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CONSTRUCTION LOAN AGREEMENT

THIS AGREEMENT, made this 14th day of December, 1983, by and between CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a savings and loan association organized under the laws of the United States (hereinafter referred to as "Lender"), and RIVERCHASE GARDENS II, LTD., an Alabama limited partnership (hereinafter referred to as "Borrower").

W I T N E S S E T H:

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WHEREAS, Borrower is the lessee of the real property in Shelby County, Alabama, and more particularly described on the attached Exhibit "A" (hereinafter called the "Premises"), on which it proposes to construct an 86 unit luxury apartment complex (hereinafter called the "Project") located one block north of Highway 17, referred to as Valleydale Road, within the planned development of Riverchase in Shelby County, Alabama, in accordance with plans and specifications heretofore submitted to Lender; and

WHEREAS, for the purpose of financing the construction of such Project, Borrower has applied to Lender for a construction loan, and Lender is willing to make said loan upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the covenants herein set forth, the parties agree as follows:

RETURN TO:
LAND TITLE COMPANY
319 N 20th ST.
BIRMINGHAM, ALABAMA 35208

1. Subject to the terms and conditions hereof, Lender hereby agrees to lend to Borrower and Borrower hereby agrees to borrow from Lender the principal sum of Two Million Three Hundred Fourteen Thousand and No/100 Dollars (\$2,314,000.00), which loan (hereinafter referred to as the "Loan") shall be a construction loan convertible to a term loan.

As hereinafter provided, the Loan shall be disbursed by Lender in installments as construction progresses and shall be payable by Borrower during the construction period on demand when construction of the Project is completed but, in any event, no later than January 25, 1985, after which time the Loan shall be converted to a permanent term loan held by Liberty. Said Construction Loan shall bear interest on the total sum advanced from time to time, during and after construction, at a fixed rate of eleven and one-fourth percent (11-1/4%) per annum. Said interest shall be due and payable on the tenth day of each month, based upon the then current balance of Loan advances outstanding. All payments on said loan shall be applied first to interest due and any balance shall be applied in reduction of principal.

2. Prior to the first advance of funds hereunder, and as a condition of the Borrower's right to receive any of the proceeds of the Loan pursuant to this Agreement, there shall have been furnished to Lender to evidence the Loan, and as security therefor, and for the performance of Borrower's obligations under this

Agreement, the following, all in form satisfactory to Lender, Liberty and their respective counsel.

(a) A promissory note (herein referred to as the "Note") in form satisfactory to Lender, executed by Borrower in the principal amount of the Loan, payable to the order of Lender, and bearing interest and maturing as provided in Paragraph 1 above;

(b) A mortgage and security agreement of even date with the Note (hereinafter referred to as the "Mortgage"), together with appropriate financing statements, sufficient to create a first mortgage lien on the Premises and the Project and a security interest superior to all other liens, encumbrances and interests in all personal property, construction materials, and fixtures now or hereafter located on the Premises, with adequate means of enforcement to secure all advances agreed to be made hereunder and all other indebtedness of Lender to Borrower;

(c) An assignment of leases and rents respecting the Project in form and substance acceptable to Lender and its counsel;

(d) A complete set of working drawings and specifications for the Project per Edward Bailey and Associates satisfactory to Lender which have been accepted and approved in writing by Liberty;

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(e) A standard ALTA construction insurance binder naming Lender as insured, issued by a title insurance company acceptable to Lender, insuring that the Mortgage is a good and satisfactory first mortgage lien of record on the Premises and the Project superior to all other titles or encumbrances, except those which are accepted in writing by Lender and Liberty and insuring that Borrower is the owner in fee simple of the Premises free from all liens and encumbrances except the lien of Borrower's mortgage to Lender herein referred to;

(f) Policies of liability insurance and hazard insurance issued by a company or companies and in amounts acceptable to Lender insuring the Project and all materials and supplies on the site of construction against loss or damage by fire, vandalism, malicious mischief, riot and other hazards, and against all liabilities arising in connection with completion of the Project, and such policies shall provide that Lender be given not less than thirty (30) days written notice of cancellation, shall contain standard loss payable clauses in favor of Lender or be issued with riders covering the interests of Lender, and, where appropriate, Lender may require that it be named as co-insured;

(g) On the request of Lender, from time to time, Borrower agrees to assign to Lender, in such form as

Lender may reasonably request, as collateral security hereunder, any or all agreements of every kind entered into by Borrower with respect to the Project and the Premises, such assignments to provide that Lender shall not be obligated to perform any of Borrower's obligations thereunder, unless Lender elects to do so.

(h) Payment to Lender of a construction loan commitment fee of one-half percent (1/2%) of the principal amount of the Loan at the time of closing; and

(i) A bond or bonds by a surety company acceptable to Lender and Liberty guaranteeing the payment to all suppliers, materialmen and mechanics of 100% of their costs relating to the Project and guaranteeing the performance of the contractor who will construct the Project for the stated price set forth on the construction contract with respect thereto.

3. Upon Borrower's full compliance with the provisions of Paragraph 2 hereof, and its obtaining all necessary zoning variances, special use permits, and building permits relating to the construction of the Project, and government approval, Lender will disburse the proceeds of the Loan for construction of the Project in installment advances as work progresses pursuant to disbursement schedules from time to time approved by Lender. Prior to making any disbursement, Lender may make such investigation as it deems necessary to satisfy itself of Borrower's compliance with

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Paragraphs 8 and 9 hereof, and it may require, at Borrower's expense, such certificates, approvals and evidence of completion of sub-contract work, lien waivers, bills, invoices and evidence of payment thereof, and such title reports or title policy endorsements satisfactory to Lender to the effect that the Mortgage continues to be a first mortgage lien of record subject only to those encumbrances specifically approved by Lender or authorized hereby. Borrower covenants that it will diligently and continuously proceed toward the completion of the construction of the Project in a workmanlike manner and in accordance with the requirements of Lender and the plans and specifications approved by Lender and will cause all work to be done under the construction contract to be completed in all respects on or before January 25, 1985. Borrower will give Lender written notice of its desire to obtain funds hereunder, accompanied by all supporting documents, certificates, and endorsements to the title policy required by Lender, at least five (5) business days prior to the day such funds will be obtained.

4. The Borrower agrees to proceed promptly to construct on the Premises the Project, and further agrees that the construction work shall be done strictly in accordance with the plans and specifications and with all applicable ordinances, statutes, regulations and restrictions, and in accordance with the requirements of all regulatory authorities having jurisdiction of the Project.

5. The Borrower agrees to use the proceeds of the Loan only for the purpose of constructing the Project in accordance with the

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plans and specifications and agrees not to commingle any of the proceeds of this Loan or any of the funds of the Borrower which are to be invested in the Project with the proceeds of other lenders or other loans. The Borrower shall use the proceeds of this Loan only for the payment of debts created in connection with the Project. Advances shall be made only on the certificate of person(s) designated by the Lender, to which certificate shall be attached an estimate by the contractor above named setting forth items to be paid out of the proceeds of each advance. However, the Lender may, in its discretion, make advances without requiring such certificate or contractor's estimate, in which event the Borrower shall furnish the Lender a list of and the amounts of items to be paid out of the advance.

6. The Lender reserves the right at any time to require satisfactory proof as to the disposition made of any of the Loan proceeds and shall have the right to refuse to make further advances until such proof has been furnished. Nothing herein set forth shall be construed to require the Lender to follow the disposition or see to the proper application of any funds advanced by the Lender.

7. Borrower represents, warrants, covenants, and agrees as follows:

(a) Materials used in the Project shall be of the quality called for by the plans and specifications and such plans and specifications and the workmanship shall

have been approved by Lender and no material changes or amendments will be made in the plans and specifications without first obtaining written approval from Lender and Liberty;

(b) Lender is authorized to disburse the proceeds of the Loan to pay all expenses or liens incurred in connection with the construction and completion of the Project, payment, or performance of any obligation of Borrower to Lender and, at its election, to pay the same, or any part thereof, to Borrower or the Contractor, or jointly to both, or to any other persons furnishing labor, supplies, or services for or in connection with the Project, or to a title insurance company, or to the holder of any lien, charge, or encumbrance on the Premises or other property securing the Loan. All such proceeds are hereby assigned, transferred, and pledged to Lender for the purposes stated above, irrespective of the provisions of the applicable schedule of advances, and the amounts of advances to which Borrower shall thereafter be entitled under this Agreement shall be correspondingly reduced;

(c) Borrower will accept disbursements in accordance with the provisions hereof and will use or cause each such disbursement to be used solely for the payment of costs of materials, labor, and services and

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other expenses incurred in connection with the Project or for such additional costs and expenses as may be approved in writing by Lender;

(d) Borrower will permit Lender and its agents, and any interested governmental agency or corporation, at all reasonable times to enter the Premises and inspect said construction and work details and to examine and/or copy all of Borrower's books, working drawings, specifications, samples of materials, certificates and reports of inspecting architects, engineers, and public officials, and all subcontracts, bills and papers pertaining to the Project;

(e) Lender has no liability or obligation in connection with the Project or the construction or completion thereof or work performed thereon, except to advance the Loan as herein agreed, and it is not obligated to inspect said Project; nor is it liable for the performance or default of the Borrower or any contractor or subcontractor, or for any failure to construct, complete, protect, or insure said improvements, or for the payment of any cost or expense incurred in connection therewith, or for the performance or nonperformance of any obligation of Borrower to Lender; and nothing, including, without limitation, any disbursement hereunder or the delivery or acceptance of any document or

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instrument, shall be construed as a representation or warranty, expressed or implied, on Lender's part contrary thereto;

(f) In the event of any default by Borrower, Lender may, but shall not be obligated to, advance such of its own funds as may be necessary to remedy such default, including the completion of the Project; and in such event all such advances shall be secured by the Mortgage and any other security for the Loan, and Borrower shall pay the same and interest thereon at the rate set forth in the Note upon demand;

(g) Without the prior written consent of Lender, no materials, equipment, fixtures, furnishings, or any part of said Project shall be purchased or installed in said Project under purchase money security agreements, conditional sales contracts, or lease agreements, or other arrangements, except a secondary security interest, wherein title to or a security interest in said property is retained or the right is reserved or accrues to anyone to remove or repossess any such items;

(h) Lender may, but shall not be obligated to, commence, appear in, or defend any action or proceeding purporting to affect the Premises, the Project, or its furnishings or equipment, or the rights or duties of

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Lender or Borrower, or the payment of any funds hereunder; and in connection therewith may pay all necessary expenses, including attorney's fees, which Borrower agrees to pay to Lender upon demand;

(i) Borrower shall promptly pay or cause to be paid, when due, all costs, charges, and expenses incurred in connection with the construction and completion of said Project, and shall keep the Premises and the Project and personal property delivered thereto free and clear of any and all liens other than the lien of Lender's Mortgage and Security Agreement. Borrower will cause any lien claim filed against the Premises or the Project to be released of record, provided that Borrower, upon first furnishing to Lender reasonable security for the payment of all liability, costs, and expenses of the litigation, may in good faith contest, at Borrower's expense, the validity of any such lien or liens. In those instances where Lender'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 Lender and shall be binding upon Borrower;

(j) There are no actions, suits or proceedings pending or threatened against Borrower or the Premises

or which may involve or affect the validity, enforceability, or punctual performance of this Agreement;

(k) Borrower will not transfer, assign or sell its interest or obligations in the Loan or this agreement without the prior written consent of Lender;

(l) Borrower will make no material substitutions, deletions, or revisions in the scope of the work, or make any substitutions, deletions, or revisions in the contract amount, or date of completion, without the approval of Lender.

(m) Borrower will provide Lender with a foundation survey.

8. Borrower warrants that at the time of the first and each subsequent draw hereunder:

(a) No lien, security interest, or other encumbrance superior to the lien of Lender shall have been permitted to attach to the Premises or the Project or any material, furnishings or fixtures delivered to the Premises;

(b) No event of default, as herein defined, shall have occurred;

(c) Borrower shall have performed each obligation required to be performed at the time under this agreement, and any other instrument given pursuant hereto and thereto, and such instruments are at that time in full force and effect;

(d) The proceeds of the Loan theretofore or then to be advanced shall have been or shall be utilized solely in the construction of the Project; and

(e) All bills for labor, material and fixtures used or on hand and to be used in the construction of the Project have been paid or will be paid from the proceeds of such draw, and no one is asserting a lien with respect thereto.

(f) The Project will be constructed and completed by the Beaver Construction Company ("Contractor") under a fixed price construction contract, such price shall be less than for the amount of this Loan minus the cost of land acquisition. Said contract must be satisfactory to Borrower and must set forth:

(1) an obligation on the part of the Contractor to do all work required to complete the Project;

(2) completion dates identified by date, acceptable to Lender;

(3) no substitutions, deletions, or revisions to the contract or dates without approval of the Lender;

(4) a provision for a five percent (5%) retainage until the Project is 100% complete as certified by Lender upon receipt of certificate of occupancy.

9. Borrower agrees that at the time of the first and each subsequent draw hereunder:

(a) Lender shall be satisfied with the progress of construction and that construction has been in accordance with the plans and specifications based on architectural inspection reports performed at critical stages of construction as required by Lender or Liberty. Such reports shall be made on Standard AIA forms and shall be delivered to Lender and Liberty within five (5) days after receipt by Borrower. Borrower also agrees to obtain and deliver to Lender and Liberty, as required, soil tests and concrete strength tests during the construction of the Project. Lender may require other certificates and affidavits showing the value of construction existing at that time, materials on site, remaining estimated costs of construction (and that any surety bonds required by Lender are in full force and effect);

(b) In the sole opinion of Lender, the estimated remaining costs of construction in accordance with the plans and specifications will not exceed the balance hereunder to be advanced for that purpose; and

(c) Lender shall have received from Borrower such certificates, affidavits and endorsements to the title policy as Lender may require, showing that all out-

standing claims for costs of construction, including claims of laborers, materialmen, subcontractors and contractors, have been paid to date, or will be paid to date with the funds being advanced at that time, and that there are no liens outstanding or unpaid superior to the lien of Lender's Mortgage and Security Agreement other than liens for ad valorem taxes not then past due.

10. Any other provisions hereof notwithstanding, the final draw shall in no event be disbursed until Borrower shall have:

(a) Furnished to Lender a certificate in form and content satisfactory to Lender from the appropriate municipal authority upon the completion of said Project, which certificate shall further certify that all applicable building code regulations have been satisfied;

(b) Furnished to Lender, as required, final affidavits of payment and waivers of liens from all contractors, subcontractors and materialmen.

(c) A certificate of completion in form satisfactory to Lender and Liberty, executed by Borrower and the Project architect, setting forth the total construction costs of the Project and stating that the construction was completed in accordance with the plans and specifications.

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11. Each of the following constitutes an event of default hereunder:

(a) Failure of Borrower to pay the Note given hereunder, or any installment of principal or interest thereof, when due;

(b) Breach of any warranty or failure of Borrower to perform any obligation required of Borrower under this Agreement, the Mortgage, or any other agreement referred to herein (other than payment of the Note) which required Borrower to perform obligations, and the continuation thereof for thirty days;

(c) Any claim or lien filed against the Premises, which claim in the opinion of Lender's counsel is a valid lien and is or may become superior to the lien of the Mortgage and Security Agreement, and the continuation thereof for thirty days;

(d) Any certificate, document or writing required hereunder proven untrue and misleading;

(e) A levy made under any process on or a receiver appointed for any property of Borrower;

(f) Any proceeding under bankruptcy laws brought against Borrower and not dismissed within sixty days, or brought by Borrower;

(g) Any act of bankruptcy committed by Borrower or any of its General Partners;

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12. If one or more such events of default should occur, or if Borrower should fail to meet the conditions required under Paragraphs 8 or 9 hereof to entitle Borrower to draw funds hereunder, then Lender may declare Borrower to be in default hereunder by sending Borrower written notice thereof, and immediately upon positing such notice in the United States mail by first or higher class, or delivering the same personally to Borrower's address, Lender may exercise any one or more of the following remedies:

(a) Terminate the credit provided hereby, declare the Note due and payable, and institute proceedings for collection;

(b) Exercise Lender's rights under the default provision of the Mortgage; and/or

(c) Complete construction of the Project contemplated in the plans and specifications at Borrower's cost and expense and add such cost to the debt evidenced by the Note and this Agreement and secured by the Mortgage. The foregoing shall be deemed to authorize, but not obligate, Lender to do all such things in connection with the completion of the construction as it, in its sole discretion, may deem advisable, including, without limitation, the right to make any payments with respect to any obligation of Borrower hereunder to lender or any other person in connection with the construction to be

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performed hereunder, to make additions and changes in the plans and specifications, to employ contractors, subcontractors and agents, and to take any and all such action, either in its own name or in the name of the Borrower, and Borrower hereby grants Lender an irrevocable power of attorney to act in its name in connection with the foregoing. In the event that Lender takes possession of the Premises and assumes control of such construction as aforesaid, it shall not be obligated to continue such construction longer than it shall see fit and may thereafter at any time abandon such construction and refuse to make further payments for the account of Borrower, whether or not the Project has been completed.

13. All items which Borrower agrees to furnish hereunder in connection herewith and all things required to be done by Borrower will be furnished and done at Borrower's sole cost and expense and without cost and expense to Lender. Borrower will pay or reimburse Lender for all its expenses in connection with the preparation, performance, and enforcement of this Agreement, and for the reasonable fees of its counsel for services in connection therewith.

14. The Borrower agrees to pay all taxes, insurance, premiums, recording fees, cost of title insurance, surveys, appraisals, fees, and all other expenses and costs of every kind

which may reasonably be incurred by the Lender in the making of this Loan and in maintaining unimpaired its security and lien, or otherwise connected with or growing out of this transaction.

15. The Borrower agrees to execute all other agreements, affidavits, powers of attorney, pledges, assignments, conveyances, notes and other instruments as may reasonably be requested by the Lender in connection with the Loan.

16. The Borrower will not further encumber or convey the Premises or any interest in the Project without the prior written consent of the Lender.

17. Any notice required or permitted to be given pursuant hereto or in connection herewith shall be deemed to have been duly given when addressed and mailed by first or higher class United States mail, postage prepaid, to Lender or to Borrower at the following addresses, or to such other place as either of the parties may for themselves designate in writing from time to time for the purpose of receiving notices pursuant thereto:

As to Lender: City Federal Savings and Loan Association
2030 North Second Avenue
Birmingham, Alabama 35203

As to Borrower: Riverchase Gardens II, Ltd.
1813 First Avenue North
Birmingham, Alabama 35203

18. The terms and conditions and the covenants and agreements of Borrower hereunder shall survive the completion of the Project.

19. Borrower shall not assign or attempt to assign any of its rights under this Agreement without written consent of Lender.

20. This Agreement shall be binding upon and the benefits hereof shall inure to the parties hereto, their successors and assigns.

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

22. Notwithstanding anything herein to the contrary, Lender reserves the right at any time in its discretion to withhold any advances hereunder pending injection into the Project by Borrower of all funds in excess of the Loan amount needed for Project completion.

23. Notwithstanding anything herein to the contrary, until a copy of the building permit authorizing the construction of the Project is furnished to the Lender there shall be no advances made hereunder except those advances made this date.

24. Neither this Agreement nor that certain Purchase and Sale Agreement of even date herewith among Lender, Borrower, and

Liberty shall be deemed to supersede or in any way modify Lender's written commitment with respect to the Loan, but are intended to implement the terms thereof and shall not relieve the Borrower of any duties or obligations under such commitment.

IN WITNESS WHEREOF, the parties hereto have caused this

Agreement to be executed in their names by their respective officers who are hereunto duly authorized, all as of the day and year first above written.

CITY FEDERAL SAVINGS AND LOAN ASSOCIATION

By: *Paul B. Woods*
Its

RIVERCHASE GARDENS II, LTD.

By: *L. A. Thif*
Its General Partner

By: *Sims R. Beaulieu*
Its General Partner

By: *W. C. H.*
Its General Partner

ATTEST:

Michael E. Scroggs
Its

WITNESS:

Helen Richardson

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Exhibit "A"

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

Commence at the Southeast corner of the Northwest Quarter of Section 30, Township 19 South, Range 2 West; run thence in a Westerly direction along the South line of said 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 110.05 feet to the point of beginning. From the point of beginning thus obtained, thence continue along last described course for a distance of 384 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; thence turn an angle to the right of 106 degrees, 13 minutes, 12 seconds and run in a Southwesterly direction for a distance of 573.80 feet; thence turn an angle to the right of 106 degrees, 11 minutes, 48 seconds to the tangent of the following described course; said course being situated on a curve to the left having a central angle of 45 degrees, 46 minutes and a radius of 294.19 feet; thence run along the arc of said curve to the left in a Northwesterly direction for a distance of 234.99 feet to the end of said curve; thence run along the tangent, if extended to said curve, in a Northwesterly direction for a distance of 25 feet to the point of beginning of a curve to the left; said curve having a central angle of 19 degrees, 15 minutes and a radius of 442.25 feet; thence run along the arc of said curve to the left in a Northwesterly direction for a distance

of 148.59 feet; thence turn an angle to the right from the tangent of the last described course of 79 degrees, 26 minutes and run in a Northwesterly direction for a distance of 190 feet; thence turn an angle to the right of 24 degrees, 51 minutes, 44 seconds and run in a Northeasterly direction for a distance of 287.10 feet to the point of beginning. Said parcel containing 311,623 square feet or 7.1539 acres.

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THOMAS B. JENNINGS
CLERK OF PROBATE

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