



REAL ESTATE MORTGAGE AND  
SECURITY AGREEMENT

STATE OF ALABAMA     )  
                              :  
COUNTY OF JEFFERSON )

THIS REAL ESTATE MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), made and entered into on this the 14th day of May, 1986, by and between WOODBROOK APARTMENTS, LTD., an Alabama limited partnership (herein called "Mortgagor"), whose general partner is Shelby Development Company, an Alabama general partnership, and SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION (herein called "Mortgagee"),

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee for money being loaned to enable Mortgagor to purchase an 88 unit apartment complex and certain contiguous real property hereafter described, as evidenced by a promissory note of even date herewith (herein, together with any promissory note given in extension, renewal, or modification of, or in substitution for, said promissory note, referred to as the "Note") in the principal amount of Two Million One Hundred Fifty Thousand and No/100 Dollars (\$2,150,000.00), which is due and payable on or before eighteen months after the date hereof; and

WHEREAS, Mortgagor is desirous of securing the prompt payment of the indebtedness evidenced by said Note, and the several installments of interest therein provided for; and

*At Title*

BOOK 072 PAGE 80

WHEREAS, Mortgagor may hereafter become indebted to Mortgagee for additional sums loaned or on account of indebtedness which may accrue to Mortgagee in respect of any future advances, payments or expenditures made by Mortgagee under the provisions of this Mortgage or the Note or otherwise; and

WHEREAS, Mortgagor wishes to execute this Mortgage for the security and enforcement of the payment both of said present and any such future indebtedness;

NOW, THEREFORE, the undersigned, in consideration of said premises and of the disbursement to Mortgagor of the sum of Two Million One Hundred Fifty Thousand and No/100 Dollars (\$2,150,000.00), to secure the prompt payment of said indebtedness with interest thereon, and all renewals, extensions, modifications and replacements thereof, or of any part thereof, and the payment of any further sum or sums for which Mortgagor may hereafter become indebted to Mortgagee under the provisions hereof or otherwise, and further to secure the performance of the covenants, conditions and agreements hereinafter and in said Note set forth, and set forth in any other instruments securing said Note, Mortgagor has bargained, sold, assigned and mortgaged and hereby grants, bargains, sells, assigns, mortgages, and conveys to Mortgagee, its successors and assigns, and grants to Mortgagee a security interest in, the following described real estate ("Real Property") situated in Shelby County, Alabama:

PARCEL I:

Commence at the Northwest corner of the Southwest Quarter of Section 11, Township 21 South, Range 3 West; thence run in an Easterly direction along the North line of said Quarter-Quarter a distance of 1235.17 feet; thence turn an angle to the right of 90 degrees 00 minutes and run in a Southerly direction a distance of 16.74 feet to the point of beginning of property herein described; thence turn an angle to the left of 90 degrees 55 minutes 29 seconds and run in an Easterly direction

a distance of 774.99 feet; thence turn an angle to the right of 94 degrees, 40 minutes, 29 seconds and run in a Southerly direction a distance of 151.76 feet; thence turn an angle to the left of 93 degrees, 45 minutes and run in an Easterly direction a distance of 245.00 feet to its intersection with the Westerly right-of-way line of Montevallo-Ashville Road; thence turn an angle to the right of 93 degrees, 45 minutes and run in a Southerly direction along the Westerly right-of-way line of said road a distance of 93.40 feet to the point of commencement of a curve to the right, having a central angle of 4 degrees, 04 minutes, 40 seconds and a radius of 2,841.09 feet; thence continue along the arc of said curve for a distance of 202.20 feet; thence from the tangent of last described curve extended, turn an angle to the right of 81 degrees, 12 minutes, 33 seconds and run in a Westerly direction a distance of 983.61 feet; thence turn an angle to the right of 90 degrees, 57 minutes, 47 seconds and run in a Northerly direction a distance of 449.79 feet to the point of beginning.

PARCEL II:

Commence at the Northwest corner of the Southwest 1/4 of Section 11, Township 21 South, Range 3 West; thence run East along the North line of said 1/4-1/4 1235.17 feet; thence turn 90 degrees right and run South 16.74 feet to the point of beginning; thence continue on the last described course 449.79 feet; thence turn 90 degrees 57 minutes 46 seconds left and run Easterly 773.61 feet; thence turn 103 degrees 49 minutes 54 seconds right and run Southwesterly 180.56 feet; thence turn 89 degrees 45 minutes 26 seconds left and run Southeasterly 189.46 feet to the point of beginning of a curve to the left having a central angle of 91 degrees 07 minutes 08 seconds and a radius of 25 feet; thence run along the arc of said curve 39.76 feet to its intersection with the Westerly right of way line of Shelby County Highway #119; thence turn an angle to the right of 135 degrees 51 minutes 19 seconds from the chord if extended from the last described curve to the chord of a curve to the right, said curve having a central angle of 3 degrees 47 minutes 00 seconds and a radius of 2753.73 feet; thence run along the arc of said curve 181.83 feet; thence continue on the tangent if extended from said curve Southwesterly along said Westerly right of way line 12.80 feet; thence turn 87 degrees 34 minutes 11 seconds right and run Northwesterly 212.31 feet; thence turn 90 degrees 00 minutes 00 seconds left and run Southwesterly 137.33 feet to a point in the centerline of Buck Creek; thence turn 123 degrees 00 minutes 35 seconds right and run Northwesterly 70.23 feet along said centerline; thence turn 16 degrees 55 minutes 51 seconds left and run Northwesterly 169.09 feet along said centerline; thence turn 26 degrees 58 minutes 40 seconds left and run Northwesterly 123.93 feet along said centerline; thence turn 13 degrees 18 minutes 35 seconds right and run Northwesterly 61.16 feet along said centerline; thence turn 29 degrees 40 minutes 41 seconds right and run Northwesterly 168.05 feet along said centerline; thence turn 65 degrees 03 minutes 32 seconds left and run Southwesterly 130.16 feet along said centerline; thence turn 29 degrees 25 minutes 03 seconds left and run Southwesterly 72.60 feet along said centerline; thence turn 3 degrees 34 minutes 28 seconds left

BOOK 072 PAGE 83

and run Southwesterly 35.20 feet along said centerline; thence turn 20 degrees 30 minutes 52 seconds right and run Southwesterly 79.37 feet along said centerline; thence turn 47 degrees 35 minutes 07 seconds right and run Northwesterly 177.55 feet along said centerline; thence turn 49 degrees 48 minutes 02 seconds right and run Northwesterly 89.68 feet along said centerline; thence turn 8 degrees 47 minutes 59 seconds right and run Northwesterly 22.48 feet along said centerline; thence turn 28 degrees 26 minutes 26 seconds right and run Northeasterly 18.64 feet along said centerline; thence turn 22 degrees 06 minutes 47 seconds right and run Northeasterly 48.14 feet along said centerline; thence turn 24 degrees 23 minutes 17 seconds left and run Northeasterly 86.54 feet along said centerline; thence turn 15 degrees 22 minutes 56 seconds left and run Northerly 25.80 feet along said centerline; thence turn 27 degrees 43 minutes 06 seconds left and run Northwesterly 47.20 feet along said centerline; thence turn 66 degrees 35 minutes 31 seconds left and run Southwesterly 95.59 feet along said centerline; thence turn 18 degrees 23 minutes 40 seconds right and run Northwesterly 35.87 feet along said centerline; thence turn 15 degrees 54 minutes 27 seconds right and run Northwesterly 117.72 feet; thence turn 28 degrees 09 minutes 54 seconds right and run Northwesterly 147.16 feet along said centerline; thence turn 0 degrees 36 minutes 11 seconds left and run Northwesterly 131.44 feet along said centerline; thence turn 37 degrees 27 minutes 25 seconds right and run Northeasterly 53.61 feet along said centerline; thence turn 55 degrees 34 minutes 51 seconds right and run Northeasterly 64.90 feet along said centerline; thence turn 36 degrees 25 minutes 42 seconds right and run Easterly 74.07 feet along said centerline; thence turn 57 degrees 13 minutes 59 seconds left and run Northeasterly 13.45 feet along said centerline; thence turn 14 degrees 12 minutes 31 seconds left and run Northeasterly 40.69 feet along said centerline; thence turn 17 degrees 15 minutes 54 seconds left and run Northeasterly 49.95 feet along said centerline; thence turn 86 degrees 18 minutes 21 seconds right and run Easterly 546.93 feet to the point of beginning.

TOGETHER WITH all improvements now or hereafter located on the Real Property.

TOGETHER WITH all and singular the rights, easements, members, privileges and appurtenances thereunto belonging or in anywise appertaining, and all rights, title and interests, if any, of Mortgagor in and to any gores of land, streets, alleys, roads or highways abutting the Real Property;

TOGETHER WITH all machinery, apparatus, equipment, fittings, furniture and fixtures, whether actually or constructively attached to the Real Property and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever (hereinafter collectively called "Equipment") now or hereafter located in, upon or under the Real Property, or any part thereof, and used or useable in connection with any present or future operation of the Real Property, including but not limiting the generality of the foregoing, all heating, air conditioning, air cooling, chilling, sprinkler, freezing, lighting, laundry, incinerating, and dynamo and generating equipment; engines, pipes, pumps, tanks, motors, conduits; switchboards, plumbing and plumbing fixtures; lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges, furnaces, oil burners or units thereof; solar heating and water heating units and all components thereof; vacuum cleaning systems; elevators and escalators; shades, awnings, and screens; storm doors and windows; mechanical equipment, gas and electric fixtures; partitions, mantels, built-in-mirrors, window shades, blinds, furniture of public spaces, halls and lobbies; attached cabinets; ducts and compressors; rugs and carpets; draperies, furniture and furnishings used in the operation of the Real Property; and all additions to and replacements of the foregoing (Mortgagor hereby agreeing with respect to all additions and replacements, to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the conveyance, transfer and assignment of any of the foregoing);

TOGETHER WITH all building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of or used or useful in connection with the improvements located or to be located on the Real Property (hereinafter collectively called "Building Materials"), whether such materials, equipment, fixtures and fittings are actually located on or adjacent to said Real

Property or not, and whether in storage or otherwise, wheresoever the same may be located. The Building Materials herein conveyed and mortgaged shall include, without limitation, all lumber and lumber products, bricks, building stones and building blocks, aggregate and gravel, sand and cement, steel or other reinforcing bars, space frames, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, pre-fabricated trusses and other building elements, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, conduits, pipes and piping, sheet metal, drywall, gypsum board, insulating materials, signs, ornamental and decorative fixtures, and in general all building material and equipment of every kind and character used or useful in connection with said improvements;

BOOK 072 PAGE 85

TOGETHER WITH (a) the reversion or reversions, remainder and remainders, rents, issues and profits of every kind, character and description, which are now due or may hereafter become due by reason of the renting, leasing or bailment of the Real Property, the improvements now or hereafter located thereon (the "Improvements"), and the Equipment; (b) all the estate, right, title and interest, claim and demand whatsoever of Mortgagor of, in and to the foregoing, and of, in and to every part and parcel thereof; and (c) any and all awards or payments, including interest thereon, and the right to receive the same as a result of (i) the exercise of any right of eminent domain; (ii) the alteration of the grade of any street; or (iii) any other injury to, taking of, or decrease in the value of, the Real Property or Improvements to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee, and of the reasonable attorney's fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment;

BOOK 072 PAGE 86

TOGETHER WITH (1) all of Mortgagor's rights further to encumber the Real Property and Improvements for debt except by such encumbrance which shall have been first approved by Mortgagee in writing, and which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Mortgagor hereby (A) representing as a special inducement to the Mortgagee to make the loan secured hereby that as of the date hereof there are no encumbrances to secure debt junior to this Mortgage except as hereinafter provided, and (B) covenanting that except as hereinafter provided, there are to be none as of the date this Mortgage becomes of record, except in either case encumbrances having the prior written approval of Mortgagee herein, and (2) all of Mortgagor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage other than this Mortgage; and Mortgagee by its acceptance of these presents hereby approving a mortgage to First Commercial Bank, so long as such mortgage shall never secure an amount (excluding amounts advanced by First Commercial Bank to protect its security) in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00), shall be subordinate in all respects to this Mortgage and shall meet all other requirements contained in this Mortgage applicable to secondary liens.

TO HAVE AND TO HOLD all of the foregoing (hereinafter called the "Mortgaged Premises"), and every part thereof, unto Mortgagee, its successors and assigns, forever, subject only to (i) the rights of tenants currently in possession of apartments in the Mortgaged Premises pursuant to leases, copies of which Mortgagor warrants it has delivered to Mortgagee, (ii) Rights of Way in favor of Alabama Power Company recorded in Deed Book 101, at page 83, in the Office of the Judge of Probate of Shelby County, Alabama, and in Deed Book 295, at page 619, in said Office, and (iii)



sanitary sewer easements as shown by surveys of Coulter, Gay, Salmon & Martin dated April 17, 1986 ("Boundary Survey") and August 20, 1976 (revised May 12, 1976) ("Alabaster Gardens"). And Mortgagor covenants with Mortgagee that it is lawfully seized of the Mortgaged Premises and has a good right to mortgage the same as aforesaid; that the Mortgaged Premises are free of all encumbrances and Mortgagor will warrant and forever defend the title to the Mortgaged Premises unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

This Mortgage is made and accepted on the understanding that the following covenants, conditions and agreements shall continue in effect so long as any portion of the indebtedness hereby secured remains unpaid, to-wit:

1. Mortgagor will pay all indebtedness secured hereby whether presently existing or hereafter incurred.

2. (a) Concurrently with scheduled payments of interest on the Note, Mortgagor will upon request by Mortgagee pay to the Mortgagee monthly on the first day of each month after the date hereof, and until the principal sum secured hereby is fully paid, a sum equal to the casualty insurance premiums, taxes and assessments next due on the Mortgaged Premises (all as estimated by the Mortgagee) less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such insurance premiums, taxes and assessments will become due, such sums to be held by Mortgagee in trust, to pay said insurance premiums, taxes and special assessments. Mortgagor shall deliver to Mortgagee all bills for such insurance premiums, taxes, assessments or other charges received by Mortgagor. The Mortgagee, upon receipt of the bills shall pay from such fund all such insurance premiums, taxes, assessments and other charges as they become due. Mortgagee shall

BOOK 072 PAGE 87

not be required to determine the accuracy of any bill or the validity of any such insurance premiums, taxes, assessments and other charges.

(b) All payments mentioned in Subparagraph (a) of this Paragraph 2 and the payments to be made on the Note shall be added together and the aggregate amount thereof shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee to the following items in the order set forth: (i) insurance premiums, taxes, and special assessments; (ii) interest on the balance of the principal due and owing hereunder; and (iii) at Mortgagee's option, in accordance with subparagraph (c), below, or in payment of principal hereunder.

(c) Any excess funds accumulated under the provisions hereof remaining after payment of the items herein mentioned shall be credited at Mortgagee's option to subsequent monthly payments of the same nature required hereunder; but if any such item shall exceed the estimate therefor the Mortgagor shall without demand forthwith make good the deficiency. Failure to do so before the due date of such item shall be a default hereunder. If the Mortgaged Premises are sold under foreclosure or are otherwise acquired by the Mortgagee after default, any remaining balance of the accumulations under this Paragraph 2 shall be credited to the principal of, or accrued interest on, the indebtedness secured by this Mortgage as of the date of commencement of foreclosure proceedings or as of the date the Mortgaged Premises are otherwise acquired, as Mortgagee shall elect. If such monthly payments are not required, the Mortgagor shall pay all insurance premiums, taxes, and assessments on the Mortgaged Premises prior to the date such taxes and assessments will become delinquent.

3. For the benefit of Mortgagee, Mortgagor will constantly keep in force fire and extended coverage, malicious mischief, and flood

coverage insurance policies and, when available and required by Mortgagee, war damage and other hazard insurance with respect to the Improvements now or hereafter constructed, or being constructed, on the Real Property, such insurance policies to contain a standard New York mortgagee clause and an agreement by the issuer thereof that no party thereto may cancel any policies without at least twenty (20) days' prior written notice to Mortgagee, and such insurance to be provided in such manner and in such companies and for such amounts as may be required by Mortgagee, with loss, if any, payable to said Mortgagee as its interest may appear, and Mortgagor hereby transfers, assigns, sets over and delivers to Mortgagee such fire and other insurance policies and any and all renewals thereof, the premiums on which have been or shall be paid by Mortgagor, and it is further agreed that all such insurance and insurance policies shall be held by Mortgagee as a part of the security for said indebtedness, and shall pass to, and become the property of, the purchaser of the Mortgaged Premises following any foreclosure hereunder, without the necessity of specifically describing said insurance or insurance policies in connection with the foreclosure proceedings, and if the Mortgagor fails to keep the Improvements insured as above specified then Mortgagee may, at its option, insure said Improvements for its insurable value against loss by fire and other hazards, casualties and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien of this Mortgage and shall bear interest at the highest rate per annum specified in the Note, from the date of payment by Mortgagee, but Mortgagee shall not be obligated to obtain such insurance; it being understood and agreed between the parties hereto that any sum, or sums, of money received on account of any damage by fire or other casualty to any building, or buildings, herein conveyed, or on account of any condemnation involving the Mortgaged Premises, or on account of any private trespass or other injury to or devaluation of the Mortgaged Premises, are hereby assigned to Mortgagee and may be retained by the then holder of the indebtedness secured by this

Mortgage and, subject to the remaining provisions of this Paragraph 3, applied toward payment of such indebtedness, in such order as Mortgagee may elect, either in whole or in part, or, at the option of the holder of said debt, same may be applied in payment for any repair or replacement of such Improvements without affecting the lien of this Mortgage for the full amount hereby secured. Provided, that if there shall exist no Event of Default under the Note, and no event has occurred and no condition exists which, with the giving of notice or the passage of time, or both, would give the Mortgagee the right hereunder to accelerate the maturity of the Note, and provided further that insurance proceeds or condemnation awards are paid to Mortgagee and are (together with any additional funds of Borrower which have been deposited with Mortgagee) sufficient, in Mortgagee's sole judgment, to fund the cost of restoration of the Mortgaged Premises to the value and character that the Mortgaged Premises had prior to its damage, destruction or taking, as the case may be, then Mortgagee shall hold such proceeds and release them to Mortgagor (in the manner and under the conditions that Mortgagee may require) for the purpose of restoring and repairing the Mortgaged Premises. Otherwise, Mortgagee shall have the option to apply said proceeds or awards in reduction of the indebtedness hereby secured, whether due or not, or to release them to Mortgagor as aforesaid. If the Mortgagee elects to make said proceeds or awards available to Mortgagor for such repair and restoration, the Mortgaged Premises shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage, destruction or taking. If the cost of rebuilding, repairing or restoring the Mortgaged Property may reasonably exceed the sum of \$100,000.00, then the Mortgagee must approve plans and specifications for such work before such work shall be commenced. All proceeds of any insurance settlement or condemnation award held by Mortgagee shall be placed in an interest bearing account, and all interest earned on said proceeds shall be applied by Mortgagee in the manner and for the purposes provided for in this Paragraph

3. Neither the availability of any such proceeds nor their receipt or application by Mortgagee will operate as a waiver of any default under this Mortgage unless Mortgagee elects otherwise in writing. Mortgagee is hereby authorized (but not obligated) to act as attorney-in-fact for Mortgagor in obtaining, adjusting, settling and cancelling all insurance on the Mortgaged Premises, in endorsing any checks or drafts drawn by insurers of the Mortgaged Premises and in directing Mortgagor to endorse any such checks or drafts as Mortgagee may direct. Notwithstanding any other provision of this Mortgage or the Note, no application of insurance proceeds to the indebtedness shall have the effect of curing any default or extending the time for making any payment due hereunder or under said Note. Mortgagee shall not be held responsible for failure to collect any insurance proceeds due under the terms of any policy provided for herein regardless of the cause of such failure. Mortgagor agrees to give Mortgagee notice in writing of any damage to the Mortgaged Premises caused by fire or other casualty within ten (10) days after the occurrence of any such damage. Not less than ten (10) days prior to the expiration dates of each policy required of the Mortgagor pursuant to this Paragraph 3, the Mortgagor will deliver to the Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee.

4. The Mortgaged Premises (including without limitation the Improvements) shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted, and Mortgagee and its agents shall have access to the Mortgaged Premises at all reasonable times. Taxes and assessments or other charges which may be levied upon or accrue against the Mortgaged Premises, as well as all other sums which may be or become liens or charges against same, shall be paid and discharged by Mortgagor promptly as and when so levied or assessed, and shall not be permitted to become delinquent or to take priority over the lien of this Mortgage.

5. No Improvement shall be structurally altered, removed or demolished without the Mortgagee's prior written consent, nor shall any of the Equipment or Building Materials be removed at any time without like consent unless actually replaced by articles of equal suitability owned by Mortgagor. In the event of any breach of this covenant the Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of the principal amount of such indebtedness immediately due and payable.

6. That any lien against any of the Mortgaged Premises which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Mortgagor and shall not be permitted to take priority over the lien of this Mortgage, provided that Mortgagor, upon first furnishing to Mortgagee full security for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens. In those instances where Mortgagee's title insurance policy protects it against such lien or liens such title insurance policy shall be deemed to be sufficient security. Determination of whether said title policy protects Mortgagee shall be made solely by Mortgagee, and such determination shall be binding upon Mortgagor.

7. That any and all legal requirements of any department of the city, county, or any other governmental unit wherein the Mortgaged Premises are located shall be fully complied with by Mortgagor.

8. If Mortgagor fails to insure the Mortgaged Premises as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against the Mortgaged Premises or the indebtedness secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge any and all mortgages, liens, debts, or

charges which might become liens superior to, inferior to, or in parity with, the lien of this Mortgage, Mortgagee may, at its option, insure the Mortgaged Premises or pay said taxes, assessments, debts, liens or charges, or take some or all of such actions; and any money which Mortgagee shall have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to the debt hereby specially secured, shall be secured by this Mortgage, shall bear interest at the highest rate per annum specified in the Note from date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable.

9. No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other mortgages, liens, debts or charges by Mortgagee shall not be taken or construed as a waiver of its right to any remedies to which Mortgagee may be entitled, including, without limitation, the right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges.

10. If Mortgagee shall be made a party to any suit involving the Mortgaged Premises or the title thereto and employs an attorney to represent it therein, or if Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the Mortgaged Premises that purports to be superior to, inferior to, or in parity with, the lien of this Mortgage in any respect, Mortgagor will pay to Mortgagee, when the same becomes due, such attorney's fee as may be reasonable for such services, and if such fee is paid or incurred by Mortgagee the same shall be secured by the lien of this Mortgage in addition to the indebtedness specially secured hereby, and shall bear interest at the highest rate per



annum specified in the Note from the date it is paid or incurred and shall be at once due and payable.

11. All expenses incurred by Mortgagee, including reasonable attorney's fees, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the Mortgaged Premises, whether such claims or encumbrances be valid or not, shall become a debt hereby secured, and shall bear interest at the highest rate per annum specified in the Note from the date they are paid or incurred and shall be at once due and payable.

12. Mortgagor agrees to pay a reasonable attorney's fee to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness secured by this Mortgage after a default herein or under the Note.

13. Notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be self-executing, Mortgagor, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute, at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this Mortgage and any advances made by Mortgagee as herein provided then remaining unpaid, with interest thereon at the rate specified herein, or in the Note, to the date of payment, whether such remaining principal sum is then due or not by the terms of said Note or of this Mortgage.

14. In the event Mortgagor fails or refuses for a period of more than two (2) days to pay any interest under the Note (other than



BOOK 072 PAGE 95

interest due upon maturity of the principal sum) as and when the same becomes due and payable, or fails to pay the principal sum of the Note, or any interest due upon maturity of the principal sum, as and when the same becomes due and payable; or in the event Mortgagor fails to make any other payment required by this Mortgage within five (5) days after notice thereof by Mortgagee; or in the event Mortgagor fails or refuses to remedy any breach of a covenant or warranty made by Mortgagor in, or to perform any other obligation imposed upon Mortgagor by, this Mortgage, the Note, the Assignment of Leases and Rents ("Assignment of Leases"), or any other agreement or instrument executed in connection with the loan evidenced by the Note ("Loan"), for a period of fifteen (15) days after demand (or such additional period as Mortgagee may specify in the event that such default, if curable, requires work to be performed, acts to be done or conditions to be remedied which, in judgment of Mortgagee, by their nature cannot be performed, done or remedied, as the case may be, within such fifteen-day period and Mortgagor shall diligently and continuously process the same to completion, or such lesser period as Mortgagee may specify in the event that Mortgagee's security reasonably will be materially impaired if Mortgagor does not perform in less than fifteen (15) days); or in the event that a receiver shall be appointed by any court for any substantial part of the assets of Mortgagor or of any person or entity who is a partner in Mortgagor or of any person or entity who is a guarantor of the Note or of Mortgagor's obligations hereunder or under the Note; or if a petition under any chapter of the federal Bankruptcy Code shall be filed by or against Mortgagor or any such partner or guarantor; or if Mortgagor or any such partner or guarantor shall apply for the benefits of, or take advantage of, any law for the relief of debtors; or if Mortgagor or any such partner or guarantor shall enter into an arrangement or composition with creditors; or if any partner of the general partner of Mortgagor withdraws from such general partnership or Mortgagor's partnership is otherwise terminated; or if Mortgagor attempts to convey or sell the Mortgaged Premises or any part

thereof without Mortgagee's express written consent obtained in advance, then Mortgagee may, in addition to any other remedies available at law or in equity to Mortgagee, proceed to collect the rent, income and profits from the Mortgaged Premises, either with or without the appointment of a receiver; and any rents, income and profits collected by Mortgagee prior to foreclosure of this Mortgage, less the cost of collecting same, including any real estate commission or attorney's fee incurred, shall be credited first to advances with interest thereon, then to interest due on the principal indebtedness, and the remainder, if any, to the principal debt hereby secured.

15. It is further agreed that (a) if Mortgagor shall fail to pay, or cause to be paid, when due, either by lapse of time, optional declaration or otherwise, the whole or any portion of the principal amount of the indebtedness secured hereby, or any interest thereon due to be paid concurrently with said principal amount, or shall fail to pay, or cause to be paid, for a period of more than two (2) days after the same shall be due any installment of interest thereon, or any other sum the payment of which is hereby secured, as they or any of them mature, either by lapse of time, optional declaration or otherwise, in accordance with the agreements, conditions and covenants herein contained; or (b) should default be made for a period of five (5) days or more in the payment of any unbonded mechanic's lien, materialmen's lien, insurance premiums, taxes or assessment now, or which may hereafter be, levied against, or which may become a lien on, the Mortgaged Premises; or (c) should default be made for a period of more than five (5) days in any other of the covenants, conditions and agreements contained in this Mortgage, the Note, or the Assignment of Leases, or contained in any other instruments securing the Note; or (d) if any warranty made by Mortgagor in this Mortgage is breached and such breach is not cured by Mortgagor within five (5) days after notice thereof from Mortgagee or any representation made by Mortgagor in this Mortgage proves false in

BOOK 072 PAGE 96

BOOK 072 PAGE 97

any material respect; or (e) if any of the stipulations contained in this Mortgage is declared invalid or inoperative by any court of competent jurisdiction; or (f) should Mortgagor or any guarantor of the obligations of Mortgagor which are secured hereby (i) apply for, or consent to, the appointment of a receiver, trustee or liquidator for itself or himself or for the Mortgaged Premises or for all or a substantial part of his, its, or the Mortgagor's assets, (ii) liquidate or dissolve or cease to do business (if a corporation or partnership), or fail to pay, or admit in writing his or its inability to pay, its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, or if an order for relief be entered against the Mortgagor or any such guarantor in any proceeding under the federal Bankruptcy Code, (v) file a voluntary petition under any chapter of the federal Bankruptcy Code, or a petition or an answer seeking an arrangement with creditors or seeking to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against him or it in any proceeding under any such law or if action shall be taken by the Mortgagor or any such guarantor for the purpose of effecting any of the foregoing, or (vi) intentionally damage or attempt to remove any of the Improvements; or (g) should it be discovered after the execution and delivery of this Mortgage (i) that there is a defect in the title to, or a lien or encumbrance of any nature on, the Mortgaged Premises prior to the lien hereof, or (ii) that there is an error or defect in the Note or this Mortgage or in the execution or the acknowledgment thereof, and if the Mortgagor shall fail for fifteen (15) days after demand by the Mortgagee, or other holder or holders of said indebtedness, to correct such defects in the title or to remove any such lien or encumbrance or claim, or to correct any error in said Note or this Mortgage or its execution or acknowledgment; then, upon the happening of any one of more of said events, the whole of said principal amount, with interest thereon, and all other sums secured hereby, shall, at the option of

BOOK 072 PAGE 98

the then holder of the indebtedness secured hereby, be and become immediately due and payable and this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the holder of the debt hereby secured shall have the right to enter upon and take possession of the Mortgaged Premises and after, or without, taking such possession of the same, to sell the Mortgaged Premises at public outcry, in front of the courthouse door of the county wherein the Mortgaged Premises are located, to the highest bidder for cash, either in person or by auctioneer, after first giving at least twenty-one days notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee, or any person conducting said sale for it, is authorized and empowered to execute to the purchaser at said sale a deed to the Mortgaged Premises so purchased in the name, and on behalf, of Mortgagor, and the certificate of the holder of the indebtedness secured by this Mortgage, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises, or to foreclose the equity of redemption from this Mortgage by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages; the Mortgagee, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of the Mortgaged Premises if the highest bidder therefor. At the foreclosure sale the Mortgaged Premises may be offered for sale and sold as a whole without first offering them in any other manner, or they may be offered for sale and sold in any other manner the Mortgagee shall elect. The proceeds of any such sale shall be applied (a) to the expenses in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been, necessary in any one or more of the foreclosure of this Mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but

without limitation to, the defense of any proceedings instituted by the Mortgagor, or anyone liable for said indebtedness, or interested in the Mortgaged Premises, to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this Mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this Mortgage, together with interest thereon; (c) to the payment and satisfaction of said principal indebtedness and interest thereon to the day of sale; and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

16. In the event of any default under this Mortgage, irrespective of whether the right to foreclose the Mortgage has accrued to Mortgagee, whether the entire debt has then been accelerated or whether foreclosure proceedings have been commenced, Mortgagee may, in the event this default has not been remedied within three (3) days after Mortgagee has given Mortgagor notice thereof, take possession of the Mortgaged Premises. While in possession of the Mortgaged Premises, Mortgagee shall have the following rights and powers:

(i) To collect the rents and manage, lease, alter and repair the Mortgaged Premises, cancel or modify existing leases, obtain insurance and in general have all powers and rights customarily incident to absolute ownership; and

(ii) To pay out of the rents so collected any management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the indebtedness secured hereby.

Mortgagee shall incur no liability for, nor shall Mortgagor assert any claim or set-off as a result of, any action taken while Mortgagee is in possession of the Mortgaged Premises, except only for Mortgagee's own gross negligence. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession of the Mortgaged Premises as long as there exists a default hereunder.

17. In the event of the enactment of any law by the State of Alabama, after the date of this Mortgage, deducting from the value of the Mortgaged Premises for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this Mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby, and in the event Mortgagor fails to pay such obligation before it becomes delinquent or if Mortgagor is prohibited by law from making such payment, the whole of the principal sum secured by this Mortgage, together with the interest due thereon, shall, at the option of Mortgagee, without notice to any party, become immediately due and payable.

18. It is expressly agreed that any indebtedness at any time secured hereby may be extended, rearranged or renewed, and that any part of the security herein described may be waived or released without in anywise altering, varying or diminishing the force, effect or lien of this instrument; and this instrument shall continue as a first lien on all of the Mortgaged Premises and other property and rights covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid; and no other security now existing or hereafter taken to secure the payment of said indebtedness, or any part thereof, shall in any manner be impaired or affected by the execution of this instrument; and no

security subsequently taken by Mortgagee or other holder or holders of said indebtedness shall in any manner impair or affect the security given by this instrument; and all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

19. If Mortgagor with the prior written approval of Mortgagee shall grant any lien of any nature on the Mortgaged Premises junior to this Mortgage, such junior lien shall be subject to the condition that the time for the payment of the indebtedness hereby secured and the manner and amount of payment thereof, the rate of interest payable thereon, and the benefits of the security afforded hereby and by the Note, or any obligation contained in said Note or in an instrument substituted therefor, may, without the consent of such junior lienholder, and without any obligation to give notice of any kind thereto, be changed, increased, extended, reextended or suspended on any terms whatsoever without in any manner affecting the priority of this Mortgage as security for the payment of the indebtedness secured hereby.

20. Mortgagor agrees for itself and any and all persons or concerns claiming by, through or under Mortgagor that if it or any one or more of them shall hold possession of the Mortgaged Premises or any part thereof, subsequent to foreclosure hereunder, (except for a tenant who has executed a subordination, attornment and non-disturbance agreement with Mortgagee or a tenant who is in possession of an apartment in the Mortgaged Premises pursuant to a lease in effect on the date hereof and of which Mortgagee has notice) it or the parties so holding possession shall become and be considered as daily tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of unlawful detainer and shall be liable to such purchaser or purchasers for reasonable rental of the Mortgaged Premises, and shall be subject to eviction and removal, forcible

BOOK 072 PAGE 101



or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

21. The Mortgaged Premises are improved with apartment buildings, space in which will be leased to one or more tenants under the provisions of lease agreements. By an agreement (the "Assignment of Leases") executed contemporaneously herewith, Mortgagor has assigned all lease agreements presently existing, or hereafter made, including without limitation, sums of money receivable in respect thereof, to Mortgagee as additional security for the repayment of the indebtedness secured hereby. Mortgagor agrees not to modify any portion or all of any such lease agreements without the prior written consent of Mortgagee as to the form and content of such change, and not permit any surrender, termination or concession with respect to any approved or existing lease agreement without the prior written consent of Mortgagee. Mortgagor agrees to faithfully perform the covenants imposed on Mortgagor by the said lease agreements and assignment thereof, and agrees that any default in the performance of the obligations under any of said lease agreements and/or assignment shall constitute a default under the provisions of this Mortgage and shall entitle Mortgagee to all remedies provided herein in the event of default hereunder.

22. Mortgagor covenants and agrees to comply with all building, zoning, environmental, and other government regulations and requirements with respect to the Mortgaged Premises.

23. This Mortgage also shall be deemed to be a the Security Agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the collateral hereunder which is covered by the



Uniform Commercial Code, by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a financing statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Mortgaged Premises or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as real property irrespective of whether (A) any such item is physically attached to the Improvements, (B) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee, or (C) any such item is referred to or reflected in any financing statement filed at any time. Similarly, the mention in any such financing statement of (1) the rights in, or the proceeds of, any fire or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Mortgaged Premises, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal government and any subdivisions or entity of the Federal government, must be filed in the Uniform Commercial Code records.

24. Mortgagor covenants and agrees that, so long as the loan secured by this Mortgage is outstanding, the Mortgaged Premises are to be managed by competent professional management satisfactory to Mortgagee, that the Mortgaged Premises will be operated in a first-class manner, and that there shall be no change in the management of the Mortgaged Premises, or in the ownership thereof, without the prior written consent of Mortgagee, which Mortgagee agrees shall not be unreasonably withheld. In the event this covenant is breached and is not remedied within three (3) days after Mortgagee has given Mortgagor notice thereof, Mortgagee may immediately accelerate the indebtedness secured hereby and, if the same is not paid, avail itself of all the remedies provided herein in the event of a default hereunder.

25. Mortgagor covenants and agrees that so long as the loan secured by this Mortgage is outstanding there will be no secondary financing with respect to the Mortgaged Premises other than the second mortgage to First Commercial Bank referred to on page 7 hereof and any such financing which Mortgagee may hereafter approve in writing. Any violation of this covenant shall entitle Mortgagee to accelerate the indebtedness secured hereby, and, in the event of any default by Mortgagor in the payment thereof, Mortgagee shall be entitled to exercise the remedies herein provided it in the case of a default by Mortgagor in the observance of, and compliance with, the terms and conditions of this Mortgage. It is further understood and agreed that provisions in this Mortgage which make general reference to junior liens or secondary financing shall not be deemed to constitute express or implied approval by Mortgagee of any junior liens or secondary financing.

26. In any action to foreclose this Mortgage, or upon the actual or threatened waste to any part of the Mortgaged Premises, Mortgagee shall be at liberty to apply for the appointment of a receiver of

the rents and profits of the Mortgaged Premises without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Mortgaged Premises as security for the amounts due the Mortgagee, or the solvency of any person or corporation liable for the payment of such amounts.

27. Mortgagee, by its acceptance of these presents, agrees that (so long as there shall be no default by Mortgagor hereunder) upon the written request of Mortgagor, Mortgagee shall release from the lien of this Mortgage that certain real property described as 1.67 acres fronting on Alabama Highway 119 and shown (but not described) on the "Boundary Survey" of Coulter, Gay, Salmon & Martin dated April 17, 1986, provided that Mortgagee shall be entitled to reserve an easement over said 1.67 acres for public ingress and egress to the Real Property, the extent and location of which easement shall be in the sole discretion of Mortgagee.

28. If Mortgagor pays the indebtedness secured by this Mortgage, and reimburses Mortgagee, its successors and assigns, for any amounts it or they may have expended pursuant to the authorization of this Mortgage, including, without limitation, sums spent in payment of insurance premiums, taxes and assessments or other liens, and interest thereon, and does and performs all other acts and things herein and in the Note and Assignment of Leases agreed to be done, Mortgagee shall execute and deliver to Mortgagor upon request a release of this Mortgage in recordable form. Mortgagor shall pay all costs of recordation of such release, if any.

29. Wherever and whenever in this Mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be given or served, and shall not be deemed to have been given or served unless in writing and forwarded by registered or certified mail, return receipt requested, addressed as follows:

BOOK 072 PAGE 105

To Mortgagor: Woodbrook Apartments, Ltd.  
c/o Boothby Realty Company  
1912 11th Avenue South  
Birmingham, Alabama 35205  
Attn: Hubert W. Goings, Jr.

To Mortgagee: SouthTrust Bank of Alabama,  
National Association  
112 North 20th Street  
P. O. Box 2554  
Birmingham, Alabama 35290

Attention: Real Estate Department

or to such other address as any of the above may have given to the others by notice as hereinabove provided.

30. As used herein, words of the masculine gender include the feminine, and singular or plural words used herein to designate the Mortgagor shall be construed to refer to the maker or makers of this Mortgage, whether one or more persons or a partnership, and all covenants and agreements herein contained shall bind the successors and assigns of the Mortgagor, and every option, right and privilege herein reserved or secured to Mortgagee shall inure to the benefit of its successors and assigns.

31. The unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law.

32. Mortgagor shall execute and deliver (and pay the costs of preparation and recording thereof) to Mortgagee and to any subsequent holder of this Mortgage from time to time, upon demand, any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution

BOOK 072 PAGE 106

notes, so as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured and the legal security title of Mortgagee to all or any part of the property intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof.

33. Mortgagor upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to the Mortgagee, or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on this Mortgage and whether any offsets or defenses exist against the mortgage debt within six (6) days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail.

34. If at any time the United States of America or the State of Alabama or other governmental authority in Alabama shall require revenue or documentary stamps to be affixed to the Note or this Mortgage, or intangible property taxes to be paid with respect to the Note or this Mortgage or the indebtedness hereby secured, the Mortgagor will pay for the same with any interest or penalties imposed in connection therewith.

35. This Mortgage shall be governed by and construed in accordance with the laws of the State of Alabama.

BOOK 072 PAGE 107

IN WITNESS WHEREOF, Mortgagor has caused these presents  
to be executed for and in its name by its duly authorized general partners on  
this the 14th day of May, 1986.

WOODBROOK APARTMENTS, LTD.  
an Alabama Limited Partnership

By: SHELBY DEVELOPMENT COMPANY  
an Alabama General Partnership

By [Signature]  
Its General Partner

By [Signature]  
Its General Partner

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

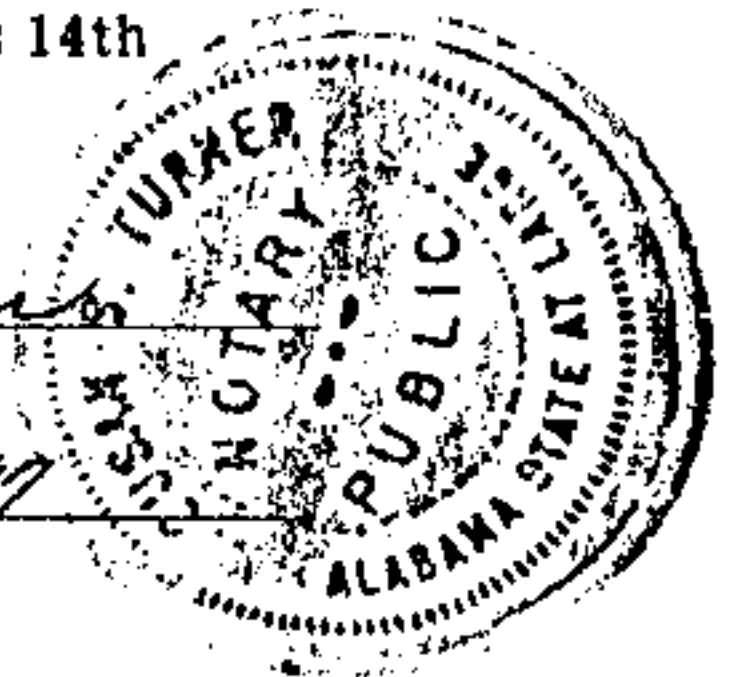
I, the undersigned, a Notary Public in and for said county in  
said state, hereby certify that Robert R. Mares and Hubert W. King whose  
names, as general partners of Shelby Development Company as general  
partner of Woodbrook Apartments, Ltd. are signed to the foregoing instru-  
ment, and who are known to me, acknowledged before me on this day that,  
being informed of the contents of the above and foregoing instrument, they  
executed the same voluntarily in their capacity as general partners of  
Shelby Development Company, acting in its capacity as such general partner  
of Woodbrook Apartments, Ltd. as aforesaid, on the day the same bears  
date.

Given under my hand and official seal of office this 14th  
day of May, 1986.

[Signature]  
Notary Public

[NOTARIAL SEAL]

My Commission expires: 7/26/87



This Instrument Prepared By:

Lant B. Davis  
Bradley, Arant, Rose & White  
1400 Park Place Tower  
Birmingham, Alabama 35203

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

1986 MAY 15 AM 10:29

[Signature]  
JUDGE OF PROBATE

999

-29-

1. Deed Tax \$ \_\_\_\_\_  
2. Mtg. Tax 3,245.00  
3. Recording Fee 72.50  
4. Indexing Fee 1.00  
TOTAL 3298.50