THIS INSTRUMENT PREPARED BY: (Name) Fran Seale, Real Estate Dept.
(Address) Central Bank of the South
P.O. Box 10566, MC 200-A
Birmingham, ALABAMA 35296

# THIS IS A FUTURE ADVANCE MORTGAGE

STATE OF ALABAMA )
COUNTY OF Jefferson )

**MORTGAGE AND SECURITY AGREEMENT**

THIS INDENTURE made this 10th day of January, 1985 between Crestwood Homes, Inc.

(hereinafter called the "Borrower", whether one or more), Mortgagor, and Central Bank of the South Birmingham, Alabama (hereinafter called the "Lender"), Mortgagee,

WITNESSETH:

WHEREAS, Borrower is justly indebted to Lender in the principal sum of Sixty Thousand and no/100---------- Dollars ($ 60,000.00), or so much as may from time to time be disbursed hereunder, as evidenced by a note bearing even date herewith, payable to said Lender, with interest thereon, on demand or as otherwise provided therein. This is a FUTURE ADVANCE MORTGAGE, and the said $ 60,000.00 indebtedness shall be advanced by Lender to Borrower in accordance with a construction loan agreement dated March 16, 1984, the terms of which agreement are made a part of this mortgage.

In addition to said $ 60,000.00 principal amount with interest, this mortgage shall also secure any and all other additional indebtedness of Borrower to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals or extensions thereof, and whether incurred or given as Maker, Endorser, Guarantor or otherwise.

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions or renewals of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorney's fees, and any and all other indebtedness of Borrower to Lender as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the note and the construction loan agreement, have bargained and sold and do hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property in the possession of the Lender or hereafter acquired by the Borrower and subject to the lien of this mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the Mortgaged Property) to-wit:

BOOK 014 PAGE 754

(a) All that tract or parcel or parcels of land particularly described in Schedule "A" attached hereto and made a part hereof.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in Schedule "A", and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Borrower and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property are actually located on or adjacent to the property described in Schedule "A" or not and whether in storage or otherwise wheresoever the same may be located.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:

(a) All rents, profits, issues and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues and profits thereof; and,

(b) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender is hereby authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest payable in respect to the note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, attorney's fees, and shall pay any and all other indebtedness of Borrower to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals or extensions thereof, whether incurred or given as Maker, Endorser, Guarantor or otherwise, and shall keep, perform and observe all and singular the covenants, conditions and agreements in the note, the construction loan agreement, and in this mortgage expressed to be kept, performed, and observed by or on the part of the Borrower, all without fraud or delay, then this mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

AND the Borrower covenants and agrees with the Lender as follows:

## ARTICLE I

1.01 *Performance of Note, Mortgage and Construction Loan Agreement.* The Borrower will perform, observe and comply with all provisions hereof and of the note secured hereby and of the construction loan agreement, and will duly and punctually pay to the Lender the sum of money expressed in the note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02 *Warranty of Title.* Borrower hereby warrants that he is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 *Future Advances and Other Debts.* It is expressly understood that this instrument is intended to and does secure, not only the indebtedness herein specifically mentioned; but also Future Advances and any and all other debts, obligations and liabilities, direct or contingent, of said Borrower to said Lender, whether now existing or hereafter arising, and any and all extensions or renewals of same, or any part thereof, at any time before actual cancellation of this instrument on the probate records of Shelby County, Alabama, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise.

1.04 *Monthly Tax Deposit.* If required by Lender, Borrower will pay on the first day of each month one-twelfth (1/12) of the yearly taxes, as estimated by Lender, together with and in addition to each regular installment of principal and interest. Such sums shall not draw interest, and shall not be, nor deemed to be, trust funds, but may be commingled with the general funds of Lender. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums may be applied by the Lender to the reduction of the amounts secured hereby in the event of a default under the note, mortgage or loan agreement.

1.05 *Other Taxes, Utilities and Liens.* (a) The Borrower will pay promptly, when and as due, and, if requested, will promptly exhibit to the Lender receipts for the payment of, all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the mortgage for any amounts secured hereby or would have priority or equality with the mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Borrower shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of the mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

BOOK 014 PAGE 755

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the entire balance of the principal sum secured by the mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.06 *Insurance.* The Borrower will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this mortgage, insurance policies, in such amounts as the Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise 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 the Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to repair such buildings, or to build new buildings in their place or for any other purpose or object satisfactory to the Lender without affecting the lien of the mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If required by the Lender, the Borrower will pay on the first day of each month, together with and in addition to the regular installment of principal and interest and monthly tax deposit (as required by Paragraph 1.04 of Article I herein), one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums. In the event of a default by Borrower in the Note, Mortgage, or Construction Loan Agreement, the Lender may apply such sums to the reduction of the sums secured hereby.

1.07 *Condemnation.* If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower'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 the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums

1.16 *Alienation or Sale of Mortgaged Property.* The Borrower shall not sell, assign, encumber, or otherwise convey the Mortgaged Property without obtaining the express written consent of the Lender at least thirty (30) days prior to such conveyance. If Borrower should sell, assign, encumber or convey all, or any part of, the Mortgaged Property without such consent by Lender, then, in such event, the entire balance of the principal sum secured by the mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

## ARTICLE II

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

(a) Failure by the Borrower to pay as and when due and payable any installments of principal, interest or escrow deposits; or

(b) Failure by the Borrower to duly observe any other covenant, condition or agreement of this mortgage for ten (10) days or more; or

(c) Failure by the Borrower to duly observe any other covenant, condition or agreement of the construction loan agreement for ten (10) days or more; or

(d) The filing by the Borrower of a voluntary petition in bankruptcy or the Borrower's adjudication as a bankrupt or insolvent, or the filing by the Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Borrower's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Borrower 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 the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

(e) The entry by a court of competent jurisdiction of any order, judgment, or decree approving a petition filed against the Borrower 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 the appointment of any trustee, receiver or liquidator of the Borrower 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 without the consent or acquiescence of the Borrower which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

(f) The interest of the Lender in the property, real and personal, secured by this Mortgage becoming endangered by reason of the enforcement of any prior lien or emcumbrance thereon, so as to endanger the debt hereby secured.

BOOK 014 PAGE 756

2.02 *Acceleration of Maturity.* If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.03 *Right of Lender to Enter and Take Possession.*

(a) If an Event of Default shall have occurred and be continuing, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and if and to the extent permitted by law, the Lender may enter and take possession of all the Mortgaged Property, and may exclude the Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property and exercise all the rights and powers of the Borrower in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender 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, after deducting (aa) All expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other charges prior to the lien of this mortgage as the Lender may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agent of the Lender; shall apply the remainder of the moneys so received by the Lender, first to the payment of accrued interest; then to the payment of tax deposits required in Paragraph 1.04; and finally to the payment of overdue installments of principal.

(c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04 *Receiver.* (a) If an Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Borrower will pay to the Lender upon demand all expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 2.04; and all such expenses shall be secured by this mortgage.

2.05 *Lender's Power of Enforcement.* If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the note or the performance of any term thereof or any right, (b) to foreclose this mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes, the Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

2.06 *Power of Sale.* If an Event of Default shall have occurred Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is

secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.08 *Care of the Property.* (a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Borrower 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, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof One Thousand Dollars ($1,000.00) for any single transaction, or a total of Five Thousand Dollars ($5,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Borrower will give immediate written notice of the same to the Lender.

(d) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Borrower 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.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower will 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 physically damaged through condemnation, the Borrower will promptly restore, repair or alter the remaining property in a manner satisfactory to the Lender.

1.09 *Additional Security.* The Lender shall also have a security interest in all other property of the Borrower, now or hereafter assigned, or coming into the possession, control, or custody of the Lender by or for the account of the Borrower (including indebtedness due from the Lender to the Borrower or any guarantor, surety or endorser of the Note) whether expressly as collateral security or for any other purpose, including any dividends declared, or interest accruing thereon, and proceeds thereof. The Lender may, but shall not be obligated to, apply, on or after demand, to the payment of the Note, any funds or credit held by the Lender, on deposit, in trust or otherwise, for the account of the Borrower or any guarantor, surety or endorser of the Note.

BOOK 014 PAGE 757

1.10 *Leases Affecting Mortgaged Property.* The Borrower will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases now or hereafter created on said premises; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Borrower will not accept payment of rent more than two (2) months in advance without the express written consent of Lender. If requested by the Lender, the Borrower will assign to the Lender as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the premises from time to time accruing, and will not cancel, surrender or modify any lease so assigned without the written consent of the Lender.

1.11 *Expenses.* The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the note, mortgage, construction loan agreement, Borrower or Mortgaged Property, including but not limited to the foreclosure of this mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall be added to the indebtedness and secured by the lien of this mortgage.

1.12 *Performance by Lender of Defaults by Borrower.* If the Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenants, condition or term of this Mortgage, or of the Construction Loan Agreement, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at the rate of ten percent (10%) per annum. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

1.13 *Books and Records.* The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of the Lender, the Borrower will furnish to the Lender within ninety (90) days after the end of the Borrower's fiscal year, a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by a Certified Public Accountant, and a rent schedule of the Mortgaged Property, certified by an officer of the Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date and the rent paid.

1.14 *Estoppel Affidavits.* The Borrower within ten (10) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the note and whether or not any offsets or defenses exist against such principal and interest.

1.15 *Energy, Environmental or Utility Problems.* In the event of unreasonable delay in the construction of the improvements secured hereby, as a direct or indirect result of energy shortages, or municipal, county, state, federal or other governmental law, order, rule or regulation relating to environmental protection, sewage treatment, zoning, or energy conservation, or lack of utilities (which includes, but is not limited to, gas, electricity, water and sewage treatment) or in the event that it reasonably appears that, upon completion of such improvements, energy (including all utilities) will not be available in sufficient quantities to permit the operation of the project, then, in either of such events, the entire balance of the principal sum secured by the mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

located, either in person or by auctioneer, after having first given twenty-one (21) days' notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the same for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.07 *Application of Foreclosure Proceeds.* The proceeds of any foreclosure sale pursuant to Paragraph 2.06 of Article II shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this mortgage;

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

(c) Third, to the payment and satisfaction of the indebtedness hereby specially secured with interest to date of sale, and to the payment of any and all other debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations and liabilities be then due or not;

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.,

2.08 *Lender's Option on Foreclosure.* At the option of the Lender, this mortgage may be foreclosed as provided by law or in Equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the mortgage in equity, Lender may, at its option, foreclose this mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.09 *Waiver of Exemption.* Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

2.10 *Suits to Protect the Mortgaged Property.* The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of the mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom, 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 would impair the security hereunder or be prejudicial to the interest of the Lender.

BOOK 014 PAGE 758

2.11 *Borrower to Pay the Note on any Default in Payment; Application of Moneys by Lender.* If default shall be made in the payment of any amount due under the note, mortgage, or construction loan agreement, then, upon demand of the Lender, the Borrower will pay to the Lender the whole amount due and payable under the note; and in case the Borrower shall fail to pay the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Lender's agents and attorneys.

2.12 *Delay or Omission No Waiver.* No delay or omission of the Lender or of any holder of the note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

2.13 *No Wavier of One Default to Affect Another, etc.* No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Lender (a) grants forebearance 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 herein or in the note; (d) releases any part of the Mortgaged Property from the lien of the mortgage or otherwise changes any of the terms of the note or mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or change hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the note, mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender 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 Lender, without notice to any person 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.

2.14 *Discontinuance of Proceedings—Position of Parties, Restored.* In case the Lender shall have proceeded to enforce any right or remedy under this mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding has been taken.

2.15 *Remedies Cumulative.* No right, power, or remedy conferred upon or reserved to the Lender by this mortgage is intended to be exclusive of any 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 now or hereafter existing at law or in equity or by statute.

## ARTICLE III

3.01 *Successors and Assigns Included in Parties.* Whenever in this mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

3.02 *Headings, etc.* The headings of the articles, sections, paragraphs and subdivisions of this mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.03 *Gender, etc.* Whenever the context so requires, the masculine includes the feminine and neuter, and the singular includes the plural.

3.04 *Invalid Provisions to Affect No Others.* In case any one or more of the covenants, agreements, terms or provisions contained in this mortgage or in 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 shall be in no way affected, prejudiced or disturbed thereby.

3.05 *Lien on Personal Property.* This mortgage creates a lien on the personal property of the Borrower located on the Mortgaged Property and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. If an Event of Default occurs, the Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

3.06 *Conflict in Loan Documents.* In the event of conflict in the terms of any provision in this Mortgage, the Note, or the Construction Loan Agreement, the terms of the provision most favorable to the Lender shall apply.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed as of the day and year first above written.

ATTEST:

_____
Its

Crestwood Homes, Inc.

By B.J. Jackson
Its President

WITNESS:

_____

_____ (Seal)

_____

_____ (Seal)

_____

BOOK 014 PAGE 759

### CORPORATE ACKNOWLEDGMENT

STATE OF Alabama
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that B.J. Jackson whose name as President of Crestwood Homes, Inc. a corporation, is signed to the foregoing Mortgage and Security Agreement, and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of the Mortgage and Security Agreement, he executed the same voluntarily on the day the same bears date for and on behalf of the corporation.

Given under my hand and official seal this the 10th day of January, 1985.

Frances A. Seale
Notary Public

My commission expires: MY COMMISSION EXPIRES MAY 23, 1987

### INDIVIDUAL ACKNOWLEDGEMENTS

STATE OF
COUNTY OF

I, _____, a Notary Public in and for said County in said State, hereby certify that _____ whose name is signed to the foregoing Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Mortgage and Security Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of _____, 19____.

_____
Notary Public

My commission expires: _____

STATE OF
COUNTY OF

I, _____, a Notary Public in and for said County in said State, hereby certify that _____ whose name is signed to the foregoing Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Mortgage and Security Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the _____ day of _____, 19____.

_____
Notary Public

My commission expires: _____

## SCHEDULE A

Lot 7, according to Chaparral, Third Sector, as recorded in Map Book 8, Page 165, in the Probate Office of Shelby County, Alabama.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1985 JAN 14 AM 10:49

Reg. Tax 9.00
Rec. 17.50
Ind. 1.00
10.50

JUDGE OF PROBATE

BOOK 014 PAGE 760

Form No. 99/58-2303 (8/78)