

STATE OF ALABAMA )

SHELBY COUNTY )

MORTGAGE

This Mortgage is made and entered into as of the 8th day of May, 2002, by and between Paradise Cove Property, LLC (hereinafter referred to as "Mortgagor"), and Michael E. Stephens, hereinafter referred to as "Mortgagee").

**WHEREAS**, Mortgagor has this day become justly indebted to Mortgagee for money loaned in the sum of One Hundred Seventy-five Thousand and no/100 Dollars (\$175,000.00) and has agreed to pay the same according to the terms of a Secured Note ("Note") bearing even date herewith, to secure prompt payment of Mortgagor's debt to Mortgagee, the Mortgagor hereby grants, bargains, sells, assigns, and conveys unto the Mortgagee all of Mortgagor's right, title, and interest in the real property described as Lot 7 of Paradise Cove, Phase III in Shelby County and more fully described in Schedule "A" attached hereto and incorporated herein, together with all buildings, structures and improvements now or hereafter located thereon (the "Property").

**TO HAVE AND TO HOLD** the said Property and every part thereof, unto the Mortgagee, its successors and assigns forever.

Mortgagor does covenant and represent with Mortgagee that it is the lawful owner of the Property, and has good right to convey the same subject to the rights, liens, and encumbrances set forth on Schedule "B" attached hereto (the " Permitted Liens ").

This Mortgage is made, however, subject to the following covenants, conditions and agreements.

1. Mortgagor shall pay the said indebtedness and interest thereon when and as they shall become due, whether in course or under any condition, covenant, or agreement herein contained, together with any other indebtedness which Mortgagor may owe to Mortgagee pursuant to this Mortgage.

2. Mortgagor shall keep the premises in good condition and repair, reasonable wear and tear excepted, shall not permit or perform any act which would in any way impair the value of the premises, shall not remove without replacing any fixture or remove or demolish any building or improvement located on the above-described land, unless same has become obsolete or is no longer useful in the operation of the premises, without the written consent of Mortgagee and shall neither commit nor permit waste of the premises.

3. Mortgagor shall pay all debts, claims or other charges that may become liens against the premises or any part thereof for repairs or improvements that may have been or may hereafter be made on the premises and shall not permit any lien or encumbrance of any kind which might become superior to the title of Mortgagee or the lien of this mortgage to secure or remain on the premises or any part thereof.

4. Mortgagor shall provide, maintain, and deliver to Mortgagee policies of fire and such other insurance as Mortgagee may from time to time reasonably require with such companies and in form and amounts reasonably satisfactory to Mortgagee, upon the buildings and improvements now or hereafter situated on the mortgaged premises, and shall assign and deliver to Mortgagee with satisfactory mortgagee clauses all insurance policies of any kind or in any amount now or hereafter issued upon the premises. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damage to the premises caused by any casualty. Full power is hereby conferred on Mortgagee to settle and compromise claims under all policies and to demand, receive and give receipt for all monies becoming payable thereunder and to assign absolutely all policies to any endorsee of the note or to the grantee of the premises in the event of the foreclosure of this mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby. In the event of loss under any of the policies of insurance herein referred to, Mortgagee covenants and agrees that, so long as no event of default hereunder has occurred and is continuing, Mortgagee will upon Mortgagor's request remit or advance the proceeds of the policy to Mortgagor for purposes of replacing, restoring, repairing, or reconstructing the insured property, and such property shall thereafter constitute Property hereunder and be subject to all of the terms of this mortgage.

5. If Mortgagor fails to insure the premises, or to pay and furnish receipts for all taxes and assessments, or to pay debts, claims or other charges for repair, all as provided herein, Mortgagee may at its option procure such insurance, pay such taxes and assessments, redeem the property from any tax sale, procure such receipts, or enter upon the premises and make such repairs as it may deem necessary and Mortgagor shall immediately pay to Mortgagee all sums which it shall have so paid, together with interest thereon at the rate provided in the Note from the date the same is paid and for payment thereof, this mortgage shall stand as security in like manner and effect as for the payment of the indebtedness referred to above; but the failure of Mortgagee to procure such insurance, to pay such taxes and assessments, to redeem the property from any tax sale, or to make repairs shall in no way render Mortgagee liable to Mortgagor. If Mortgagee shall elect to advance insurance premiums, taxes or assessments, or redeem from tax sale, the receipt of the insurance company or the proper tax official shall be conclusive evidence of the amount, validity and the fact of payment thereof.

6. Mortgagor shall immediately pay to Mortgagee all sums, including costs, expenses and reasonable agent's or attorney's fees, which it may expend or become obligated to pay in any proceedings legal or otherwise, to prevent the commission of waste, to establish or sustain the lien of this mortgage or its priority, or to defend against liens, claims, rights, estates, easements, or restrictions of persons or entities claiming by, through or under Mortgagor asserting priority to this mortgage other than the Permitted Liens; in payment, settlement, discharge or release of any asserted



lien, claim, right, easement or restriction of persons or entities claiming by, through or under Mortgagor made upon advice of competent counsel that the same is superior to the lien of this mortgage other than the Permitted Liens; for title insurance abstract or extension thereof; in connection with any suit to enforce or foreclose this mortgage; or to recover any sums hereby secured, together with interest on all such sums at the maximum legal rate until paid; and for payment of such sums and interest, this mortgage shall stand as security in like manner and effect as for the payment of the said indebtedness.

7. If default shall be made (a) under the terms of the Note, or (b) in the payment of any other indebtedness secured hereby or any part thereof which is not cured within any applicable grace period, or (c) in the performance of any covenant, condition, or agreement of this mortgage, or any other agreement given as security for said mortgage, which default is not cured (with respect to rights granted to Mortgagee pursuant to this mortgage) within 90 days after the receipt by Mortgagor of Mortgagee's notice of such default, or (d) upon the attempted transfer of the property given as security hereunder (other than (i) transfers of structures or improvements made in conjunction with improvements or replacements to the Property, and (ii) the granting of any mortgage or lien on the Property which is subordinate to the mortgage and lien of Mortgagee) without the prior written consent of the Mortgagee, which written consent shall not be unreasonably withheld, then the whole indebtedness hereby secured shall, at the option of the Mortgagee, become immediately due and payable and this mortgage subject to foreclosure; and Mortgagee shall have the right and is hereby authorized to enter upon and take possession of the premises and after or without taking possession, to sell the same before the Courthouse door in the county where the above-described real estate is located, at public outcry, for cash, after having given notice of the time, place and terms of sale by publication once a week for three 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 said sale is authorized and empowered to execute to the purchaser at said sale a deed to the premises so purchased, and Mortgagee may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At said foreclosure sale, the premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale in any other manner as Mortgagee may elect.

8. The proceeds of said sale shall be applied:

First, to the expenses of advertising and selling, including a reasonable attorney's fee;

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

Third, to the payment and satisfaction of the indebtedness hereby specially secured with interest to the date of sale;

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 expenses of ascertaining who is such owner.

If this mortgage be foreclosed by judicial proceeding, reasonable attorney's fees for foreclosing the same shall be paid out of the proceeds of the sale.

9. After foreclosure of this mortgage, Mortgagor and all holding under them shall become and be conclusively presumed to be tenants at will of the purchaser at the foreclosure sale.

10. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this mortgage.

11. Any promise made by Mortgagor herein to pay money may be enforced by a suit at law, and the security of this mortgage shall not be waived thereby, and as to such debts the Mortgagor waives all rights and exemption under the Constitution and laws of the State of Alabama and agrees to pay a reasonable attorney's fee for the collection thereof.

12. (a) No delay or failure of Mortgagee to exercise any option herein given or reserved shall constitute a waiver of such option or estop Mortgagee from afterwards exercising same or any option at any time and the payment or contracting to pay by Mortgagee of anything Mortgagor has herein agreed to pay shall not constitute a waiver of the default of Mortgagor in failing to make said payments and shall not estop Mortgagee from foreclosing this mortgage on account of such failure of Mortgagor.

(b) No delay or failure of the Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present default on the part of said Mortgagor, and the procurement of insurance or payment of taxes by the Mortgagee shall not be taken or deemed as a waiver of the right to declare the entire unpaid indebtedness secured by this mortgage immediately due and payable without notice to the Mortgagor; and such election may be made although the Mortgagee may at any time or times prior to the rejection of such payment have accepted any late payment or payments, it being agreed that no notice need be given to the Mortgagor that future payments must be made within the time prescribed despite such former acceptances.

13. All awards or damages in connection with any condemnation for public use of or injury to any of said property are hereby assigned and shall be paid to Mortgagee, and if an event of default hereunder shall have occurred and be continuing, Mortgagee may apply the same to payment of the installments under said note in the inverse order of their maturity, and Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittance thereof and to appeal from any such award. In the event of any such award or damages in connection with any condemnation for public use of or injury to any of said property, and so long as no event of default hereunder has occurred and is continuing, Mortgagee will upon Mortgagor's request remit or advance



the proceeds of such award or damages to Mortgagor for purposes of purchasing substitute premises, or replacing, restoring, repairing, improving or reconstructing the property which is the subject of such proceeding, and such property and improvements thereon shall thereafter constitute Property hereunder and be subject to all of the terms of this mortgage.

14. Mortgagee shall have access to and the right to inspect said premises at all reasonable times.

15. Mortgagor shall keep and maintain complete and accurate books and records and, upon request of Mortgagee from time to time (but no more frequently than quarterly), shall furnish unaudited financial statements prepared in accordance with generally accepted accounting principles.

16. In the event of the passage after the date of this mortgage of any law of the State of Alabama, deducting from the land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust, or debts secured hereby, for state or local purposes, or the manner of the operation of any such taxes so as to affect the interest of Mortgagee (but specifically excluding any taxes based on the income of Mortgagee), then and in such event, Mortgagor shall bear and pay the full amount of such taxes, provided that if for any reason payment by Mortgagor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the note, or within the mortgage or otherwise, Mortgagee may, at its option declare the whole sum secured by this mortgage with interest thereon to be immediately due and payable, or Mortgagee may, at its option, pay that amount or portion of such taxes as renders the loan or indebtedness secured hereby unlawful or usurious, in which event Mortgagor shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

17. If any event of default shall have occurred and be continuing, Mortgagee shall be entitled, as a matter of strict right and without regard to the value or occupancy of the security, to have a receiver appointed to enter upon and take possession of the premises, collect rents and profits therefrom and apply the same as the court may direct, such receiver to have all rights and powers permitted under the laws of Alabama. The expenses, including receiver's fees, counsel fees, costs and agents' compensation, incurred pursuant to the powers herein contained shall be secured hereby. The right to enter and take possession of said property, to manage and operate the same, to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee, whether received pursuant to this paragraph or otherwise. Notwithstanding the appointment of any receiver, trustee, or other custodian, by the court having jurisdiction thereof, the Mortgagee shall be entitled as pledgee to the possession and control of any cash, or other instruments at the time held by or payable or deliverable under the terms of this mortgage to the Mortgagee.

18. Any one or more of the following events shall constitute an event of default:

- (a) The occurrence of an event of default under the Note; or
- (b) Failure by Mortgagor to duly observe any covenant, condition or agreement of this mortgage, the security agreement, or the note or any other instrument in connection with the indebtedness secured by this mortgage, which failure is not cured within 30 days after the receipt by Mortgagor of Mortgagee's notice of such failure; or
- (c) Filing by Mortgagor of a voluntary petition in bankruptcy or Mortgagor's adjudication as a bankrupt or insolvent, or the filing by Mortgagor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Mortgagor or all or any substantial part of the mortgaged property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing or its inability to pay its debts generally as they become due; or
- (d) The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of the entry thereof, or the appointment of any trustee, receiver or liquidator of Mortgagor, or all or any substantial part of the mortgaged property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Mortgagor which appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); or
- (e) The entry by any court of last resort of a decision that an undertaking by Mortgagor as herein provided to pay taxes, assessments, levies, liabilities, obligations and encumbrances is legally inoperative or cannot be enforced.

19. In the event of any default by Mortgagor under the Secured Note, the security agreement, or in this mortgage, or in any other contract or agreement between Mortgagor and Mortgagee, such default shall be an event of default, entitling the Mortgagee to exercise the remedies provided herein, including the right to foreclose this mortgage in accordance with the terms hereof.

20. If at any time hereafter, without Mortgagee's consent, which consent shall not be unreasonably withheld, fee title to all or any part of the premises is transferred, whether by operation of law or otherwise, or the controlling interest of Mortgagor is changed by transfer of ownership interests (except among the existing owners and/or their affiliates), by operation of law or otherwise,



Mortgagee may, at Mortgagee's option, declare the indebtedness and the interest secured hereby to be immediately due and payable. A waiver by Mortgagee of the provisions of this paragraph shall operate as a waiver only for the specific occasion as to which the waiver is given by Mortgagee and the provisions of this paragraph shall otherwise continue to be fully effective and operable as to any other occasion or occasions.

This agreement shall be construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the undersigned has caused this Mortgage to be executed by its duly authorized officer or agent as of the day and year first above written.

Paradise Cove Property, LLC

By: Rhonda E. Hoyle  
Its Secretary

STATE OF ALABAMA )  
SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Rhonda E. Hoyle, appearing as Secretary of Paradise Cove Property, LLC, who is authorized to bind said company, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily.

Given under my hand and official seal this 8<sup>th</sup> day of May 2002

Joy A. Strickfellow  
Notary Public

My Commission Expires: 1-29-04

## **EXHIBIT A**

The property is described as Lot 7, according to map of Paradise Cove, Phase III, as recorded in Map Book 27, page 94, in the Probate Office of Shelby County, Alabama.



**EXHIBIT B**

1. Ad valorem taxes for the 2002 tax year and thereafter
2. 35 foot building setback line from Paradise Cove Lane as shown on map recorded in Map Book 27, page 94, in said Probate Office
3. Transmission line permits to Alabama Power Company recorded in Deed Book 133, page 281, in said Probate Office
4. Less and except half of all minerals and mining rights which are reserved pursuant to the provisions of deed recorded in Deed Book 337, page 673, in said Probate Office
5. Flood rights of Alabama Power Company as set out in Deed Book 241, page 838, and Deed Book 246, page 714, in said Probate Office
6. Right-of-way granted to South Central Bell recorded in Deed Book 343, page 766, in said Probate Office