

STATE OF ALABAMA)
COUNTY OF SHELBY)

835

FIRST MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT made this 10th day of April, 1984, between BHN Corporation and Southwood Park Estates, Inc. whose address is 1813 First Avenue North, Birmingham, Alabama, 35203, (collectively "Mortgagor") and City Federal Savings and Loan Association, a federally chartered savings and loan association, ("Mortgagee"), whose address is 2030 Second Avenue North, Birmingham, Alabama, 35203.

W I T N E S S E T H :

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of One Million Eight Hundred Thousand and 00/100 (\$1,800,000) Dollars together with interest thereon, as evidenced by that certain promissory note of even date herewith, executed by Mortgagor and delivered to Mortgagee, the final payment of which is due on or before the 1st day of October, 1985, (the "Note") which by reference said Note is made a part hereof to the same extent as though set out in full herein; and

WHEREAS, Mortgagor desires to secure the prompt payment of the indebtedness evidenced by the Note, and the several installments of principal and interest therein provided for; and

WHEREAS, Mortgagor may hereafter become indebted to said 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 First Mortgage and Security Agreement; and Mortgagor wishes to execute this conveyance for the security and enforcement of the payment both of said present and any such future indebtedness;

NOW, THEREFORE, (a) to secure the performance and observance by Mortgagor of all covenants and conditions set forth in the Note, in any renewal, extension or modification thereof, in this First Mortgage and Security Agreement and in all other instruments evidencing and securing the Note; and (b) also to secure: (1) all future advances and re-advances that may subsequently be made to Mortgagor by Mortgagee, evidenced by the aforesaid Note, or any

Bank Title Co.

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other promissory notes, and all renewals and extensions thereof; provided, however, that nothing set forth herein shall create an obligation on the part of Mortgagee to make future advances or re-advances to Mortgagor and (ii) all other indebtedness of Mortgagor to Mortgagee, now or hereafter existing, whether direct or indirect, all charges and expenses of collection incurred by Mortgagee, including court costs, and reasonable attorneys' fees; and (c) also in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance; and (d) for and in consideration of the sum of One and No/100 (\$1.00) Dollar paid by Mortgagee to Mortgagor this date, and for other valuable consideration, the receipt of which is acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm unto Mortgagee, its successors and assigns forever all right, title and interest of Mortgagor in and to the following:

THE MORTGAGED PROPERTY

(A) The Land. All the land located in the County of Shelby, State of Alabama (the "Land"), described in Exhibit "A" attached hereto and made a part hereof;

(B) The Improvements. TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures subject to any lien, security interest or claim together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on its behalf (the "Improvements");

(C) Easements or other Interests. TOGETHER WITH all easements, rights-of-way, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any part of the land or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title,

(E) Assignment of Condominium Unit Sale Contracts. Together with all of Mortgagor's rights, title and interest in and to all contracts entered into or to be entered into by Mortgagor or Mortgagor's agents for the sale of any condominium units now or

(D) Assignment of Rents. TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof to be applied against the indebtedness and other sums secured hereby, provided, however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagor shall be entitled, at its option upon the occurrence of a default hereunder, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof whether or not Mortgagor takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon any such default hereunder, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall terminate and such permission shall not be reinstated upon a cure of the default without Mortgagor's specific consent and the continued taking of such rents, unless immediately delivered to the Mortgagee, shall constitute action-able conversion of such assets by Mortgagor. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor or, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof;

hereafter comprising a part of the Improvements and Mortgagor does hereby appoint Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Land and Improvements as provided in Section 2.04 of this First Mortgage and Security Agreement) to consummate the sales of such units and to act pursuant to any escrow agreements or instructions entered into in connection with such sales and to collect the proceeds of such sales.

(F) Fixtures and Personal Property. TOGETHER WITH a security interest in (i) all property and fixtures now or hereafter acquired and affixed to or located on the property described in paragraph (A), (B) and (C) hereof which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property, (ii) all articles of personal property now or hereafter acquired and all materials delivered to the property described in paragraph (A), (B) and (C) hereof for use in any construction being conducted thereon, and owned by Mortgagor; (iii) and all contract rights, general intangibles, actions and rights in action now or hereafter acquired pertaining to the Mortgaged Property, including all rights to insurance proceeds, and (iv) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing. Mortgagor, as debtor, hereby grants to Mortgagee, as secured party, a security interest in all fixtures, rights in action and personal property described herein. This Mortgage is a self-operative security agreement with respect to such property, but Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may reasonably request in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. On demand, Mortgagor will promptly pay all costs and expenses of filing financing statements, continuation statements, partial releases, and termination statements deemed necessary or appropriate by Mortgagee to establish and maintain the validity, perfection and priority of the security interest of Mortgagee, hereby granted, or any modification thereof, and all costs and expenses of any searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Alabama Uniform Commercial Code with respect to such property, and it is expressly agreed in accordance with the provisions of the Alabama Uniform Commercial Code, ten (10) days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Alabama Uniform Commercial Code requiring such notice; provided, however, that Mortgagee may at its option dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the real property pursuant to the provisions of this Mortgage and Security Agreement, in lieu of proceeding under the Alabama Uniform Commercial Code.

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1.01 Performance of Note, Mortgage, etc. Mortgagor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and will

COVENANTS OF MORTGAGOR

ARTICLE ONE

MORTGAGOR COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee the principal and interest payable under the Note, at the times and in the manner stipulated herein, and in all other instruments securing the Note, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage and in all other instruments securing the Note, to be kept, performed or observed by Mortgagor, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use and benefit forever, subject, however, to the terms and conditions hereof:

(C) Together with all of Mortgagor's rights further to encumber the aforesaid property without the prior written approval of the Mortgagee.

Everything referred to in paragraphs (A), (B), (C), (D), (E) and (F) hereof and any additional property hereafter acquired by Mortgagor and subject to or hereafter made subject to the lien of this Mortgage, or intended to be so, is herein collectively referred to as the "Mortgaged Property".

Some of the items of property described in this Subsection F are goods that are now or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage and Security Agreement shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the land is located. Information concerning the security interest created by this instrument may be obtained from the Mortgagee, as Secured Party, or the Mortgagor, as Debtor, at the address first shown above. THIS IS A CONSTRUCTION MORTGAGE AS DEFINED IN THE ALABAMA UNIFORM COMMERCIAL CODE;

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promptly pay to Mortgagee the principal with interest thereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of every other instrument securing the Note when payment shall become due, all without deduction or credit for taxes or other similar charges paid by Mortgagor.

1.02 Performance of Construction Loan Agreement. It is understood and agreed that funds to be advanced under the Note are to be used in the construction of the improvements and the development of the Board, and said funds shall be advanced in accordance with a certain Construction Loan Agreement (the "Construction Loan Agreement") of even date herewith, between Mortgagor and Mortgagee. Mortgagor shall perform, observe and comply with all provisions of the Construction Loan Agreement. Any default in the Construction Loan Agreement shall be deemed an event of default hereunder. All advances and indebtedness arising and accruing under the Construction Loan Agreement from time to time shall be secured hereby.

1.03 Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple in the Land and real property hereby mortgaged, has good and absolute title to all existing personal property hereby mortgaged or made subject to the security interest hereby created and has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein; that Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Land and real property hereby mortgaged and every part thereof; that the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created is free and clear of all liens, security interests, charges and encumbrances whatsoever, except for the lien for property taxes not yet due and payable and those permitted encumbrances accepted in writing by the Mortgagee. Mortgagor shall make such further assurances to perfect Mortgagee's fee simple title to the Land and the real property hereby mortgaged, and the title to the personal property hereby mortgaged or made subject to the security interest hereby created as may reasonably be required by Mortgagee. Mortgagor fully warrants the title to the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created and every part thereof, and will forever defend the same against the claims of all persons whomsoever.

1.04 Zoning and Environmental Laws. Mortgagor covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Land permit the use and occupancy of the Improvements and further covenants and warrants to comply with all environmental and ecological laws, ordinances and regulations affecting the Mortgaged Property.

1.05 Taxes and Liens.

(a) Mortgagor shall pay or bond promptly, when and as due, and shall promptly exhibit to Mortgagee receipts for the payment of all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality, public service district, or other taxing authority upon or against Mortgagor or in respect of the Mortgaged Property or any part thereof, and any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attaches or any penalty is incurred.

(b) Mortgagor shall not permit or suffer more than ten (10) days any mechanics', laborers', materialmen's, statutory or other lien upon any of the Mortgaged Property.

(c) Mortgagee may, in its sole discretion, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making any required payments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Mortgagee to be sufficient to enable Mortgagee to pay at least thirty (30) days before they become due, all taxes, assessments and other similar charges against the Mortgaged Property or any part thereof. Such deposits shall not be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are required to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such taxes, assessments and similar charges. In the event of a default under any of the terms, covenants and conditions of the Note, this First Mortgage and Security Agreement or any other instruments securing the Note to be kept, performed or observed by Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph 1.05(c) of Article One remaining to Mortgagee's credit.

(d) Mortgagor shall not claim, demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other sums secured hereby,

for so much of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof as are applicable to the indebtedness secured hereby or to Mortgagee's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note, this First Mortgage and Security Agreement or any other instrument securing the Note.

1.06 Insurance.

(a) Mortgagor shall, at its sole expense, obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, insurance policies in such amounts as Mortgagee may require in no event exceeding the full insurable value of the Mortgaged Property or the loan amount, insuring the Mortgaged Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Mortgagee may require including flood damage, and shall pay promptly, when due, any premiums on such insurance policies and on any renewals thereof. The form of such policies and the companies issuing them shall be acceptable to Mortgagee. All such policies and renewals thereof shall be held by Mortgagee and shall contain a noncontributory mortgagee endorsement making losses payable to Mortgagee. The coverage under such policies shall be limited to the improvements now or hereafter located on the Mortgaged Property. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all premiums on such insurance policies and renewals. Delivery of the insurance policies and renewals thereof shall constitute an assignment to Mortgagee, as further security, of all unearned premiums. In the event of loss, Mortgagor will give immediate written notice to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee of the Mortgaged Property. Mortgagee may at any time, at its own discretion procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in like amount, as it may determine without prejudice to its right to foreclose hereunder, should Mortgagor fail or refuse to keep said premises so insured.

(b) Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies, and Mortgagee is hereby authorized and empowered in its reasonable discretion, to adjust or compromise

(d) Mortgagee may, in its sole discretion, require Mortgageor to deposit with Mortgagee on the first day of each month, in addition to making payments of regular installments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for all insurance. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgageor shall deliver to Mortgagee such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such premiums when due. In the event of a default under any of the terms, covenants and conditions in the Note, this Mortgage or any other instrument securing the Note to be kept, performed or observed by Mortgageor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph

(c) Mortgageor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, liability insurance policies relating to the mortgaged property, in such amounts, with such companies and in such form as may be reasonably required by Mortgagee. Mortgagee may require such policies to contain an endorsement, in form satisfactory to Mortgagee, naming Mortgagee as an additional insured thereunder. Mortgageor shall pay promptly, when due, any premiums on such insurance policies and renewals thereof.

any loss under any insurance policies on the mortgaged property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Mortgagee alone, and not to Mortgageor and Mortgagee jointly. After deducting from such insurance proceeds any expenses incurred by Mortgagee in the collection or handling of such funds, Mortgagee may apply the net proceeds, at its option either toward restoring the improvements or as a credit on any portion of the indebtedness and other sums secured hereby, whether then matured or to mature in the future, or, at the option of Mortgagee, such sums either wholly or in part may be paid over to Mortgageor to be used to repair such improvements or to build new improvements in their place or for any other purpose or object satisfactory to Mortgagee, without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. If Mortgagee elects to restore the improvements, any balance of such monies after restoration shall either be applied toward the reduction of indebtedness and other sums secured hereby or shall be paid to Mortgageor. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

remaining to Mortgagor's credit and any return premium received from cancellation of any insurance policy by Mortgagee upon foreclosure of this Mortgage.

1.07 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of Alabama or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness and other sums secured hereby shall, at the option of Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of any damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or reliefs, and the right thereto, are hereby assigned by Mortgagor to Mortgagee, who, after deducting therefrom all its expenses including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same, in such manner as Mortgagee shall determine, to the reduction of the sums secured by this Mortgage or other instrument securing the Note. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds as Mortgagee may require.

1.08 Care of Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair. Mortgagor shall not remove, demolish, materially alter or materially change the use of any building, structure or other Improvement presently or hereafter on the Land without the prior written consent of Mortgagee, except as provided in the Construction Loan Agreement. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as otherwise provided in this Mortgage, or the Construction Loan Agreement, no fixture, personal property or other part of the Mortgaged Property shall be removed, demolished or altered, without the prior written consent of Mortgagee.

Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable or obsolete only if they are replaced immediately with similar items of at least equal value which shall, without further action, become subject to the lien of this Mortgage, except as otherwise provided in this Mortgage or the Construction Loan Agreement.

(c) Mortgagee may enter upon and inspect the Mortgaged Property at any reasonable time during the life of this Mortgage.

(d) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be lost, damaged or destroyed by fire or any other cause, Mortgagor will give immediate written notice thereof to Mortgagee and shall promptly restore the Mortgaged Property to the equivalent of its original condition regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be lost, physically damaged or destroyed through condemnation, Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to Mortgagee.

(f) If any work required to be performed under this paragraph involves an estimated expenditure of more than one (1%) percent of the face amount of the Note, no such work shall be undertaken until plans and specifications therefor, prepared by an architect or engineer satisfactory to Mortgagee, have been submitted to and approved in writing by Mortgagee.

1.09 Transfer of Property. Mortgagor shall not sell, convey, transfer, lease or further encumber any interest in or any part of the Mortgaged Property, without the prior written consent of Mortgagee. If any person should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of Mortgagee, further assign the rents from the Mortgaged Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof.

1.10 Further Assurances. At any time and from time to time, upon Mortgagee's request, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be re-recorded or re-filed at such time and in such offices and places as shall be deemed desirable by Mortgagee any and all such further mortgages, instruments of further assurance, certificates and other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete, enlarge in accordance with the Construction Loan Agreement or perfect, or to continue and preserve the obligations of Mortgagor under the Note and this First Mortgage and Security Agreement, and the lien of this First Mortgage and Security Agreement as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or re-file any and all such mortgages, instruments, financing statements, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.11 After Acquired Property. The lien of this First Mortgage and Security Agreement will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Mortgaged Property or any part thereof.

1.12 Leases Affecting Mortgaged Property. Mortgagor shall comply with and observe its obligations as landlord under all leases (if any) affecting the Mortgaged Property or any part thereof. Mortgagor, if required by Mortgagee, shall furnish promptly to Mortgagee executed copies of all such leases now existing or hereafter created, all of which shall be in form and substance subject to the approval of Mortgagee. Mortgagor shall not, without the express written consent of Mortgagee, modify, surrender, terminate or extend any such lease now existing or hereafter created, or permit or suffer an assignment or sublease. Mortgagor shall not accept payment of rent more than one (1) month in advance without the prior written consent of Mortgagee.

1.13 Expenses. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorney's fees and disbursements, and costs incurred or paid by Mortgagee in connection with the making and administration of the Loan including those paid or incurred in any action which is threatened, pending or completed or proceeding in dispute in which

Mortgagee is or might be made a party or appears as a party plaintiff or party defendant and which affects or might affect the Note, or the Mortgaged Property or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but not limited to the foreclosure of this First Mortgage and Security Agreement, condemnation involving all or part of the Mortgaged Property or any action to protect the security hereof. All such costs, charges and expenses so incurred or paid by Mortgagee shall become due and payable immediately, whether or not there be notice, demand, attempt to collect or suit pending. The amounts so incurred or paid by Mortgagee, together with interest thereon at the per annum rate set forth in the Note from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this First Mortgage and Security Agreement.

1.14 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder or in the performance or observance of any other covenant, condition or term in this First Mortgage and Security Agreement or in any other instrument securing the Note, Mortgagee may at its option perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately by Mortgagor. The amounts so incurred or paid by Mortgagee, together with interest thereon at the rate set forth in the Note from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Nothing set forth in this paragraph 1.14 shall be construed as requiring Mortgagee to advance or expend monies for any purposes mentioned in this paragraph, or for any other purpose. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

1.15 Books and Records. Mortgagor shall keep and maintain at all times complete, true and accurate books of accounts and records reflecting the results of the operation of the Mortgaged Property. Mortgagor shall furnish to Mortgagee a balance sheet and a statement of income and expenses in accordance with the terms of the Loan Agreement. Mortgagor shall permit Mortgagee to inspect said books and records in accordance with the terms of the Loan Agreement.

1.16 Estoppel Affidavits. Mortgagor, within ten (10) days after written request from Mortgagee, shall furnish a written

statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against principal and interest or other sums.

ARTICLE TWO

DEFAULTS

2.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) An event of default under the Construction Loan Agreement.

(b) A breach by Mortgagor of any of the covenants, agreements and conditions of Article One hereof.

(c) Failure by Mortgagor to duly keep, perform and observe any other covenant, condition or agreement in the Note, this Mortgage and Security Agreement, or any other instrument securing the Note or any other instrument collateral to the Note or executed in connection with the sums secured hereby.

(d) If either (A) Mortgagor or any guarantor or endorser of the Note: (i) files a voluntary petition in bankruptcy, or (ii) is adjudicated as a bankrupt or insolvent, or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of 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 (v) makes any general assignment for the benefit of creditors, or (vi) makes an admission in writing of its inability to pay its debts generally as they become due; or (B) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Mortgagor or any guarantor or endorser of the Note, 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 sixty (60) days (whether or not consecutive) from the date of entry thereof; or (C) any trustee, receiver or liquidator of Mortgagor or of all or any substantial part of the

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Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

(e) Default by Mortgagor under any agreement or obligation of Mortgagor affecting any portion of the Mortgaged Property, or any other documents or instruments securing any other indebtedness of Mortgagor to Mortgagee, if such default is not cured within any grace period permitted therein and if such default permits the holder to cause such obligation to become due prior to its stated maturity. Mortgagor shall notify Mortgagee in writing of the occurrence of such default, specifying the nature of such default.

(f) Material breach of any warranty or material untruth of any representation of Mortgagor set forth in the Note, this First Mortgage and Security Agreement or any other instrument securing the Note.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become and be due and payable without demand or notice.

2.03 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinafter provided or otherwise, sell the Mortgaged Property at public outcry, in front of the courthouse door of the county wherein the land 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, Mortgagee or any person conducting said sale for it is authorized and empowered to execute and deliver 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 Mortgagee, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. The equity of redemption from this First Mortgage and Security Agreement may also be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages. The proceeds of any such sale shall be applied (a) to the expense 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 First Mortgage and Security Agreement, 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 interest in the Mortgaged Property, to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this First Mortgage and Security Agreement; (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.

2.04 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all the Mortgaged Property, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee along with all books, papers and accounts of Mortgagor, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(c) Mortgagor shall pay to Mortgagee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(d) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the

Mortgaged Property and conduct the business thereof, and, from time to time:

- (1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personally and other property;
- (11) insure or keep the Mortgaged Property insured;
- (111) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same;
- (iv) enter into agreements with others to exercise the powers herein granted Mortgagor;

all as Mortgagor in its reasonable judgment from time to time may determine; and Mortgagor may collect and receive all the income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagor in such priority as Mortgagor may determine to (1) the reasonable compensation, expenses and disbursements of the agents and attorneys; (2) the cost of insurance, taxes, assessments and other proper charges upon the Mortgaged Property or any part thereof; (3) the deposits for taxes and assessments and insurance premiums due; and (4) the payment of accrued interest on the Note.

Mortgagor shall surrender possession of the Mortgaged Property to Mortgagor only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of the terms of this First Mortgage and Security Agreement, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.05 Leases. Mortgagor, at its option, is authorized to foreclose this First Mortgage and Security Agreement subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagor to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.06 Purchase by Mortgagee. Upon any such foreclosure sale, Mortgagee may hold for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

2.07 Application of Indebtedness Toward Purchase Price. Upon any such foreclosure sale, Mortgagee may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Mortgagee under the Note, this Mortgage or any other instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

2.08 Waiver of Appraisement, Valuation, Stay, Extension, and Redemption Laws. Mortgagor agrees, to the full extent permitted by law, that in case of a default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this First Mortgage and Security Agreement, or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers of the Mortgaged Property, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety.

2.09 Receiver. If an Event of Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the state where the Land is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the powers herein set forth shall be secured by this Mortgage. All rights and powers granted herein, including without limitation, the right to enter and take possession of and

to manage and operate the mortgaged property, and 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 paragraph 2.03. Notwithstanding the appointment of any receiver or other custodian, mortgagee shall be entitled as secured party hereunder to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this mortgage to, mortgagee.

2.10 Suits to protect the mortgaged property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as mortgagee may deem advisable (a) to prevent any impairment of the mortgaged property by any acts which may be unlawful or any violation of this mortgage, (b) to preserve or protect its interest in the mortgaged property, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to mortgagee's interest.

2.11 Proofs of claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting mortgagee, any person, partnership or corporation guaranteeing or endorsing any of the mortgagee's obligations, its creditors or its property, mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire amount due and payable by mortgagee under the Note, this mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by mortgagee after such date.

2.12 Mortgagee to pay the Note on any default in payment;

Application of monies by mortgagee.

(a) If default shall be made in the payment of any amount due under the Note, this mortgage or any other instrument securing the Note, then, upon mortgagee's demand, mortgagee will pay to mortgagee the whole amount due and payable under the Note and all other sums secured hereby; and if mortgagee shall fail to pay the same forthwith upon such demand, mortgagee shall be entitled to sue for and to recover judgment for the whole amount so due and

unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of Mortgagee's agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Mortgagee shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Mortgagee to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any such judgment by Mortgagee and no attachment or levy of any execution upon any of the Mortgaged Property or any other property shall in any way effect the lien of this First Mortgage and Security Agreement upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Any monies collected or received by Mortgagee under this Paragraph 2.12 shall be applied as follows:

(i) First, to the payment of reasonable compensation, expenses and disbursements of the agents and attorneys; and

(ii) Second, to payment of amounts due and unpaid under the Note, this Mortgage and all other instruments securing the Note;

2.13 Delay or Omission No Waiver. No delay or omission of Mortgagee to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

2.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any

subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this First Mortgage and Security Agreement or any other instrument securing the Note; (d) releases any part of the Mortgaged Property from the lien of this First Mortgage and Security Agreement or any other instrument securing the Note; (e) consents to the filling of any map, plat or replat of the Land; (f) consents to the granting of any easement on the Land; or (g) makes or consents to any agreement changing the terms of this First Mortgage and Security Agreement or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, this First Mortgage and Security Agreement or otherwise of the Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, cosigner, endorser, surety or guarantor. No such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Mortgagee, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.15 Discontinuance of Proceedings; Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this First Mortgage and Security Agreement by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case Mortgagee and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding has occurred or had been taken.

2.16 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this First Mortgage and Security Agreement or any other instrument securing

the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

ARTICLE THREE

LENDING PROVISIONS

3.01 Breach of Construction Loan Agreement and Other Documents. Notwithstanding anything to the contrary set forth in this First Mortgage and Security Agreement or in the Note, or in any other instrument securing the loan evidenced by such Note, upon the occurrence of Event of Default, under the Construction Loan Agreement unless cured in accordance with the terms thereof, Mortgagee, may at its option, declare the entire indebtedness secured hereby, and all interest thereon and all advances made by Mortgagee hereunder, immediately due and payable and/or exercise any additional rights accruing to it under this First Mortgage and Security Agreement in the event of a breach by Mortgagor of any covenant set forth in this Mortgage, the Note, or in the Construction Loan Agreement between Mortgagor and Mortgagee, which Construction Loan Agreement is, by this reference, herein incorporated to the same extent and effect as though it were set forth herein in full.

3.02 Partial Foreclosure. In the event the Mortgaged Property is comprised of more than one parcel of real property, Mortgagor hereby waives any right to require Mortgagee to foreclose or exercise any of its other remedies against all of the Mortgaged Property as a whole or to require Mortgagee to foreclose or exercise such remedies against one portion of the Mortgaged Property prior to the foreclosure or exercise of said remedies against other portions of the Mortgaged Property.

3.03 Delivery of Partial Releases; Prepayment. Mortgagee agrees to execute and deliver from time to time when requested by the Mortgagor partial releases of the lien of this First Mortgage and Security Agreement as it applies to condominium units comprising a part of the Improvements. No partial release shall be granted except on fulfillment of the following conditions:

(1) Mortgagor shall not be in default under the terms of this Mortgage, the Construction Loan Agreement, or the Note;

(2) Mortgagee shall have approved the declaration of condominium ownership for the condominiums to be constructed on the land. Said declaration shall have been recorded and be in effect;

(3) The Improvements being made to the land with the loan secured hereby shall have been substantially completed in accordance with the plans and specifications delivered to and approved by Mortgagee and a certificate of occupancy shall have been issued for said improvements by the municipality or other governmental unit having jurisdiction thereof;

(4) A partial release shall only be delivered at or in connection with the consummation of the sale of the condominium unit as to which a release of the lien of this First Mortgage and Security Agreement has been requested;

(5) The entire net sales price for each condominium unit sold shall be applied by Mortgagee, without premium or penalty, as a prepayment of the principal amount of the Note secured hereby. For purposes of this Subparagraph (5), the term net sales price shall mean the gross purchase price for which Mortgagee has contracted to sell each condominium unit, minus, in each case, reasonable costs of consummating each such sale as more fully defined below, but no more than seven percent (7%) of the gross purchase price of a condominium unit may be deducted for the purpose of determining the net sales price of such unit. For purposes of the calculation of net sales prices of condominium units, the reasonable costs of consummating a sale of such unit shall include title insurance costs, real estate transfer tax, attorney's fees, commissions to salesmen, customary proration, and other costs customarily incurred, but shall expressly exclude marketing, overhead, office or administrative expenses, and any costs in excess of those customarily and reasonably incurred in connection with the sale of condominium units in the vicinity of the premises;

(6) Each partial release shall, if required by Mortgagee, be delivered through an escrow the terms of which shall be satisfactory to Mortgagee, and in any event shall be delivered in such a way as to assure Mortgagee in its reasonable opinion of the application of the aforementioned portion of the net proceeds of said sale to the prepayment of the Note secured hereby as aforesaid;

(7) Mortgagee shall be given at least (5) business days notice of Mortgagor's request for each partial release.

Except as provided in this Paragraph, the Note secured hereby may not be prepaid prior to its maturity.

ARTICLE FOUR

MISCELLANEOUS PROVISIONS

4.01 Successors, and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the successors and assigns of such party shall be included and all covenants and agreements set forth in this First Mortgage and Security Agreement, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

4.02 Addresses for Notices, etc. Any notice, report, demand or other instrument authorized or required to be given or furnished under this First Mortgage and Security Agreement to Mortgagor or Mortgagee shall be deemed given or furnished in accordance with the provisions of the Construction Loan Agreement.

4.03 Headings. The headings of the articles, sections, paragraphs and subdivision of this First Mortgage and Security Agreement are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

4.04 Invalid Provision to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this First Mortgage and Security Agreement or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

4.05 Changes, etc. Neither this First Mortgage and Security Agreement nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this First Mortgage and Security Agreement shall be superior to the rights of the holder of any intervening lien or encumbrance.

4.06 Governing Law. This First Mortgage and Security Agreement is made by Mortgagor and accepted by Mortgagee in the State of Alabama, with reference to the laws of such State, and shall be construed, interpreted, enforced and governed by and in accordance with such laws (excluding the principles thereof governing conflicts of law).

IN WITNESS WHEREOF, the undersigned has caused this First Mortgage and Security Agreement to be executed in its name and behalf the day and year above first written.

BHN Corporation
By: William C. Hylton
Its President

Southwood Park Estates, Inc.

By: John E. Miller
Its President

ATTEST:
James A. Hylton
Its Secretary
BHN Corporation
ALABAMA
Attest:
Joe B. Hylton
Its Secretary
Southwood Park Estates, Inc.

City Federal Savings and Loan Association hereby joins in the execution of this First Mortgage and Security Agreement with the intention and solely for the purpose that it shall serve as a financing statement pursuant to §7-9-402 of the Code of Alabama 1975, as amended.
ALABAMA

City Federal Savings and
Loan Association

By: Joe B. Hylton
Its Secretary Vice President

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William C. Hulsey, whose name as President of BHN Corporation, an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, 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 12th day of April, 1984.

Mary Gray
Notary Public
My Commission Expires: 9/29/85

(AFFIX SEAL)

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jesse E. Miller, whose name as President of Southwood Park Estates, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, 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 12th day of April, 1984.

Patricia C. McCool
Notary Public
My Commission Expires: 9/8/85

(AFFIX SEAL)

EXHIBIT A
TO THE FIRST MORTGAGE
AND SECURITY AGREEMENT BETWEEN
CITY FEDERAL SAVINGS AND LOAN ASSOCIATION
AND SOUTHWOOD PARK ESTATES, INC. AND
BHN CORPORATION

PARCEL 1

Commence at the Southeast corner of the Northwest One-Quarter of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama; 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 and run in a North-westerly direction along the North-easterly right-of-way line of U.S. Highway #31 South 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 an Easterly 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 North-easterly 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 North-easterly direction for a distance of 525.54 feet; thence turn an angle to the right of 101 degrees, 40 minutes, 03 seconds and run in a South-easterly direction for a distance of 465.96 feet to the point of beginning, thence continue along last described course for a distance of 61 feet; thence turn an angle to the right of 31 degrees, 30 minutes and run in a South-easterly direction for a distance of 176.65 feet; thence turn an angle to the left of 89 degrees, 45 minutes, 07 seconds to the tangent of the following described course, said course being situated on a curve to the left having a central angle of 50 degrees, 12 minutes, 30 seconds and a radius of 378.82 feet; thence run along the arc of said curve to the left in a North-easterly direction for a distance of 331.94 feet to the end of said curve and the point of beginning of a curve to the right, said curve to the right having a central angle of 35 degrees, 50 minutes, 46 seconds and a radius of 402.0 feet; thence run along the arc of said curve to the right in a North-easterly direction for a distance of 251.50 feet; thence turn an angle to the left from the tangent of last described course of 82 degrees, 44 minutes, 57 seconds and run in a North-westerly direction for a distance of 248.26 feet; thence turn an angle to the left of 67 degrees, 46 minutes, 22 seconds and run in a North-westerly direction for a distance of 225.52 feet; thence turn an angle to the left of 23 degrees, 03 minutes, 41 seconds and run in a South-westerly direction for a distance of 164.06 feet; thence turn an angle to the left of 61 degrees, 18 minutes, 24 seconds and run in a South-westerly direction for a distance of 344.86 feet to the point of beginning.

PARCEL 2

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An easement for ingress and egress over the following:
Commence at the Southeast corner of the Northwest One-Quarter of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama; thence run 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 and run in a Northwesterly direction along the Northeasterly right-of-way line of U.S. Highway #31 South 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 an Easterly 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 525.54 feet; thence turn an angle to the right of 101 degrees, 40 minutes, 03 seconds and run in a Southeasterly direction for a distance of 526.96 feet; thence turn an angle to the right of 31 degrees, 30 minutes and run in a Southeasterly direction for a distance of 176.65 feet; thence turn an angle to the right of 0 degrees, 14 minutes, 53 seconds and run in a Southeasterly direction for a distance of 30 feet to the point of beginning of a center line of a 60 foot right-of-way, said right-of-way being located 30 feet on either side of the following described center line: From the point of beginning thus obtained, thence turn an angle to the left of 90 degrees to the tangent of the following described course, said course being situated on a curve to the left having a central angle of 50 degrees, 12 minutes, 30 seconds and a radius of 408.82 feet; thence run along the arc of said curve to the left in a Northeasterly direction for a distance of 358.25 feet to the end of said curve and the point of beginning of a curve to the right, said curve to the right having a central angle of 62 degrees, 0 minutes, 0 seconds and a radius of 372 feet; thence run along the arc of said curve to the right for a distance of 402.54 feet to the point of beginning of a curve to the left, said curve to the left having a central angle of 45 degrees, 57 minutes, 43 seconds and a radius of 372 feet; thence run along the arc of said curve to the left in a Northeasterly direction for a distance of 298.41 feet to the end of said curve; thence run along the tangent, if extended to said curve, in a Northeasterly direction for a distance of 61.24 feet to the point of beginning of a curve to the right, said curve having a central angle of 36 degrees, 48 minutes, 59 seconds and a radius of 412.20 feet; thence run along the arc of said curve to the right in a Northeasterly direction for a distance of 264.90 feet to the end of said curve; thence run along the tangent, if extended to said curve, in a Northeasterly direction for a distance of 25 feet to the point of beginning of a curve to the right, said curve to the right having a central angle of 47 degrees, 40 minutes, 03

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
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JUDGE OF PROBATE

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seconds, and a radius of 264.19 feet; thence run along the arc of said curve to the right in a Northeasterly, Easterly, and Southeasterly direction for a distance of 219.79 feet to the end of said curve and the end of said center line, said point being situated on the end of the dedication of right-of-way of the woods of Riverchase Drive as dedicated by Riverchase Gardens Subdivision First Sector.