

ASSIGNMENT OF BORROWER'S INTEREST
IN PERMITS, CONTRACT DOCUMENTS AND DEVELOPER'S RIGHTS
(this "Assignment")

THIS ASSIGNMENT, made this 23rd day of October, 1985, by COLUMBIANA VILLAS, LTD., an Alabama limited partnership, Assignor ("Borrower"), to MIDLAND MORTGAGE INVESTMENT CORPORATION, a Florida corporation ("Lender");

R E C I T A L S:

- A. By instrument bearing even date herewith Borrower has entered into a Loan Agreement (the "Loan Agreement") with Lender whereby Lender has agreed, upon certain terms and conditions, to loan (the "Loan") the sum of \$1,197,000.00 to Borrower.
- B. The indebtedness of the Loan is evidenced by a promissory note (the "Note") of even date herewith in the amount of the Loan.
- C. As part of the security for the performance by Borrower of its obligation, Borrower has executed and delivered to Lender a mortgage (the "Mortgage"), of even date herewith, encumbering real property (the "Property") located in the County of Shelby, State of Alabama and more fully described in the Mortgage.
- D. Borrower has therein undertaken to erect certain improvements upon the Property.
- E. Borrower has entered, or is about to enter into certain contracts and agreements, and to acquire rights in other documents including but not limited to: permits, approvals, variances, licenses, franchises, architect's contracts, drawings, plans, specifications, general contracts, AIA contract, addenda and modifications thereof (herein collectively called the "Contract Documents"), affecting the Property and the anticipated improvements thereon.

NOW THEREFORE, in consideration of the above recitals and other good and valuable consideration, the sufficiency of which is acknowledged, Borrower and Lender agree as follows:

1. Collateral Assignment. Borrower hereby unconditionally grants, transfers and assigns to Lender, its

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This instrument was prepared by:

DOUGLAS M. WILLIAMSON

of FISHER & SAULS, P.A.

Attorneys

City Center

100 Second Avenue South

Suite 701

P. O. Box 387

St. Petersburg, FL 33731

successors and assigns, all of the right, title and interest of Borrower in and to the Contract Documents, and grants to Lender, its successors and assigns, a security interest in such Contract Documents, and all rights and privileges of any nature thereunder accruing, together with any changes, extensions, revisions, modifications or guarantees of performance of obligations to Borrower under the Contract Documents, for the purpose of providing additional security: (a) for payment of all sums now or at any time hereafter due Lender under the Note and the Mortgage, together with any renewals or extensions thereof, and any future advances made thereunder to the extent permitted under applicable law; (b) for any other amounts which may be added to the indebtedness under the terms of the Mortgage; and (c) for performance and discharge of each obligation, covenant and agreement of Borrower contained herein or contained in any document executed by Borrower in connection with the Loan.

2. Termination of Assignment. By accepting this Assignment, Lender agrees that upon the payment in full of all indebtedness secured hereby, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Mortgage without the simultaneous recording of another mortgage in favor of Lender affecting the Property this Assignment shall become null and void and of no further effect.

3. Warranties by Borrower. Borrower warrants that:

(a) There is no other assignment of any of its rights under the Contract Documents to any other person.

(b) Borrower has done no act nor omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions herein.

(c) There is no default under the terms of the existing Contract Documents to the knowledge of Borrower, and all Contract Documents remain in full force and effect.

(d) Borrower is not prohibited under any agreement with any other person or any judgment or decree from the

execution and delivery of this Assignment of the Contract Documents, the performance of each and every covenant of Borrower hereunder and in the Contract Documents, and the meeting of each and every condition herein contained.

(e) No action has been brought or threatened which would in any way interfere with the right of Borrower to execute this Assignment and perform all of Borrower's obligation herein contained.

4. Covenants.

(a) Borrower agrees, so long as it is indebted to Lender, that Borrower will: (i) fulfill, perform and observe each and every condition and covenant of Borrower contained in the Contract Documents; (ii) give prompt notice to Lender of any claim of default under the Contract Documents given to Borrower or given by Borrower, together with a complete copy of any such claim; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every covenant and condition of the Contract Documents to be performed or observed; (iv) appear in and defend any Contract Documents or the obligations or liabilities of Borrower, or any guarantor thereunder; and (v) not do any act prohibited by the terms of the Mortgage, the Note, the Loan Agreement, or any other document executed in connection with the Loan.

(b) The rights assigned hereunder include all of Borrower's right and title to modify the Contract Documents, to terminate the Contract Documents, and to waive or release the performance or observance of any obligation or condition of the Contract Documents. Borrower covenants that Borrower will neither modify the terms of the Contract Documents (unless required so to do by its terms) nor waive or release any person from the performance of any obligation to be performed under the terms of the Contract Documents or from liability on account of any warranty given by them.

5. Events of Default. Upon the occurrence of any one of the following events:

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(a) the failure by Borrower to perform or observe any covenant of Borrower contained in this Assignment, the Mortgage, the Loan Agreement, the Note, or any other instrument executed in connection with the Loan, or should any warranty of Borrower contained in any of the aforesaid instruments prove untrue or misleading in any material aspect;

(b) should Borrower fail to meet any condition set forth in the Contract Documents; or

(c) should any event occur under any agreement made by Borrower with any third person whereby that person might declare immediately due and payable any indebtedness owing by Borrower to such third person;

then, and thereupon, the Lender shall have the remedies as herein provided.

6. Remedies Upon Default. Upon default Lender may:

(a) declare the total indebtedness due under the Note and secured by this Assignment immediately due and payable;

(b) proceed to enter upon, take possession, and operate the Property under this Assignment to the extent allowed by applicable law without becoming a mortgagee in possession;

(c) proceed to perform any and all obligations of Borrower contained in the Contract Documents and exercise any and all rights of Borrower therein as fully as Borrower itself could, and this without regard to the adequacy of security for the indebtedness hereby secured and with or without the bringing of any legal action; and

(d) do all other acts which Lender may deem necessary or proper to protect its security.

7. Additional Remedies.

(a) Borrower does hereby specifically authorize Lender, in Borrower's name or in Lender's name, to sue for or otherwise collect and receive issues and profits from the

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Contract Documents, including those past due and unpaid, and apply the same against all costs and expenses of operation of the Property or the performance of Borrower's obligations under the Contract Documents, including reasonable attorney's fees. Any amounts remaining after such application shall be applied next to interest and then to the principal on the indebtedness evidenced by the Note. Neither entry upon and taking possession of the Property nor the collection of the issues and rights from the Contract Documents shall in any way operate to cure or waive any default under any other instrument given by Borrower to Lender in connection with the Loan, nor prohibit the taking of any other action by Lender under any such instrument, or at law or in equity, to enforce payment of the indebtedness secured by the Contract Documents or to realize on any other security.

(b) Borrower further agrees that:

(1) Should Borrower fail to perform or observe any covenant or comply with any condition contained in the Contract Documents, the Lender, but without obligation so to do and without notice to or demand on Borrower or releasing Borrower from its obligation so to do, may perform such covenant or condition and may appear in and defend any action affecting the Contract Documents. To the extent that Lender shall incur any costs or pay any monies in connection therewith, including any costs or expenses of litigation, and reasonable attorneys' fees (whether incurred in litigation or otherwise), then such charges shall be included in the indebtedness secured hereby and shall bear interest from the incurring of payment thereof at the maximum rate of interest permitted by law.

(2) Lender shall not be obligated to perform or discharge any obligation of Borrower under the Contract Documents and Borrower agrees to indemnify and hold Lender harmless against any and all liability, loss or damage which Lender may incur under the Contract Documents or under or by reason of this Assignment and of and from all claims and

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demands whatsoever which may be asserted against it by reason of an act of Lender under this Assignment or under the Contract Documents. Should the Lender incur any such liability, loss or damage under any Contract Document or under or by reason of this Assignment, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate applicable to such charges in accordance with the terms of the Mortgage, shall be included in the indebtedness secured by the Mortgage, and the Borrower shall reimburse the Lender therefor immediately upon demand.

8. Applicable Law. This Assignment has been executed and delivered in the State of Alabama and the rights of all parties hereunder shall be governed and decided exclusively by the laws of the State of Alabama with reference to which the parties have made the other instruments securing or executed with respect to the indebtedness evidenced thereby.

9. Definitions of Terminology and Construction.

(a) The parties agree that wherever used in this Assignment, unless the context clearly indicates a contrary intent or unless otherwise specifically provided therein, the words "Borrower" and "Lender" shall include individuals, corporations (and if a corporation, its officers, employees, agents or attorneys) and any and all other persons or entities and the respective heirs, executors, legal representatives, administrators, successors and assigns of the parties hereto, and all those holding under either of them.

(b) The pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto.

IN WITNESS WHEREOF, the Borrower hereto has caused this Assignment to be executed and delivered on the day and

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year first written above.

Witnesses:

Spence A. Elliott
Stephen D. Norrell

COLUMBIANA VILLAS, LTD., an
Alabama limited partnership

By: John T. Huff, Jr.

By: Steven D. Norrell

General Partners

STATE OF ALABAMA

COUNTY OF LEE

The foregoing instrument was acknowledged before
me this 23rd day of October, 1985, by JOHN T. HUFF, JR.,
and STEVEN D. NORRELL, as General Partners of COLUMBIANA
VILLAS, LTD., an Alabama limited partnership, on behalf of the
partnership.



Lynne Ann Elliott
Notary Public - State of Alabama

My Commission Expires:

NOTARY PUBLIC
STATE OF ALABAMA
COMMISSION EXPIRES AUG. 21, 1989

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STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1985 OCT 24 PM 2:20
Thomas A. Swanson, Jr.
JUDGE OF REGISTRATION

RECORDING FEES

Recording Fee \$ 17.50
Index Fee 1.00
TOTAL \$ 18.50