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STATE OF ALABAMA)
COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE, made and entered into on this the 13th day of November, 1986 by RIVERCHASE GARDENS, LTD., an Alabama limited partnership (herein called "Mortgagor") and STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA, (herein called "Mortgagee"), (herein called "this mortgage"),

W I T N E S S E T H:

WHEREAS, Mortgagor is indebted to Mortgagee for money loaned in the amount of Three Million Six Hundred Thousand Dollars (\$3,600,000) ("Loan") as evidenced by a promissory note ("Note") of even date herewith; and

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

WHEREAS, Mortgagor may hereafter become indebted to said Mortgagee for additional sums loaned and/or on account of indebtedness which may accrue to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee under the provisions of this mortgage; and Mortgagor wishes to execute this conveyance for the security and enforcement of the payment both of said present and any such future indebtedness; and

WHEREAS, Mortgagor's property is contiguous to and shares certain interests in common with that certain property described in Exhibit C (the "RG II Premises"), owned by Riverchase Gardens II, Ltd. (hereinafter called "RG II"), an Alabama limited partnership, the general partners of which are likewise general partners of Mortgagor; and

WHEREAS, Mortgagee is unwilling to make the Loan unless the indebtedness secured by the Note and the RG II Note (as hereinafter defined) provide for cross-default and cross-collateralization and RG II has agreed to execute and deliver a mortgage to Mortgagee of the RG II Premises to further secure the Note and to cross-collateralize the RG II Premises with the property described in this mortgage; and

WHEREAS, it is in the best interests of Mortgagor that this mortgage secure not only the Loan and other obligations of Mortgagor to Mortgagee described herein but that it should secure that certain Note executed by RG II to Mortgagee of even date herewith in the original principal amount of \$2,400,000 (the "RG

Land Title

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II Note") as well as all other obligations of RG II to Mortgagee under any documents now or hereafter evidencing or securing the RG II Note including that certain mortgage (the "RG II Mortgage") of even date herewith encumbering the RG II Premises and that certain Assignment of Leases and Rents of even date herewith (the "RG II Assignment") encumbering the RG II Premises, (the RG II Note, the RG II Mortgage, the RG II Assignment, and all other documents now or hereafter evidencing or securing the RG II Note collectively referred to herein as the "RG II Loan Instruments");

NOW, THEREFORE, the undersigned, in consideration of the Loan and said premises, and other good and valuable consideration the receipt and sufficiency of which is acknowledged, to secure the prompt payment of said indebtedness (the term "indebtedness" when used in this mortgage intending to describe all such indebtedness under the Loan Instruments (as hereinafter defined) as well as the RG II Loan Instruments) with interest thereon, and all renewals, extensions, modifications and replacements 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 the Note set forth, and those set forth in any other instruments now or hereafter securing said Note, and to further secure the performance of the covenants, conditions and agreements in the RG II Loan Instruments, Mortgagor has granted, bargained, sold and conveyed and hereby grants, bargains, sells and conveys to Mortgagee, its successors and assigns, all that certain real estate, lying and being in Shelby County, Alabama and described in Exhibit "A" which is attached hereto and incorporated herein by reference, (such property and all of the property, and interests hereinafter described being referred to herein as the "Mortgaged Premises"),

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

TOGETHER WITH Mortgagor's right, title and interest in all oral and written leases with, or other agreements for use and occupancy made or agreed to by, any person or entity pertaining to all or any part of the property herein mortgaged whether such leases have been heretofore or are hereafter made or agreed to and all rents, issues and profits of the Mortgaged Premises, the property described in this clause being hereby pledged primarily and on a parity with the Mortgaged Premises and not secondarily.

TOGETHER WITH all buildings and structures, now or hereafter constructed thereon, and all building materials, equipment, and fittings of every kind or character now owned or hereafter acquired by Mortgagor for the purpose of constructing buildings and structures thereon, and located at the Mortgaged Premises, and all improvements, fixtures and Mortgagor's articles of personal property now or hereafter attached to or used or adapted for use in the operation of the Mortgaged Premises, all of which shall be deemed part of the realty, including, but without being limited to all furniture, furnishings, carpeting, underpadding and drapes (except that owned by tenants in the Mortgaged Premises), heating and incinerating apparatus and all equipment whatsoever, all boilers, engines, motors, dynamos, generating equipment, wiring, piping, plumbing fixtures, cooling, air conditioning, ventilating, incinerating, sprinkling, intercommunicating, and vacuum cleaning systems and equipment, fire extinguishing apparatus, gas and electric fixtures, and cleaning and maintenance equipment; and

TOGETHER WITH any awards, settlements and considerations hereafter made or given for or in anticipation of any taking of or injury to the Mortgaged Premises through eminent domain or otherwise, including awards or damages for change of grade, and also all proceeds, unearned premiums, dividends and other payments upon any insurance at any time provided for the benefit of Mortgagee, all of which awards, damages, settlements, considerations, proceeds, premiums, dividends and payments are hereby assigned to Mortgagee and may be at any time collected by it.

TOGETHER WITH all of Mortgagor's rights further to encumber the Mortgaged Premises for debt except by such encumbrance 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 (i) representing as a special inducement to the Mortgagee to make the loans secured hereby that as of the date hereof there are no encumbrances to secure debt junior to this mortgage and (ii) covenanting that 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. This provision shall not be construed to in any way affect or detract from any of the restrictions contained in provisions (21), (27) and (28) hereof whereby junior liens and secondary financing are not permitted without the written consent of Mortgagee.

TO HAVE AND TO HOLD all of the aforescribed property and interests in property, and every part thereof, unto Mort-

gagee, its successors and assigns, forever. And Mortgagor covenants with Mortgagee that it is lawfully seized of the Mortgaged Premises and has a good right to sell and convey the same as aforesaid; that the Mortgaged Premises are free of all encumbrances except as herein set out on Exhibit B which is attached hereto and incorporated herein by reference, 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.

The Note, this mortgage, that certain Assignment of Leases and Rents of even date herewith (the "Assignment") encumbering the Mortgaged Premises, and all other documents now or hereafter evidencing or securing the Note are herein collectively referred to as the "Loan Instruments."

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. Mortgagor will comply with the terms and conditions of this mortgage, all other Loan Instruments, and the RG II Loan Instruments and any other documents executed in connection with the loans secured hereby.

(2) Mortgagor will pay to the Mortgagee upon request, and concurrently with payments of principal and interest, monthly, commencing on the first day of the second month after the date hereof, and until the principal sum secured hereby is fully paid, a sum equal to taxes, assessments, and casualty insurance premiums next due on the Mortgaged Premises (all as reasonably 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 taxes and assessments will become delinquent. Such sums shall be held by Mortgagee, without interest, to pay said taxes and special assessments, and such sums may be commingled with other assets of Mortgagee. In the event of a Default in the payment of the indebtedness secured hereby or in the performance of any of the covenants, conditions and agreements hereof, Mortgagee may apply such sums collected hereunder to such portions of the indebtedness secured hereby as Mortgagee may determine and/or to such taxes, assessments and insurance premiums, as Mortgagee may elect. Mortgagor shall, promptly upon receipt, deliver to Mortgagee all bills for such taxes, assessments and insurance premiums as they become due. Mortgagee shall not be required to determine the accuracy of any bill or the validity of any such taxes, assessments and insurance premiums.

Any excess funds accumulated under the provisions of this paragraph (2) remaining after payment of the items herein mentioned shall be credited at Mortgagee's option (i) to subsequent monthly payments of the same nature required hereunder, or (ii) utilized to effect an adjustment in the subsequent monthly payments evidenced by; but if any such item shall exceed the estimate therefor the Mortgagor shall make good the deficiency and failure to do so shall be a Default hereunder. If the Mortgaged Premises are sold under foreclosure or are otherwise acquired by Mortgagee after Default, any remaining balance of the accumulations under this paragraph (2) shall be credited to the principal and/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, unless such shall have been previously applied by Mortgagee in accordance with the foregoing provisions of this paragraph (2).

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(3) For the benefit of Mortgagee, Mortgagor will constantly keep in force "all risks" coverage, malicious mischief, rent coverage insurance policies and, when available to and required by Mortgagee, other hazard insurance, with respect to any and all of the Mortgaged Premises in the amount of the full insurable value thereof on a replacement costs basis, and Mortgagor will also constantly keep in force liability insurance pertaining to the Mortgaged Premises. Additionally, should the Mortgaged Premises become part of a flood zone as so designated by any federal, state, county, city or other governmental agency, then, in that event, Mortgagor shall be required to obtain and keep in force flood insurance in accordance with the terms hereinabove stated. Such insurance policies shall contain an agreement by the issuer thereof that no party thereto may cancel or modify any policies without at least thirty (30) days' prior written notice to Mortgagee, shall be endorsed with a standard non-contributory mortgagee clause, and shall contain such other terms, provisions and endorsements as shall be satisfactory to Mortgagee. All such insurance shall be provided in such manner, in such companies, in such form and substance and in such amounts as are 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 the hazard and other insurance policies covering the Mortgaged Premises and shall transfer, assign, set over and deliver any and all renewals and replacements thereof to Mortgagee with evidence of payment of all premiums no later than thirty (30) days prior to the expiration of any then existing policy, 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, together with any insurance claims in process, shall pass to, and become the property of, the purchaser at any

foreclosure sale hereunder, without the necessity of specifically describing said insurance or insurance policies or claims in process in the foreclosure notice, sale, deed or other proceedings in consummation of such foreclosure. If the Mortgagor fails to keep the Mortgaged Premises insured as above specified, then Mortgagee may, at its option, insure the Mortgaged Premises for such amounts as it shall determine against loss by "all risks" coverage 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, be payable on demand of Mortgagee and bear interest at a rate equal to the Default Rate provided for in the Note from the date of payment by Mortgagee. It is further understood and agreed between the parties hereto that any sum, or sums, of money received for any damage by fire or other casualty to any part of the Mortgaged Premises herein conveyed may at the option of Mortgagee and after notifying Mortgagor of the option chosen by Mortgagee, (1) be retained by the Mortgagee and applied toward payment of the indebtedness secured by this mortgage in such order as Mortgagee may elect either in whole or in part, or, (2) be applied in payment for any repair or replacement of the Mortgaged Premises, upon such terms and conditions pertaining to the completion of such repairs and replacement and the payment of all costs thereof as Mortgagee shall require, without affecting the lien of this mortgage for the full amount hereby secured.

Mortgagor agrees to give Mortgagee notice in writing of any damage to the Mortgaged Premises caused by fire or other casualty promptly after the occurrence of any such damage. In case of loss or damage the proceeds of claims under rental interruption insurance policies pertaining to the Mortgaged Premises shall be paid to Mortgagee for application to amounts due under the Note, this Mortgage and any other instruments additionally securing the indebtedness secured hereby as such amounts become due and payable, with the balance, if any, paid to Mortgagor subject to such controls as Mortgagee may impose to assure that such balance is first used, to the extent necessary, for payment of expenses of operation and maintenance of the Mortgaged Premises. After giving written notification to Mortgagor of its intention so to do, Mortgagee is hereby authorized (but not obligated) to act as attorney-in-fact for Mortgagor in obtaining, adjusting, settling and cancelling all insurance claims 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. All proceeds of insurance policies, except to the extent such proceeds exceed the total indebtedness then secured by this mortgage, shall be paid to Mortgagee solely, and not to Mortgagor and Mortgagee jointly. Notwithstanding any other provision of this Mortgage or the Note,

no application of insurance proceeds to the indebtedness shall result in a prepayment premium or have the effect of curing any Default or extending the time for making any payment due hereunder or under the 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.

(4) The Mortgaged Premises, including the improvements thereon, shall be kept in good condition and no waste committed or permitted thereon. Mortgagor shall permit Mortgagee and its agents to have access to the Mortgaged Premises at all reasonable times. Taxes and assessments or other charges which may be levied upon or accrue against said 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 except as to the lien for taxes which becomes a lien before they are due and payable; provided, however, that Mortgagor, upon first furnishing to Mortgagee such security as shall be satisfactory to Mortgagee 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 taxes or assessments.

(5) No building, other improvement, fixture or personal property included in the Mortgaged Premises shall be structurally or materially altered, removed or demolished without the Mortgagee's prior written consent, nor shall any fixture or chattel covered by this mortgage and adapted to the proper use and enjoyment of the Mortgaged Premises be removed or sold at any time without like consent unless actually replaced by an article of equal suitability and value owned by Mortgagor free and clear of any lien or security interest.

(6) Any lien 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 such security as shall be satisfactory to Mortgagee 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.

(7) Any and all legal requirements of the city, town, and/or county wherein the Mortgaged Premises are located and any department thereof and all state and federal laws, regulations, licenses, and permits including, without limitation any such pertaining to oil and hazardous waste materials, subdivision,

zoning and environmental controls shall be fully complied with by Mortgagor. Mortgagor shall also comply with all covenants, restrictions, easements and other agreements affecting the Mortgaged Premises and shall not take any action which would constitute a breach of, or detract from the benefits to the Mortgaged Premises of, such covenants, restrictions, easements and other agreements. This covenant shall survive the foreclosure of this mortgage or a taking of a deed in lieu of foreclosure by Mortgagee.

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(8) If Mortgagor fails to insure the Mortgaged Premises as hereinabove provided, or fails 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 liens, debts, and/or charges which might become liens superior to, inferior to, or in parity with, the lien of this mortgage, or fails to keep the Mortgaged Premises in good repair, as determined by Mortgagee, or fails to perform any other covenant, condition, or agreement of this mortgage, or of any other Loan Instrument or the RG II Loan Instruments, Mortgagee may, at its option, insure the Mortgaged Premises and/or pay said taxes, assessments, debts, liens and/or charges, and/or repair the Mortgaged Premises and/or perform such other covenant, condition or agreement and any money which Mortgagee shall have so paid or become obligated to pay in connection therewith shall constitute a debt of Mortgagor to Mortgagee additional to the indebtedness hereby specially secured, shall be secured by this mortgage, shall bear interest at a rate equal to the Default Rate provided for in the Note from date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable.

(9) No failure or delay of Mortgagee to exercise any option herein given to declare the maturity of the indebtedness 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 liens, debts or charges by Mortgagee, or the making of any repairs or the performance of any other agreement, condition or covenant of this mortgage shall not be taken or construed as a waiver of its right to any remedies to which Mortgagee may be entitled including, but without limitation to, 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 or to perform any such other obligations.

(10) If Mortgagee shall be made a party to any suit involving the title to the Mortgaged Premises or any portion thereof hereby conveyed 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 hereby conveyed that purports to be superior 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 fees and expenses as may be reasonable for such services, and if such fees and expenses are 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 a rate equal to the Default Rate provided for in the Note from the date paid or incurred and shall be immediately due and payable.

(11) All expenses incurred by Mortgagee, including reasonable attorney's fees and expenses, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the Mortgaged Premises hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the indebtedness hereby secured, shall bear interest at a rate equal to the Default Rate provided for in the Note from the date paid or incurred and shall be immediately due and payable.

(12) Mortgagor agrees to pay reasonable attorney's fees to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness secured by this mortgage. Whenever Mortgagor has an obligation to pay attorney's fees in this mortgage, such fees shall also include all such fees and expenses in connection with an appeal from any judgment.

(13) Notwithstanding that the assignment of awards, settlements and considerations hereinabove referred to in the granting clauses of this mortgage shall be deemed to be self-executing, Mortgagor shall execute, at Mortgagee's request, and forthwith deliver to Mortgagee, such valid assignments in recordable form if required by Mortgagee, assigning all condemnation claims, awards, damages, settlements and considerations to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge all indebtedness then secured by this mortgage, including, without limitation, any advances made by Mortgagee as herein provided then remaining unpaid, with interest thereon at the Default Rate, provided for in the Note to the date of payment, whether such indebtedness is then due or not by the terms of said note or of this mortgage.

(14) If a Default or Event of Default, as hereinafter defined, should occur hereunder or under the other Loan Instruments or the RG II Loan Instruments, 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. 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 fees and expenses incurred, shall be credited to such portions of all the indebtedness secured hereby and in such order as Mortgagee may determine.

(15) In the event that any payment due under this mortgage shall become overdue for a period in excess of five (5) days, a late charge of four cents (\$0.04) for each dollar (\$1.00) of principal and interest so overdue may be charged by the Mortgagee for the purpose of defraying the expenses incident to handling such delinquent payment.

(16) If a Default or Event of Default, as hereinafter defined, should occur hereunder, or under the other Loan Instruments or the RG II Loan Instruments, then and in that event and notwithstanding any other action Mortgagee may have taken to protect its interests pursuant to paragraph 8, the whole of said indebtedness, shall, at the option of the then holder of said indebtedness, be and become immediately due and payable and the holder of the debts 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, 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 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 mortgage indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. Alternatively, the equity of redemption from this mortgage may be foreclosed 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. The proceeds of any such sale referred to in either of the first two sentences of this paragraph (16) shall be applied: (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee and expenses, or reasonable attorneys'

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fees and expenses, for such services as may be, or have been, performed in any one or more of (i) the foreclosure of this mortgage, or (ii) the collection of said indebtedness, including any sums due hereunder or under the Loan Instruments or the RG II Loan Instruments, or (iii) 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 or 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 accordance with the provisions of this mortgage, together with interest thereon at the Default Rate provided in the Note; (c) to the payment and satisfaction of said indebtedness and interest on the Note and the other Loan Instruments to the day of sale; (d) to the payment and satisfaction of said indebtedness and interest on the RG II Note and the other RG II Loan Instruments; all in such order of application to the items of indebtedness referred to in clauses (b), (c) and (d) as the Mortgagee shall determine in its sole discretion; and (e) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. Mortgagor hereby, to the extent permitted by law, expressly waives its rights under Alabama Code Sections 35-11-2 through 35-11-4 to require marshalling of assets. 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.

(17) Following a Default or an Event of Default as hereinafter defined, either before or after the foreclosure sale, a receiver may be appointed by the court without notice, and without regard to the solvency or insolvency of Mortgagor, the then value of the Mortgaged Premises or whether the premises are then occupied as a homestead. The receiver shall have the power to collect the rents and income from the Mortgaged Premises during the pendency of the foreclosure sale and, in the case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not. The receiver shall have all other powers for the protection, possession, management and operation of the Mortgaged Premises which an absolute owner would have, but the net rents in the hands of the receiver shall be applied to all the indebtedness secured hereby in such order as the Mortgagee shall determine and/or to such expenses of the receivership or foreclosure suit as the court may direct.

(18) In the event of any Event of Default, as hereinafter defined, 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, without notice to or demand upon Mortgagor, 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 in such order as the Mortgagee may determine.

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. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists a Default.

(19) In the event of the enactment of any law by the State of Alabama after the date of this mortgage 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 continually thereafter pay any such obligation imposed on Mortgagee thereby (and such will be included in the payments provided for in paragraph (2)), and in the event Mortgagor fails to pay such obligation or is prohibited by law from making such payment (in the opinion of counsel for Mortgagee), the whole of the indebtedness 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.

(20) Should Mortgagor become insolvent or bankrupt; or should a receiver of Mortgagor's property be appointed and not be removed within thirty (30) days thereafter; or should Mortgagor intentionally damage or attempt to remove any improvements, fixtures or personal property upon the Mortgaged Premises; or should it be discovered after the execution and delivery of this mortgage that there is a defect in the title to the Mortgaged Premises or a lien or encumbrance of any nature on said property prior to the lien hereof, or in case of an error or defect in the Note or this mortgage or in the execution or the acknowledgment

thereof, and if the said Mortgagor shall fail, for thirty (30) 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 to correct any error in said Note or this mortgage or its execution or to otherwise cure and correct any of the foregoing; then, upon any such Default, failure or contingency, the Mortgagee, or other holder or holders of said indebtedness, or any part thereof, shall have the option or right, without notice or demand, to declare all of said indebtedness then remaining unpaid immediately due and payable, and may immediately or at any time thereafter foreclose this mortgage by the power of sale herein contained or by suit, as such Mortgagee, or other holder or holders of said indebtedness, may elect, all in accordance with the provisions of paragraph (16) hereof.

(21) 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 mortgage; and this mortgage shall continue as a first lien on the Mortgaged Premises and any other rights and interests covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid and until the indebtedness evidenced or secured by the RG II Loan Instruments is likewise fully paid and is satisfied according to their provisions; 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 mortgage; 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.

If the Mortgagor shall grant any lien of any nature on the property conveyed hereby junior to this mortgage, such junior lien shall be subject to the condition that the time for the payment of the indebtedness hereby secured, including without limitation the indebtedness evidenced by the RG II Note, 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 other Loan Instruments and by the RG II Loan Instruments, any obligation contained therein 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 for the payment of the indebtedness secured hereby. This provision shall not be deemed to permit

Mortgagor to create further liens on the Mortgaged Premises without the prior written consent of the holder of the note secured by this mortgage.

(22) 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, it or the parties so holding possession shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale, and any tenant failing or refusing to surrender possession upon demand shall be guilty of forcible 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 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. Nothing herein shall be deemed to limit the applicability and enforceability of any subordination or non-disturbance and attornment agreements which may be entered into between Mortgagee and tenants.

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(23) The Mortgaged Premises are improved with buildings being used for apartments, and other appurtenances which are leased to various tenants. By an agreement executed contemporaneously herewith Mortgagor has assigned all leases presently existing, or hereafter made, including without limitation, rentals payable in respect thereof, to Mortgagee as additional security for the repayment of the indebtedness secured hereby. Mortgagor agrees not to permit any lease to be made of any portion or all of the Mortgaged Premises, without the prior written consent of Mortgagee as to the form and content of each such lease, including, without limitation, the tenant thereunder, rental and other financial terms thereof and the term thereof, and not permit any material modification, surrender, termination or concession with respect to any approved or existing lease without the prior written consent of Mortgagee. Mortgagor agrees not to collect rent under any of said leases for more than each current month in advance and to faithfully perform the covenants imposed on Mortgagor by the said leases and by said Assignment of Leases, and agrees that any default in the performance of Mortgagor's obligations as lessor under any of said leases, and/or Assignment of Leases 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.

(24) Mortgagor shall furnish to Mortgagee within ninety (90) days after the close of each fiscal year of Mortgagor an audited annual statement of the operation of the Mortgaged Premises which shall include, without limitation, a detailed

statement of income and expenditures. Such statement shall be prepared in accordance with generally accepted accounting principles consistently applied and shall be certified and prepared by a certified public accountant acceptable to Mortgagee. In the event Mortgagor fails to comply with the provisions of this paragraph, the Mortgagee may conduct its own audit using either its internal auditing staff or, at its option, other certified public accountants and, in either such case, Mortgagor agrees to cooperate with such auditors and to pay all fees, costs and/or charges imposed by such auditors and any money which Mortgagee shall have so paid or become obligated to pay in connection therewith shall constitute a debt of Mortgagor to Mortgagee additional to the indebtedness hereby specially secured. Such debt shall be secured by this Mortgage, and shall bear interest at a rate equal to the Default Rate provided for in the Note from the date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable.

(25) Mortgagor covenants and agrees to provide and maintain, during the term of the loans secured hereby, paved parking area on the Mortgaged Premises sufficient to comply with all governmental requirements.

(26) Mortgagor and Mortgagee are respectively the Debtor and Secured Party in certain Uniform Commercial Code Financing Statements covering personal property referred to or described herein; and it is agreed that:

(a) This instrument shall also constitute a Security Agreement under the Uniform Commercial Code as in force in the State of Alabama.

(b) In order to further secure the payment of the indebtedness described herein and the performance of all the obligations, agreements, terms and conditions of the Loan Instruments and the RG II Loan Instruments, the Mortgagor hereby grants to Mortgagee a security interest in all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Mortgagor now or hereafter attached or affixed to or used in and about the building or buildings now or hereafter erected or placed on the property and intended to be attached thereto or installed therein, together with all accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all of which is hereinafter collectively called the "Collateral," and together with all proceeds of the Collateral.

(c) Mortgagor represents that it is the owner of the Collateral and has good right and authority to grant a security interest in the Collateral, that there is no presently outstand-

ing adverse lien, security interest or encumbrance in or on the Collateral or its proceeds (except for the security interest granted in this mortgage), and that there is no financing statement covering the Collateral or its proceeds on file in any public office; and Mortgagor agrees not to permit any adverse lien, security interest, encumbrance, or financing statement to be outstanding with respect to the Collateral (except for the security interest granted in this mortgage).

(d) So long as the indebtedness secured hereby or any part thereof remains unpaid, Mortgagor covenants and agrees with the Mortgagee as follows:

(i) Mortgagor shall account fully and faithfully for and, if the Mortgagee so elects, shall promptly pay or turn over to the Mortgagee the proceeds in whatever form received from the disposition in any manner of any of the Collateral. Mortgagor shall at all times keep any proceeds from the Collateral separate and distinct from other property of Mortgagor and shall keep accurate and complete records of such proceeds.

(ii) Mortgagor shall sign and execute alone or with the Mortgagee any financing statement or other document or procure any document, and pay all reasonably connected costs, deemed advisable by the Mortgagee to protect the security interest hereunder against the rights or interests of third persons.

(iii) The Collateral will be used in the business of Mortgagor and shall remain in Mortgagor's possession or control at all times at Mortgagor's risk of loss and shall be located and maintained on the property described herein except for its temporary removal in connection with its ordinary use or unless Mortgagor notifies the Mortgagee in writing and the Mortgagee consents in writing in advance of its removal to another location.

(iv) Mortgagor may sell or dispose of Collateral upon replacing the same by, or substituting for the same, other Collateral of at least equal value and serviceability to the Mortgaged Premises, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(e) Upon the occurrence of any Default under this mortgage or under the Note or under the other Loan Instruments or the RG II Loan Instruments, Mortgagee may, with respect to the

Collateral, exercise its rights of enforcement under the Uniform Commercial Code; and, in conjunction with, in addition to, or in substitution for those rights and remedies and all other rights and remedies provided under this instrument:

(i) Mortgagee may enter upon any premises of the Mortgagor to take possession of, assemble and collect the Collateral; and

(ii) Mortgagee may require Mortgagor to assemble the Collateral and make it available at a place the Mortgagee designates which is mutually convenient to allow the Mortgagee to take possession or dispose of the Collateral; and

(iii) Mortgagee may remedy any Default in any reasonable manner without waiving the Default remedied and without waiving any other prior or subsequent Default; and

(iv) Written notice mailed to Mortgagor as provided herein five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(v) Any sale of all or any part of the Collateral shall be deemed to have been conducted in a commercially reasonable manner if held contemporaneously with, or included with, the sale of real property described herein under power of sale as provided in this mortgage; and

(vi) In the event of a sale, whether made by Mortgagee under the terms hereof, or under judgment of a court, the Collateral and all other property constituting the premises may, at the option of the Mortgagee, be sold as a whole or in part; and

(vii) It shall not be necessary that the Mortgagee take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this paragraph is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale.

(f) The Collateral is intended to be and shall be subject to all the other provisions of this instrument, and the terms and provisions of this paragraph shall not in any way limit

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any rights or remedies of the Mortgagee with respect to the Collateral under other provisions of this instrument.

(27) Mortgagor recognizes that any secondary or junior financing placed upon the Mortgaged Premises could (a) divert funds which would otherwise be used to pay the indebtedness evidenced and secured by the Loan Instruments; (b) result in acceleration and foreclosure by any such junior encumbrance, which could force the Mortgagee to take measures and incur expenses to protect its security; and (c) impair Mortgagee's right to accept a deed in lieu of foreclosure from the Mortgagor, as a foreclosure by the Mortgagee would be necessary to clear the title to the Mortgaged Premises. Mortgagor covenants and agrees that, so long as the indebtedness secured by this mortgage is outstanding, there will be no secondary financing, mortgage or encumbrance with respect to the Mortgaged Premises without Mortgagee's prior written approval. If Mortgagor should violate this covenant, the Mortgagee shall be entitled 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 the Mortgagee in the case of Default in the observance of and compliance with the terms and conditions of this mortgage.

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(28) Mortgagor acknowledges that Mortgagee, in determining whether or not to make the loan secured hereby, examined the qualifications and creditworthiness of the Mortgagor and its general partners, found them to be acceptable, and relied and will continue to rely upon the same as the means of repayment of the indebtedness evidenced and secured by the Loan Instruments. Mortgagor also acknowledges that Mortgagee evaluated the background and experience of Mortgagor and its general partners in owning and operating property such as the Mortgaged Premises, found it acceptable and relied and will continue to rely upon the same as the means of maintaining the value of the Mortgaged Premises. The Mortgagor acknowledges that it and its general partners are business persons or entities well-experienced in borrowing money and owning and operating property such as the Mortgaged Premises, were ably represented by licensed attorneys-at-law in the negotiation and documentation of the loan secured hereby and bargained at arm's length, in good faith, and without duress of any kind for all of the terms and conditions of the Loan Instruments and the RG II Loan Instruments, including without limitation this section.

The original Mortgagor hereunder is an Alabama limited partnership whose sole general partners are William C. Hulsey, Frank A. Nix, and Sims R. Beavers. Such general partners, in equal shares among themselves, have interests in the partnership of one percent (1%) of cash flow distributions and fifteen

percent (15%) of "residual" distributions, such "residual" distributions being defined by the terms of paragraph 8.3 of the Riverchase Gardens, Ltd. Partnership Agreement. Except as otherwise provided in this paragraph, (i) any encumbrance, pledge, transfer, or other alienation upon or of the Mortgaged Premises or any ownership interest in Mortgagor, or (ii) any change in the present ownership of all or any part of the Mortgaged Premises or the RG II Premises or any interest therein, or (iii) any change in the general partners comprising the limited partnership which is the original Mortgagor or any transfer or reduction or any change whatsoever of the general partnership interests of such general partners of the original Mortgagor shall, at the option of the Mortgagee, constitute an Event of Default hereunder. Notwithstanding the foregoing, any one of the general partners shall have the right to transfer any or all of his respective partnership interest to either or both of the other two general partners. In the event of the death of one or two, but not more than two, of the general partners, the surviving general partner(s) may own the entire interest(s) of the deceased partner(s) provided that under the terms of the partnership agreement of the Mortgagor any decision respecting the partnership may be made by any one of the general partners. In the event that Mortgagee shall give its written consent to any such change, encumbrance, pledge, transfer or other alienation as is referred to in this paragraph, the provisions of this paragraph will continue to apply with respect to any further change in the ownership of all or any part of the Mortgaged Premises or the RG II Premises or any interest therein or of the then Mortgagor and any further encumbrance, pledge, transfer or other alienation upon or of the Mortgaged Premises or the RG II Premises or any ownership interests in the then Mortgagor. Except for the consents as provided above, it is expressly understood and agreed that Mortgagee may condition its consent to any transfer or any transfer of the benefits of the Loan, secured by this mortgage, upon the fulfillment of certain requirements including, but not limited to, the following: (i) that the proposed transferee be acceptable in all respects to Mortgagee in Mortgagee's sole discretion; (ii) that the purchaser specifically assume liability for the outstanding balance of the indebtedness secured hereby and the obligations to be performed under the obligation and this mortgage to the extent provided for herein and in the other Loan Instruments and in the RG II Loan Instruments; (iii) that fees and other payments and/or charges be paid to Mortgagee at the time of the transfer; (iv) that the interest rate payable under the obligation be increased; (v) that the term of the Loan be modified or that other modifications and/or amendments be made to the Loan Instruments or the RG II Loan Instruments; (vi) that a new policy of Mortgagee's title insurance be obtained; (vii) that new financing statements be

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filed; and (viii) that endorsements to existing or new hazard and other insurance policies be obtained.

It is further expressly understood and agreed that Mortgagee shall not consent to (i) any transfer of less than the entire Mortgaged Premises and the RG II Premises, or (ii) any transfer in any form, including but not limited to a sale and leaseback, which has the effect of creating additional liens on or expense to or charges against the Mortgaged Premises or the RG II Premises.

Mortgagor shall at all times engage a professional manager for the Mortgaged Premises acceptable to and approved by Mortgagee, such approval not to be unreasonably withheld or delayed, (it being understood that Royal Homes, Inc. is acceptable as such professional manager) pursuant to a management agreement acceptable to Mortgagee. Mortgagee must approve of any change in such professional management of the Mortgaged Premises and must approve of any material change in the Management Agreement.

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(29) Mortgagor represents to Mortgagee that the Mortgaged Premises are located within the city limits of Hoover, Alabama, and that they comply with all such governmental, zoning, and subdivision ordinances (including, without limitation, so-called bulk and dimensional coverages and the like) and other governmental regulations without reliance on adjoining or other properties other than dedicated easements and rights of way for public streets and utility and storm drainage satisfactory to Mortgagee, and without reliance on any "Grandfather" provisions. In the event the Mortgaged Premises shall hereafter become subject to any such ordinances under which the Mortgaged Premises and/or the use thereof is placed in a "Grandfather" status, Mortgagor shall provide and maintain such insurance endorsements as Mortgagee shall require including, without limitation, demolition and contingent liability endorsements.

(30) Mortgagor agrees to execute, or cause to be executed and deliver or cause to be delivered, to Mortgagee on reasonable notice any further security agreements, financing statements, other agreements and assurances of title deemed advisable by Mortgagee to effectuate, confirm and evidence a first lien on and a validly perfected paramount security interest in the Mortgaged Premises. Mortgagor covenants and agrees to pay when due any recording fees or taxes in connection with recording this mortgage.

(31) The Mortgagor recognizes that, during the term of this mortgage, the Mortgagee:

(a) May be involved in court or administrative proceedings, including, without limitation, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, condemnation, housing authority or pollution control proceedings of any kind, to which Mortgagee may be a party by reason of this mortgage or the indebtedness secured hereby or in which the Mortgaged Premises or the RG II Premises are involved directly or indirectly; or

(b) May make preparations and take any action for the commencement of any suit for the foreclosure hereof or for the exercise of any remedies under this mortgage or under the other Loan Instruments or the RG II Loan Instruments executed concurrently herewith, which may or may not be actually commenced; or

(c) May make preparations for the defense of any threatened proceeding which might affect the Mortgaged Premises or the RG II Premises or the priority, validity or effectiveness of the lien created or intended to be created hereby, which proceeding may or may not be actually commenced; or

(d) May enter into negotiations with Mortgagor or agents of Mortgagor in connection with the existence of or the curing of any Default, the assumption of liability for any of the indebtedness represented by the Note or the RG II Note, the transfer of the Mortgaged Premises in lieu of foreclosure, or the obtaining of Mortgagee's approval of actions taken or proposed to be taken by the Mortgagor or its agents which approval is required by the terms of this mortgage or the other Loan Instruments or RG II Loan Instruments.

All expenditures (which may be estimated as to items to be expended after sale under power of sale or after judgment) made by Mortgagee in connection with any of the foregoing for attorneys' fees and expenses, appraisers' fees and expenses, expert evidence, expenses of procuring title examinations, policies and certificates, court costs, and all other like and unlike costs which the Mortgagee deems to be necessary or desirable, shall be paid by the Mortgagor.

(32) Whenever used in this mortgage or in the Note which this mortgage secures or in the other Loan Instruments or the RG II Loan Instruments, the words "Default" or "Event of Default" shall mean the failure of Mortgagor to make any payment of principal and/or interest on said Note or any other monetary payment required under the Loan Instruments on any due date therefor, or the failure by Mortgagor to abide by any other

covenants or fail to meet any other obligations contained in the Loan Instruments. Each of the following events shall constitute a Default or Event of Default under this mortgage in addition to any other, notwithstanding any actions Mortgagee may have taken to protect its interests under paragraph 8 hereof, and shall entitle Mortgagee to all of the rights and remedies referred to in this mortgage, including without limitation, paragraph 16 hereof:

(a) The failure of Mortgagor to make any payment required under the Note or the Loan Instruments as the same shall become due and payable;

(b) The failure of Mortgagor to perform in a full and timely manner any of the other covenants, obligations, agreements, terms or conditions of this mortgage, or any of the other Loan Instruments; provided, however, that any breach by the Mortgagor of any other covenant, obligation, agreement, term or condition of this mortgage or any of the other Loan Instruments shall not constitute an Event of Default hereunder if the Mortgagor shall cure said breach within thirty (30) days after written notice from the Mortgagee specifying said breach; and provided further that Mortgagee shall have no obligation to Mortgagor to give such notice of a Default by Mortgagor in the covenant to carry insurance as provided in paragraph 3 hereof or for an intentional breach or an intentional Default in the covenants, agreements, or conditions of this mortgage by Mortgagor;

(c) The untruth of any representation made herein or the breach of any of Mortgagor's warranties or representations contained herein or in any of the other Loan Instruments or in the Submissions referred to in the loan commitment dated August 14, 1986 or in any other document executed in connection with the loan secured hereby; provided, however, that the untruth of any representation made herein or the breach of any of Mortgagor's warranties or representations contained herein or in any of the other Loan Instruments or in the Submissions referred to in the loan commitment dated August 14, 1986 or in any other document executed in connection with the loan secured hereby shall not constitute an Event of Default hereunder if the Mortgagor shall cure said breach within thirty (30) days after written notice from the Mortgagee specifying said breach;

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(d) Any uninsured loss, damage, destruction or the taking by eminent domain or other condemnation proceedings of any substantial portion of the Mortgaged Premises or of any part of the Mortgaged Premises which impairs any of the present or then existing uses of the Mortgaged Premises;

(e) The attachment of a levy or execution upon all or any part of the Mortgaged Premises which is not dismissed within thirty (30) days;

(f) The appointment of a trustee or conservator of all or any part of the Mortgaged Premises or of Mortgagor's business pertaining to the operation of the Mortgaged Premises which is not dismissed within thirty (30) days;

(g) The occurrence of any of the following events:

(i) An admission in writing by Mortgagor or any guarantor of the Note or any general partner of Mortgagor of inability to pay debts as they become due;

(ii) The institution by Mortgagor, or any such guarantor, or any of the general partners of Mortgagor, of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing;

(iii) The institution against the Mortgagor or any such guarantor or any general partner of Mortgagor of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing which proceedings are not dismissed within sixty (60) days of filing;

(iv) The making of a general assignment for the benefit of creditors by the Mortgagor or any such guarantor or general partner of Mortgagor;

(v) The issuance of a writ or warrant of attachment or any similar process against all or a major part of the Mortgaged Premises which is not stayed within sixty (60) days of issuance or the lapse of any such stay.

(33) If Mortgagor shall pay the indebtedness secured by this mortgage and shall reimburse Mortgagee, its successors and

assigns, for any amounts it may have expended pursuant to any authorizations contained in this mortgage, including, without limitation, sums spent in payment of taxes, assessments, insurance, other liens, and repairs, and interest thereon, and shall pay any other sums required to be paid by it under any of the provisions of this Mortgage and any of the other Loan Instruments, and shall do and perform all other acts and things herein agreed to be done, and if RG II shall similarly pay the indebtedness evidenced by the RG II Note and fulfill all of the obligations and requirements of the other RG II Loan Instruments then, and only then, shall this conveyance be null and void; otherwise it shall remain in full force and effect.

BOOK 99 PAGE 941 (34) Except as otherwise provided herein, and in the Note of even date herewith, Mortgagee waives any right to any money judgment, whether by an action brought upon the Note as secured hereby or an action brought for a deficiency judgment against Mortgagor, or any partner thereof, (except as such right arises out of a guaranty or other agreement by any partner of Mortgagor to Mortgagee) or any successor of the Mortgagor entitled to the Mortgaged Premises, and the extent of liability on the part of said Mortgagor or successor in title is limited solely to the Mortgaged Premises and the RG II Premises and other security granted to the Mortgagee hereof under the Loan Instruments and the RG II Loan Instruments and any instrument now or hereafter further securing the Note or the RG II Note, including, and without limitation, policies of hazard insurance maintained on the Mortgaged Premises or the RG II Premises and any proceeds thereof and any award of damages on account of any condemnation for public use of or injury to the Mortgaged Premises or the RG II Premises, the Mortgagee agreeing to look solely to the Mortgaged Premises and the RG II Premises and security, policies, proceeds and awards in satisfaction of the indebtedness evidenced by the Note and the RG II Note in the case of a Default or an Event of Default herein or therein, or in any other Loan Instrument or other RG II Loan Instrument except that Mortgagor or its successor in title shall be subject to personal liability (i) to the extent the rents, issues and profits of the Mortgaged Premises are received by such party after a breach of condition or covenants in the Loan Instruments or the RG II Loan Instruments (whether or not such obligation is due the Mortgagee) and are not applied to the indebtedness evidenced by the Note or the RG II Note or the normal operating expenses of the Mortgaged Premises or the RG II Premises; (ii) to the extent rents, issues and profits of the Mortgaged Premises are received by such party after acceleration of the indebtedness evidenced by the Note pursuant to a right on the part of the Mortgagee thereof so to accelerate the same, and are not applied to the indebtedness evidenced by the Note or the RG II Note or to the normal operating expenses of the Mortgaged Premises; (iii) to the extent that

rents from the Mortgaged Premises or the RG II Premises are collected for more than each current month in advance or to the extent payments in the nature of security for the performance of lessee's obligations under any lease of all or a part of the Mortgaged Premises or the RG II Premises are held, at the time of the occurrence of a breach of condition or covenant referred to in clause (i) above or acceleration referred to in clause (ii) above; (iv) to the extent that Mortgagee may suffer any damage as a result of a material misrepresentation made herein or in any of the Loan Instruments or the RG II Loan Instruments, certifications or documents executed by or on behalf of the Mortgagor or any other document executed in connection with the loan evidenced hereby; (v) to the extent that any condemnation or casualty insurance proceeds shall be misapplied; and, (vi) to the extent that any expense, damage, loan or liability is incurred by State Mutual arising from the application of oil or hazardous wastes or materials statutes to the Mortgaged Premises or to the RG II Premises.

(35) 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 express mail, or registered or certified mail, return receipt requested, addressed as follows:

Mortgagee:

440 Lincoln Street
Worcester, Massachusetts 01605
Attention: Real Estate Investments

Notices to Mortgagor shall be delivered or mailed as follows:

Riverchase Gardens, Ltd.
2117 Second Avenue North
Birmingham, Alabama 35203

or to such other address as either party may have given to the other by notice as hereinabove provided.

(36) Mortgagor agrees to pay any fines, charges, fees, expenses or other liabilities to the extent such liabilities arise from or pertain to oil or hazardous waste statutes to the extent applicable to the Mortgaged Premises. Mortgagor represents and warrants to Mortgagee that the Mortgaged Premises are not now nor have they ever been a Disposal Site for Hazardous Wastes as such terms are defined in The Hazardous Wastes Management Act of 1978 (Code of Alabama 1975, §22-30-1 et seq.) or any other federal, state or local act including, without limitation, the

Comprehensive Environmental Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. §§9601 et seq. (1982). Mortgagor further represents and warrants that it is not subject to or liable for any response costs or any other remedial actions under any federal, state or local hazardous waste statutes including, without limitation, CERCLA. Mortgagor does hereby agree to indemnify and forever save Mortgagee harmless from any and all expense, damage, loss or liability incurred by Mortgagee arising from the application of such statutes to Mortgagee, which indemnity shall survive any foreclosure of this Mortgage or the taking by the Mortgagee of a deed in lieu of foreclosure.

(37) 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 corporation, and all covenants and agreements herein contained shall bind the heirs, executors, administrators of Mortgagor, and their successors and assigns in title, and every option, right and privilege herein reserved or secured to Mortgagee shall inure to the benefit of its successors and assigns. All references herein to "Mortgagor" and "Mortgagee" shall include all such respective heirs, executors, administrators, and successors and assigns in title of Mortgagor and successors and assigns of Mortgagee.

(38) The unenforceability or invalidity of any provision or provisions of this mortgage shall not render any other provision or provisions herein contained enforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law; and if any application of any term, restriction or covenant to any person or circumstance is deemed unenforceable or invalid, the application of such term, restriction, or covenant to any other person or circumstances shall remain unaffected to the extent permitted by law.

(39) This mortgage shall be governed by and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed for and in its name by its duly authorized general partners on this, the 13th day of November, 1986.

RIVERCHASE GARDENS, LTD.
an Alabama limited partnership

By: William C. Hulsey
William C. Hulsey
Its General Partner

By: Frank A. Nix
Frank A. Nix
Its General Partner

By: Sims R. Beavers
Sims R. Beavers
Its General Partner

STATE OF ALABAMA)
COUNTY OF Jefferson)

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I, the undersigned Notary Public in and for said County in said State, hereby certify that William C. Hulsey, Frank A. Nix, and Sims R. Beavers, whose names as general partners of RIVERCHASE GARDENS, LTD., an Alabama limited partnership, are signed to the foregoing instrument and who are known to me to be such general partners, acknowledged that they, being informed of the contents of this instrument, and with full authority executed the same voluntarily as such general partners of RIVERCHASE GARDENS, LTD., an Alabama limited partnership, on the day the same bears date.

BOOK Given under my hand and official seal this 13th day of November, 1986.

J. Fred Powell
NOTARY PUBLIC

[NOTARIAL SEAL]

This instrument was prepared by J. Fred Powell, Attorney at Law, 3000 SouthTrust Tower, Birmingham, Alabama 35203.

EXHIBIT A

Parcel I:

Lot 1, according to the Survey of Riverchase Gardens, First Sector as recorded in Map Book 8, page 153 in the Probate Office of Shelby County, Alabama.

Parcel II:

Easements for the benefit of Parcel I as created by Reciprocal Easement Agreement dated December 1983 and recorded in Volume 54, page 177 as amended by amendment dated November 13, 1986, and recorded in Volume 99, page 905, for the purposes described in that easement.

EXHIBIT B

RIVERCHASE GARDENS, LTD. - LIMITED ENCUMBRANCES

1. Ad valorem taxes for the year 1987 which said taxes are not due and payable until October 1, 1987.
2. Easement as shown on recorded Map in Map Book 8, page 153 as located on survey of Coulter, Gay, Salmon and Martin, revised 10/8/86.
3. 25' and 50' permanent slope easement as shown by survey of Coulter, Gay, Salmon and Martin, revised 10/8/86.
4. Mineral and mining rights and rights incident thereto recorded in Deed Book 64, page 50 in the Probate Office of Shelby County, Alabama.
5. Agreement with Blue Cross Blue Shield recorded in Misc. Book 19, page 690 in said Probate Office.
6. Declaration of protective covenants, agreements, easements and charges and liens for Riverchase (Business), recorded in Misc. Book 19, page 633 in said Probate Office.
7. Item #6 in deed recorded in Deed Book 331, page 757.
8. Terms and Provisions and Conditions of Reciprocal Easement Agreement as recorded in Volume 54, page 177 in the Probate Office of Shelby County, Alabama, and as modified by Volume 99, page 905.

EXHIBIT C

RIVERCHASE GARDENS II, LTD. - PREMISES DESCRIPTION

Parcel I:

Lot 2, according to the Survey of Riverchase Properties Second Addition to Riverchase, as recorded in Map Book 9, page 40 in the Probate Office of Shelby County, Alabama.

Parcel II:

Easements for the benefit of Parcel I as created by Reciprocal Easement Agreement dated December 13, 1983 and recorded in Volume 54, page 177 and amended by amendment dated November 13, 1986 and recorded in Volume 99, page 905 for the purposes described in that easement.

Parcel III:

Easement for the benefit of Parcel I as created by that certain Easement dated December 13, 1983 and recorded in Real 2571, page 628 and refiled by Volume 99, page 911 for the purposes of a sanitary sewer pipeline.

Parcel IV:

Easement for the benefit of Parcel I as created by that certain Easement dated November 30, 1983 and recorded in Real 2429, page 31 and refiled in Volume 85, page 56 for the purpose of a sanitary Sewer pipeline.

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

1986 NOV 13 PM 2:49

Thomas A. Snowdon, Jr.
JUDGE OF PROBATE

1. Bond Tax	\$	_____
2. Adm. Fee	\$	400.00
3. Recording Fee		12.50
4. Indexing Fee		1.00
TOTAL		5473.50

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