, Lender, in its sole discretion, without obligation to do so and without notice to or demand upon Borrower and without releasing Borrower from any Secured Obligation, may make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Borrower shall immediately upon demand therefor by Lender pay all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

Section 1.13 Survival of Warranties. Borrower shall fully and faithfully satisfy and perform the Secured Obligations of Borrower contained herein. All representations, warranties and covenants of Borrower contained herein shall remain continuing obligations, warranties and representations of Borrower during any time when any portion of the obligations secured by this Mortgage remain outstanding.

Section 1.14 Eminent Domain. Should the Mortgaged Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation



proceeding, or in any other manner ("Condemnation"), or should Borrower receive any notice or other information regarding such proceeding, Borrower shall give prompt written notice thereof to Lender. Lender may participate in any such Condemnation proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings and shall consult with Lender and its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or proceeds of sale in lieu of Condemnation with respect to the Mortgaged Estate and all judgments, decrees and awards for injury or damage to the Mortgaged Estate or any part thereof or interest therein shall be paid to Lender and shall be applied first to all costs and expenses incurred by Lender in obtaining the proceeds. The balance of the proceeds, if any, shall be applied at the option of Lender (i) toward altering, restoring or rebuilding the Mortgaged Estate or such portion thereof that may have been altered, damaged or destroyed or (ii) against sums secured hereby in such order as Lender may in its absolute discretion elect. If Lender elects not to apply all of the Condemnation proceeds for the restoration or repair of the Mortgaged Estate, Borrower shall not be required to repair or restore that portion of the Mortgaged Estate affected by Lender's election and the failure to do so shall not constitute a breach by Borrower of its obligation to maintain the Mortgaged Estate set forth in Section 1.04 hereof.

Borrower hereby assigns and transfers to Lender, and agrees to execute such further assignments of, all such proceeds, judgments, decrees and awards as Lender may request. Lender is hereby authorized, in the name of Borrower, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Lender shall not be, in any event or circumstance, liable or responsible for failure to collect or exercise diligence in the collection of any proceeds, judgments, decrees or awards.

Section 1.15 Additional Indebtedness. Subject to Permitted Encumbrances, the Borrower shall not further encumber the Mortgaged Estate or any portion thereof (including, without limitation, secured transactions under the UCC) without the prior written consent of Lender.

Section 1.16 Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds all parties hereto, their administrators, successors and assigns. The covenants and agreements of Borrower contained herein shall apply to and be binding upon any successor owner of the Mortgaged Estate or any part thereof.

Section 1.17 Inspections. Lender, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Estate for the purpose of inspecting the same, and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

Section 1.18 Liens. Borrower shall pay and promptly discharge, at Borrower's cost and expense, all liens, encumbrances and charges upon the Mortgaged Estate, or any part thereof or interest therein. Any cost incurred by Lender in connection with any such payment or discharge shall be secured hereby and shall be immediately due and payable without notice or demand.

Section 1.19 Restrictions Affecting Title. Borrower shall perform when due all Secured Obligations required to be performed by Borrower by the provisions of any agreement affecting title to the Mortgaged Estate.

Section 1.20 Further Assurances. Borrower shall take all action and do all things which it is authorized by law to take and do, and cooperate with Lender as Lender deems necessary or desirable, to insure the release of all encumbrances against the Mortgaged Estate, except Permitted Encumbrances, existing prior to the date hereof.

So long as any Secured Obligation shall remain unpaid, Borrower shall execute, acknowledge, where appropriate, and deliver from time to time promptly at the request of Lender all such instruments and documents as in the opinion of Lender are necessary or desirable to preserve the first priority lien created by this Mortgage.

Section 1.21 No Event of Default Under Loan Documents. Borrower agrees to notify Lender immediately in writing of any default by Borrower in the performance or observance of any covenant, agreement, representation, warranty or obligation of Borrower set forth in this Mortgage. Borrower shall also notify Lender in writing of any event or condition which with the lapse of time or the giving of notice would constitute an Event of Default.

Section 1.22 Enforceability. This Mortgage and each of the other Loan Documents to which Borrower is a party have been duly executed and delivered by Borrower and constitute valid and binding obligations of Borrower enforceable in accordance with their respective terms.

Section 1.23 Pending Litigation. There are no proceedings pending or, to the knowledge of Borrower threatened, against or affecting Borrower in any court or before any governmental authority or arbitration board or tribunal.

Section 1.24 Transfer of Interests in Borrower or Mortgaged Estate. Borrower shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, pledge or assign ownership or control of all or any part of the Mortgaged Estate or any interest therein (or in Borrower), except Borrower may sell or otherwise convey the Mortgaged Estate in the event it pays the total Secured Obligations in full.

## ARTICLE II

### LENDER'S POWERS

At any time, or from time to time, without liability therefor, Lender, without affecting the personal liability of any person for payment of the Secured Obligations or the effect of this Mortgage upon the remainder of said Mortgaged Estate, may from time to time without notice take such action as may be permitted by a secured party under the Uniform Commercial Code.

## ARTICLE III

### SECURITY AGREEMENT

Section 3.01 Creation of Security Interest. With respect to any portion of the Mortgaged Estate which constitutes personal property, fixtures or other property governed by the Uniform Commercial Code of the State of Alabama, ("UCC"), this Mortgage shall constitute a security agreement between Borrower as the debtor and Lender as the secured party, and Borrower hereby grants to Lender a security interest in such portion of the Mortgaged Estate. Cumulative of all other rights of Lender hereunder, Lender shall have all of the rights conferred upon secured parties by the UCC. Borrower will execute and deliver to Lender all financing statements that may from time to time be required by Lender to establish and maintain the validity and priority of the security interest of Lender, or any modification thereof, and all costs and expenses of any searches required by Lender. Lender may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if, upon an Event of Default, Lender should proceed to dispose of such property in accordance with the provisions of the UCC, ten (10) days' notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Lender may at its option dispose of such property in accordance with Lender's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC.

Some of the items of the Mortgaged Estate described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Estate is situated. Information concerning the security interest created by this instrument may be obtained from Lender, as secured party, at the address of Lender stated in Section 5.05 of



this Mortgage. The mailing address of Borrower, as debtor, is as stated in Section 5.05 of this Mortgage.

#### ARTICLE IV

##### EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT

Section 4.01 Events of Default. Any one or more of the following events shall be deemed an Event of Default hereunder:

(a) failure by Borrower to pay as and when due, (i) any payment of principal of or interest on the Note or (ii) any other sum secured hereby or due hereunder or under any other Loan Document, together with interest at the Late Rate provided by the Note;

(b) failure by Borrower to punctually perform or observe any covenant or agreement contained in this Mortgage (other than the monetary obligations described in paragraph (a) above) and such failure shall not have been cured within ten (10) days after notice from Lender of such failure;

(c) the occurrence of a default or an Event of Default under any Loan Document (other than this Mortgage);

(d) Borrower shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall admit in writing its inability to pay its debts generally as they become due;

(e) a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Estate, or any judgment involving monetary damages shall be entered against Borrower which shall become a lien on the Mortgaged Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within fifteen (15) days after its entry or levy;

(f) any suit or proceeding shall be filed against Borrower on any of the Loan Documents, which, if adversely determined, could substantially impair the ability of Borrower to perform any of his obligations contained in the Loan Documents, as determined by Lender in its sole and absolute discretion;



(g) if, during the term of the Note secured by this Mortgage, Borrower shall, without the prior written approval of Lender, sell, convey, alienate, mortgage or encumber the Mortgaged Estate or any part thereof or any interest therein, or shall be divested of his title or any interest therein, in any manner, whether voluntarily or involuntarily;

(h) at any time any representation, warranty or statement made by Borrower in any Loan Document or certificate delivered by Borrower shall be incorrect or misleading in any material respect, or any material misrepresentation shall at any time be made to Lender by Borrower.

Section 4.02 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Lender may declare all Secured Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind except as otherwise provided herein, and Borrower hereby waives notice of intent to accelerate the Secured Obligations. Thereafter, Lender may take any action and do such other things as secured parties are allowed to perform under the UCC, including without limitation, foreclosure, acceleration of rents, applying rents, if any, to the Secured Obligations, and sell or dispose of Mortgage Estate.

Section 4.03 Appointment of Receiver. If an Event of Default shall have occurred, Lender, as a matter of right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value of the Mortgaged Estate or the interest of Borrower therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Estate and Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided in Section 4.02 and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Estate unless such receivership is sooner terminated.

Section 4.04 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to them, all as the Lender shall deem most effectual for such purposes the Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

**Section 4.05 Power of Sale.** If a default or Event of Default should occur hereunder, the holder of the debt hereby secured shall have the right to enter upon and take possession of the Mortgaged Property and after, or without, taking such possession of the same, sell the Mortgaged Property at public outcry, in front of the courthouse door of the county wherein the Mortgaged Property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Lender or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Lender Property so purchased in the name and on behalf of the Borrower, and the certificate of the holder of the mortgage indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. Alternatively, the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages. The Lender, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of the Mortgaged Property if the highest bidder therefor.

**Section 4.06 Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to this Mortgage shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said Indebtedness and the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the Indebtedness hereby specially secured with interest to date of sale;

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

**Section 4.07 Lender's Option on Foreclosure.** At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale.

Section 4.08 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real property as to any Indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the Indebtedness secured hereby.

Section 4.09 Delay or Omission No Waiver. No delay or omission of the Lender or of 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 the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

Section 4.10 No Waiver of One Default to Affect Another, etc. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

Section 4.11 Discontinuance of Proceedings - Position of Parties, Restored. In case the Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case, the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding has been taken.

Section 4.12 Remedies Not Exclusive. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other 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 Lender, or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender. Lender may pursue inconsistent remedies. The acceptance by Lender of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided.



## ARTICLE V

### MISCELLANEOUS

Section 5.01 Governing Law. This Mortgage shall be governed by the laws of the State of Alabama. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end, the provisions of this Mortgage are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 5.02 Waiver of Rights. To the extent permitted by law, Borrower waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisement before sale of any portion of the Mortgaged Estate, and (ii) in any way extending the time for the enforcement of the collection of the Secured Obligations or creating or extending a period of redemption from any sale made in collecting Secured Obligations. To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, and Borrower, for his heirs, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Estate, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of Secured Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Borrower expressly waives and relinquishes any and all rights, remedies and defenses that Borrower may have or be able to assert by reason of the laws of the state in which the Property is located pertaining to the rights, remedies and defenses of sureties.

Section 5.03 Limitation of Interest. All agreements between Borrower and Lender, whether now existing or hereafter arising, and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Lender for the use, forbearance, or detention of the money to be loaned pursuant to the Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law.

Section 5.04 Statements by Borrower. Borrower, within ten (10) days after being given notice, will furnish, or cause to be furnished, to Lender a written statement stating the unpaid



principal of and interest on the Note and any other amounts secured by this Mortgage and stating that no offset or defense exists against such amounts.

Section 5.05 Notices. Whenever Lender or Borrower shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing and shall be deemed to have been given if sent by hand delivery, overnight courier or certified mail, postage prepaid, addressed to the following addresses:

If to Borrower: Ashley Bloom and Brian Christopher Curry  
2016 Grove Park Way  
Birmingham, Alabama 35242

If to Lender: Coed Properties, LLC  
13680 Sharp's Lake Road  
Tuscaloosa, Alabama 35473-7135  
Attn: Star Bloom

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change.

Section 5.06 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 5.07 Invalidity of Certain Provisions; Conflicting Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Mortgaged Estate, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on the Secured Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured or fully secured by the lien of this Mortgage.

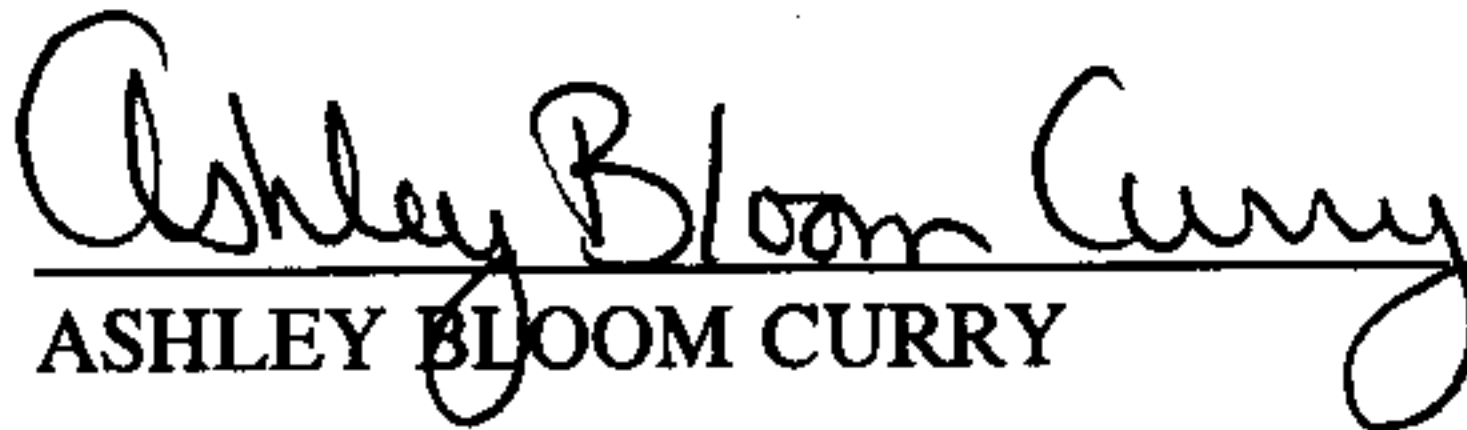
Section 5.08 Change in Ownership. If the ownership of the Mortgaged Estate or any part thereof or interest therein becomes vested in a person other than Borrower owing the same on the date hereof, Lender may, without notice to Borrower, deal with such successor or successors in interest with reference to this Mortgage and the Secured Obligations in the same manner as with Borrower without in any way vitiating or discharging Borrower's liability hereunder or upon the Secured Obligations. Such action shall not constitute consent to any such change in ownership without the express written consent of Lender. No sale of

the Mortgaged Estate, and no forbearance on the part of Lender, and no extension of the time for the payment of the Secured Obligations, given by Lender, shall operate to release, discharge, modify, change or affect the original liability, if any, of Borrower or the liability of any guarantors or sureties of Borrower, either in whole or in part.

Section 5.09 Assignment of Lender's Interest. It is expressly agreed that any and all terms of this Mortgage, the other Loan Documents and all other agreements made or executed by Borrower or others in favor of Lender, and all rights, powers, privileges, options and remedies conferred upon Lender herein and therein, shall inure to and be for the benefit of Lender and may be exercised by Lender, its successors and assigns, and the word "Lender" shall also mean and include the successor or successors and the assign or assigns of Lender and its successors and assigns. Borrower hereby specifically grants unto Lender the right and privilege, at Lender's option, to transfer and assign to any third person all or any part of Lender's rights to receive funds or payments hereunder.

Section 5.10 Time Is of the Essence. Time is of the essence under this Mortgage and the other Loan Documents.

IN WITNESS WHEREOF, Borrower, jointly and severally, has caused this Mortgage to be duly executed on the day and year set forth in the acknowledgment attached hereto and effective on the date first written above.

  
ASHLEY BLOOM CURRY

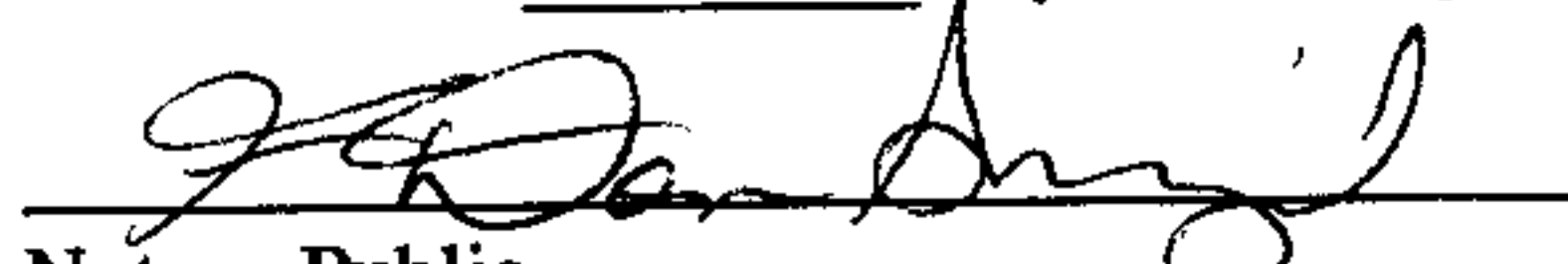
  
BRIAN CHRISTOPHER CURRY

STATE OF ALABAMA      )

SHELBY COUNTY      )

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Ashley Bloom Curry and Brian Christopher Curry, individuals, whose names are signed to the foregoing Agreement, and who are known to me, acknowledged before me on this day, that, being informed of the contents of said Agreement, each executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 25<sup>th</sup> day of January, 2002.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 5-14-02

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

**Lot 1158, according to the Map of Highland Lakes, 11<sup>th</sup> Sector, an Eddleman Community, as recorded in Map Book 27 page 84 A & B, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.**

**Together with nonexclusive easement to use the private roadways, common areas, all as more particularly described in the Declaration of Easements and Master Protective Covenants for Highland Lakes, a Residential Subdivision, recorded as Inst. #1994-07111 and amended in Inst. No. 1996-17543 and with 2<sup>nd</sup> Amendment in Inst. #1999-31095 in the Probate Office of Shelby County, Alabama, and the Declaration of Covenants, Conditions and Restrictions for Highland Lakes, a Residential Subdivision, 11th Sector, recorded in Inst. #2000-41316 in the Probate Office of Shelby County, Alabama (which, together with all amendments thereto, is hereinafter collectively referred to as, the "Declaration"). Mineral and Mining rights excepted.**



## **EXHIBIT "B"**

### **PERMITTED ENCUMBRANCES**

1. General and special taxes and assessments for the year 2002 and subsequent years not yet due and payable.
2. Easements as shown by recorded plat, including 10 feet on the Easterly side of lot.
3. Declaration of restrictions, covenants and conditions as set out in Inst. #1994-7111, Inst. #1995-17543 and Inst. #1999-31095 in the Probate Office of Shelby County, Alabama, along with Articles of Incorporation of Highland Lakes Residential Association, Inc. recorded as Inst. #94027947 in the Probate Office of Jefferson County, Alabama.
4. Declaration of Restrictions, Covenants and Conditions for Highland Lakes, Eleventh Sector, recorded in Inst. #3000-41316 in the Probate Office.
5. Right of Way granted to Water Works & Sewer Board of the City of Birmingham as set out in Inst. #2000-12490; Inst. #1997-4027 and Inst. #1996-25667 in the Probate Office.
6. Easement for Ingress and Egress to serve Highland Lakes Development executed by Highland Lakes Development, Ltd. to Highland Lakes Properties, Ltd. recorded as Inst. #1993-15704 in the Probate Office.
7. Lake Easement Agreement executed by Highland Lake Properties, Ltd. and Highland Lakes Development, Ltd., provided for easements, use by others and maintenance of Lake Property described within Inst. #1993-15705 in Probate Office.
8. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 28, page 237 in Probate Office.
9. Release(s) or damages as set out in instrument(s) recorded in Inst. #1999-40613 in Probate Office.

**EXHIBIT "B" (cont.)**

10. Cable Agreement as set out in Inst. #1997-33476 in Probate Office.
11. Restrictions, limitations and conditions as set out in Map Book 27, page 84 A, B, C & D.
12. Release of damages, restrictions, modifications, covenants, conditions, rights, privileges, immunities, and limitations, as applicable, as set out in and as referenced in deed(s) recorded in Inst. #2001-33144 in the Probate Office.
13. Alabama Power Company easement recorded in Inst. #2001-22920 in Probate Office.

fds\curry\mtgsecag.mtg

Inst. # 2002-05641

22

02/01/2002-05641  
02:28 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
026 CH 422.00