

MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE, made and entered into on this the 22nd day of February, 1983, by and among RIVERCHASE GARDENS, LTD., an Alabama Limited Partnership (herein called the "Mortgagor"), BHN Corporation, a corporation (herein called "BHN"), and CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a federal savings and loan association (herein called "Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagor is indebted to Mortgagee for money being loaned in advances as construction progresses, as evidenced by promissory note of even date herewith, in the amount of Three Million One Hundred Eighty Thousand and no/100 (\$3,180,000.00) Dollars; and

WHEREAS, the said Three Million One Hundred Eighty Thousand Dollars indebtedness shall be advanced by Mortgagee in accordance with a Construction Loan Agreement of even date herewith, the terms of which agreement are made a part of this mortgage; and

WHEREAS, Mortgagor is desirous of securing the prompt payment of the indebtedness evidenced by said note, and the payment of principal and interest therein provided for;

WHEREAS, upon the assignment of this mortgage to Liberty National Life Insurance Company, Birmingham, Alabama, interest on the debt secured hereby shall be payable in one hundred twenty (120) successive monthly installments as provided in said note with the principal due and payable on a date ten (10) years from the first day of the month succeeding the assignment;

WHEREAS, Mortgagor may hereafter become indebted to the Mortgagee for additional sums loaned and/or on account of indebtedness which may accrue to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee under the provisions of this mortgage, and Mortgagor and BHN wish to execute

James E. Hatcher
James E. Hatcher
1700 First Ala. Bank Bldg
Birmingham, AL 35203

BOOK 427 PAGE 524

See Assign Mtd. BK 54 pg 686 - (1-18-84)

this conveyance for the security and enforcement of the payment both of said present and any such future indebtedness;

WHEREAS, as a condition of advancing the monies under the aforementioned Construction Loan Agreement, Mortgagee has required BHN to grant to Mortgagee a first mortgage lien on the real property hereinafter described; and

WHEREAS, it is in the best interests of BHN that Mortgagee lend said monies to Mortgagor;

NOW, THEREFORE, the undersigned, Mortgagor in consideration of the premises, the ultimate disbursement to Mortgagee of the aforesaid sum of Three Million One Hundred Eighty Thousand and no/100 (\$3,180,000.00) Dollars, to secure the prompt payment of said indebtedness with interest thereon, and the payment of any further sum or sums for which Mortgagor may hereafter become indebted to Mortgagee under the provisions hereof or otherwise, and, further, to secure the performance of the covenants, conditions and agreements hereinafter and in said note set forth, Mortgagor has bargained and sold and hereby grants, bargains, sells and conveys to Mortgagee, its successors and assigns, its Leasehold interest in and to the following described real estate, lying and being in the County of Shelby, State of Alabama, to-wit:

That certain parcel of land situated in Shelby County, Alabama, and more particularly described as follows:

Commence at the Southeast corner of the Northwest One-Quarter of Section 30, Township 19 South, Range 2 West; run thence in a Westerly direction along the South line of said Quarter-Quarter Section for a distance of 2,300.55 feet; thence turn an angle to the right of 86 degrees, 00 minutes and run in a Northerly direction along the East line of U. S. Highway 31 for a distance of 1,096.84 feet; thence turn an angle to the right of 101 degrees, 03 minutes, 10 seconds and run in a Southeasterly direction for a distance of 346.16 feet; thence turn an angle to the left of 71 degrees, 19 minutes, 50 seconds and run in a Northeasterly direction for a distance of 580 feet; thence turn an angle to the right of 18 degrees, 59 minutes, 22 seconds and run in a Northeasterly direction for a distance of 535.19 feet; thence turn an angle to the right of 7 degrees, 10 minutes, 43 seconds and run in a Northeasterly direction for a distance of 450.31 feet; thence turn an angle to the right of 54 degrees, 38 minutes, 40 seconds and run in a Southeasterly direction for a distance of 589.98 feet; thence turn an angle to the left of 47 degrees, 25 minutes, 30 seconds and run in a Northeasterly direction

for a distance of 295 feet; thence turn an angle to the right of 19 degrees, 30 minutes and run in a North-easterly direction for a distance of 394.05 feet; thence turn an angle to the right of 25 degrees, 31 minutes and run in a Southeasterly direction for a distance of 420 feet to the point of beginning. From the point of beginning thus obtained, thence continue along last described course for a distance of 62.29 feet; thence turn an angle to the left of 20 degrees, 43 minutes and run in a Northeasterly direction for a distance of 454.41 feet; thence turn an angle to the right of 27 degrees, 54 minutes and run in a Southeasterly direction for a distance of 127.85 feet to a point on the Westerly right-of-way line of Riverchase Parkway East; thence turn an angle to the right of 56 degrees, 24 minutes, 52 seconds to the tangent of the following described course; said course being situated on a curve to the right having a central angle of 69 degrees, 28 minutes, 08 seconds and a radius of 267.71 feet; thence run along the arc of said curve to the right and along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 324.59 feet to the end of said curve; thence run along the tangent, if extended to said curve, continuing in a Southwesterly direction along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 56 feet to the point of beginning of a curve to the left; said curve having a central angle of 38 degrees, 52 minutes, and a radius of 360.31 feet; thence run along the arc of said curve to the left in a Southwesterly direction along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 244.42 feet to the end of said curve; thence run along the tangent, if extended to said curve, in a Southwesterly direction along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 192.08 feet to the point of beginning of a curve to the right; said curve having a central angle of 12 degrees, 12 minutes and a radius of 776.49 feet; thence run along the arc of said curve to the right in a Southwesterly direction along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 165.34 feet to the end of said curve; thence run along the tangent, if extended to said curve, in a Southwesterly direction along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 165 feet; thence turn an angle to the right of 86 degrees, 0 minutes and run in a Northwesternly direction for a distance of 159 feet to the point of beginning of a curve to the right; said curve having a central angle of 56 degrees, 45 minutes and a radius of 323.99 feet; thence run along the arc of said curve to the right in a Northwesternly direction for a distance of 320.91 feet to the end of said curve and the point of beginning of a curve to the left; said curve to the left having a central angle of 36 degrees, 44 minutes and a radius of 294.19 feet; thence run along the arc of said curve to the left in a Northwesternly direction for a distance of 188.61 feet; thence turn an angle to the right from the tangent of the last described course of 73 degrees, 48 minutes, 12 seconds and run in a Northeasterly direction for a distance of 573.80 feet.

AND BHN, in consideration of the premises, the ultimate disbursement to Mortgagor of the aforesaid sum of Three Million One Hundred Eighty Thousand and no/100 (\$3,180,000.00) Dollars, to

secure the prompt payment of said indebtedness with interest thereon, and the payment of any further sum or sums for which Mortgagor may hereafter become indebted to Mortgagee under the provisions hereof or otherwise, and, further, to secure the performance of the covenants, conditions and agreements hereinafter and in said note set forth, BHN has bargained and sold and hereby grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the following described real estate, lying and being in the County of Shelby, State of Alabama, to-wit:

That certain parcel of land situated in Shelby County, Alabama, and more particularly described as follows:

Commence at the Southeast corner of the Northwest One-Quarter of Section 30, Township 19 South, Range 2 West; run thence in a Westerly direction along the South line of said Quarter-Quarter Section for a distance of 2,300.55 feet; thence turn an angle to the right of 86 degrees, 00 minutes and run in a Northerly direction along the East line of U. S. Highway 31 for a distance of 1,096.84 feet; thence turn an angle to the right of 101 degrees, 03 minutes, 10 seconds and run in a Southeasterly direction for a distance of 346.16 feet; thence turn an angle to the left of 71 degrees, 19 minutes, 50 seconds and run in a Northeasterly direction for a distance of 580 feet; thence turn an angle to the right of 18 degrees, 59 minutes, 22 seconds and run in a Northeasterly direction for a distance of 535.19 feet; thence turn an angle to the right of 7 degrees, 10 minutes, 43 seconds and run in a Northeasterly direction for a distance of 450.31 feet; thence turn an angle to the right of 54 degrees, 38 minutes, 40 seconds and run in a Southeasterly direction for a distance of 589.98 feet; thence turn an angle to the left of 47 degrees, 25 minutes, 30 seconds and run in a Northeasterly direction for a distance of 295 feet; thence turn an angle to the right of 19 degrees, 30 minutes and run in a Northeasterly direction for a distance of 394.05 feet; thence turn an angle to the right of 25 degrees, 31 minutes and run in a Southeasterly direction for a distance of 420 feet to the point of beginning. From the point of beginning thus obtained, thence continue along last described course for a distance of 62.29 feet; thence turn an angle to the left of 20 degrees, 43 minutes and run in a Northeasterly direction for a distance of 454.41 feet; thence turn an angle to the right of 27 degrees, 54 minutes and run in a Southeasterly direction for a distance of 127.85 feet to a point on the Westerly right-of-way line of Riverchase Parkway East; thence turn an angle to the right of 56 degrees, 24 minutes, 52 seconds to the tangent of the following described course; said course being situated on a curve to the right having a central angle of 69 degrees, 28 minutes, 08 seconds and a radius of 267.71 feet; thence run along the arc of said curve to the right and along the Northwestern right-of-way line of Riverchase Parkway East for a distance of 324.59 feet to the end of said curve; thence run along the tangent, if extended to said curve, continuing in a Southwesterly direction along the Northwestern right-of-way line of Riverchase Parkway East for a distance of

BOOK 427 PAGE 527

56 feet to the point of beginning of a curve to the left; said curve having a central angle of 38 degrees, 52 minutes, and a radius of 360.31 feet; thence run along the arc of said curve to the left in a Southwesterly direction along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 244.42 feet to the end of said curve; thence run along the tangent, if extended to said curve, in a Southwesterly direction along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 192.08 feet to the point of beginning of a curve to the right; said curve having a central angle of 12 degrees, 12 minutes and a radius of 776.49 feet; thence run along the arc of said curve to the right in a Southwesterly direction along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 165.34 feet to the end of said curve; thence run along the tangent, if extended to said curve, in a Southwesterly direction along the Northwesternly right-of-way line of Riverchase Parkway East for a distance of 165 feet; thence turn an angle to the right of 86 degrees, 0 minutes and run in a Northwesternly direction for a distance of 159 feet to the point of beginning of a curve to the right; said curve having a central angle of 56 degrees, 45 minutes and a radius of 323.99 feet; thence run along the arc of said curve to the right in a Northwesternly direction for a distance of 320.91 feet to the end of said curve and the point of beginning of a curve to the left; said curve to the left having a central angle of 36 degrees, 44 minutes and a radius of 294.19 feet; thence run along the arc of said curve to the left in a Northwesternly direction for a distance of 188.61 feet; thence turn an angle to the right from the tangent of the last described course of 73 degrees, 48 minutes, 12 seconds and run in a Northeasterly direction for a distance of 573.80 feet.

TOGETHER WITH all and singular the rights, members, privileges and appurtenances thereunto belonging or in anywise appertaining, and all rights, title and interests, if any, of Mortgagor or BHN in and to any streets, alleys, roads or highways abutting the described premises; and

TOGETHER WITH structures, now or hereafter constructed thereon, and all building materials, equipment and fittings of every kind or character now owned or hereafter acquired by Mortgagor or BHN for the purpose of constructing buildings and structures thereon, whether or not such materials, equipment and fittings are located on or adjacent to the mortgaged property or whether in storage or otherwise; such personal property being conveyed and mortgaged includes, without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware,

nails, wires and wiring equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building materials and equipment of every kind and character used or intended for use in connection with said improvements, also all improvements, fixtures and articles of personal property now or hereafter attached to or used or adapted for use in the operation of the mortgaged premises, all of which shall be deemed part of the realty, including, but without being limited to, furniture, all carpeting, drapes, elevators, heating and incinerating apparatus and equipment whatsoever, all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, cooling, air conditioning, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures;

BOOK 427 PAGE 629
TOGETHER WITH any awards hereafter made for any taking of or injury to said premises through eminent domain or otherwise, including awards or damages for change of grade, and also any return premiums or other payments upon any insurance at any time provided for the benefit of Mortgagee, all of which awards, damages, premiums and payments are hereby assigned to Mortgagee and may be at any time collected by it.

TO HAVE AND TO HOLD the said premises, and every part thereof, unto Mortgagee, its successors and assigns, forever. And Mortgagor covenants with Mortgagee that it is lawfully seized of a leasehold interest in said premises and has a good right to sell and convey the same as aforesaid; and BHN covenants with Mortgagee that it is lawfully seized in said premises and has good right to sell and convey as aforesaid; and BHN and Mortgagor covenant with said Mortgagee that the said premises are free of all encumbrances except as herein set out, and that they will warrant and forever defend the title to said premises unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

THIS IS A FUTURE ADVANCE MORTGAGE. The said indebtedness of Three Million One Hundred Eighty Thousand and no/100 (\$3,180,000.00)

Dollars which is secured hereby is being advanced by Mortgagee to Mortgagor in accordance with a Construction Loan Agreement of even date herewith between Mortgagor and Mortgagee, the terms of which are incorporated as a part hereof. In the event of default in the terms of said Construction Loan Agreement, such default shall be an event of default entitling the Mortgagee herein to exercise the remedies provided herein, including the right to foreclose this mortgage in accordance with the terms hereof. The provisions of this paragraph shall be terminated upon the sale and assignment of this mortgage and said note secured hereby to Liberty National Life Insurance Company, Birmingham, Alabama, or any other party by the Mortgagee. Such sale and assignment shall be conclusive evidence of the complete performance and fulfillment thereof.

This mortgage is made and accepted on the understanding that the following covenants, conditions and agreements shall continue in effect so long as any portion of the indebtedness hereby secured remains unpaid, to-wit:

(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 set forth, together with any other indebtedness which Mortgagor may owe to Mortgagee, it being further agreed that any statement, any note or obligation that is secured by this mortgage shall be conclusive evidence of such fact. Any indebtedness secured hereby and interest thereon if not paid when due shall bear interest at the rate of thirteen percent (13%) per annum and such additional interest shall be secured hereby.

(2) That, for the benefit of Mortgagee, Mortgagor will constantly keep in force fire and extended coverage, malicious mischief, and rent coverage insurance policies and, when available and required by Mortgagee, war damage and other hazard insurance with respect to any and all buildings on said premises, such insurance to be provided in such manner and in such companies and for such amounts as may be required by Mortgagee, with loss, if

BOOK 427 PAGE 631

any, payable to said Mortgagee as its interest may appear, and Mortgagor hereby transfers, assigns, sets over and delivers to Mortgagee the fire and other insurance policies covering said property and any and all renewals thereof, the premiums on which have been or shall be paid by Mortgagor, and it is further agreed that all such insurance and insurance policies shall be held by Mortgagee as a part of the security for said indebtedness, and shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder, without the necessity of specifically describing said insurance or insurance policies in the foreclosure notice, sale, deed or other proceedings in consummation of such foreclosure, and if the Mortgagor fails to keep said property insured as above specified, then Mortgagee may, at its option, insure said property for its insurable value against loss by fire and other hazards, casualties and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien of this mortgage and bear interest at the rate of 13% per annum from the date of payment by Mortgagee; it being understood and agreed between the parties hereto that any sum, or sums, of money received for any damage by fire or other casualty to any building, or buildings, herein conveyed may be retained by the then holder of the indebtedness secured by this mortgage and applied toward payment of such indebtedness, either in whole or in part, or, at the option of the holder of said debt, same may be applied in payment for any repair or replacement of such building, or buildings, without affecting the lien of this mortgage for the full amount hereby secured. Mortgagor agrees to give Mortgagee notice in writing of any damage to the mortgaged premises caused by fire or other casualty within ten (10) days after the occurrence of any such damage.

If the property mortgaged hereby is at any time included within an area identified by the Secretary of Housing and Urban Development as having special flood or mud slide hazards for which the sale of flood insurance has been made available under the

National Flood Insurance Act of 1973, Mortgagor shall promptly purchase a flood insurance policy acceptable to Mortgagee. Such policy shall insure Mortgagee to the extent of its interest and shall be promptly delivered to Mortgagee.

(3) That said premises and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted. Taxes and assessments or other charges which may be levied upon or accrue against said premises, as well as all other sums which may be or become liens or charges against same, shall be paid and discharged by Mortgagor promptly as and when so levied or assessed, and shall not be permitted to become delinquent or to take priority over the lien of this mortgage.

BOOK 427 PAGE 632
(4) No building or other improvement on the premises shall be structurally altered, removed or demolished without the Mortgagee's prior written consent, nor shall any fixture or chattel covered by this mortgage and adapted to the proper use and enjoyment of the premises be removed at any time without like consent unless actually replaced by an article of equal suitability owned by Mortgagor. In the event of any breach of this covenant, the Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of said principal sum immediately due and payable.

(5) That any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Mortgagor and shall not be permitted to take priority over the lien of this mortgage, provided that Mortgagor, upon first furnishing to Mortgagee reasonable security for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens. In those instances where Mortgagee's title policy protects it against such lien or liens, such title policy shall be deemed to be sufficient security. Determination of whether said title

policy protects Mortgagee shall be made solely by Mortgagee and shall be binding upon Mortgagor.

(6) That any and all legal requirements of any department of the city wherein said premises are located shall be fully complied with by Mortgagor.

(7) If Mortgagor fails to insure said property as hereinabove provided, or fails to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against said property or the indebtedness secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge any and all liens, debts, and/or charges which might become liens superior to the lien of this mortgage, Mortgagee may, at its option, insure said property and/or pay said taxes, assessments, debts, liens and/or charges, and any money which Mortgagee shall have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to the debt hereby specifically secured, shall be secured by this mortgage, shall bear interest at the rate of 13% per annum from date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable.

(8) No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges.

(9) If Mortgagee shall be made a party to any suit involving the title to the property hereby conveyed and employs an attorney to represent it therein, or if the Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the property hereby conveyed that purports to be superior

to the lien of this mortgage in any respect, Mortgagor will pay to Mortgagee, when the same becomes due, such attorney's fee as may be reasonable for such services, and if such fee is paid or incurred by Mortgagee, the same shall be secured by the lien of this mortgage in addition to the indebtedness specially secured hereby, and shall bear interest at the rate of 13% per annum from the date it is paid or incurred and shall be at once due and payable.

(10) All expenses incurred by Mortgagee, including attorney's fees, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the property hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the debt hereby secured.

(11) Mortgagor agrees to pay a reasonable attorney's fee to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness secured by this Mortgage or to appear in any bankruptcy proceeding affecting the Mortgagee under this Mortgage.

(12) In the event damages are paid or awarded for the taking of or injury to the property herein mortgaged, whether such taking or injury be done under the power of eminent domain or otherwise, any and all such payments, awards and damages arising thereunder shall be paid to Mortgagee to be applied at the option of Mortgagee toward the satisfaction of any and all indebtedness secured hereby.

(13) Notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be self-executing, Mortgagor and BHN, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute, at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this mortgage, and any advances made by Mortgagee as herein provided then remaining unpaid, with interest thereon at the rate

of thirteen percent (13%) per annum to the date of payment, whether such remaining principal sum is then due or not by the terms of said note or of this mortgage.

(14) If Mortgagor shall make default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, Mortgagee may proceed to collect the rent, income and profits from the premises, either with or without the appointment of a receiver; any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the cost of collecting same, including any real estate commission or attorney's fee incurred, shall be credited first to advances with interest thereon, then to the interest due on the principal indebtedness, and the remainder, if any, to the principal debt hereby secured.

BOOK 427 PAGE 635
(15) It is further agreed that if Mortgagor shall fail to pay, or cause to be paid, the whole or any portion of the principal sum or any installment of interest thereon, or any other sum the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein set forth, or should default be made in the payment of any mechanic's lien, materialman's lien, insurance premiums, taxes or assessment now, or which may hereafter be, levied against, or which may become a lien on, said property, or should default be made in the Ground Lease Agreement between the Mortgagor and BHN covering the mortgaged property (herein called the "Ground Lease"), or should default be made in any of the covenants, conditions and agreements herein set forth (other than a default under the Ground Lease or a default in payment of principal or interest as referred to above), and if such defaults have not been cured after Mortgagee has given Mortgagor thirty (30) days written notice thereof, then and in that event, the whole of said principal sum, with interest thereon, and all other sums secured hereby, shall, at the option of the then holder of said indebtedness, be and become immediately due and payable and the holder of

the debt hereby secured shall have the right to enter upon and take possession of said 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 said 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 Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the property so purchased in the name and on behalf of Mortgagor, 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, or 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 Mortgagee, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of said property if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been, necessary in any one or more of the foreclosure of this mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Mortgagor, or anyone liable for said indebtedness, or interested in the mortgaged premises, to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this Mortgage, (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this mortgage, together with interest thereon; (c)

to the payment and satisfaction of said principal indebtedness and interest thereon to the day of sale; and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money. Mortgagee, Mortgagor and BHN agree that marshalling of assets principles shall not govern a foreclosure sale hereunder and that the fee unencumbered by the leasehold interest shall be the asset sold at any such foreclosure sale.

(16) In the event of the enactment of any law by the State of Alabama, after the date of this mortgage, deducting from the value of the land for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby, and in the event Mortgagor fails to pay such obligation within seven (7) days after being given written notice by Mortgagee so to do, or is prohibited by law from making such payment, the whole of the principal sum secured by this mortgage, together with the interest due thereon, shall, at the option of Mortgagee, without any further notice to any party, become immediately due and payable.

(17) Should Mortgagor or any of its General Partners become insolvent or bankrupt; or should a receiver of Mortgagor's or any of its General Partners' property be appointed; or should Mortgagor intentionally damage or attempt to remove any improvements upon said mortgaged real estate; or should it be discovered after the execution and delivery of this instrument that there is a defect in the title to or a lien or encumbrance of any nature on said property prior to the lien hereof; and if the said Mortgagor shall fail for thirty (30) days after demand by the Mortgagee, or other

BOOK 427 PAGE 637

BOOK 427 PAGE 638

holder or holders of said indebtedness, to correct such defects in the title or to remove any such lien or encumbrance or, at the option of the Mortgagor, within such thirty (30) day period to deposit with the Mortgagee cash, or a corporate surety bond naming Mortgagee as obligee, in an amount sufficient to cover the payment, with interest and penalties, of curing any such lien or encumbrance within a reasonable period of time; then, upon any such default, failure or contingency, the Mortgagee, or other holder or holders of said indebtedness, or any part thereof, shall have the option or right, without notice or demand, to declare all of said indebtedness then remaining unpaid immediately due and payable, and may immediately or at any time thereafter foreclose this mortgage by the power of sale herein set forth or by suit, as such Mortgagee, or other holder or holders of said indebtedness, may elect. Notwithstanding anything to the contrary herein set forth, after the purchase by and assignment to Liberty National Insurance Company of this mortgage and the note secured hereby any reference in this paragraph 17 to the General Partners of the Borrower shall be ineffective.

(18) It is expressly agreed that any indebtedness at any time secured hereby may be extended, rearranged or renewed, and that any part of the security herein described may be waived or released without in anywise altering, varying or diminishing the force, effect or lien of this instrument; and this instrument shall continue as a first lien on all of said lands and premises and other property and rights covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid; and no other security now existing or hereafter taken to secure the payment of said indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this instrument; and no security subsequently taken by Mortgagee or other holder or holders of said indebtedness shall in any manner impair or affect the security given by this instrument; and all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

(19) Mortgagor agrees to provide Mortgagee with an annual operating statement with regard to the mortgaged property. Mortgagor shall establish an initial operating capital and contingency reserve in the amount of \$150,000 to be used only for unforeseen operating contingencies. Said reserve (less any portion thereof which shall have been used for unforeseen operating contingencies) shall be maintained until the annual income shown on the statements referred to above is sufficient ground to provide for the payment of all expenses in connection with the mortgaged property, including, without limitation, taxes, insurance, rent under the Ground Lease, and interest on the note secured hereby.

(20) Mortgagor and BHN agree for themselves and any and all persons or concerns claiming by, through or under Mortgagor or BHN that if they or any one or more of them shall hold possession of the above-described property or any part thereof subsequent to foreclosure hereunder, they or the parties so holding possession shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of wrongful detainer and shall be liable to such purchaser or purchasers for reasonable rental of said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

(21) When and if Mortgagor and Mortgagee shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement with regard to property either referred to or described herein, or in any way connected with the use and enjoyment of the premises hereby mortgaged, this mortgage shall be deemed to be a Security Agreement as defined in the Alabama Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreements herein set forth shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said

financing statement by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a financing statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the mortgaged property and/or adapted for use therein and/or which is described or reflected in this mortgage is, and at all times and for all purposes and in all proceedings both legal and equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital set forth herein or in any list filed with the Mortgagee, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) the rights in or the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal government and any subdivisions or entity of the Federal government, must be filed in the Commercial Code Records.

(22) Mortgagee acknowledges that BHN has heretofore leased the mortgaged property to Mortgagor pursuant to the Ground Lease. The parties hereto contemplate that, upon the assignment of this mortgage and the purchase of the note secured hereby to Liberty National Life Insurance Company ("Liberty"), Liberty shall purchase from BHN the real property mortgaged hereby, subject to the leasehold interest of Mortgagor. Upon such purchase, this mortgage shall be and become a leasehold mortgage on the leasehold interest of Mortgagor and any reference herein to a mortgage on the fee shall become null and void. If all or any part of the mortgaged property is sold, transferred or further encumbered, other than pursuant to the Ground Lease, Mortgagee may, at Mortgagee's sole option, declare all sums secured by this Mortgage to be immediately due and payable.

BOOK 427 PAGE 641
(23) Provided always that if Mortgagor pays the indebtedness secured by this mortgage, and reimburses Mortgagee, its successors and assigns, for any amounts it may have expended pursuant to the authorization of this mortgage, including, without limitation, sums spent in payment of taxes, assessments, insurance or other liens and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; otherwise it shall remain in full force and effect.

(24) Wherever and whenever in this mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be deemed to have been given or served when deposited in the United States Mail by registered or certified mail, return receipt requested, addressed as follows:

<u>To Mortgagor:</u>	Riverchase Gardens, Ltd. 1813 First Avenue North Birmingham, Alabama 35203
<u>To BHN:</u>	BHN Corporation 1813 First Avenue North Birmingham, Alabama 35203
<u>To Mortgagee:</u>	City Federal Savings and Loan Association 2030 North Second Avenue Birmingham, Alabama 35203

or to such other address as either party may have given to the other by written notice.

(25) Singular or plural words used herein to designate the Mortgagor shall be construed to refer to the maker or makers of this mortgage, whether one or more persons, and all covenants and agreements herein set forth shall bind the heirs, successors and assigns of the Mortgagor; and every option, right and privilege herein reserved or secured to Mortgagee shall inure to the benefit of its successors and assigns.

(26) The unenforceability or invalidity of any provision or provisions of this mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law.

IN WITNESS WHEREOF, the parties hereto have executed this Indenture, all as of the day and year first above written.

RIVERCHASE GARDENS, LTD.

By:

Will C. Nun
Its General Partner

Frank A. Thif
Its General Partner

Sam R. Beavers
Its General Partner

BHN Corporation

By:

Will C. Nun
Its President

ATTEST:

Frank A. Thif
Its Secretary

CITY FEDERAL SAVINGS AND LOAN
ASSOCIATION

By: *Kevin A. Williams*
Its Senior Vice President

ATTEST:

Malcolm E. Scroggins
Its Assistant Secretary

This Instrument Was Prepared By:
Samuel E. Upchurch, Jr.
1700 First Alabama Bank Building
Birmingham, Alabama 35203

BOOK 427 PAGE 643

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that WILLIAM C. HULSEY, SIMS R. BEAVERS, AND FRANK A. NIX, whose names as General Partners of Riverchase Gardens, Ltd., are signed to the foregoing Mortgage, and who are known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, they, as such General Partners, and with full authority, executed the same voluntarily for and as the act of said Limited Partnership.

Given under my hand and official seal this the 22nd day of February, 1983.

Mary Margaret Blanton
Notary Public
My commission expires 2/8/86

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that William C. Hulsey, whose name as President of BHN Corporation, a corporation, is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.


Given under my hand and official seal this the 23rd day of February, 1983.

Mary Margaret Blanton
Notary Public
My commission expires 2/8/86

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in
said State, hereby certify that Louie A. Williams, Jr.,
whose name as Senior Vice President of City
Federal Savings and Loan Association, is signed to the foregoing
Mortgage, and who is known to me, acknowledged before me on this
day that, being informed of the contents of said Mortgage, he, as
such officer and with full authority, executed the same voluntarily
for and as the act of said banking association.

Given under my hand and official seal this the 22nd day of
February, 1983.


Deborah L. Gray
Notary Public
My Commission Expires 5-12-83

BOOK 427 PAGE 645.

JEFFERSON COUNTY, ALABAMA
I HEREBY CERTIFY THIS
INSTRUMENT WAS FILED

1983 FEB 22 PM 3:21

Thomas A. Lawrence, Jr.
JUDGE OF THE EASE

Mtg Tax \$, 110.00

Fee 33.00

Ind 1.00

4,804.00