

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

KENNETH A. MOSER, ESQUIRE
WOMBLE CARLYLE SANDRIDGE & RICE
2400 Wachovia Building
Winston-Salem, NC 27102

759

ASSIGNMENT OF
LESSOR'S INTEREST IN LEASES

BY THIS ASSIGNMENT, dated October 7, 1986, CROW WOOD SPRINGS ASSOCIATES, LTD., a Georgia limited partnership, hereinafter referred to as "Assignor", as an inducement for the making of the Loan evidenced and secured as hereinafter described, hereby assigns to WACHOVIA BANK AND TRUST COMPANY, N.A., a national banking association having its principal office in Winston-Salem, North Carolina, hereinafter referred to as "Assignee", all the right, title and interest of Assignor in, under or by virtue of any and all leases now existing or hereafter made and affecting the real property described in Exhibit A hereto (the "Real Property") including (without limitation) those leases, if any, listed in the Schedule of Leases attached hereto as Exhibit "B" and made a part hereof, and all extensions, renewals, amendments and other modifications or replacements thereof and any and all guaranties of the lessee's obligations under any provisions thereof (any such lease or leases being hereinafter referred to collectively as the "Leases" and the buildings and/or appurtenances as well as the Real Property described in Exhibit "A" being leased, collectively referred to as the "Leased Premises").

TO HAVE AND TO HOLD said Assignor's right, title and interest unto Assignee, its successors and assigns as security for the payment of Assignor's Twelve Million Eight Hundred Fifty Thousand Dollar (\$12,850,000.00) Mortgage Loan Note of even date herewith ("Note") and, from and after the Purchase Date (as hereinafter defined), as security for a Note on similar terms and conditions to Assignee from Crow Wood Gardens Associates, Ltd., in the principal amount of Fourteen Million Eight Hundred Thousand and NO/100 Dollars (\$14,800,000.00), dated as of October 7, 1986 (the "Wood Gardens Note") which is secured by an Assignment of Lessor's Interest in Leases on similar terms and conditions from Crow Wood Gardens, Ltd. to Assignee, dated as of October 7, 1986 (the "Wood Gardens Assignment"); provided, however, that if (a) either the Leased Premises (as herein defined) or the "Leased Premises" (as defined in the Wood Gardens Assignment) are sold in compliance with the terms of the mortgage encumbering such Leased Premises, or (b) either the Note or the Wood Gardens Note is paid in accordance with its respective terms, then this Assignment shall be released as security for the Wood Gardens Note, and for the performance of the agreements of Assignor contained herein and in the Mortgage, Assignment of Rents and Security Agreement of even date herewith ("Mortgage")

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✓ Jack A

and in any and all other instruments given in consideration of and as security for the Note (the "other Security Documents"), made by Assignor to and for Assignee and recorded or to be recorded at or prior to the recording of this Assignment, covering the Real Property and the buildings and improvements located thereon, reserving, however, a right to collect, except as hereinafter provided, the rents, income and profits accruing by virtue of said leases as they respectively become due, but not more than thirty (30) days in advance and reserving the rights set forth in paragraph 11 herein. In the event the Note is purchased by OTR, an Ohio general partnership, or its assigns (the date any such purchase occurs being hereinafter referred to as the "Purchase Date") this Assignment shall also secure the payment of "Fixed Interest," "Contingent Interest" and "Additional Interest," as such terms are defined in the Note (the interest under the Note, whether accruing before or after the Purchase Date, including without limitation such Fixed Interest, Contingent Interest, and Additional Interest being hereinafter collectively referred to as "Interest").

ASSIGNOR COVENANTS AS FOLLOWS:

1. ASSIGNEE TO BE CREDITOR OF INSOLVENT LESSEES.

Assignor agrees that upon the occurrence of a default in the performance of any of the terms, covenants and conditions of the Note, Mortgage, this Assignment or any other Security Documents, Assignee, and not Assignor, shall be and be deemed to be the creditor of each lessee in respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings or otherwise to pursue creditor's rights therein and to apply any money received by Assignee as such creditor in reduction of the indebtedness secured or evidenced by the Mortgage or the Note.

2. ASSIGNEE AUTHORIZED TO COLLECT RENTS UPON DEFAULT OF ASSIGNOR.

Assignor agrees that in the event of default by Assignor in the performance of any of the terms, covenants and conditions of the Note, the Mortgage, this Assignment or any other Security Document and until such default shall terminate, Assignee is hereby authorized either in person, by agent or by a receiver appointed by a court, at its option, to enter and take possession of the Leased Premises, or any part thereof, and to perform all acts necessary for the operation and maintenance of the premises in the same manner and to the same extent that Assignor might reasonably so act. In furtherance thereof and not by way of limitation, Assignee is empowered but shall be under no obligation, to collect the rent, income and profits under the Leases, to enforce payment thereof and the performance of any and

all other terms and provisions of the Leases, to exercise all the rights and privileges of Assignor thereunder including the right to fix, collect, or modify rents, income and profits, and to demand and sue for possession of the premises covered by the Leases, in the name of the Assignor or Assignee, and to enforce payment thereof and the performance of any and all other terms and provisions of the Leases. Assignor irrevocably appoints Assignee its true and lawful attorney-in-fact irrevocably to do any and all of the foregoing. Assignor shall from time to time apply the net amount of income after payment of all proper costs and charges, including loss or damage and including reasonable attorneys' fees, to the sums then due to the Assignee under the Note or Mortgage. The manner of the application of such net income, the reasonableness of the costs and charges to which such net income is applied and the item or items which shall be credited thereby shall be within the sole and uncontrolled discretion of the Assignee. Such entry and taking possession of the Leased Premises, or any part thereof, may be made by actual entry and possession or by written notice served personally upon or sent by registered or certified mail to the last owner of the Leased Premises appearing on the records of Assignee as Assignee may elect and no further authorization shall be required. Assignee shall only be accountable for money actually received by it pursuant to this Assignment.

3. THIS ASSIGNMENT TO TERMINATE UPON SATISFACTION OF THE MORTGAGE.

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Upon payment to Assignee of the full amount of the indebtedness secured by the Mortgage as evidenced by a recorded full cancellation, release or reconveyance of the Mortgage, this Assignment shall be void and of no further force or effect, but the Affidavit of any officer of Assignee showing any part of said indebtedness remaining unpaid shall be and shall constitute conclusive evidence as to third parties of the validity, effectiveness and continuity of this Assignment and any person may and is hereby authorized to rely thereon.

4. ASSIGNOR WAIVES RIGHTS AGAINST LESSEES.

Assignor irrevocably consents that the lessees under the Leases, upon demand and notice from Assignee of Assignor's default under the Note, the Mortgage, this Assignment, or any other Security Document, shall pay the rents, income and profits under the Leases to Assignee without liability of lessees for the determination of the actual existence of any default claimed by Assignee. Assignor hereby irrevocably authorizes and directs lessees, upon receipt of any notice from Assignee stating that a default exists and that payments are due under or in the performance of any of the terms, covenants or conditions of the Note, the Mortgage, this Assignment, or any other Security Document, to

pay to Assignee the rents, income and profits due and to become due under the Leases. Assignor agrees that lessees shall have the right to rely upon any such notices of Assignee that lessees shall pay such rents, income and profits to Assignee, without any obligation or without any right to inquire as to whether such default actually exists and notwithstanding any claim of Assignor to the contrary, Assignor shall have no claim against lessees for any rents paid by lessees to Assignee. Upon the curing of all defaults in the payments due under and in the performance of any of the terms, covenants or conditions of the Note or the Mortgage, Assignee, following written notice to such lessees of Assignor's default under the Loan documents, shall give written notice thereof to lessees and thereafter, until further notice from Assignee, lessees shall pay the rents, income and profits to Assignor.

5. ASSIGNEE MAY ASSIGN THIS ASSIGNMENT.

Assignee shall have the right to assign Assignee's right, title and interest in the Leases to any subsequent holder of the Note and Mortgage and to assign Assignor's right, title and interest in the Leases to any person acquiring title to the Leased Premises through foreclosure or otherwise. After Assignor shall have been barred and foreclosed of all right, title and interest, and equity of redemption in the Leased Premises, no assignee of Assignor's interest in the Leases shall be liable to account to Assignor for the rents, income and profits thereafter accruing.

6. ASSIGNOR INDEMNIFIES ASSIGNEE FROM LIABILITY UNDER THIS ASSIGNMENT.

Assignor agrees to indemnify and hold Assignee harmless of and from any and all liability, loss or damage which Assignee may incur under the Leases or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking to be performed or discharged by Assignor or Assignee under said Leases or this Assignment. Nothing herein contained shall be construed to bind Assignee to the performance of any of the terms and provisions contained in the Leases, or otherwise to impose any obligation on Assignee including, without limitation, any liability under the covenants of quiet enjoyment contained in the Leases in the event that the lessees shall have been joined as parties defendant in any action to foreclose the Mortgage and shall have been barred and foreclosed thereby of all right, title, interest and equity of redemption in the Leased Premises. Prior to actual entry and taking possession of said Premises by Assignee, this Assignment shall not operate to place responsibility for the control, care, management, or repair of the Leased Premises upon Assignee or for the carrying out of any

of the terms and provisions of the Leases. Should Assignee incur any liability by reason of actual entry and taking possession or for any other reason or occurrence by reason of this Assignment or sustain loss or damage under the Leases or under or by reason of this Assignment or in the defense of any such claims or demands (other than any claim or demand resulting from the negligence or willful misconduct of Assignee) Assignor shall immediately upon demand reimburse Assignee for the amount thereof including interest from and after the date of demand (a) prior to the Purchase Date at that rate which is two percentage points greater than the then effective interest rate provided in the Note and (b) from and after the Purchase Date at the Default Rate as provided in the Note, costs and expenses and reasonable attorneys' fees, and Assignee may retain possession and collect the rents, income and profits and, from time to time, apply them in or toward satisfaction of or reimbursement for said loss or damage.

7. ASSIGNOR TO DEFEND LEASES.

Assignor agrees to, at Assignor's sole cost and expense, in the normal course of business by the exercise of good business judgment, enforce the Leases by appearing in and defending any action or proceeding arising under, growing out of or in any manner connected with any of the Leases or the obligations thereunder of Assignor or Assignee.

8. ASSIGNOR AUTHORIZED TO EXECUTE THIS ASSIGNMENT.

With respect to the Leases, if any, listed in the Schedule of Leases attached hereto as Exhibit B, Assignor represents that Assignor now is the absolute owner of the Leases with full right and title to assign the same and the rents, income and profits due or to become due thereunder; that the Leases are valid, in full force and effect, and have not been modified or amended except as stated herein; and as fully disclosed in writing to Assignee; that there is no outstanding assignment or pledge thereof or of the rents, income and profits due or to become due thereunder; that there are no existing defaults under the provisions thereof on the part of Landlord and to the best of Assignor's knowledge of Lessee, that the lessees have no defense, set off or counterclaim against Assignor; that the lessees are paying rent and other charges under the Lease and as provided therein and that no rents, income or profits payable thereunder have been or will hereafter be anticipated, discounted, released, waived, compromised or otherwise discharged except as may be expressly permitted by the Leases.

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9. POWER OF ATTORNEY TO ASSIGNEE.

Assignor agrees to execute and deliver to Assignee and hereby irrevocably appoints Assignee and its successors and assigns as its agent and attorney-in-fact to execute and deliver during the term of this Assignment upon the failure of Assignor to do so, such further instruments as Assignee may deem necessary to make this Assignment and any further assignment effective.

10. LEASEHOLD INTEREST NOT TO MERGE.

That the acquisition by any lessee in any manner whatsoever of the fee simple title to the Leased Premises, or any portion thereof, shall not cause, or operate as, a merger of the leasehold estate of such lessee or the demised term with the fee simple title.

11. ASSIGNOR NOT TO MODIFY LEASES WITHOUT APPROVAL OF ASSIGNEE.

Assignor will not (i) execute any lease of all or any portion of the Leased Premises not substantially in the form of the standard lease approved by Assignee; (ii) execute any further assignment of any of its right, title or interest in the leases or rents and profits (except to Assignee); (iii) permit any lease of the Leased Premises or any part thereof to become subordinate to any lien other than the lien of the Mortgage; (v) terminate, consent to the cancellation, modify or accept prepayments more than one (1) month in advance with respect to any lease without Assignee's consent other than in the normal course of business in connection with Assignor's attempt to maximize the Gross Income (as defined in the Note) from the Leased Premises; or (vi) execute any lease of all or any portion of the Leased Premises except for actual occupancy by the lessee thereunder.

12. ASSIGNOR TO NOTIFY ASSIGNEE OF DEFAULTS.

Assignor will give prompt notice to Assignee of any notice of Assignor's default involving a dollar amount of \$1000.00 or more under any lease received from lessees or from any other person and furnish Assignee with complete copies of the notice.

13. THIS ASSIGNMENT NOT AFFECTED BY SUBSEQUENT VARIATIONS IN NOTE OR MORTGAGE.

Notwithstanding any variation of the terms of the Note and/or the Mortgage including increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or any release of part or parts of the lands and/or subject to the Mortgage, the

Leases and the benefits hereby assigned shall continue as additional security in accordance with the terms of this Assignment.

14. ASSIGNEE MAY TAKE ADDITIONAL SECURITY AND MODIFY NOTE AND/OR MORTGAGE.

Assignee may take security in addition to the security already given Assignee for the payment of the principal and Interest provided to be paid in or by the Note, or the Mortgage or release such other security, may release any party primarily or secondarily liable on the Note, may grant or make extensions, renewals, modifications, or indulgences with respect to such Note, Mortgage and replacements thereof, which replacement of said Note or Mortgage, may be on the same or on terms different from the present terms of the Note or Mortgage, and may apply any other security therefor held by it to the satisfaction of such Note without prejudice to any of its rights hereunder.

15. FUTURE LEASES INCLUDED IN THIS ASSIGNMENT.

Immediately upon Assignor's entering into a lease of any part of the above described Leased Premises which lease is not listed in Exhibit "B" attached hereto, said lease shall be deemed included in this Assignment as though originally listed herein.

16. ASSIGNMENT OF SECURITY DEPOSITS.

Assignor hereby also assigns to the Assignee all security deposits received by Assignor or any agent for Assignor in respect of any leases. Prior to default hereunder or under the Note or Mortgage and demand by the Assignee for delivery of such security deposits to it or its designee, Assignor may retain the security deposits. After default and upon demand by the Assignee, Assignor shall deliver such deposits to Assignee or its designee. Upon delivery of such security deposits to Assignee, the Assignee shall hold such deposits pursuant to the terms of the leases in respect of which such deposits were obtained by Assignor. Provided, however, in no event shall Assignee be liable under any lease for the return of any security deposit in any amount in excess of the amount delivered to the Assignee by Assignor. Any security deposits delivered to and held by Assignee shall not bear interest.

17. RIGHTS OF ASSIGNEE CUMULATIVE AND NOT SUBJECT TO WAIVER.

Failure of the Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time or at any time or times, shall not constitute a waiver thereof. The rights and remedies of Assignee under this

instrument are cumulative and are not in lieu of but are in addition to any other rights and remedies which Assignee shall have under said Note and Mortgage. The rights and remedies of Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

18. MODIFICATIONS OF THIS ASSIGNMENT TO BE IN WRITING.

No change, amendment, modification, abridgement, cancellation or discharge hereof or of any part hereof, shall be valid unless consented to in writing by Assignee.

19. THIS ASSIGNMENT TO INURE TO SUCCESSORS.

All covenants and agreements herein shall apply to, inure to the benefit of, and bind the respective heirs, executors, administrators, successors and assigns of Assignor and Assignee.

20. GOVERNING LAW.

Prior to the Purchase Date, this Assignment shall be governed by the laws of the State of North Carolina, and from and after the Purchase Date, this Assignment shall be governed by the laws of the State of Ohio, except in each case, however to the extent that the real and personal property laws of the State of Alabama must necessarily control by reason that the Leased Premises are located in the State of Alabama.

21. TITLES NOT CONTROLLING.

The paragraph headings herein are for convenience only and are not part of this Agreement and shall not be used in construing it.

22. DEFAULT.

As used herein the word "default" shall include any applicable cure period under the Mortgage or the Note.

23. CONFLICT.

In the event of a conflict between this Assignment and the Mortgage executed by the parties of even date herewith, the provisions of the Mortgage shall control.

IN WITNESS WHEREOF, this Assignment has been duly executed by Assignor.

CROW WOOD SPRINGS ASSOCIATES, LTD.
a Georgia limited partnership (Seal)

By: CTW DEVELOPMENT CORP., a Georgia
corporation, General Partner

By: David J. Elwell
Its: VP

ATTEST:

Holly D. Kemoore
Its: Asst. Sec.

[Corporate Seal]

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ACKNOWLEDGEMENT

STATE OF GEORGIA :
COUNTY OF COBB : SS.

I, the undersigned Notary Public in and for said County, in said State, hereby certify that David J. Elwell, whose name as Vice President of CTW Development Corp., a Georgia corporation, general partner of Crow Wood Springs Associates, Ltd., a Georgia limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation acting in its capacity as general partner as aforesaid.

Given under my hand and official seal of office this 7th day of October, 1986.

Deborah Ann McLaughlin
Notary Public



[Notarial Seal]

My Commission Expires: Notary Public, Georgia, State at Large
My Commission Expires Sept. 10, 1988

THIS INSTRUMENT WAS
PREPARED BY:

Kenneth A. Moser, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE
P. O. Drawer 84
2400 Wachovia Building
Winston-Salem, NC 27102

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EXHIBIT A

LEGAL DESCRIPTION

PHASE I

All that tract or parcel of land being a part of Lot 1-A, Cahaba River Park First Addition as recorded in Map Book 8, Page 62, in the office of the Judge of Probate of Shelby County, Alabama and being more particularly described as follows:

BEGINNING at the N.W. corner of the N.W. 1/4 of the N.E. 1/4 of Section 35, Township 18 South, Range 2 West and run South along the West line of said 1/4-1/4 section a distance of 285.00 feet to a point; thence 90°00' to the left in an Easterly direction a distance of 240.00 feet to a point; thence 50°29'05" to the right in a Southeasterly direction a distance of 508.99 feet to the P.C. (point of curve) of a curve to the left having a radius of 377.38 feet and a central angle of 39°05'50"; thence Southeasterly along the arc of said curve a distance of 257.51 feet to a point; thence from the tangent of said curve, turn 64°32'40" to the right to the tangent of a curve to the left having a radius of 75.00 feet and a central angle of 151°29'13"; thence Southeasterly, Easterly and Northeasterly along the arc of said curve a distance of 198.30 feet to a point; thence from the tangent of said curve, turn 67°00'38" to the right and run in a Northeasterly direction a distance of 185.79 feet to the P.C. (point of curve) of a curve to the right having a radius of 197.54 feet and a central angle of 37°15'; thence Northeasterly, Easterly and Southeasterly along the arc of said curve a distance of 128.43 feet to the P.T. (point of tangent) of said curve; thence Southeasterly on the tangent to said curve a distance of 14.52 feet to a point on the Northwesterly right-of-way line of Riverview Road; thence 89°38'40" to the left to the tangent of a curve to the left having a radius of 3779.83 feet and a central angle of 4°09'57"; thence Northeasterly along the arc of said curve and along said right-of-way line a distance of 274.82 feet to the P.T. (point of tangent) of said curve; thence Northeasterly on the tangent to said curve and along said right-of-way line a distance of 13.75 feet to the P.C. (point of curve) of a curve to the right having a radius of 613.69 feet and a central angle of 17°26'30"; thence Northeasterly along the arc of said curve and along said right-of-way line a distance of 186.82 feet to the P.T. (point of tangent) of said curve; thence Northeasterly on the tangent to said curve and along said right-of-way line a distance of 157.71 feet to the P.C. (point of curve) of a curve to the right having a radius of 613.69 feet and a central angle of 18°32'30"; thence Northeasterly along the arc of said curve and along said right-of-way line a distance of 198.59 feet to the P.T. (point of tangent) of said curve; thence Northeasterly on the tangent to said curve and along said right-of-way line a distance of 45.55 feet to the point of intersection of said right-of-way line with the Southwesterly right-of-way line of Old U.S. Highway No. 280; thence 106°40'15" to the left in a Northwesterly direction along the Southwesterly right-of-way line of Old U.S. Highway No. 280 for a distance of 126.72 feet to a point on the North line of the N.E. 1/4 of the N.E. 1/4 of said Section 35; thence west along said 1/4-1/4 section line and along the North line of the N.W. 1/4 of the N.E. 1/4 of said Section 35 for a distance of 1691.00 feet to the POINT OF BEGINNING; being designated Phase I per plat of survey by Walter Schoel Engineering Company dated December 2, 1985, revised December 12, 1985 and last revised August 20, 1986, bearing the seal and certification of Walter Schoel, Jr., Alabama Registration No. 3092.

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EXHIBIT B
Schedule of Leases

NONE

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

1986 OCT -8 PM 2: 38

Thomas A. Hamilton, Jr.
JUDGE OF PROBATE

RECORDING FEES	
Recording Fee	\$ <u>30.00</u>
Index Fee	<u>1.00</u>
TOTAL	\$ <u>31.00</u>