

REAL ESTATE MORTGAGE

19800929000109690 Pg 1/5 .00
Shelby Cnty Judge of Probate, AL
09/29/1980 00:00:00 FILED/CERTIFIED

STATE OF ALABAMA)
COUNTY OF SHELBY)

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the undersigned RIVERCHASE TOWN HOMES II, LTD. (herein called "Mortgagor") is, contemporaneously with the execution hereof, becoming indebted to THE HARBERT-EQUITABLE JOINT VENTURE (hereinafter referred to as "Mortgagee"), in the sum of Two Hundred Twenty Thousand and No/100 Dollars (\$220,000.00) principal, as evidenced by a promissory note of even date herewith, payable to Mortgagee with interest thereon, on demand or as otherwise provided therein (hereinafter "Note"); and

WHEREAS, it is desired by the parties to secure said principal amount with interest, and any and all other additional indebtedness of said Mortgagor to said Mortgagee, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and all renewals or extensions thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, all of which are hereinafter referred to as "other indebtedness".

NOW, THEREFORE, the undersigned Mortgagor, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions or renewals of same, and any charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to attorney's fees, and any and all other indebtedness of Mortgagor to Mortgagee as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, and as may be set forth in any other instruments evidencing or securing other indebtedness of Mortgagor to Mortgagee, have bargained and sold and do hereby grant, bargain, sell and convey unto the said Mortgagee, its successors and assigns, that certain real property in the County of Shelby, State of Alabama (hereinafter "Property"), described as follows to wit:

A tract of land situated in the NE 1/4 of the SE 1/4 of Section 24, Township 19 south, Range 3 West, Shelby County, Alabama, and being more particularly described on Exhibit A, attached hereto and made a part hereof.

Said property is warranted free from all encumbrances and against any adverse claims, except as stated above.

Together with all and singular the rights, privileges, tenements, hereditaments, improvements, fixtures and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the above granted Property unto the said Mortgagee, its successors and assigns, forever.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Mortgagee the principal and interest payable in respect to the Note of even date herewith, at the time and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to attorney's fees, and shall pay any and all other indebtedness of Mortgagor to Mortgagee, and shall keep, and singular the covenants, conditions and

RIVERCHASE



C/O ROGER YANKO

*see Partial Release Use Book 39 Page 616 (2-23-81)
see Partial Release Use Book 41 Page 704 (8-6-81)
BOOK 406 PAGE 261 (see Release) Use Book 41 Page 986 (9-1-81)
see Full Satisfaction Rec. Bk. 42 pg. 10 (9/2/81)*

agreements in the Note and in this Mortgage, and in any other instruments evidencing or securing other indebtedness of Mortgagor to Mortgagee, expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

Upon the happening of a default in the payment of said Note, or of any installment thereof, principal or interest, when due, or upon the happening of a default in the payment of any other indebtedness, obligation or liability hereby secured, or any renewals or extensions thereof when due, or upon default in the performance of any of the covenants, conditions and agreements in the Note and in this Mortgage, or in any other instruments evidencing or securing other indebtedness of Mortgagor to Mortgagee, or should the interest of said Mortgagee or assigns in said Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon or otherwise, so as to endanger the security hereby given, or should the Mortgagor file a voluntary petition in bankruptcy, or be adjudged as a bankrupt or insolvent, or should Mortgagor seek or acquiesce in a general assignment for the benefit of creditors, or seek or acquiesce in any arrangement or other relief under law for relief of debtors, the Mortgagor hereby vests the Mortgagee with full power and authority to sell said Property at public auction at the front door of the courthouse of said county. Such sale may be in lots or parcels or en masse as Mortgagee's agents, auctioneer or assigns deem best, for cash, to the highest bidder, after first giving twenty-one (21) days' notice of the time, place and terms of such sale, together with a description of the Property to be sold, by publishing the same once a week for three (3) consecutive weeks in a newspaper published in said county and state. Mortgagee has full power and authority to make proper conveyance to the purchaser and to apply the proceeds of said sale: First, to the payment of the expenses of such sale including advertising, selling and conveying, including reasonable attorney's and auctioneer's fees; second, to the payment of any and all debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations or liabilities be then due or not and any amount that may be due the Mortgagee by virtue of any of the special liens or agreements herein declared; and, lastly, the surplus, if any, to be paid over to the said Mortgagor. The said Mortgagee may, at any sale made under this Mortgage, become the purchaser of said Property, or any part thereof or interest therein, like a stranger hereto, in which event the auctioneer making the sale shall make the deed in the name of the Mortgagor, and all recitals made in any deed executed under this Mortgage shall be evidence of the facts therein recited.

The Mortgagor, its successors and assigns, hereby covenant with the Mortgagee, its successors and assigns, that it is seized of an indefeasible estate in fee simple in and to said Property, that said Property is free from all liens and encumbrances, and that it will forever warrant and defend the title thereto and the quiet use and enjoyment thereof unto the said Mortgagee, its successors or assigns, and unto the purchaser at any such sale, against the lawful claims of all persons whomsoever.

The Mortgagor further expressly agrees and covenants:

1. To pay said Note, principal and interest, when it respectively falls due.
2. To keep any buildings now or hereafter erected on said Property in good repair, and insured against fire and windstorm, and such other risks as Mortgagee may designate, by policies made

payable to the holder of this Mortgage as its interests may appear. Such policies shall be in an amount, not exceeding the indebtedness hereby secured and not exceeding the value of said buildings, as may be required by the Mortgagee.

3. To keep the improvements situated on the Property in a reasonable state of repair and not to commit or permit waste on the Property, and not to remove any fixtures.

4. To pay promptly all taxes, assessments, liens and other charges which are now, or may become effective against said Property before the same become delinquent, together with all penalties, costs, and other expenses incurred, or which may accrue, in connection therewith.

5. That if it shall become necessary to employ an attorney to collect the debt or any of the debts hereby secured, or any portion thereof, or to foreclose this Mortgage by sale under the power herein contained, or by bill in equity, or by an action at law, then the said Mortgagor shall pay and allow a reasonable attorney's fee, and for any amounts expended by Mortgagee in this behalf, it shall have an additional lien, secured by this Mortgage, upon said Property.

6. To maintain possession of the Property above described, subordinate to the rights of the Mortgagee, and in the event of litigation arising over the title to, or possession of said Property, the Mortgagee may prosecute or defend said litigation and for any amounts expended by the Mortgagee in this behalf it shall have an additional lien, secured by this Mortgage, upon said Property.

7. That if the said Mortgagor fails to perform any of the duties herein specified, the Mortgagee may perform the same, and for any sums expended by the Mortgagee in this behalf, it shall have an additional lien, secured by this Mortgage, upon said Property.

8. Not to sell or otherwise transfer or dispose of the Property, or any part thereof, without the prior written consent of the Mortgagee. Mortgagor intends to subdivide the Property and record a subdivision plat showing thirty-two (32) individual lots. Mortgagee hereby agrees that it shall release such lots from the lien of this Mortgage upon the payment by Mortgagor to Mortgagee of \$10,000.00 for each lot to be released.

The provisions hereof shall inure to and bind not only the parties hereto, but also their respective successors and assigns.

IN WITNESS WHEREOF, the said Mortgagor has caused this instrument to be executed by its general partners on this the 23 day of September, 1980.

RIVERCHASE TOWN HOMES II, LTD.

By: [Signature]

A General Partner

By: Davenport Companies, Inc.,
a General Partner

By: [Signature]

Its President

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, Judy M. Johnson, a Notary Public in and for said County, in said State, hereby certify that James D. Davenport whose name as general partner of Riverchase Town Homes II, Ltd., an Alabama Limited Partnership, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of such conveyance, he, as such general partner, 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 23rd day of September, 1980.

Judy M. Johnson
Notary Public

My Commission expires: October 1, 1984

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Judy M. Johnson, a Notary Public in and for said County in said State, hereby certify that James D. Davenport, whose name as President of Davenport Companies, Inc., a corporation and general partner of Riverchase Town Homes II, Ltd., an Alabama Limited Partnership, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of such conveyance, he, as such officer of such general partner, and with full authority, executed the same voluntarily for and as the act of said corporation acting as a general partner of said limited partnership.

Given under my hand and official seal this 23rd day of September, 1980.

Judy M. Johnson
Notary Public

My Commission expires: October 1, 1984

THIS DOCUMENT WAS PREPARED BY:

Randolph Lanier
Balch, Bingham, Baker,
Hawthorne, Williams & Ward
Post Office Box 306
Birmingham, Alabama 35201

EXHIBIT A

19800929000109690 Pg 5/5 .00
Shelby Cnty Judge of Probate, AL
09/29/1980 00:00:00 FILED/CERTIFIED

A description of a tract of land situated in the NE 1/4 of the SE 1/4 of Section 24, Township 19 South, Range 3 West, Shelby County, Alabama, and being more particularly described as follows:

From the SW Corner of said 1/4-1/4 section run in a northerly direction along the west line of said 1/4-1/4 section for a distance of 326.02 feet to a point "A"; thence continue along last mentioned course for a distance of 633 feet, more or less, to the centerline of the Cahaba River being the point of beginning; thence turn an angle to the right of 180°00' and run in a southerly direction for a distance of 633 feet, more or less to a point "A"; thence turn an angle to the left of 123°03'31" and run in a northeasterly direction for a distance of 248.96 feet; thence turn an angle to the right of 53°34'20" and run in a southeasterly direction for a distance of 142.00 feet; thence turn an angle to the left of 33°20'48" and run in a northeasterly direction for a distance of 155.77 feet; thence turn an angle to the left of 77°15'24" and run in a northerly direction for a distance of 143.65 feet; thence turn an angle to the right of 78°42'00" and run in a northeasterly direction for a distance of 361.46 feet to a point on the southwest right-of-way line of U.S. Highway #31; thence turn an angle to the left of 105°15'43" and run in a northwesterly direction along said southwest right-of-way line for a distance of 103.32 feet; thence turn an angle to the left of 90° and run in a southwesterly direction for a distance of 20 feet; thence turn an angle to the right of 90° and run in a northwesterly direction along said southwest right-of-way line for a distance of 210 feet, more or less, to a point on the centerline of the Cahaba River; thence turn an angle to the left and run along the centerline of said Cahaba River for a distance of 692 feet, more or less, to the point of beginning.

BOOK 406 PAGE 265

CLERK OF ALA. SHELBY CO.
RECORDED THIS
FILED

SEP 29 AM 8:41

CLERK OF PROBATE

Edg. Lee 33000
acc. 750
24100
33500