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Shoal Run
4/20/87

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AMENDED AND RESTATED
MORTGAGE AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), made this 21st day of April, 1987, between DJ-II INVESTMENTS, LTD., an Alabama limited partnership, with its principal office at 530 Beacon Parkway W, Suite 900, Birmingham, Alabama 35209, ("Borrower"), and BALCOR PENSION INVESTORS VI, an Illinois limited partnership, with its principal office at 4849 Golf Road, Skokie, Illinois 60077, ("Lender");

WITNESSETH THAT:

WHEREAS, Borrower executed in favor of CENTRAL BANK OF THE SOUTH ("Construction Lender") a Mortgage and Security Agreement ("Construction Mortgage"), dated January 28, 1986, recorded with the Judge of Probate of Shelby County, Alabama, on January 29, 1986, in Book 059, Page 129, securing the principal amount of \$9,000,000 evidenced by a Promissory Note of even date therewith (the "Construction Note").

WHEREAS, Construction Lender has assigned its rights and interests in the Construction Note and the Construction Mortgage to Lender by an instrument dated April 21, 1987 to be recorded in the Probate Office of Shelby County prior to the recording hereof.

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WHEREAS, Borrower and Lender have agreed to increase the indebtedness evidenced by the Construction Note by \$450,000 and amend and restate the Construction Note as evidenced by the Amended and Restated Secured Promissory Note of even date herewith executed by Borrower in favor of Lender (the "Note"). The Note matures on April 1, 1999, and contains provisions for acceleration in event of default, contains provisions limiting prepayment, and provides for payment of costs of collection, including attorneys' fees in the event of default, waives demand, presentment for payment, protest, notice of nonpayment and protest, and the terms of which are hereby incorporated by reference and made a part hereof.

WHEREAS, Borrower and Lender have agreed to amend and restate the provisions of the Construction Mortgage, as follows:

NOW, THEREFORE, Borrower, in order to secure to Lender the repayment of the indebtedness evidenced by the Note, with "Stated Interest" thereon and certain "Additional Interest" as provided therein, the payment of all other sums with interest thereon in accordance herewith and the Note, and the performance of the covenants and agreements of Borrower contained herein, has bargained and sold and does hereby grant, warrant, bargain, sell, transfer, assign, convey and confirm and mortgage unto Lender the garden apartment complex located in Birmingham, Shelby County, Alabama commonly known as Shoal Run Apartments, which property is legally described in Exhibit A attached hereto; together with all buildings,

THIS INSTRUMENT PREPARED BY AND
SHALL BE RETURNED TO:

JOY S. GOLDMAN
Schwartz & Freeman
Suite 3400
401 North Michigan Avenue
Chicago, Illinois 60611
(312) 222-0800

Land Title

structures and other improvements and chattels now on said land or that may hereafter be erected or placed thereon, and items which are used or useful in the operation of a luxury apartment complex; swimming pools and tennis courts located in or on the premises; all elevators, motors and machinery; also together with all mineral, oil and gas rights and interests; also together with all shrubbery and trees now growing or that hereafter may be planted or grown thereon; and also together with all crops and/or produce of any kind now growing or that may be hereafter growing, grown or produced upon said land or any part thereof; and also development rights or credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock;

Also together with all and singular the ways, easements and other rights, and all tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including but not limited to all rights in any abutting public or private streets and alleys and in any submerged lands adjacent thereto (hereinafter referred to as the "Premises");

And all present and future rents, issues, avails, profits and proceeds (hereinafter referred to as the "Rents") of or from the Premises, the "Leases" and/or and the "Equipment" (both of which terms are hereinafter defined), howsoever occurring, existing, created or arising;

And all present and future permits, licenses, franchises and agreements of or from the Premises (collectively, the "Licenses"), leases, agreements, tenancies, licenses and franchises (hereinafter collectively referred to as the "Leases") of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or useable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, including, without limitation, those Licenses and Leases issued by any governmental authority, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessees' performances thereunder;

And all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment, the Licences and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto;

And all present and future apparatus, machinery, equipment, fixtures and articles of personal property of any and every kind and nature whatsoever used, attached to, installed or located in or on the Premises, or required for use in or on or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof and accessions thereto to the extent owned by Borrower (hereinafter referred to as the "Equipment"), including, but not limited to, any such item of Equipment now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, laundry service and all other related or other such services (all of the immediately above mentioned items of Equipment being deemed to be a part of the Premises, whether physically attached thereto or not);

And all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases or the Equipment;

And all proceeds of each and every of the foregoing.

Borrower hereby grants to Lender a continuing security interest in (i) the funds held by Lender pursuant to a certain Pledge and Escrow Agreement; (ii) all motor vehicles; (iii) that portion of the Mortgaged Property (as hereinafter defined) constituting property or interests in property, whether real or personal, tangible or intangible, now owned or existing and hereafter acquired and arising, which are subject to the priority and perfection of security interest provisions of the Uniform Commercial Code or any similar and applicable law, statute, code or other governing body of law; and (iv) the Equipment and all proceeds thereof to secure payment of the indebtedness and obligations secured by this Mortgage.

TO HAVE AND TO HOLD the above described property and interests in property ("Mortgaged Property") unto Lender, its successors and assigns, forever;

PROVIDED ALWAYS, that upon full payment of the Note secured hereby plus all accrued Stated Interest and Additional Interest, or extensions or renewals thereof, in whole or in part, and payment in full of "Borrower's Liabilities" (as hereinafter defined) and secured hereby, and Borrower faithfully and promptly having complied with and performed "Borrower's Obligations" (as hereinafter defined), then these presents shall be void.

AND THIS INDENTURE FURTHER WITNESSETH:

1. DEFINITIONS

1.1 Wherever used in this Mortgage, "Borrower's Liabilities" means any and all of the following: (a) the payment of any and all monies, including, but not limited to, the payment, when due or declared due in accordance with the terms of the Note, of the principal sum of the Note, together with the Stated Interest and Additional Interest defined hereafter, any prepayment premium or liquidated damages, and any fees, costs, charges, expenses or payments of any kind, whether at a default or other rate of interest, now and/or hereafter owed or to become owing by Borrower to Lender under and/or pursuant to the terms and provisions of the Note; (b) the payment or deposit of any and all other debts, claims, obligations, demands, monies, liabilities, certificates of deposit, letters of credit and/or indebtednesses (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Borrower to Lender under and/or pursuant to the terms and provisions of this Mortgage; and (c) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtednesses (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Borrower to Lender, under and/or pursuant to the terms and provisions of (i) a certain Assignment of Leases and Rents of even date herewith executed and delivered by Borrower to Lender relating to the Mortgaged Property; (ii) a certain Collateral Assignment of Management Agreement executed and delivered by Borrower to Lender relating to the management of the Mortgaged Property; (iii) a certain Pledge, Escrow and Reserve Agreement between Borrower and Lender; (iv) an irrevocable letter of credit naming Lender as beneficiary thereunder in the amount of \$311,000; and (v) such other instruments, documents and agreements evidencing and/or securing the payment of the Note as Borrower executes and delivers to Lender now and from time to time hereafter (the documents described in (i), (ii), (iii), (iv) and (v) of this paragraph shall be hereinafter referred to as the "Other Agreements"), all of which are incorporated herein by this reference thereto.

1.2 Wherever used in this Mortgage the terms "Stated Interest" and "Additional Interest" shall have the meanings ascribed to those terms in the Note. As used herein, the "Maturity Date" means APRIL 1, 1999 or such earlier maturity date of the Note (whether by prepayment, agreement, default and acceleration or deed in lieu of foreclosure).

1.3 Wherever used in this Mortgage, "Borrower's Obligations" means the prompt, full and faithful performance, discharge, compliance and observance by Borrower of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provisions to be performed, discharged, observed or complied with by Borrower contained in this Mortgage, the Note and/or in the Other Agreements.

1.4 Wherever used in this Mortgage, the term "and/or" means one or the other or both, or any one or all, of the things, events or persons or parties in connection with which the term is used.

2. CONVEYANCE; COLLATERAL ASSIGNMENT OF PERMITS,
LICENSES, FRANCHISES AND AGREEMENTS; EXECUTION
AND DELIVERY OF OTHER DOCUMENTS

2.1 To secure the payment by Borrower of Borrower's Liabilities and the performance by Borrower of Borrower's Obligations, Borrower has bargained and sold and hereby does grant, give, bargain, confirm, assign, pledge, set over, transfer, sell, convey, remise, release and otherwise mortgage to Lender, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage.

2.2 Borrower, within ten (10) days after request by Lender therefor, will certify, in writing, to Lender, or to any proposed assignee of this Mortgage, the amount of principal, Stated Interest and Additional Interest (to the extent ascertainable) then owing and unpaid under the Note and whether Borrower has or asserts any offsets or defenses thereto.

2.3 Borrower, immediately upon request by Lender, at Borrower's sole expense, will or will cause to be made, executed and delivered to Lender, in form and substance acceptable to Lender, all "Documents" (as hereinafter defined) that Lender is advised are and/or deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage, the Note or the Other Agreements or required to perfect or continue perfected, as valid liens or encumbrances, the liens or encumbrances granted herein or in the Other Agreements by Borrower to Lender upon the Mortgaged Property. As used in this Paragraph, "Documents" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, note, security agreement, financing statements, assignment of management agreement, assignment of insurance, loss payable clause, mortgage title insurance policy, letters of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, report, permit, consent, approval, financial statement, contract, agreement, lease, guaranty, affidavit, survey, certification, side letter and any other similar such agreements, instruments or documents.

2.4 Without limiting Lender's rights and powers hereunder except as herein set forth, from and after a Default under the Note and/or an Event of Default hereunder, Lender shall have the right,

in its sole discretion, to exercise all rights of Borrower under all Licenses, and to retain, use and enjoy the same, or to sell, assign or transfer the same (with appropriate governmental consents, where necessary) in connection with the enforcement of its rights and remedies under this Mortgage. Borrower hereby irrevocably constitutes and appoints Lender as its agent to demand, receive and enforce Borrower's rights with respect to the Licenses, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Lender with the same effect as if done by Borrower if this assignment had not been made. Lender does not hereby assume any of Borrower's obligations or duties under or in connection with any of said Licenses.

3. COVENANTS, WARRANTIES AND REPRESENTATIONS

3.1 Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower promptly will pay, or cause to be paid, when due or declared due, Borrower's Liabilities and promptly, fully and faithfully will perform, discharge, observe and comply with each and every one of Borrower's Obligations.

(ii) Borrower now has and hereafter shall maintain the standing, right, power and lawful authority, and is and hereafter shall be duly authorized and empowered to own or hold the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute and deliver this Mortgage, the Note and the Other Agreements to Lender, to encumber the Mortgaged Property to Lender as provided herein or in the Other Agreements and to perform all of Borrower's Obligations and to consummate all of the transactions described in or contemplated by this Mortgage, the Note and the Other Agreements.

(iii) The execution, delivery and performance by Borrower of and under this Mortgage, the Note and the Other Agreements does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, trust agreement, note, judgment, order, award, decree or other restriction to which Borrower or any of the Mortgaged Property is or hereafter shall become a party or by which Borrower or any of the Mortgaged Property is or hereafter shall become bound or any law or regulatory provision now or hereafter affecting Borrower or any of the Mortgaged Property.

(iv) Borrower shall establish a replacement reserve (the "Reserve") into which Borrower shall make deposits, on a monthly basis. Beginning with the first month of the second "Loan Year" (as hereinafter defined), Borrower shall make equal monthly deposits into the Reserve, calculated on the basis of one hundred one dollars and 50/100 (\$101.50) per year for each rental unit; and thereafter, equal monthly deposits in each Loan Year shall reflect a six percent (6%) increase over the deposits made in the previous Loan Year. A "Loan Year" is a period of 12 months, with the first Loan Year beginning with the first full calendar month following the date on which the proceeds of the indebtedness evidenced by the Note (the "Loan") are disbursed ("Loan Disbursement Date"), and each subsequent twelve month period thereafter, or shorter period thereafter, due to the occurrence of the Maturity Date. The

Reserve shall be maintained in a bank, savings and loan or other financial institution, in an interest bearing account, and provided no default shall have occurred under the Note, this Mortgage or the Other Agreements, shall be under the control of the Borrower. All interest earned on such account shall be for the benefit of Borrower, and shall be included in, and shall constitute a part of, the Reserve. Funds in the Reserve shall be used by the Borrower for replacement of items of personal property and replacement of capital improvements or repairs, the cost for which would be a capital expenditure within the meaning of the Internal Revenue Code (such as roof, paving and HVAC) but the Reserve shall not be used for normal and ordinary repair and maintenance of the Mortgaged Property. Borrower shall provide to Lender, on a quarterly basis, information showing all deposits into, and all withdrawals from, the Reserve, and detailed information showing the use of funds withdrawn from the Reserve. Lender, in its reasonable discretion, may from time to time require Borrower to increase the amounts of deposits into the Reserve.

(v) The various financial and operating statements relating to the Mortgaged Property and the construction, operation and business thereof heretofore and from time to time hereafter delivered by or for Borrower to Lender pursuant to Paragraph 3.3(vii) below, are and shall be true, correct, complete and accurate in all respects, fairly present the financial conditions represented as of the dates and for the periods indicated and have been and shall be prepared in accordance with generally accepted accounting principles and practices, consistently applied unless otherwise specifically indicated.

(vi) The various other data and information relating to the Mortgaged Property and the construction, operation and business thereof heretofore and from time to time hereafter delivered by or for Borrower to Lender are and shall be correct, complete and accurate in all respects.

(vii) Borrower has duly filed and shall continue timely to file all federal, state and other governmental tax and similar returns which Borrower is required by law to file with respect to the Mortgaged Property and the construction, operation and business thereof. All taxes and other sums which are shown to be payable under such returns have been and shall be timely and fully paid and Borrower shall maintain adequate reserves in amount to fully pay all such liabilities which hereafter may accrue.

(viii) All of the Licenses necessary for the operation of the Mortgaged Property are and shall at all times remain in full force and effect; and, to the best of Borrower's knowledge, all of the Leases are and shall remain genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes and valid and enforceable in accordance with their terms. Borrower has made no previous assignment of the Licenses, and Borrower agrees not to further assign or to otherwise encumber its interest in such Licenses during the term of this Mortgage. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases, and revealed by Borrower to Lender in writing, no advance payments have been or shall be made thereunder.

(ix) There is no litigation, action, claim or proceeding pending or threatened, which might, in any way, manner or respect, materially or adversely affect the Mortgaged Property, the operation or the business thereof, Lender's lien thereon, the collectibility of the Note, the ability of Borrower to repay the

Note or the financial condition of Borrower or the Mortgaged Property or the operation or business thereof.

(x) Borrower and the Mortgaged Property possess and hold and shall maintain adequate properties, interests in properties, leases, licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Mortgaged Property.

(xi) There does not exist any default or breach of or under any agreement, instrument or document for borrowed money by which Borrower or the Mortgaged Property is bound or obligated.

(xii) The location, existence, use and condition of the Premises and the Equipment are and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, but not limited to, building and zoning laws, and all covenants and restrictions of record.

(xiii) For all tenants in possession on the Loan Disbursement Date, as of the Loan Disbursement Date, the leases for such tenants are true, correct, accurate and complete; no tenant is in default under any such lease; and Borrower is not aware of, nor has it received from any tenant any notice of any default by the Borrower under any such Lease.

(xiv) Borrower, subject to the rights of tenants in possession, is and shall, throughout the term of the Loan, remain in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims thereon or thereto of any and all parties.

(xv) Borrower will save and hold Lender harmless of and from any and all damage, loss, cost and expense, including, but not limited to, reasonable attorneys' and paralegals' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with any suit or proceeding, threatened, filed and/or pending, in or to which Lender is or may become or may have to become a party by reason of or arising from or on account of or in connection with Borrower's Liabilities, Borrower's Obligations, this Mortgage, the Note or the Other Agreements.

3.2 Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Premises, free and clear of all liabilities, claims, debts, exceptions, security interests, assessments, charges, impositions, levys, taxes, liens and all other types of encumbrances (hereinafter referred to as the "Encumbrances") except (I) the Encumbrances of Lender, (II) those Encumbrances described on Exhibit "B" attached hereto and made a part hereof, and (III) existing Leases to a tenant or tenants in possession of all or portions of the Premises.

(ii) Electric, gas, sewer, water facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the Premises, and any easements necessary to the furnishing of such utilities services have been obtained and duly recorded.

(iii) The proceeds of the loan evidenced by the Note and secured hereby will be used solely for the purposes specified in

Illinois Revised Statutes, Chapter 17, Section 6404, and the principal obligation evidenced by the Note constitutes a "business loan" within the definition and purview of said section.

3.3 Borrower covenants with and warrants and represents to Lender as follows:

(i) Borrower will not change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including the replacement of any items of the Equipment) to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Borrower shall not remove any fixture or demolish any building or improvement located in or on the Premises. Borrower shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property and shall make no material alterations to the Mortgaged Property which in the opinion of Lender diminishes its value, and promptly shall repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Borrower shall comply with all requirements of law and all municipal ordinances governing the Mortgaged Property and the use thereof. Borrower shall permit Lender, and its agents, upon demand, access to and to inspect the Mortgaged Property at all reasonable times. Borrower shall not grant any license or easement burdening the Mortgaged Property or agree to or accept the modification, amendment, or termination of any license or easement affecting the Mortgaged Property without the prior written consent of Lender, which consent shall not be unreasonably withheld.

(ii) Borrower promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges and all other municipal or governmental charges, impositions, levies, assessments and taxes of any kind or nature that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof, and shall deliver to Lender duplicate receipts evidencing payment thereof at least thirty (30) days before delinquency; provided, however, that if Borrower in good faith and by appropriate legal action shall contest the validity of any such item or the amount thereof, and shall have established on its books or by deposit of cash with Lender, as Lender may elect, a reserve for the payment thereof in such amount as Lender may reasonably require, then Borrower shall not be required to pay the item or to produce the required receipts: (a) while the reserve is maintained, and (b) so long as the contest operates to prevent collection, including enforcement of any lien securing payment thereof, is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Borrower. If Lender is required by legislative enactment or judicial decision to pay any charge, imposition, assessment, levy or tax in or to any state, municipality or government on the Mortgaged Property (or on any interest therein), this Mortgage, the Other Agreements or Borrower's Liabilities, then all of Borrower's Liabilities shall become and be due and payable, at the election of Lender, thirty (30) days after the mailing of notice of such election to Borrower; provided, however, said election and right to elect will be unavailing and this Mortgage, the Note and the Other Agreements will be and remain in full force and effect as though said law had not been enacted or said decision had not been rendered if, notwithstanding such law or decision, Borrower lawfully may pay such

charge, imposition, assessment, levy or tax to or for Lender and does, in fact, pay, when payable, so much thereof as, taken with interest as aforesaid, does not exceed the maximum amount of interest permitted by applicable law. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage, the Note or the Other Agreements, Borrower will pay for the same, together with any interest or penalties imposed in connection therewith.

(iii) Borrower shall keep the Mortgaged Property free and clear of all Encumbrances (including, but not limited to, mechanics' liens and other similar liens or claims for liens) of any and every kind and nature except those described in Paragraph 3.2(i) above, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Lender, shall deliver to Lender evidence satisfactory to Lender of the payment and discharge thereof. To prevent an Event of Default hereunder, Borrower may indemnify Lender, by a means determined solely by and acceptable to Lender, against loss by reason of such an Encumbrance which Borrower may desire to contest. If, in accordance with the terms of this Mortgage, Lender makes payment of any such Encumbrance, Lender shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

(iv) Except as may be expressly permitted in the Note, Borrower shall not, without the prior written consent of Lender (which shall not be unreasonably withheld), enter into any transaction which constitutes an Initial Sale or Subsequent Sale (as those terms are defined in the Note). If Lender gives its consent to any such transaction, such consent shall be subject to the payment in full of all sums due upon any such Initial Sale or Subsequent Sale as provided in the Note. Lender, in its sole discretion, may deliver or withhold such consent based upon Lender's determination, to its sole satisfaction, of the creditworthiness, experience in real estate operations and ability of the proposed assignee, transferee or purchaser to satisfy, perform and discharge Borrower's Liabilities and Borrower's Obligations in a proper and timely fashion and manner, and, in addition, Lender may impose such other conditions as are necessary, in Lender's sole discretion, to protect and preserve the priority of its mortgage lien hereunder and the value and operation of the Mortgaged Property.

(v) All present and future items of fixtures, equipment, furnishings or other tangible personal property (whether or not constituting a part of the Mortgaged Property) related or necessary to or used or useable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances except those described in Paragraph 3.2(i) above and Borrower will not acquire any such property subject to any Encumbrance except those Encumbrances described in Paragraph 3.2(i) above. Within five (5) days after request by Lender, Borrower will execute and deliver to Lender a security agreement and financing statements, in form and substance acceptable to Lender, covering all such property. Borrower and Lender agree that a carbon, photographic or other reproduction of this Mortgage, any security agreement executed by Borrower or a financing statement shall be sufficient as a financing statement.

(vi) With respect to the Mortgaged Property and the operation and business thereof, Borrower will keep or cause to be kept proper books and records, prepared in accordance with generally accepted accounting principles and practices consistently applied.

Lender shall have the right to examine said books and records at from time to time during customary business hours during the period that the Note is outstanding and for a period of one year thereafter. Borrower shall deliver to Lender (i) an unaudited statement of income and expenses, certified by Borrower as true, correct, complete and accurate, as soon as practicable after the end of each quarter, and in any event within forty-five (45) days thereafter; (ii) a current rent roll with respect to the Mortgaged Property, certified by Borrower as true, correct, complete and accurate, as soon as practicable after the end of each calendar quarter, and in any event within forty-five (45) days thereafter (but only upon Lender's request for the quarterly rent roll), and as soon as practicable after the end of each calendar year, but in any event within sixty (60) days thereafter, or more often upon Lender's reasonable request; (iii) balance sheet and statement of income and expenses (certified by Borrower) as soon as practicable after the end of each calendar year, and in any event within ninety (90) days thereafter, certified as true, correct, complete and accurate by Borrower; provided that Lender, upon reasonable notice, may require that the annual statements referred to in (i), (ii) and (iii) above be certified by an independent certified public accountant reasonably acceptable to Lender, but at Borrower's sole expense; and (iv) such other financial and other information as Lender may reasonably request from time to time. If Borrower fails to deliver any of the foregoing financial reports to Lender as required herein, Lender may, at its option and at the sole expense of Borrower, retain the services of an auditor to prepare said reports.

(A) Borrower shall permit Lender and its auditors and agents from time to time during regular business hours during the period that the Note is outstanding and for a period of one year thereafter to review Borrower's books, records and financial information as Lender may, in its sole and absolute discretion, deem necessary, appropriate or advisable in order to permit Lender to verify, to its satisfaction, any amounts payable under the Note.

3.4 If Borrower, immediately after written demand from Lender, shall neglect or refuse to keep the Premises in good operating condition and repair or to replace or maintain the same as herein agreed, to pay the premiums for the insurance which is required to be maintained hereunder, to pay and discharge all Encumbrances as herein agreed or otherwise defaults in the performance of Borrower's Obligations, Lender, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such Obligations. Any amounts paid by Lender in taking such action, together with interest thereon at the Default Rate from the date of Lender's payment thereof until repaid by Borrower to Lender, shall be due and payable by Borrower to Lender upon demand, and, until paid, shall constitute a part of Borrower's Liabilities secured by this Mortgage. Notwithstanding the foregoing, such advances by Lender shall not be deemed to relieve Borrower from an Event of Default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Lender and not obligatory upon Lender and Lender shall not in any case be liable to Borrower for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Lender may rely upon any bills delivered to it by Borrower or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

4. TAXES, INSURANCE AND CONDEMNATION.

4.1 (A) Borrower, at all times, shall keep and maintain the Mortgaged Property fully insured (without co-insurance): (i) against loss or damage by, or resulting from, fire and such other hazards as are now or hereafter included in so-called "Extended Coverage" and against such other hazards, casualties and contingencies as under good insurance practices are insured against for property of like character as the Mortgaged Property in companies, form, amounts and for such periods as are satisfactory to Lender, but, in any event, in the form of "Agreed Amount Replacement Cost Insurance With An Inflation Protection Endorsement" acceptable to Lender with insurance thereunder in an amount equal to the greater of the agreed amount or the original principal amount of the Note, without deduction for depreciation; (ii) with flood insurance unless Borrower furnishes evidence satisfactory to Lender that the Mortgaged Property is not located in an area which is subject to special flood hazards; (iii) with rental insurance in favor of Lender in an amount equal to not less than one year's gross rent from the Mortgaged Property, which shall be determined annually on the rental insurance renewal date and based upon the sum of the actual rental received during the prior year for occupied space and the scheduled rental for unoccupied space as of such insurance renewal date; (iv) with comprehensive general public liability insurance with combined single limit for bodily injury or property damage of \$2,000,000.00 with respect to any one accident or disaster naming Lender as an additional insured; (v) sprinkler insurance and boiler insurance, if applicable; (vi) earthquake insurance, if applicable; and (vii) such other insurance as may be reasonably required by Lender from time to time. All such policies and renewals thereof (hereinafter referred to as the "policies") shall contain standard lender loss payable clauses naming Lender as "Lender", as well as a standard waiver of subrogation endorsement and a non-contributory standard mortgagee clause and shall be delivered, as issued, to Lender, with premiums therefor paid in full by Borrower. All policies shall provide that they are non-cancellable as to Lender by the insurer without first giving at least thirty (30) days prior written notice to Lender of any intended cancellation. Borrower will give immediate written notice to Lender of any loss or damage to the Mortgaged Property caused by any casualty. In case of policies about to expire, Borrower will deliver to and deposit with Lender renewal policies not less than thirty (30) days prior to the respective dates of expiration. Borrower will deliver and deposit with Lender receipts for the payment of the premiums on all policies. In the event of foreclosure of this Mortgage, or assignment hereof by Lender or transfer of title to the Mortgaged Property in extinguishment of Borrower's Liabilities, all right, title and interest of Borrower in and to any policies then in force shall pass to the purchaser, grantee or assignee.

(B) (a) Full power is hereby conferred on Lender:

- (i) to settle and compromise all claims under all policies;
- (ii) to demand, receive and receipt for all monies becoming due and/or payable under all policies;
- (iii) to execute, in the name of Borrower or in the name of Lender, any proof of loss notices or other instruments in connection with all claims under all policies; and

- (iv) to assign all policies to any holder of Borrower's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

(b) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to Lender, and Lender, in its sole and absolute discretion, may:

- (i) apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' and paralegals' fees, either
 - (I) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof, in which event Lender must give its prior written approval to all plans and specifications for the alteration, reconstruction, repair or restoration of the Mortgaged Property; or
 - (II) as a payment on account of Borrower's Liabilities (without affecting the amount or time of each subsequent payment required to be made by Borrower to Lender under the Note), whether or not then due or payable;

or

- (ii) deliver the same to Borrower.

(c) The provisions of Paragraph 4.1(B)(b) notwithstanding, the proceeds of such insurance shall be released to Borrower, on such terms as Lender shall determine to protect the amount and validity of the lien granted hereunder, for the purpose of repairing or restoring the Mortgaged Property, provided (i) there is no Event of Default hereunder at such time; (ii) such proceeds, together with other funds of Borrower, are sufficient to fully repair or restore the Mortgaged Property; and (iii) the damaged portion of the Mortgaged Property does not include more than twenty percent (20%) of the apartment units.

(d) All insurance proceeds at any time or times hereafter disbursed to or for the benefit of the Borrower in any way, manner or respect affecting, arising from or relating to, the Mortgaged Property, or any portion thereof, are hereby assigned to Lender as additional security for the payment of the Borrower's Liabilities (and for such purpose Borrower hereby grants to Lender a security interest therein).

4.2 (A) Borrower shall deposit with Lender on the first (1st) day of each month hereafter until Borrower's Liabilities are fully paid, a sum equal to one-twelfth 1/12 of (i) one hundred percent (100%) of the total annual impositions, levies, taxes and assessments arising with respect to the Mortgaged Property for the

most recent ascertainable tax year and (ii) the total amount of annual premiums for all policies required to be obtained and maintained by Borrower pursuant to this Mortgage with respect to the Mortgaged Property. Subject to the provisions of this Paragraph and provided that Borrower is not in default in the timely payment of any payment of principal, Stated Interest, Additional Interest or other monies due or declared due under the Note and is not in default under the Other Agreements and there is no Event of Default hereunder, Lender shall pay, when and to whom due and payable under applicable contracts or law, to and including the Maturity Date all of the aforesaid impositions, levies, taxes, assessments and premiums. Notwithstanding the foregoing, Lender does not hereby assume any of Borrower's obligations under said contracts or laws to make such payments and nothing contained herein, in the Note or the Other Agreements shall require Lender to perform any such obligations of Borrower except for the making of the aforesaid payments in accordance with and subject to the above specified terms. Upon occurrence or existence of a default under the Note, the Other Agreements, or an Event of Default hereunder, Lender shall not be obligated to make such payments, but, at its sole election and in its sole discretion, may make any or all of such payments. Any such payments made by Lender from its own funds, together with interest thereon at the Default Rate (as hereinafter defined) from the date of Lender's payment(s) thereof until repaid by Borrower to Lender, shall be due and payable by Borrower to Lender upon demand, and, until paid, shall constitute a part of Borrower's Liabilities secured by this Mortgage.

(B) If the deposits required by Subparagraph (A) above are insufficient to pay the taxes and premiums for which they are provided, on or before thirty (30) days before the same shall become due and payable, Borrower shall deposit with Lender such additional monies as are necessary to pay in full such obligations.

(C) Upon the occurrence or existence of an Event of Default hereunder, Lender, at its option and in its sole discretion, may apply any monies held pursuant to Subparagraph (A) above on account of any of Borrower's Liabilities, in such order or priority as Lender may elect.

(D) Upon payment in full of Borrower's Liabilities, Lender shall deliver any remaining of the aforesaid deposits to Borrower or the then owner of the Mortgaged Property.

(E) All of the aforesaid deposits hereby are pledged, as additional security for the payment of Borrower's Liabilities (and for such purpose, Borrower hereby grants to Lender a continuing security interest therein), to be applied by Lender for the purposes hereinabove set forth and shall not be subject to the control of Borrower; provided, however, that Lender shall not be liable for failure to pay, when due, any such taxes or premiums unless Borrower, prior to the occurrence or existence of an Event of Default, shall have requested Lender, in writing, to pay the same and delivered to Lender appropriate evidence of payment or statements therefor.

4.3 (A) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Borrower in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including, but not limited to, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Property) hereby are assigned to the Lender as additional security for the payment of Borrower's

Liabilities (and for such purpose, Borrower hereby grants to Lender a security interest therein);

(B) Lender shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Borrower's name, in Lender's name or in both names), and may, in its sole and absolute discretion, use such proceeds for any one or more of the following purposes:

(i) to apply the same, or any part thereof, to Borrower's Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made by Borrower to Lender under the Note;

(ii) to use the same, or any part thereof, to satisfy, perform or discharge any of Borrower's Obligations;

(iii) to use the same, or any part thereof, to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to Lender, and Lender must give its prior written approval to the plans and specifications for any such replacement, repair or restoration; or

(iv) to release the same to Borrower.

(C) The provisions of Paragraph 4.3 notwithstanding, the proceeds of such awards shall be released to Borrower, on such reasonable terms as Lender shall determine to protect the validity, priority and enforceability of the lien granted hereunder and the amount secured thereby, for the purpose of repairing or restoring the Mortgaged Property, provided (i) there is no Event of Default hereunder at the time of any such casualty and at the time the proceeds therefrom become payable; (ii) such proceeds, together with other funds of Borrower, are sufficient to fully repair or restore the Mortgaged Property; and (iii) in Lender's reasonable opinion, that the value of Lender's security is not impaired.

(D) Borrower, immediately upon request by Lender, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Lender any and all assignments and other instruments sufficient to assign, and cause the payment directly to Lender of, all such awards, free and clear of all Encumbrances except those Encumbrances described in Paragraph 3.2(i) above. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Borrower shall continue to pay all of Borrower's Liabilities, as and when due and payable, until any such award or payment shall have been actually received by Lender, and any reduction in Borrower's Liabilities resulting from the application by Lender of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by Lender of such award or payment, the Mortgaged Property shall have been sold upon the exercise of Lender's remedies under this Mortgage, Lender shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with the lower of legal interest or the Default Rate thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and with the reasonable attorneys' and paralegals' fees, costs, expenses and disbursements incurred by Lender in connection with the collection of such award or payment.

5. ASSIGNMENT OF LEASES AND RENTS

5.1 All of the Rents arising from the Leases are hereby absolutely and unconditionally assigned, transferred and conveyed to Lender as security for the payment of Borrower's Liabilities. Prior to the occurrence of an Event of Default under this Mortgage, Borrower shall have the right to collect all of the Rents arising from the Lease, or renewals thereof, and shall hold the same, in trust for the benefit of Lender and Borrower, to be applied first to the payment of all impositions, levies, assessments and other charges upon the Mortgaged Property, secondly to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, thirdly to the maintenance and repairs required hereby and lastly to the payment of Borrower's Liabilities, before using any part of the Rents for any other purposes.

5.2 After an Event of Default shall occur or exist, any of Lender's agents shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Lender, a nominee of Lender or in any or all of said names.

5.3 Upon request by Lender, and thereafter, Borrower shall promptly upon Borrower's receipt or learning thereof, inform Lender, in writing, of any assertion of any material claims, offsets or counterclaims by any of the obligors of the Leases. Unless otherwise agreed in writing by Lender, Borrower shall not demand, collect or receive any Rents under any Lease for a period greater than one month in advance.

5.4 If an Event of Default shall occur or exist, Lender may, in its sole discretion, exercise the following rights and remedies:

(i) Borrower's right to use the Rents is terminated and any Rents then or thereafter coming into Borrower's possession are (to the extent sums remain due under the Note) to be held in trust by Borrower for the benefit of Lender in a segregated manner and immediately delivered to Lender, and Borrower shall have no rights to use the Rents for any purpose whatsoever without the prior written consent of Lender.

(ii) To the extent permitted by applicable law, Lender may, without notice and without bringing any action or proceeding or by a receiver appointed by a court, take possession of the Mortgaged Property and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Lender may deem proper. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease portions of the Premises or from any other act or omission of Lender in managing the Mortgaged Property (unless such loss is caused by the willful misconduct and bad faith or gross negligence of Lender).

(iii) Immediately upon demand by Lender, Borrower shall deliver to Lender the originals of the Leases, with appropriate endorsement and/or other specific evidence of assignment thereto to Lender which endorsement and/or assignment shall be in form and substance acceptable to Lender, and shall turn over to Lender or its designated agent its original books and records relating the Leases and the Mortgaged Property.

(iv) Lender, then or at any time or times thereafter, at its sole election, without notice thereof to Borrower, may notify any or all of the obligors of the Leases that the Leases have been assigned to Lender and Lender (in its name, in the name

of Borrower or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to Lender.

(v) Borrower, immediately upon demand by Lender, irrevocably shall direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Lender.

(vi) Lender shall have the right at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Borrower, Lender or in both names.

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(vii) Borrower irrevocably hereby designates, makes, constitutes and appoints Lender (and all persons designated by Lender) as Borrower's true and lawful attorney and agent in fact with power, without notice to Borrower and at such time or times thereafter as Lender, at its sole election, may determine, in the name of Borrower, Lender or in both names: (a) to demand payment of the Rents and performance of the Leases; (b) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (c) to exercise all of Borrower's rights, interests and remedies in and under the Leases and to collect the Rents; (d) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (e) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (f) to take control, in any manner, of the Rents; (g) to prepare, file and sign Borrower's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against obligors of the Leases; (h) to endorse the name of Borrower upon any payments or proceeds of the Rents and to deposit the same to the account of Lender; and (i) to do all acts and things necessary, in Lender's sole discretion, to carry out any or all of the foregoing, and Lender's rights under Paragraph 5 hereof. The foregoing power of attorney, being coupled with an interest, is irrevocable and shall not terminate unless and until all of Borrower's Liabilities and Obligations hereunder have been paid and fully performed.

(viii) All of the foregoing payments and proceeds received by Lender shall be utilized by Lender, at its sole election and in its sole discretion, for any one or more of the following purposes: (a) to be held by Lender as additional collateral for the payment of Borrower's Liabilities; (b) to be applied to Borrower's Liabilities, in such manner and fashion and to such portions thereof as Lender, at its sole election, shall determine; (c) to be applied to such obligations of Borrower or the Mortgaged Property or the operations or business thereof as Lender, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (d) to be remitted to Borrower.

6. DEFAULT

6.1 The occurrence or existence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(i) The failure of Borrower to pay when due or declared due, any of Borrower's Liabilities.

(ii) Prepayment by Borrower after the occurrence or existence of an Event of Default hereunder, of any other indebtedness secured by a lien on the Mortgaged Property.

(iii) Failure of Borrower to promptly, fully and faithfully to satisfy, perform, discharge, observe and comply with each and every of Borrower's Obligations, other than those set forth in Sub-Paragraph (x) below, which continues for thirty (30) days after written notice thereof to Borrower.

(iv) A petition is filed by or against Borrower or the general partner of Borrower, if Borrower is a general or limited partnership, seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency (and in the case of an involuntary petition, such petition is not discharged within thirty (30) days of its filing), or Borrower seeks or consent to or acquiesces in the appointment of any trustee, receiver or master or liquidator of itself or of all the rent, revenues, issues, earnings, profits or income of Borrower to the Mortgaged Property; or a custodian, receiver, or trustee for any of the Mortgaged Property is appointed, or if it makes an assignment for the benefit of creditors, or if it is adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution is levied against any of the Mortgaged Property and is not discharged within thirty (30) days from the commencement thereof.

(v) The occurrence or existence of a "Default" or "Event of Default" as defined in the Note, any of the Other Agreements, or a default or event of default under any other agreement, instrument, or document evidencing and/or securing and/or guarantying all or any portion of the indebtedness secured hereby, which is not cured within any applicable grace or cure periods.

(vi) Except as otherwise permitted herein, the consummation of any transaction of the types described in or contemplated by Paragraph 3.3(iv) above.

(vii) Borrower's obtaining any additional or future advances, or obligations of any character, whether direct or indirect, the repayment or performance of which is secured by a lien on or an interest in the Mortgaged Property.

(viii) The failure of Borrower to deliver to Lender, when due, the various financial and operating statements and information referred to in Paragraph 3.3 above.

(ix) The voluntary or involuntary dissolution or termination of Borrower or the liquidation of the assets of Borrower.

(x) The occurrence or existence of any default, event of default, or material breach of or under any agreement, instrument or document for borrowed money by which the Mortgaged Property or the Borrower is bound or obligated, in connection with any transaction using the Mortgaged Property or any part thereof to secure the repayment of such borrowed money, other than Borrower's Liabilities and/or Borrower's Obligations hereunder.

6.2 Upon the occurrence or existence of an Event of Default, Lender, after notice and demand insofar as required hereby, or by applicable law, in its sole discretion and at its sole election, without notice of such election, and without further demand, may do any one or more of the following:

(i) Declare all of Borrower's Liabilities immediately due and payable and collect the same at once by foreclosure or otherwise, without notice of broken covenant or condition (and in case of an Event of Default and the exercise of such option,

Borrower's Liabilities shall bear interest at the Default Rate from the date of such Event of Default until paid in full).

(ii) Either with or without process of law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any persons, goods or chattels occupying or located on the Mortgaged Property, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property as fully as Borrower might do if in possession thereof, including, without limitation, the making of all repairs and replacements deemed necessary by Lender and the leasing of the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' and paralegals' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Borrower's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to the Borrower at the address of Borrower last appearing on the records of Lender. Borrower agrees to surrender possession of the Mortgaged Property to Lender immediately upon the occurrence of an Event of Default. If Borrower shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such Event of Default, such possession shall be as a tenant of Lender, and Borrower agrees to pay to Lender, or to any receiver appointed as provided below, after such Event of Default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by the Borrower, to be applied as provided above in the first sentence of this Sub-Paragraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Borrower may be dispossessed by the usual summary proceedings. In the event Borrower shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Lender in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(iii) File one or more suits at law or in equity for the foreclosure of the lien of this Mortgage and to collect Borrower's Liabilities. At its option, Lender may foreclose the lien of this Mortgage upon less than all of the Mortgaged Property and specifically reserves the right to bring future foreclosure actions with respect to the balance of the Mortgaged Property or portions thereof. In the event of the commencement of any such suit by Lender, Lender shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Borrower at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Borrower's Liabilities.

In case of a sale pursuant to foreclosure, the Premises may be sold as one parcel.

(iv) Sell or cause to be sold and dispose of the Mortgaged Property (en masse or in separate parcels, as the Lender may think best), and all the right, title and interest of Borrower, its successors or assigns therein, at public auction at any place authorized by law as specified in the notice of such sale, for the highest and best price the same will bring in cash, three successive weeks' public notice having been previously given of the time, place and terms of such sale, together with a description of the property to be sold, by advertising, weekly, in some newspaper of general circulation at that time published in Shelby County, Alabama; and out of the proceeds or avails of such sale, after first paying and retaining all fees, charges and costs of making said sale, apply such proceeds to the principal and interest due on the Note according to the tenor and effect thereof, and all moneys advanced by Lender for insurance, taxes and assessments, or other money advanced pursuant to the terms hereof, with interest thereon at the Default Rate rendering the overplus, if any, unto the Borrower, its successors or assigns; which sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against the Borrower, its successors or assigns, and all other persons claiming the said property, or any part under Borrower. The holder or holders of the Note may purchase said property or any part thereof; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money. If a release deed is required, it is agreed that the Borrower, its successors or assigns, will pay the expense thereof. The Borrower, for itself and for its successors and assigns hereby fully and absolutely waives and releases all rights and claims it may have in or to the Mortgaged Property as a Homestead Exemption, or other exemption, under and by virtue of the laws of the State of Alabama now existing or which may hereafter be passed in relation thereto.

(v) Exercise any other remedies or rights permitted or provided under or by the laws or decisions of the State of Alabama (including all remedies and rights of a secured party under the Uniform Commercial Code of the State of Alabama), accruing to a mortgagee and/or secured party upon a default by a mortgagor and/or debtor or otherwise available in equity or under the Note or the Other Agreements.

6.3 Upon the occurrence or existence of an Event of Default under this Mortgage, there will be added to and included as part of Borrower's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage or the Note) the following: the costs, charges, expenses and attorneys' and paralegals' fees and expenses and other fees specified in Paragraph 6.4 below; any and all expenditures which may be paid or incurred by or on behalf of Lender for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, and similar data and assurances with respect to the title to the Mortgaged Property; interest at the Default Rate, as provided in the Note upon a default thereunder; all prepayment or like premiums, if any, provided for in the Note; and all other fees, costs and expenses which Lender deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like premiums, fees and other expenditures shall be a part of Borrower's Liabilities, secured by this Mortgage, payable on demand and, except for the aforesaid interest at the Default Rate and the

prepayment or like premiums, shall bear interest at the Default Rate from the date of Lender's payment thereof until repaid to Lender.

6.4 If foreclosure proceedings are instituted upon this Mortgage, or if Lender shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding (bankruptcy or otherwise) relating to this Mortgage, the Note, the Other Agreements, or Borrower's Liabilities, or if Lender shall incur or pay any expenses, costs, charges or attorneys' and paralegals' fees and expenses by reason of the employment of counsel for advice with respect to this Mortgage, the Note, the Other Agreements, or any other of Borrower's Liabilities, and whether in court proceedings or otherwise, such expenses and all of Lender's attorneys' and paralegals' fees and expenses shall be part of Borrower's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the Default Rate from the date of Lender's payment thereof until repaid to Lender.

6.5 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraphs 6.3 and 6.4 above, secondly, to the balance of Borrower's Liabilities, and thirdly, the surplus, if any, to Borrower.

6.6 In the event of the commencement of judicial proceedings to foreclose this Mortgage, Borrower, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage: (i) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; and (ii) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to purchaser at such sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

6.7 Lender shall have the right from time to time to sue for any sums, whether Stated Interest, Additional Interest, principal or any other sums required to be paid by or for the account of Borrower under the terms of this Mortgage, the Note or the Other Agreements, as the same become due under the Note, or any other of Borrower's Liabilities, shall be due and without prejudice to the right of the Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default by the Borrower existing at the time such earlier action was commenced.

6.8 No right or remedy of Lender hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and the holder of the Note may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of an Event of Default by Borrower hereunder, or acquiescence therein, nor will it affect any subsequent Event of Default hereunder by Borrower of the same or different nature. Every such right or remedy may be exercised independently or

concurrently, and when and so often as may be deemed expedient by Lender. No terms or conditions contained in this Mortgage or the Note may be waived, altered or changed except as evidenced in writing signed by Borrower and Lender.

6.9 Lender shall release this Mortgage by proper instrument upon payment and discharge of all of Borrower's Liabilities, including all prepayment or like premiums, if any, provided for in the Note and payment of all costs, expenses and fees, including reasonable attorneys' and paralegals' fees, incurred by Lender for the preparation, execution and/or recording of such release.

6.10 Upon occurrence or existence of an Event of Default and following acceleration by Lender of the maturity of Borrower's Liabilities as provided herein, a tender of payment thereof by Borrower, or any other party, or a payment thereof received upon or on account of a foreclosure of this Mortgage or Lender's exercise of any of its other rights or remedies under this Mortgage, the Note, the Other Agreements or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Borrower of the Note and, therefore, such payment must, to the extent permitted by applicable law, include the interest at the Default Rate payable upon an Event of Default, contained in the Note.

6.11 (A) Any agreements between Borrower and Lender are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the loan evidenced by the Note or otherwise, shall the amount paid or agreed to be paid to Lender for the use, detention or forbearance of the loan proceeds to be disbursed exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.

(B) If fulfillment of any provision herein or in the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful rate, then ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful rate. If by any circumstance Lender shall ever receive as interest an amount which would exceed such highest lawful rate, the amount which may be deemed excessive interest shall be applied to the principal of Borrower's Liabilities and not to interest.

(C) The terms and provisions of this Paragraph shall control all other terms and provisions contained herein, in the Note or in the Other Agreements.

6.12 Any failure of Lender to insist upon the strict performance by Borrower of any of the terms and provisions of this Mortgage, the Other Agreements or the Note shall not be deemed to be a waiver of any of the terms and provisions thereof, and Lender, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Borrower of any and all of the terms and provisions thereof to be performed by Borrower. Neither Borrower, nor any other person now or hereafter obligated for the payment of the whole or any part of Borrower's Liabilities, shall be relieved of such obligation by reason of the sale, conveyance or other transfer of the Mortgaged Property or the failure of Lender to comply with any request of Borrower, or of any other person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, the Other Agreements or the Note, or by reason of the release, regardless of consideration, of the whole or any part of the security held for Borrower's Liabilities, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Lender extending the time of payment or

modifying the terms thereof without first having obtained the consent of Borrower or such other person, and, in the latter event, Borrower, and all such other persons, shall remain liable on account of Borrower's Liabilities and shall remain liable to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by Lender. Lender, without notice, may release, regardless of consideration, any part of the security held for Borrower's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Lender may resort for the payment of Borrower's Liabilities to any other security therefor held by the Lender in such order and manner as Lender may elect.

6.13 Upon and after the occurrence or existence of an Event of Default under this Mortgage, Lender shall not be obligated to accept any cure or attempted cure by Borrower, except to the extent required by applicable law or in this Mortgage; however, if Lender accepts such cure, Lender shall not exercise its rights or remedies under Paragraphs 5 or 6 of this Mortgage unless and until a separate or additional Event of Default then exists hereunder.

6.14 It is understood and agreed that neither the exercise by Lender of any of its rights or remedies under this Mortgage shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Lender, in person or by agent, assumes actual possession thereof. The appointment of a receiver for the Mortgaged Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Mortgaged Property or any part thereof by such receiver, shall not be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

6.15 Borrower does hereby authorize and empower, upon the maturity of the indebtedness as herein provided, Lender to sell the Mortgaged Property and Borrower agrees that in case of any sale under this Mortgage, by virtue of judicial proceedings or by private non-judicial sale or otherwise, the Mortgaged Property may be sold in one parcel and as any entirety or in such parcels, manner or order as Lender in its sole discretion may elect. By the execution of this Mortgage, Borrower expressly (i) ACKNOWLEDGES THE RIGHT OF LENDER TO ACCELERATE THE DEBT AND THE POWER OF SALE GIVEN HEREIN TO SELL THE MORTGAGED PROPERTY AND PORTIONS OF THE MORTGAGED PROPERTY BY PRIVATE NON-JUDICIAL FORECLOSURE UPON DEFAULT BY BORROWER WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN ADVERTISING THE TIME, PLACE AND TERMS OF SALE AS PROVIDED HEREIN; (ii) WAIVES ANY AND ALL RIGHTS WHICH BORROWER MAY HAVE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF STATE CONSTITUTIONS, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY LENDER OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO LENDER; (iii) ACKNOWLEDGES THAT BORROWER HAS READ THIS MORTGAGE AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THE MORTGAGE AND ITS PROVISIONS HAVE BEEN ANSWERED FULLY TO BORROWER AND BORROWER HAS BEEN AFFORDED AN OPPORTUNITY TO CONSULT WITH COUNSEL OF BORROWER'S CHOICE PRIOR TO EXECUTION OF THIS MORTGAGE; AND (iv) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF BORROWER HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY BORROWER AS PART OF A BARGAIN FOR THE COMMERCIAL LOAN TRANSACTION EVIDENCED AND REFLECTED IN THE NOTE AND THIS MORTGAGE.

7. MISCELLANEOUS

7.1 Every provision for notice, demand or request required in this Mortgage, the Note or the Other Agreements or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (or mailed or sent by a recognized nationwide commercial courier to, as hereinafter provided) the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made certified or registered mail, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the fifth (5th) day following posting as aforesaid. If sent by commercial courier, such notice, demand or request shall be deemed to have been made on the first business day after delivery to the courier. For the purposes herein, notices shall be sent to Borrower and Lender as follows:

To Borrower:

DJ-II Investments, Ltd.
c/o Durham & Associates, Inc.
530 Beacon Parkway W.
Suite 900
Birmingham, Alabama 35209
Attention: Ronald O. Durham

with a copy to:

John C. Coggin III, P.A.
500 Bank for Savings Building
Birmingham, Alabama 35203

To Lender:

Balcor Pension Investors VI
c/o Balcor Mortgage Advisors, Inc.
4849 Golf Road
Skokie, Illinois 60077
Attention: Robert C. Fliss

with a copy to:

Schwartz & Freeman
401 North Michigan Avenue
Chicago, Illinois 60611
Attention: Joy S. Goldman

7.2 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.3 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns, or heirs and personal representatives, as the case may be, of the Borrower and Lender.

7.4 This Mortgage, having been negotiated, executed and delivered in the State of Illinois, shall be governed as to validity, interpretation, construction, effect and in all other respects (including the legality of the interest charged under the Note), by the laws and decisions of the State of Illinois, except to the extent that recourse to the laws and decisions of the State

of Alabama may become necessary to enforce Lender's rights and remedies hereunder.

7.5 In this Mortgage, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret, define or limit the provisions hereof.

7.6 Wherever a power of attorney is conferred upon Lender hereunder, it is understood and agreed that such power of attorney is conferred with full power of substitution, and Lender may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof to one or more sub-agents.

7.7 The pleadings of any statute of limitations as a defense to any and all obligations secured by this Mortgage is hereby waived to the fullest extent permitted by law.

7.8 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

7.9 Borrower shall have no personal liability for a breach of the covenants, warranties and representations nor for any deficiency which may remain after the enforcement of Lender's rights and remedies under the Note, this Mortgage or the Other Agreements, Lender's recourse being exclusively limited to the Mortgaged Property, the other items of collateral pledged or delivered to Lender hereunder and under the Other Agreements and the Borrower's personal liability for all gross income collected after an Event of Default hereunder which is not applied in payment of indebtedness secured by the Mortgaged Property, towards the operation of the Mortgaged Property, or in the ordinary course of business.

7.10 Nothing herein shall be deemed or construed, nor shall the exercise by Lender of any of its rights, privileges, or remedies conferred under the Mortgage, the Note or Other Agreements, to render Lender and Borrower as joint venturers or partners in any way with respect to the Mortgaged Property.

7.11 The Mortgaged Property shall at all times be managed by a property manager or property management company to be approved by Lender, and the Mortgaged Property shall at all times be managed in a manner reasonably satisfactory to the Lender. Any management contract entered into for the Mortgaged Property shall contain provisions that the contract may be terminated upon two (2) days' prior written notice by Lender, at its option, if:

- (a) the Lender or its successors and assigns acquires the Mortgaged Property by foreclosure of this Mortgage, by deed in lieu thereof or otherwise; or
- (b) upon the occurrence or existence of an Event of Default hereunder.

7.12 As used herein, the Default Rate means eighteen percent (18%) per annum.

7.13 This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

7.14 Borrower is the owner of approximately fifteen acres of vacant land adjacent to the Mortgaged Property and legally described on Exhibit C attached hereto (the "Adjacent Parcel") which Borrower intends to develop with an apartment project. Borrower agrees not to commence development of or construction of improvements upon the Adjacent Parcel until such time that the Mortgaged Property has generated Gross Receipts in excess of Expenses (including a proportionate amount of annual expenses such as taxes or insurance) for at least six consecutive months (as those terms are defined in the Note), or until Lender consents.

IN WITNESS WHEREOF, the Borrower has executed this Mortgage as of the day and year first above set forth.

DJ-II INVESTMENTS, LTD., an
Alabama limited partnership

Ray A. Goldman
Witness

By: Ronald O. Durham
Ronald O. Durham, its
general partner

Ray A. Goldman
Witness

By: John R. Johnston
John R. Johnston, its
general partner

The foregoing Amended and Restated Mortgage and Security Agreement is hereby accepted:

BALCOR PENSION INVESTORS VI

Ray A. Goldman
Witness

By: Lawrence Hermalyn
Lawrence Hermalyn

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

I, Karen W. Zetson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Ronald O. Durham and John R. Johnston, personally known to me to be the general partners of DJ-II Investments, Ltd., an Alabama limited partnership, whose names are subscribed to the within instrument, appeared before me this day in person and acknowledged that as such general partners, they signed and delivered the said instrument and executed same as their free and voluntary act and as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21st day of April, 1987.

Karen W. Zetson
Notary Public

SEAL

My Commission Expires:

9-6-87

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Karen W. Epton, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Lawrence Hermalyn, personally known to me to be the Authorized Representative of Balcor Pension Investors VI, an Illinois corporation, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such representative, he signed and delivered the said instrument and executed same as his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21st day of April, 1987.

Karen W. Epton
Notary Public

SEAL

My Commission Expires:

9-6-87

EXHIBIT "A" TO
MORTGAGE AND SECURITY AGREEMENT
DATED AS OF APRIL 21, 1987 BETWEEN
DJ-II INVESTMENTS, LTD., AS BORROWER
AND BALCOR PENSION INVESTORS VI AS LENDER

LEGAL DESCRIPTION OF THE MORTGAGED PROPERTY:

Lot 2, according to the Survey of Shoal Run as recorded in Map
Book 9, Page 130 in the Probate Office of Shelby County, Alabama.

BOOK 126 PAGE 473

EXHIBIT "B" TO
MORTGAGE AND SECURITY AGREEMENT
DATED AS OF APRIL 21, 1987 BETWEEN
DJ-II INVESTMENTS, LTD., AS BORROWER
AND BALCOR PENSION INVESTORS VI AS LENDER

DESCRIPTION OF THE OTHER ENCUMBRANCES:

1. Taxes and assessments for the year 1987 and subsequent years, which are not yet due and payable.
2. Rights of tenants in possession under written leases.
3. Recorded easements for utility purposes.

EXHIBIT "C" TO
MORTGAGE AND SECURITY AGREEMENT
DATED AS OF APRIL 21, 1987 BETWEEN
DJ-II INVESTMENTS, LTD., AS BORROWER
AND BALCOR PENSION INVESTORS VI AS LENDER

LEGAL DESCRIPTION OF ADJACENT PROPERTY:

Lot 1, according to the Survey of Shoal Run as recorded in Map
Book 9, Page 130 in the Probate Office of Shelby County, Alabama.

BOOK 126 PAGE 475

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1987 APR 22 PM 12:48

Thomas A. Snowden
JUDGE OF PROBATE

| | | |
|------------------|----|---------------|
| 1. Deed Tax | \$ | _____ |
| 2. Mtg. Tax | | <u>675.00</u> |
| 3. Recording Fee | | <u>75.00</u> |
| 4. Indexing Fee | | <u>1.00</u> |
| TOTAL | | <u>751.00</u> |