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SECOND PRIORITY MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made as of the 1st day of December, 1985, between FPI BIRMINGHAM, LTD., an Alabama limited partnership whose managing general partners are Avron B. Fogelman and Fogelman Properties, Inc., a Tennessee corporation (hereinafter called "Mortgagor") and CITICORP REAL ESTATE, INC., Atlanta, Georgia (hereinafter called "Mortgagee").

W I T N E S S E T H :

That for and in consideration of the sum of ONE HUNDRED AND NO/100 (\$100.00) DOLLARS in hand paid and the other considerations hereinafter mentioned, receipt whereof is hereby acknowledged, Mortgagor does hereby bargain, sell, grant and convey to Mortgagee, its successors and assigns, all of the following described land, buildings, improvements

THIS DOCUMENT WAS PREPARED BY AND SHOULD BE RETURNED TO:

David N. Minkin, Esq.
David N. Minkin, P.C.
3414 Peachtree Street
Suite 560, Monarch Plaza
Atlanta, Georgia 30326

(including improvements to be made hereafter), fixtures, furniture and appliances and other personal property (hereinafter sometimes collectively called the "Secured Premises"), to wit:

(a) All that tract or parcel of land (the "Land") more particularly described in Exhibit A attached hereto and made a part hereof and buildings and other improvements now or hereafter placed thereupon;

(b) All gas and electric fixtures, radiators, heaters, space heaters, engines and machinery, boilers, ranges, ovens, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other air-conditioning, plumbing, and heating fixtures, awnings, window shades, drapery rods, drapes, brackets, screens, floor coverings, incinerators, mirrors, mantles, refrigerating plants, refrigerators, iceboxes, dishwashers, carpeting, furniture, laundry equipment, cooking apparatus and appurtenances, and all building material and equipment now or hereafter owned by Mortgagor and delivered to the Secured Premises and intended to be installed therein, and any other machinery, equipment, material, appliances and fixtures now or hereafter delivered to the Secured Premises and intended to be installed therein, and any other machinery, equipment, material, appliances and fixtures now or hereafter installed or placed by Mortgagor in the Secured Premises for the generation and distribution of air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or air conditioning purposes, or for sanitary or drainage purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; such other goods,

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equipment, chattels and personal property as are usually furnished by landlords in letting premises of the character hereby conveyed (or as hereafter improved) and all renewals or replacements thereof or articles in substitution thereof and all of the estate, right, title and interest of Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Land or intended to be used in connection with the operation thereof, together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on behalf of Mortgagor, all inventory, accounts, chattel paper, documents, equipment, fixtures, farm products, consumer goods and general intangibles constituting proceeds acquired with cash proceeds of any of the property described hereinabove, all of which shall be deemed to be fixtures and an accession to the freehold and a part of the realty as between the parties hereto and all persons claiming by, through or under them and shall be deemed to be a portion of the security for the indebtedness herein mentioned and secured by this Second Priority Mortgage and Security Agreement.

TOGETHER WITH all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenants, reversion and reversions, remainder and remainders, whatsoever, in anyway belonging, relating or appertaining to

the Secured Premises, or any part thereof, or which hereafter shall in anyway belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor.

TOGETHER WITH all insurance proceeds and condemnation awards, and all rents, profits, issues and revenues of the Secured Premises from time to time accruing (including, without limitation, all tenant security deposits and escrow funds, whether held by Mortgagor or in a trust account), whether under leases or tenancies now existing or hereafter created, reserving only the right to Mortgagor to collect the same so long as Mortgagor is not in default hereunder and so long as the same are not subjected to garnishment, levy, attachment or lien not being contested as provided for herein. In addition, Mortgagor hereby assigns, transfers and conveys to Mortgagee, its successors and assigns, all of Mortgagor's right, title and interest in, to and under all leases now or hereafter leasing or affecting the Secured Premises or any part thereof, reserving to Mortgagor the right to collect the same so long as Mortgagor is not in default hereunder.

TOGETHER WITH all sums held in escrow by Mortgagee for the benefit of the Borrower or the Secured Premises.

TO HAVE AND TO HOLD the Secured Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Mortgagee, its successors and assigns, in fee simple forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Secured Premises in fee simple and has good right to convey the same, that the same are unencumbered except for the Prior Mortgage and the Prior Assignment of Leases, as hereinafter defined, and except as to the

items set forth on Exhibit B attached hereto and made a part hereof, and that Mortgagor will warrant and defend the title thereto against the claims of all persons whomsoever, except as hereinbefore expressly provided.

PROVIDED, HOWEVER, that if Mortgagor shall pay or cause to be paid to Mortgagee, at its principal office, or at such other place which may hereafter be designated by Mortgagee, its successors or assigns, with interest, all of the "Secured Indebtedness" (as hereafter defined) and shall also fully perform all of the covenants, conditions and terms of this Second Priority Mortgage and Security Agreement, then this instrument shall be void, and Mortgagee shall execute a proper deed of release or reconvey by quitclaim the Secured Premises, all at the expense of Mortgagor; otherwise to remain in full force and effect. The "Secured Indebtedness" secured hereby is the following:

(a) All sums now or hereafter due by Mortgagor to Mortgagee under the terms of that certain Letter of Credit, Indemnity and Reimbursement Agreement (the "Reimbursement Agreement") between Mortgagor and Mortgagee, of even date herewith, including, without limitation, all payments of principal, interest and premium (if any) due from time to time under the Reimbursement Agreement, together with any and all reimbursements, fees, renewals and extensions of the Secured Indebtedness evidenced by or otherwise outstanding under the Reimbursement Agreement, together with any and all expenses and costs payable by Mortgagor thereunder (all of which obligations are hereinafter collectively called the "Letter of Credit Obligations"); and

(b) All amounts due to Mortgagee under the terms of that certain Interest Rate Exchange Agreement to be entered into between Mortgagor and Mortgagee (the "Interest Rate Exchange Agreement") pertaining to Mortgagor's debt service obligations relating to the Bonds (as hereinafter defined); and

(c) Any and all additional advances made by Mortgagee to protect or preserve the Secured Premises or the lien or security interest hereof on the Secured Premises or for taxes, assessments or insurance premiums, whether such advances are obligatory or are made at the option of Mortgagee, or otherwise, whether or not such additional advances or sums are evidenced by a promissory note, and whether or not identified by recital that they are secured by this Second Priority Mortgage and Security Agreement. The foregoing future advance provisions shall not be construed to obligate Mortgagee to make any additional loans or advances. Such advances so secured hereby shall be made during the period ending on the 20th anniversary of the date hereof and shall not exceed 200% of the Secured Indebtedness as of the date hereof.

Except for the amounts due under the Interest Rate Exchange Agreement, the debt secured hereby is the same debt as is secured by the Prior Mortgage (as hereinbelow defined). As of the date hereof, the maximum amount of the Secured Indebtedness is equal to the sum of \$42,046,000.00, together with interest as provided for in the Reimbursement Agreement and the Loan Agreement, and is finally due and payable December 10, 1993.

Mortgagor covenants with Mortgagee as follows:

ARTICLE I

1.01 Payment of Indebtedness and Performance of Obligations.

Mortgagor will pay the Secured Indebtedness according to the tenor thereof promptly as the same shall become due, and shall perform every obligation of Borrower contained in this Second Priority Mortgage and Security Agreement, in the Reimbursement Agreement, in the Interest Rate Exchange Agreement, and in each and every instrument now or hereafter evidencing or securing the indebtedness secured hereby.

1.02 Monthly Deposits. To secure further the payment of the taxes and assessments hereinafter referred to, Mortgagor shall, upon the request of Mortgagee, deposit with Mortgagee on the first day of each and every month a sum which, in the reasonable estimation of Mortgagee, shall be equal to one-twelfth of the annual taxes and assessments; said deposits to be held by Mortgagee, with interest as provided for in the Reimbursement Agreement, and free of any liens or claims on the part of creditors of Mortgagor and as part of the security of Mortgagee, and to be used by Mortgagee to pay current taxes and assessments on the Secured Premises as the same accrue and are payable. Said deposits shall be deemed to be trust funds and shall not be commingled with the general funds of Mortgagee. If said deposits are insufficient to pay the taxes and assessments in full as the same become payable, Mortgagor shall deposit with Mortgagee such additional sum or sums as may be required in order for Mortgagee to pay such taxes and assessments in full. Upon any default hereunder or under the Bonds, Mortgagee may, at its option, apply

any money in the fund resulting from said deposits to the payment of the Secured Indebtedness in such manner as it may elect.

1.03 Taxes, Liens and Other Charges.

(a) 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 debts secured by deeds of trust or the manner of collecting taxes so as to affect adversely Mortgagee, Mortgagor shall promptly pay any such tax; if Mortgagor fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibit Mortgagor from making such payment or would penalize Mortgagee if Mortgagor makes such payment, then the entire balance of the principal sum secured by this indenture and all interest accrued thereon shall, without notice, immediately become due and payable at the option of Mortgagee.

(b) Mortgagor shall pay, before the same become delinquent, all taxes, liens, assessments and charges of every character already levied or assessed or that may hereafter be levied or assessed upon or against the Secured Premises and all utility charges, whether public or private; and upon demand shall furnish Mortgagee receipted bills evidencing such payment. Notwithstanding the foregoing, nothing contained herein shall require the payment or discharge of any such tax, lien, assessment or charge by Mortgagor for so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings, provided the same shall prevent (i) the collection

thereof or other realization thereof and the sale or forfeiture of the Secured Premises or any part thereof to satisfy the same, or (ii) (x) the enforcement thereof against Mortgagor, Mortgagee or the Secured Premises or any part thereof, and (y) so long as Mortgagor first deposits with Mortgagee in escrow such sums or other security as Mortgagee may require to assure Mortgagee of the availability of sufficient monies to pay such tax, lien, assessment or charge if and when the same is finally determined to be due.

(c) Subject to Mortgagor's right to contest same as provided for in the Reimbursement Agreement, whichever may be applicable, Mortgagor shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien which might or could be prior to or equal to the security interest of this Second Priority Mortgage and Security Agreement to be created or to remain outstanding upon any part of the Secured Premises.

1.04 Insurance. Mortgagor shall keep all buildings and improvements whether now standing on the Secured Premises or hereafter erected, continuously insured against loss or damage by fire, by the perils covered by extended coverage insurance, by builder's risk insurance, by loss of rents or business interruption insurance for up to not more than six (6) months and by malicious mischief and against such other hazards as Mortgagee, in its sole discretion, shall from time to time require, for the benefit of Mortgagee; all such insurance at all times shall be in an insurance company or companies in such amounts and with terms acceptable to Mortgagee, with loss, if any, payable to

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Mortgagee as its interest may appear, pursuant to a non-contributory mortgagee clause which shall be satisfactory to Mortgagee; and forthwith upon the issuance of such policies Mortgagor shall deliver to Mortgagee receipts for the premiums paid thereon. Any policies furnished Mortgagee shall become its property in the event Mortgagee becomes owner of the Secured Premises by foreclosure or otherwise. Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Secured Premises, 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, instead of to Mortgagor and Mortgagee jointly. In case of loss under any such policy of insurance, Mortgagee may apply the net proceeds to the payment of the indebtedness hereby secured, whether due or not, or Mortgagee may require all buildings and improvements to be repaired or replaced by the use of said net proceeds.

Notwithstanding the foregoing, in the event Mortgagee shall receive the net proceeds under any such policy of insurance, as long as there shall exist no default under the terms of this Second Priority Mortgage and Security Agreement, Mortgagee shall apply such proceeds to the restoration, reparation and alteration of the Secured Premises pursuant to a disbursement procedure reasonably acceptable to Mortgagee.

1.05 Care of the Secured Premises.

(a) Mortgagor shall keep the improvements now or hereafter erected on the Secured Premises in good condition and repair, shall not commit or suffer any waste and shall not do or suffer to be done anything

(other than construction, ownership, operation, maintenance and repair or renovation of improvements) which shall increase the risk of fire or other hazard to the Secured Premises or any part thereof.

(b) Except as set forth in the Reimbursement Agreement, Mortgagor shall not remove or demolish nor alter the design or structural character of any building (now or hereafter erected), fixture, chattel or other part of the Secured Premises without the prior written consent of Mortgagee.

(c) If the Secured Premises or any part thereof is damaged by fire or any other cause, Mortgagor shall give immediate written notice of the same to Mortgagee.

(d) Mortgagee or its representative is hereby authorized to enter upon and inspect the Secured Premises at any time during normal business hours, subject to the rights of tenants therein.

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(e) Mortgagor shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority materially affecting the Secured Premises or any part thereof.

(f). If all or any part of the Secured Premises shall be damaged by fire or other casualty, Mortgagor shall, upon request of Mortgagee, promptly restore the Secured Premises to the equivalent of its condition immediately prior to such damage, and if a part of the Secured Premises shall be damaged through condemnation, Mortgagor shall, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Secured Premises in a manner satisfactory to Mortgagee. In the event Mortgagor is required pursuant to the provisions contained herein to

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restore, repair or alter the Secured Premises after fire, other casualty or condemnation, Mortgagor shall be entitled to any net insurance proceeds or condemnation proceeds which have been received as a result of said fire, other casualty or condemnation so to restore, repair or alter, but only to the extent of the cost of such restoration, reparation or alteration. To the extent that the amount of any such net insurance proceeds or condemnation proceeds, whichever may be applicable, exceed the cost of such restoration, reparation or alteration, Mortgagee may apply the amount of such excess to the payment of the Secured Indebtedness.

1.06 Further Assurances. At any time, and from time to time, upon request by Mortgagee, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered, to Mortgagee, any and all other further instruments, certificates and other documents as may be necessary in order to effectuate, complete, or perfect or to continue and preserve the obligations of Mortgagor under the Bonds (as hereinbelow defined) and the security interest of this Second Priority Mortgage and Security Agreement. Upon any failure by Mortgagor so to do, Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of Mortgagor and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney in fact of Mortgagor so to do.

1.07 Leases Affecting the Secured Premises. Mortgagor shall perform all covenants to be performed by the landlord under any and all leases now or hereafter on the Secured Premises or any part thereof and

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shall not, without the written consent of Mortgagee, cancel, surrender or modify any such lease which cancellation, surrender or modification in the opinion of Mortgagee adversely affects the security interest of this Second Priority Mortgage and Security Agreement; provided, however, that, any cancellation, surrender or modification in the ordinary course of the business of operating and managing an apartment complex shall not require Mortgagee's consent. Mortgagor shall upon Mortgagee's request furnish Mortgagee signed copies of all leases on the Secured Premises or any part thereof promptly after their execution. Upon request of Mortgagee, Mortgagor shall, by written instrument in form and substance satisfactory to Mortgagee, assign to Mortgagee Mortgagor's interest in each and every lease hereafter entered into by Mortgagor leasing all or any part of the Secured Premises. The terms "lease" and "leases" as used in this paragraph 1.07 shall include all tenancies.

1.08 Expenses. Mortgagor shall pay or reimburse Mortgagee for all reasonable attorney's fees, costs and expenses incurred by Mortgagee in any proceedings involving the estate of a decedent or an insolvent, or in any action, legal proceeding or dispute of any kind in which Mortgagee is made a party, or appears as party plaintiff or defendant (unless due solely to action wrongfully taken or wrongfully failed to have been taken by Mortgagee), affecting the indebtedness secured hereby, this Second Priority Mortgage and Security Agreement or the interest created herein, or the Secured Premises, any condemnation action involving the Secured Premises or any action to protect the security hereof; and any such

amounts paid by Mortgagee shall be added to the indebtedness secured by this Second Priority Mortgage and Security Agreement.

1.09 Estoppel Affidavits. Either party hereto shall, upon ten (10) days' prior written notice, furnish the other a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any off-sets or defenses exist against such principal and interest.

1.10 Subrogation. Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.11 Performance by Mortgagee of Defaults by Mortgagor. If Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Secured Premises; in the payment of any utility charge, whether public or private; in the payment of any insurance premium, in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; in the performance of any covenant, term or condition of any leases affecting all or any part of the Secured Premises; or in the performance or observance of any other covenant, condition or term of this Second Priority Mortgage and Security Agreement, then Mortgagee, at its option, after the expiration of any cure period provided for herein, may perform or observe the same, and all payments made or costs incurred by Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee with interest thereon at the rate of two percent (2%) per annum in excess of the rate of interest

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otherwise payable under the Reimbursement Agreement. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Secured Premises or any part thereof (subject to rights of tenants thereof) for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Mortgagor or any other person in possession holding under Mortgagor.

1.12 Condemnation. If all or any part (which materially affects the security of Mortgagee) of the Secured Premises shall be damaged or taken through condemnation (which term when used in this Second Priority Mortgage and Security Agreement 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 Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation, awards, and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding 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 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 security interest of this Second Priority Mortgage and Security Agreement and may apply the same in such manner as Mortgagee shall determine, to the reduction of the sum secured hereby, and any

balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Mortgagee may require. Notwithstanding the foregoing, in the event Mortgagee shall receive any award related to any condemnation, as long as there shall exist no default under the terms of this Second Priority Mortgage and Security Agreement, Mortgagee shall apply such award to the restoration, reparation and alteration of the Secured Premises pursuant to a disbursement procedure reasonably acceptable to Mortgagee.

1.13 Annual Operating Statements. In addition to the requirements set forth in the Reimbursement Agreement, Mortgagor shall maintain, or cause to be maintained, accurate records of Mortgagor's income and expenses in connection with the operation of the Secured Premises and shall promptly furnish to Mortgagee within sixty (60) days after the close of Mortgagor's fiscal year annual statements certified by Mortgagor itemizing all material information with respect to the operation of the Secured Premises, including, but not limited to, sources of income, expenses, occupancy, and balance sheets of the Secured Premises for the fiscal year. In the event of default hereunder, and while said default continues, Mortgagor agrees to permit Mortgagee, on demand to inspect the books and accounts of Mortgagor relating to the Secured Premises. Failure so to furnish said data shall constitute a default by Mortgagor hereunder.

1.14 Security Agreement.

(a) With respect to the machinery, apparatus, equipment, fittings, fixtures, building supplies and materials, articles of personal property, chattels, chattel paper, documents, inventory, accounts, farm products, consumer goods and general intangibles of Mortgagor referred to or described in this Second Priority Mortgage and Security Agreement, or in any way connected with the use and enjoyment of the Secured Premises, but excluding promissory notes or obligations, if any, of limited partners evidencing or representing their obligation to make capital contributions to Mortgagor, this Second Priority Mortgage and Security Agreement is hereby made and declared to be a security agreement encumbering each and every item of such property included herein as a part of the Secured Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Alabama. Upon request by Mortgagee, at any time and from time to time, a financing statement or statements reciting this Second Priority Mortgage and Security Agreement to be a security agreement affecting all of such property shall be executed by Mortgagor and Mortgagee and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Second Priority Mortgage and Security Agreement shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of any such financing statement or

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statements in the records normally having to do with personal property shall not in any way affect the agreement of Mortgagor and Mortgagee that everything used in connection with the production of income from the Secured Premises or adapted for use therein or which is described or reflected in this Second Priority Mortgage and Security Agreement, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Second Priority Mortgage and Security Agreement, or (iii) any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for a taking or for loss of value, or (iii) Mortgagee's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Secured Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Mortgagee as determined by this Second Priority Mortgage and Security Agreement or affect the priority of Mortgagee's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Mortgagee in the event any court shall at any time hold with respect to

the foregoing clauses (i), (ii) or (iii) of this sentence, that notice of Mortgagee's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

(b) Mortgagor warrants that (i) Mortgagor's (that is "Debtor's") name, identity or corporate structure and residence or principal place of business are as set forth in Exhibit C attached hereto and made a part hereof; (ii) Mortgagor (that is "Debtor") has been using or operating under said name, identity or corporate structure without change for the time period set forth in Exhibit C hereto; and (iii) the location of the collateral is upon the land (excepting materials intended to be located thereon and stored temporarily in a bonded public warehouse). Mortgagor covenants and agrees with Mortgagee that Mortgagor will furnish Mortgagee with notice of any change in the matters addressed by clauses (i) or (iii) of this Subparagraph 1.14(b) within thirty (30) calendar days of the effective date of any change and Mortgagor will promptly execute any financing statements or other instruments deemed necessary by Mortgagee to prevent any filed financing statement from becoming misleading or losing its status.

1.15 Conveyance of the Secured Premises.

(a) Mortgagor hereby acknowledges and confirms that (i) the identity and expertise of Mortgagor were and continue to be material circumstances upon which Mortgagee has relied in connection with, and which constitute valuable consideration to Mortgagee for, Mortgagee's entering into the Reimbursement Agreement and the other transactions related thereto, and (ii) any change in such identity or expertise (by

general partners' interest sale, condominium conversion or otherwise) could materially impair or jeopardize the security for the payment of the Secured Indebtedness granted to Mortgagee by this Second Priority Mortgage and Security Agreement.

(b) Accordingly, Mortgagor shall not, without the prior written consent of Mortgagee, voluntarily or by operation of law, sell, transfer, lease to one entity in its entirety, convey or assign all or any part of the legal or equitable title to the Secured Premises, or any part of, or interest in, the Secured Premises, or any of the personalty (except such thereof no longer used or useful in connection therewith) located thereon or used or intended to be used in connection therewith. Any change in a twelve-month period in the legal or equitable ownership of any majority partnership or majority stock interest of Mortgagor or any change at any time of any nature in the legal or equitable ownership of any partnership or stock interest of Mortgagor or any managing general partner of Mortgagor held by the Guarantor (as such term is hereinbelow defined) or held by any Affiliate (as such term is defined in the Reimbursement Agreement) of the Guarantor shall constitute a transfer of the Secured Premises for the purposes of this Second Priority Mortgage and Security Agreement. Notwithstanding the foregoing, Mortgagor may execute, deliver and grant such easements as may be necessary or desirable in the development or use of the Secured Premises so long as the same shall first be approved by Mortgagee. Subject to its giving approval to the substantive provisions thereof, Mortgagee agrees to execute, acknowledge and deliver such instruments or conveyances as may be required to effect

same and to subordinate the lien of this Second Priority Mortgage and Security Agreement thereto.

(c) Further, except for that certain First Priority Mortgage and Security Agreement (the "Prior Mortgage") of even date herewith among Mortgagor, Mortgagee and FIRST GUARANTY BANK for Savings ("FGB"), assigned by FGB to First Alabama Bank (hereinafter called "First Alabama"), Trustee under the terms of that certain Trust Indenture (the "Indenture") dated as of December 1, 1985 between the Alabama Housing Finance Authority (the "Issuer") and First Alabama with respect to the Issuer's Variable Rate Multifamily Residential Development Bonds, 1985 Series P (Hunter's Pointe Development) (the "Bonds"), except for that certain First Priority Collateral Assignment of Lease or Leases and Rents (the "Prior Assignment of Leases") of even date herewith among Mortgagor, Mortgagee and FGB, assigned by FGB to First Alabama, except for that certain Second Priority Collateral Assignment of Lease or Leases and Rents of even date herewith between Mortgagor and Mortgagee, except as provided in subparagraph (b) above, and except for transfers by reason of death, Mortgagor shall not, without the prior written consent of Mortgagee, voluntarily or by operation of law, transfer, convey or assign the Secured Premises, or any part of, or interest in, the Secured Premises, as security for an indebtedness other than for the Secured Indebtedness.

(d) Notwithstanding anything provided to the contrary in Paragraph 2.01 hereinbelow, in the event Mortgagor breaches any term of this Paragraph 1.15, such breach shall entitle Mortgagee immediately to exercise all rights and remedies provided herein, and Mortgagor shall not be entitled to any cure period in connection therewith.

ARTICLE II

2.01 Default. A default shall have occurred hereunder if:

(a) There occurs an "Event of Default" under the terms of the Reimbursement Agreement; or

(b) Mortgagor fails duly to observe any covenant, condition or agreement of this Second Priority Mortgage and Security Agreement which is not a covenant, condition or agreement of the Reimbursement Agreement and fails to cure such default within thirty (30) calendar days after written notice of such default is given by Mortgagee to Mortgagor [provided, however, that if such default by its nature cannot be cured

BOOK 054 PAGE 337 within thirty (30) calendar days, then in such event Mortgagor shall not be in default hereunder if Mortgagor commences such cure within said thirty (30) calendar days after such written notice and diligently and vigorously pursues such cure to completion thereafter and completes such cure within ninety (90) calendar days after such written notice]; or

(c) Mortgagor defaults under the terms of the Interest Rate Exchange Agreement; or

(d) Avron B. Fogelman (hereinafter called the "Guarantor") voluntarily files a petition in bankruptcy, or is adjudicated as a

bankrupt, or makes an assignment for the benefit of his creditors, or any state or federal supervisory agency takes control of or supervises the assets of the Guarantor, or the Guarantor enters into an agreement of composition with its creditors, or any court of competent jurisdiction approves a petition applicable to the Guarantor in any proceeding instituted under the provisions of state law or the federal bankruptcy statute as amended, or any similar act which may hereinafter be enacted; or

(e) The Guarantor defaults under the terms of that certain Guaranty of Payment of even date herewith by the Guarantor for the benefit of Mortgagee; or

(f) Mortgagee reasonably suspects the occurrence of any one or more of the abovesaid defaults and Mortgagor, upon the request of Mortgagee, fails to provide evidence reasonably satisfactory to Mortgagee that such default has not in fact occurred.

2.02 Acceleration of Maturity. If a default shall have occurred hereunder, then the whole unpaid principal sum of the indebtedness secured hereby with interest accrued thereon shall, at the option of Mortgagee, become due and payable without notice or demand, time being of the essence of this Second Priority Mortgage and Security Agreement and of the Secured Indebtedness; and no omission on the part of Mortgagee to exercise such option when entitled so to do shall be considered as a waiver of such right.

2.03 Right to Enter and Take Possession.

(a) If any default shall have occurred and be continuing, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Secured Premises 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 the Secured Premises and may exclude Mortgagor and Mortgagor's agents and employees wholly therefrom.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Secured Premises or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Secured Premises to Mortgagee, and Mortgagor hereby specifically consents to the entry of such judgment or decree. Mortgagor shall pay to Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Mortgagee, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Second Priority Mortgage and Security Agreement.

(c) Upon every such entering and taking of possession, Mortgagee may hold, store, use, operate, manage, control, and maintain the Secured Premises and conduct the business thereof, and, from time to time, (1) make all necessary and proper 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 Secured Premises insured; (iii) manage and operate the Secured Premises and exercise all the rights and powers of Mortgagor, in its name or otherwise, with respect to the same and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Mortgagee; all as Mortgagee may from time to time determine to be to its best advantage; and Mortgagee may collect and receive all of the income, rents, profits, issues and revenues of the Secured Premises, including those past due as well as those accruing thereafter and, after deducting (aa) all expenses of taking, holding, managing and operating the Secured Premises (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, purchases, and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other charges as Mortgagee may determine to pay, (ee) other proper charges upon the Secured Premises or any part thereof and (ff) the reasonable compensation and expenses of attorneys and agents of Mortgagee, shall apply the remainder of the money so received by Mortgagee, to payment of the Secured Indebtedness. Notwithstanding anything provided herein to the contrary, Mortgagee shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Beneficiary of its rights under this Second Priority Mortgage and Security Agreement, and Mortgagee shall be liable to account only for the rents, income, issues and profits actually received by Mortgagee.

(d) For the purpose of carrying out the provisions of this Paragraph 2.03, Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney in fact of Mortgagor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact in the Secured Premises.

(e) Whenever all such defaults have been cured and satisfied, Mortgagee shall surrender possession of the Secured Premises to Mortgagor, provided that the right of Mortgagee to take possession, from time to time, pursuant to Subparagraph 2.03(a), shall exist if any subsequent default shall occur and be continuing.

2.04 Appointment of a Receiver and Foreclosure.

(a) If a default shall have occurred hereunder and not have been cured within the applicable cure period, if any, then the whole debt secured by this Second Priority Mortgage and Security Agreement with all interest thereon, and all other amounts hereby secured shall, at the option of Mortgagee, become immediately due and payable, and may forthwith or at any time thereafter be collected by suit at law, foreclosure of or other proceeding upon this Second Priority Mortgage and Security Agreement or by any other proper, legal or equitable procedure appropriate in the State of Alabama without declaration of such option and without notice.

(b) In any action to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on

behalf of Mortgagee for attorneys' fees (including, without limitation, attorneys' fees for both trial and appellate phases), appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Secured Premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional debt secured hereby and immediately due and payable with interest thereon at the rate of two percent (2%) per annum in excess of the rate of interest otherwise payable under the Reimbursement Agreement on the date of such default, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant, or defendant, by reason of this foreclosure hereof after accrual of such right to foreclose whether or not actually commenced or (iii) preparations for the defense of any threatened suit or proceeding which might effect the Secured Premises or the security hereof, whether or not actually commenced.

(c) Prior to, upon, or at any time after, the filing of a complaint to foreclose this Second Priority Mortgage and Security Agreement, the court in which such complaint is filed may appoint a

receiver of the Secured Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Secured Premises. Such receiver shall have power to collect the rents, issues and profits of the Secured Premises during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times which Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Secured Premises during the whole of said period.

(d) Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, guarantee policies, muniments of title, surveys and other papers relating to the Secured Premises, and in case of foreclosure hereof and failure to redeem, the same shall be delivered to and become the property of the person obtaining a deed to the Secured Premises by reason of such foreclosure.

(e) Mortgagor hereby waives any and all rights of redemption from the sale under any order or decree of foreclosure of this Second Priority Mortgage and Security Agreement on its behalf of each and every person and its successors and assigns.

(f) Notwithstanding anything provided herein to the contrary, Mortgagee shall not consummate a foreclosure hereunder whereby Mortgagor's interest in the Secured Premises is extinguished earlier than the ninetieth (90th) calendar day after written notice is delivered to the Guarantor under the terms of Section 4(a) of that certain Collateral Security Agreement (as defined in the Reimbursement Agreement).

2.05 Purchase by Mortgagee. Upon any foreclosure sale or sale of all or any portion of the Secured Premises under the power herein granted, Mortgagee may bid for and purchase the Secured Premises and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

2.06 Application of Proceeds. With respect to all proceeds relating to any foreclosure under this Second Priority Mortgage and Security Agreement, such proceeds shall be applied, first, to the expenses of such foreclosure and of all proceedings in connection therewith, including reasonable attorneys' and trustees' fees (and attorney and trustee fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges, including utility charges,

advanced by Mortgagee; then to the payment, in the order of priorities set forth in this Paragraph 2.06, of the outstanding principal balance of the Secured Indebtedness; then to the accrued interest on all of the foregoing; and finally, the remainder, if any shall be paid to the Guarantor.

2.07 Mortgagor as Tenant Holding Over. In the event of any such foreclosure sale or sale under the power herein granted, Mortgagor (if Mortgagor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

2.08 Discontinuance of Proceedings and Restoration of the Parties. In case Mortgagee shall have proceeded to enforce any right or remedy under this Second Priority Mortgage and Security Agreement by receiver, 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 Mortgagor 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 had been taken.

2.09 Remedies Cumulative. No right, power or remedy conferred upon or reserved by Mortgagee by this Second Priority Mortgage and Security Agreement is intended to be 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 now or hereafter existing at law or in equity or by statute.

2.10 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 the part of Mortgagor 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, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Second Priority Mortgage and Security Agreement, or the absolute sale of the Secured Premises, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, 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 comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

2.11 Leases. Mortgagee, at its option, is authorized to foreclose this Second Priority Mortgage and Security Agreement subject to the rights of any tenants of the Secured Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be, by Mortgagor a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby.

2.12 Waiver.

(a) No delay or omission of Mortgagee or of any holder of this Second Priority Mortgage and Security Agreement 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 Second Priority Mortgage and Security Agreement to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. Failure on the part of Mortgagee to complain of any act or failure to act or to declare default hereunder, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies consequent on any breach or default by Mortgagor. The lien of this Second Priority Mortgage and Security Agreement shall remain in full force and effect during any postponement or extension of the time of payment of the Secured Indebtedness or any part thereof. The parties hereto shall have the right by mutual agreement, at any time and from time to time, to renew or extend the indebtedness secured hereby or any part thereof, or any addition which may be made thereto, that they may by agreement increase or decrease the rate of interest, and that they may modify or change any other obligation between the parties hereto secured by this instrument, and all of such changes, modifications and extensions shall be binding upon any junior encumbrancer, voluntary or involuntary; and such changes, modifications and extensions may be granted without affecting or releasing the obligation of any subsequent purchaser who may

purchase the Secured Premises by assuming this indebtedness with Mortgagee's consent; and that any or all of these changes, modifications and extensions may be made without notice to or the consent of any junior encumbrancer or subsequent purchaser.

(b) If Mortgagee (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Reimbursement Agreement; (iv) releases any part of the Secured Premises from the lien of this Second Priority Mortgage and Security Agreement or otherwise changes any of the terms, covenants, conditions or agreements of the Reimbursement Agreement or this Second Priority Mortgage and Security Agreement; (v) consents to the filing of any map, plat or replat affecting the Secured Premises; (vi) consents to the granting of any easement or other right affecting the Secured Premises; or (vii) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Reimbursement Agreement, this Second Priority Mortgage and Security Agreement or any other obligation of Mortgagor or any subsequent purchaser of the Secured Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default; nor, except as otherwise expressly provided in an instrument or instruments executed

by Mortgagee, shall the lien of this Second Priority Mortgage and Security Agreement be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Secured Premises, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Secured Premises or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements 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 liabilities, obligations or undertakings.

2.13 Suits to Protect the Secured Premises. Mortgagee shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Secured Premises by any acts which may be unlawful or any violation of this Second Priority Mortgage and Security Agreement, (b) to preserve or protect its interest in the Secured Premises and in the rents, issues, profits and revenues 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 Mortgagee.

2.14 Mortgagee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, 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 the claims of Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Second Priority Mortgage and Security Agreement at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

ARTICLE III

3.01 Successors and Assigns Included in Parties. Whenever in this Second Priority Mortgage and Security Agreement one of the parties hereto is named or referred to, the heirs, executors, legal representatives, successors and permitted assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of Mortgagor and by or on behalf of Mortgagee shall bind and inure to the benefit of their respective heirs, executors, legal representatives, successors and permitted assigns, whether so expressed or not.

3.02 Headings. The headings of the sections, paragraphs and subdivisions of this Second Priority Mortgage and Security Agreement are for the convenience of reference only, are not to be considered a part hereof and shall limit or otherwise affect any of the terms hereof.

3.03 Invalid Provisions to Affect No Others. If fulfillment of any provision hereof or any transaction related hereto or to the Bonds, at the time performance of such provisions shall be due, shall involve

transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; in no event and under no circumstances whatsoever shall Mortgagor be charged more than the highest lawful rate of interest permitted under applicable law; if any clause or provision herein contained operates or would prospectively operate to invalidate this Second Priority Mortgage and Security Agreement in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Second Priority Mortgage and Security Agreement shall remain operative and in full force and effect.

3.04 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

3.05 Notice. Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Second Priority Mortgage and Security Agreement shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given or served and shall be effective upon being personally delivered or upon being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, to the other party at the address of such other party set forth below or at such other address as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence

on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, demand, or request shall be addressed as follows:

Mortgagor:

FPI Louisville, Ltd.
c/o Fogelman Properties
5400 Poplar Avenue
Memphis, Tennessee 38119
Attention: Ira C. Fenton
Senior Vice President

With a copy to:

Morris J. Kriger, Esq.
c/o Fogelman Properties
5400 Poplar Avenue
Memphis, Tennessee 38119

With a copy to:

William S. Solmson, Esq.
Wildman, Harrold, Allen, Dixon &
McDonnell
6060 Primacy Parkway, Suite 328
Memphis, Tennessee 38119-5738

Mortgagee:

Citicorp Real Estate, Inc.
211 Perimeter Center Parkway
Suite 700
Atlanta, Georgia 30346
Attention: Thomas J. Freeman
Vice President

With a copy to:

David N. Minkin, Esq.
David N. Minkin, P.C.
3414 Peachtree Road
Suite 560
Atlanta, Georgia 30326

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ARTICLE IV

4.01 Governing Law. This Second Priority Mortgage and Security Agreement shall be governed by and interpreted in accordance with the laws of the State of Alabama.

4.02 Time of Essence. Time is of the essence in the performance of all obligations hereunder.

4.03 Assignment. This Second Priority Mortgage and Security Agreement is assignable by Mortgagee and any assignment hereof by Mortgagee shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Mortgagee.

ARTICLE V

5.01 Agreements Regarding Loan Agreement and Prior Mortgage Documents.

(a) Mortgagor and Mortgagee hereby acknowledge and confirm that the terms and provisions of this Second Priority Mortgage and Security Agreement are subject and subordinate to the terms and provisions of the Prior Mortgage, which Prior Mortgage secures, among other obligations, the performance by Mortgagor of its obligations and agreements under the terms of those certain Mortgage Loan Documents ("Mortgage Loan Documents") of even date herewith between Mortgagor and FGB relating to the financing of development of improvements upon the Secured Premises, which Mortgage Loan Documents are being purchased from FGB with the proceeds of the Bonds. Mortgagor hereby covenants and agrees to comply with all the terms, provisions and conditions of the Mortgage Loan Documents. Mortgagor shall, upon receipt of any notice of default with

respect to the Mortgage Loan Documents, immediately forward a copy of such notice to Mortgagee. In the event Mortgagor shall fail to so comply with any terms, provisions, or conditions of the Mortgage Loan Documents (other than with respect to the payment of any sums due thereunder which remain unpaid due to the failure to Citibank, N.A. to honor any proper draw upon the Letter of Credit or other than with respect to the maintenance and reinstatement from time to time of the Letter of Credit by Citibank, N.A. in accordance with the terms and agreements of Mortgagee in the Reimbursement Agreement) within ten (10) calendar days after notice from the Trustee under the Indenture of an occurrence which would constitute an event of default under the Indenture or the Mortgage Loan Documents, such failure on the part of Mortgagor shall, pursuant to Section 2.01(b) above, constitute a default under this Second Priority Mortgage and Security Agreement and shall entitle Mortgagee, at its option, to exercise any and all rights and remedies given Mortgagee in the event of a default hereunder. Such remedies shall include, without limitation, the right to cure any such default under the Mortgage Loan Documents, and Mortgagor hereby authorizes Mortgagee to expend any money or to perform such actions as Mortgagee deems necessary to cure any such default, and the amounts so expended by Mortgagee to cure any such default, together with all related expenses and costs, shall constitute advances by Mortgagee to Mortgagor and shall be added to the amount of indebtedness secured hereby; provided, however, that Mortgagee shall not be in any way obligated to advance any such sums or to cure any such defaults. Furthermore, any cure by Mortgagee of such default under the Mortgage Loan Documents shall not be deemed to cure the default on the

part of the Mortgagor for purposes of this Second Priority Mortgage and Security Agreement, Mortgagor's default in such circumstances being cured only upon Mortgagor's reimbursement of Mortgagee for all costs, liabilities, and expenses (including, without limitation, any attorneys' fees and court costs) incurred by Mortgagee in connection with Mortgagee's cure of the default caused by Mortgagor under the Mortgage Loan Documents. Mortgagee is authorized to rely upon the representations and statements of the Issuer or the Trustee under the Indenture in curing any defaults under the Mortgage Loan Documents, and all curative payments shall be immediately due and payable, with interest thereon from the date of advance at the rate provided in the Reimbursement Agreement, at the time of such cure.

(b) Mortgagor covenants and agrees not to exercise any right or privilege of prepayment, redemption, or conversion of the Bonds without the prior written consent of Mortgagee. Furthermore, Mortgagor covenants and agrees that Mortgagor shall not enter into any agreement with the Issuer, the Trustee of the Indenture, or the holder of the Mortgage Loan Documents modifying or amending, or consenting to any modification or amendment to, any of the provisions of the Mortgage Loan Documents or the Indenture, without obtaining prior written consent of Mortgagee.

(c) Mortgagor hereby transfers and assigns to Mortgagee any and all proceeds in excess of the amount required to satisfy the indebtedness secured by the Prior Mortgage, which may be or become payable by reason of foreclosure of the Prior Mortgage. Mortgagor shall and does hereby authorize, direct and instruct that any and all such proceeds be paid directly to Mortgagee and not to Mortgagor, up to the full extent

required to satisfy the indebtedness secured by this Second Priority Mortgage and Security Agreement in excess of the amount required to satisfy the indebtedness secured by the Prior Mortgage, and Mortgagor shall and does hereby release and relinquish any and all right, title, interest and claim in and to such proceeds to the extent so required to satisfy such indebtedness. The term "foreclosure" as used in this Paragraph 5.01 shall be and include, without limitation, foreclosure of all or any part of the Secured Premises by judicial foreclosure, conveyance or lien of foreclosure or other means.

5.02 Limitation of Liability of Mortgagor. It is the intention of Mortgagor and Mortgagee that the Secured Indebtedness be a non-recourse indebtedness of Mortgagor, and Mortgagee agrees, notwithstanding anything to the contrary in this Second Priority Mortgage and Security Agreement or other documents relating to the Secured Indebtedness, that no deficiency judgment shall be sought or obtained against Mortgagor or any partner thereof for any balance of the Secured Indebtedness which may remain unpaid after the exhaustion of remedies hereunder or against security and collateral described herein, nor shall any judgment rendered with respect to the Secured Indebtedness be executed against or be a lien upon any real or personal property of Mortgagor or any partner thereof other than such real and personal

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property described herein or in other documents executed in connection with the Secured Indebtedness or the Bonds; provided, however, that nothing herein contained shall be deemed to be a release or impairment of the Secured Indebtedness or of the security therefor intended by any documents related thereto or shall preclude Mortgagee from foreclosing upon or selling the Secured Premises or enforcing its rights hereunder or any of the other documents in the event of any default hereunder or under the terms of any such other documents. Nothing in this clause shall be deemed to be a release or impairment of that certain Guaranty of Completion of even date herewith from the Guarantor to Mortgagee, or that certain Guaranty of Payment of even date herewith from the Guarantor to Mortgagee.

IN WITNESS WHEREOF, Mortgagor has caused this Second Priority Mortgage and Security Agreement to be executed and sealed, the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness

Witness

FPI BIRMINGHAM, LTD., an Alabama limited partnership whose managing general partners are Avron B. Fogelman and Fogelman Properties, Inc.

By: Avron B. Fogelman (SEAL)
Managing General Partner

By: Fogelman Properties, Inc.,
Managing General Partner

By: Avron B. Fogelman
President

[AFFIX CORPORATE SEAL]

STATE OF Tennessee

COUNTY OF Shelby

I, Hundred & Mathis a Notary Public in and for said County, in the State aforesaid, do hereby certify that Avron B. Fogelman personally known to me to be a managing general partner of FPI Louisville, Ltd., whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument of writing as a managing general partner of said FPI Louisville, Ltd., pursuant to due authority, as his free and voluntary act, and as the free and voluntary act and deed of said FPI Louisville, Ltd., for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16 day of December, 1985.

Hundred & Mathis
Notary Public (Affix Seal and State
Date of Expiration of Commission)
March 13, 1989

STATE OF Tennessee

COUNTY OF Shelby

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I, Hundred & Mathis a Notary Public in and for said County, in the State aforesaid, do hereby certify that Avron B. Fogelman, personally known to me to be the President of FOGELMAN PROPERTIES, INC. whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument of writing as President of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16 day of December, 1985.

Hundred & Mathis
Notary Public (Affix Seal and State
Date of Expiration of Commission)
March 13, 1989

EXHIBIT A

The East half of the Northeast Quarter of Section 36, Township 18, Range 2 West, situated in Shelby County, Alabama.

LESS AND EXCEPT that part conveyed by Volume 324, page 126 more particularly described as follows:

A parcel of land situated in the Northeast quarter of Section 36, Township 18 South, Range 2 West being more particularly described as follows: Beginning at the southeast corner of the northeast quarter of Section 36, Township 18 South, Range 2 West, run thence in a westerly direction along the South line of said quarter section for a distance of 243.41 feet to a point on the east right-of-way line of a paved county road, said point being on a curve which has a central angle of 3 degrees, 22 minutes, 40 seconds, a radius of 1171 feet, and is concave westerly; thence turn an angle to the right and run in a northeasterly direction along the arc of said curve for a distance of 69.03 feet to the end of said curve, the chord of said arc forming an angle to the right of 116 degrees, 11 minutes, 54 seconds with a westerly extension of said 243.41 foot line; thence run in a northeasterly direction 327.10 feet along a line which is tangent to said curve, and is the east right-of-way line of said County road, to the beginning of a curve to the right, said curve having a central angle of 12 degrees, 53 minutes, 22 seconds, a centerline radius of 726.37 feet and a radius of 696.37 feet on the east right-of-way line, said 327.10 foot line being tangent to said curve; thence run in a northeasterly direction 119.88 feet along the arc of said curve to the right to a point on the east line of said quarter section, which is 463.76 feet north of the point of beginning, thence run in a Southerly direction 463.76 feet along the east line of said quarter section to the point of beginning. Situated in Shelby County, Alabama.

EXHIBIT B

Permitted Title Exceptions

1. Taxes due in the year 1986 which are a lien but not due and payable until October 1, 1986.
2. Right-of-way to Shelby County as recorded in Volume 95, page 525 in the Probate Office of Shelby County, Alabama.
3. Transmission line permit as recorded in Volume 126, page 188 in said Probate Office.
4. Easement with Alabama Power Company as recorded in Volume 185, page 120 in said Probate Office.

4630b

EXHIBIT C

Schedule 1

(Description of "Debtor" and "Secured Party")

A. Debtor

1. Name and identity and corporate structure:

FPI BIRMINGHAM, LTD., an Alabama limited partnership whose managing general partners are Avron B. Fogelman and Fogelman Properties, Inc.

2. The principal place of business of FPI Birmingham, Ltd., Avron B. Fogelman and Fogelman Properties, Inc. is 5400 Poplar Avenue Road, Memphis, Tennessee 38119.

3. Neither FPI Birmingham, Ltd. nor Avron B. Fogelman nor Fogelman Properties, Inc. has more than one place of business in the State of Tennessee.

4. FPI Birmingham, Ltd. has been using or operating under said name or identity without change since _____, 1985.

B. Secured Party:

Citicorp Real Estate, Inc.

Schedule 2

(Notice Mailing Addresses of "Debtor" and "Secured Party")

A. The mailing address of Debtor is:

FPI Birmingham, Ltd.
c/o Fogelman Properties
5400 Poplar Avenue
Memphis, Tennessee 38119
Attention: Ira C. Fenton
Senior Vice President

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B. The mailing address of the Secured Party is:

Citicorp Real Estate, Inc.
Suite 700
211 Perimeter Center Parkway
Atlanta, Georgia 30346
Attention: Thomas J. Freeman

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1985 DEC 19 PM 4 39

Thomas A. Shanderson, Jr.
JUDGE OF PROBATE

RECORDING FEES	
Recording Fee	\$ <u>117.50</u>
Index Fee	<u>1.00</u>
TOTAL	\$ <u>118.50</u>

THIS MORTGAGE SECURES THE
SAME DEBT AS IS SECURED BY
THAT CERTAIN FIRST PRIORITY
MORTGAGE AND SECURITY AGREEMENT OF
EVEN DATE HERewith AMONG MORTGAGOR,
MORTGAGEE AND FIRST GUARANTY
BANK FOR SAVINGS.

FBI, Birmingham, Inc.
By *Fogelman Properties, Inc.*
By *Shannon Fungis*
SE. VICE PRES.