

STATE OF ALABAMA)
SHELBY COUNTY)

FUTURE ADVANCE MORTGAGE

THIS FUTURE ADVANCE MORTGAGE (this "Agreement") dated December 20, 1994 is between **HSW RIVERCHASE ASSOCIATES, L.P.**, a Tennessee limited partnership (the "Borrower"), as mortgagor, and **AMSOUTH BANK OF ALABAMA**, an Alabama banking corporation (the "Lender"), as mortgagee.

Recitals

Capitalized terms used in these Recitals have the meanings defined for them above or in Section 1.2. The Borrower has requested that the Lender extend Credit to the Borrower in the form of a construction and term loan in the maximum principal amount of \$13,500,000 (the "Loan") to finance the construction and interim financing of the Project, as more particularly described in the Credit Agreement. To secure the Obligations, the Borrower has agreed to execute this Agreement.

This is a **FUTURE ADVANCE MORTGAGE** and the Credit is to be advanced to the Borrower in installments from time to time pursuant to the terms of the Credit Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing Recitals, and in consideration of the Lender's agreement to extend Credit to the Borrower on the terms and subject to the conditions set forth in the Credit Agreement and the other Credit Documents, the Borrower agrees with the Lender as follows:

ARTICLE 1

Rules of Construction and Definitions

SECTION 1.1 Rules of Construction. For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.

(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and do not limit or describe the scope or intent of, or in any way affect, this Agreement.

(c) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

(d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(e) All Recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated in this Agreement by reference.

(f) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.

(g) All references in this Agreement to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

SECTION 1.2 Definitions. As used in this Agreement, the following terms are defined as follows:

(a) **Architect Contracts** means all contracts between the Architects and the Borrower providing for the design of the Project, the preparation of the Plans, the supervision of the construction of the Project and the provision of any other architectural services or products related to the Project.

(b) **Architects** means the architects for the Project, or any portion thereof, each of which must be an architect or architectural firm satisfactory to the Lender.

(c) **Business Day** means any day other than a Saturday, a Sunday or a day on which banking institutions are required or authorized to close in Birmingham, Alabama.

(d) **CERCLA** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*

(e) **Construction Contracts** means the contracts between the Contractors and the Borrower providing for the construction of the Project, or any portion thereof.

(f) **Construction Documents** means (1) all plans and specifications for the Project, or any portion thereof (including the Plans); (2) all contracts (including the Architect Contracts) with architects and engineers (including the Architects and the Engineers) responsible for the design of any of the Project, the preparation or evaluation of any of such plans and specifications or the supervision of the construction of any of the Project; (3) all contracts to which the Borrower is a party (including the Construction Contracts) providing for the construction of any of the Project or the furnishing of labor or materials in connection therewith or the furnishing or installation of any equipment or other personal property in connection therewith; (4) all

contracts to which the Borrower is a party providing for the management of the construction of any of the Project; (5) all rights of the Borrower as a third party beneficiary under all contracts and subcontracts pertaining to the Project as to which the Borrower is not a party; (6) all payment and performance bonds relating to any of the Project; and (7) all other contracts and agreements related to the design, management, construction, equipping and development of any of the Project, including the Agreement dated August 29, 1994 with The Water Works and Sewer Board of the City of Birmingham and all deposits made by the Borrower thereunder, and all other contracts with other persons for the furnishing of roads or utilities to the Project and all deposits thereunder.

(g) **Contractors** means any person who enters into contracts with the Borrower to construct, install, equip or develop the Project, or any portion thereof, or to furnish any labor or materials in connection therewith, or to furnish or install any equipment or other personal property in connection therewith, each of which persons must be a contractor or contracting firm satisfactory to the Lender.

(h) **Credit** means, individually and collectively, all loans, forbearances, advances, disbursements and other extensions of credit now or hereafter made by the Lender to or for the account of the Borrower under the Credit Documents, including the Loan.

(i) **Credit Agreement** means the Credit Agreement (Construction Loan) dated December 20, 1994 between the Borrower and the Lender providing for the Loan.

(j) **Credit Documents** means this Agreement, the Credit Agreement, the documents described in **Exhibit B** and all other documents now or hereafter executed or delivered in connection with the transactions contemplated thereby.

(k) **Default Rate** means a rate of interest equal to three and one-half percentage points (350 basis points) in excess of the highest interest rate that would otherwise be payable on the principal amount of the Credit under the Credit Documents from time to time in the absence of the existence of a default, or the maximum rate permitted by law, whichever is less.

(l) **Engineers** means any engineers for the Project, or any portion thereof, each of which must be an engineer or engineering firm satisfactory to the Lender.

(m) **Environmental Law** means any Governmental Requirement (including CERCLA) relating to pollution or protection of human health or the environment, including any Governmental Requirement relating to Hazardous Substances.

(n) **Event of Default** is defined in Section 5.2. An Event of Default "exists" if the same has occurred and is continuing.

(o) **Governmental Authority** means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

(p) **Governmental Requirements** means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.

(q) **Hazardous Substances** means all pollutants, contaminants, toxic or hazardous wastes and other substances (including asbestos, urea formaldehyde foam insulation and materials containing either petroleum or any of the substances referenced in Section 101(14) of CERCLA), the removal of which is required or the manufacture, use, maintenance and handling of which is regulated, restricted, prohibited or penalized by any Environmental Law, or even if not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto.

(r) **Impositions** means all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the operations thereon, the use or occupancy thereof, the Liens or other interests created by this Agreement, the filing or recording of this Agreement or the Obligations.

(s) **Improvements** is defined in Section 2.1(b).

(t) **Land** is defined in Section 2.1(a).

(u) **Lien** means any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement.

(v) **Non-Recourse Carveouts** means liability of the Borrower or any Guarantor arising as a result of (1) application of any security deposits collected with respect to the Property other than in accordance with the terms of the applicable Leases, (2) misappropriation or conversion of any security for the Loan, (3) collection of rents, issues or profits from the Property in contravention of the terms and provisions of the Credit Documents unless the same are applied to the Loan, (4) use of any insurance or condemnation proceeds other than in compliance with the Credit Documents, (5) fraudulent conduct or misrepresentation by the Borrower, the General Partner or any Guarantor, and (6) the obligation of the indemnitors named therein to indemnify the Lender under the environmental indemnity agreement executed concurrently herewith and included in the Credit Documents.

(w) **Obligations** means (1) the payment of all amounts now or hereafter becoming due and payable under the Credit Documents, including the principal amount of the Credit, all interest thereon (including interest that, but for the filing of a petition in bankruptcy, would accrue on any such principal) and all other fees, charges and costs (including attorneys' fees and disbursements) payable in connection therewith; (2) the observance and performance by the

Borrower of all of the provisions of the Credit Documents; (3) the payment of all sums advanced or paid by the Lender in exercising any of its rights, powers or remedies under the Credit Documents, and all interest (including post-bankruptcy petition interest, as aforesaid) on such sums provided for herein or therein; (4) all renewals, extensions, modifications and amendments of any of the foregoing, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith; and (5) the Non-Recourse Carveouts.

(x) **Obligors** means the Borrower, each other person, if any, executing any Security Document as a grantor, (if the Borrower or any such grantor is a partnership) any general partner thereof, and any other maker, endorser, surety, guarantor or other person now or hereafter liable for the payment or performance, in whole or in part, of any of the Obligations.

(y) **Permitted Encumbrances** means any Liens and other matters affecting title to the Property that are described in Exhibit C.

(z) **Plans** means the final working plans and specifications for constructing and developing the Project prepared by Architects and Engineers approved by the Lender or other persons acceptable to the Lender, and all amendments and modifications thereto.

(aa) **Project** means a certain project consisting of Improvements to be financed in whole or in part with the proceeds of the Loan and to be constructed in accordance with the Plans on the Land, together with all related utilities, roads and other off-site Improvements, if any, said project being generally described as follows: a 345-unit luxury apartment complex.

(ab) **Person** (whether or not capitalized) includes natural persons, sole proprietorships, corporations, trusts, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, limited liability companies and Governmental Authorities.

(ac) **Personal Property** is defined in Section 2.1(c).

(ad) **Property** is defined in Section 2.1.

(ae) **Real Property** is defined in Section 2.1(b).

(af) **Security Documents** means all Credit Documents that now or hereafter grant to the Lender any guaranty, collateral or other security for any of the Obligations.

(ag) **UCC Property** means the Personal Property and all other personal property and fixtures included in the Property.

ARTICLE 2

Granting Clauses

SECTION 2.1 Granting Clauses. As security for the Obligations, the Borrower hereby grants, bargains, sells, assigns and conveys unto the Lender, and hereby grants to the Lender a security interest in, all of the Borrower's right, title and interest in, to and under the following property and interests in property (collectively, the "Property"):

(a) **Land.** The land located in Shelby County, Alabama more particularly described in Exhibit A, and all reversions and remainders in and to said land and all tenements, hereditaments, easements, rights-of-way, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any right, title and interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any other property, and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land; and all claims or demands of the Borrower, at law or in equity, in possession or expectancy of, in or to any of the same (all of the foregoing hereinafter collectively called the "Land").

(b) **Improvements.** All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building materials, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by the Borrower (all of the foregoing hereinafter collectively called the "Improvements," and together with the Land called the "Real Property").

(c) **Personal Property.** All goods, equipment, inventory, supplies and other items or types of tangible personal property (including additions and accessions thereto and replacements and substitutions therefor) now owned or hereafter created or acquired by the Borrower and attached to the Real Property (other than fixtures); or placed on the Real Property and used or useful in connection with, or in any way pertaining or relating to, the Real Property or the use and occupancy thereof, though not attached to the Real Property; or for which the proceeds of the Credit have been or may be advanced, wherever the same may be located; including: (1) all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, wires, wiring and other building materials; and (2) all machinery, equipment, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for incinerating or compacting plants, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse, sewage, or garbage, and all furniture, furnishings, decorations, art, mirrors, wall-beds, wall-safes, built-in furniture, appliances and installations, linens, towels, cutlery, dishes, shelving, partitions, screens, doorstops, vaults, elevators, escalators, dumbwaiters, awnings, window shades, venetian blinds, curtains, window treatments, light fixtures, bathroom

fixtures, fire hoses and brackets and boxes for same, fire sprinklers, alarm systems, drapery rods and brackets, screens, storm doors and windows, linoleum, carpets, rugs, wall coverings, plumbing, laundry and drying equipment, vacuum and other cleaning systems and equipment, call systems, switchboards, iceboxes, refrigerators, heating units, dishwashing equipment, stoves, ovens, water heaters, generators, tanks, motors, engines, boilers, furnaces, incinerators, garbage disposers, video and audio equipment, entertainment equipment and systems, recreation equipment, communication systems, and signage and graphics (all of the foregoing hereinafter collectively called the "Personal Property").

(d) **Rents and Leases.** All leases, subleases, lettings and licenses, and other use and occupancy agreements, now or hereafter pertaining to any of the Real Property or Personal Property, and all rents, profits, issues and revenues of the Real Property and Personal Property now or hereafter accruing; provided, however, that if no Event of Default exists, the Borrower shall have a license (but limited as set forth in Section 5.3(f)) to collect and receive all of such rents, profits, issues and revenues.

(e) **Insurance Policies.** All policies of hazard insurance now or hereafter in effect that insure the Real Property, the Personal Property or any other property conveyed or encumbered hereby, together with all right, title and interest of the Borrower in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums.

(f) **Litigation Awards.** All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to the Borrower or any subsequent owner of any of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Real Property, the Personal Property, or any other such property.

(g) **General Intangibles and Agreements.** (1) All general intangibles relating to the development or use of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, or the management and operation of any business of the Borrower thereon, including all patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets; (2) the good will of any business conducted or operated on the Real Property, all governmental licenses and permits relating to the construction, renovation or operation thereof, all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant thereof; and (3) all contracts and agreements (including construction, renovation, maintenance, engineering, architectural, leasing, management, operating and concession agreements) affecting the Real Property, the Personal Property or any other property conveyed or encumbered by this Agreement, or used or useful in connection therewith, whether now or hereafter entered into.

(h) **Construction Documents.** The Construction Contracts, the Architect Contracts, the Plans and the other Construction Documents.

(i) **Loan Funds, etc.** (1) All Loan funds held by the Lender, whether or not disbursed, (2) all funds from time to time on deposit in the construction account, (3) all reserves, deferred payments, deposits, escrows, refunds, cost savings and payments of any kind related to the Project, including all amounts from time to time on deposit in the capital reserve fund required by Section 6.17 of the Credit Agreement, and (4) all loan commitments and loan insurance related to the Project and all approvals, deposits, fees, applications and documents related thereto.

(j) **Supplemental Documents.** All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for any agreement or instrument included in the foregoing, and all rights of the Borrower to modify or terminate, or waive or release performance or observance of any obligations or condition of such document.

(k) **Proceeds.** All proceeds of any of the foregoing.

SUBJECT, HOWEVER, to Permitted Encumbrances.

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto the Lender, its successors and assigns forever.

ARTICLE 3

Representations and Warranties

The Borrower represents and warrants to the Lender that:

SECTION 3.1 Valid Title, Debt, etc. (a) The Borrower is lawfully seized in fee simple of the Real Property and is the lawful owner of, and has good title to, the remainder of the Property, and the Borrower has good right to mortgage, assign and grant a security interest in the Property as aforesaid; (b) the Property is free of all Liens other than Permitted Encumbrances; (c) the Borrower has full power to encumber, assign and convey the Property as provided herein; (d) this Agreement is and will remain a valid and enforceable first priority mortgage lien on, and security interest in, the Property, subject only to Permitted Encumbrances; and (e) the Borrower shall forever warrant and defend the title to the Property unto the Lender against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

SECTION 3.2 Environmental Compliance. To the best knowledge of the Borrower, (a) the Property has not been used to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substance; (b) the Property is not now, and has never been, in violation of any applicable Environmental Law; (c) there are no pending or threatened investigations or claims with respect to the Property by any Governmental Authority or other person under any Environmental Law; (d) there are no Hazardous Substances present on property adjacent to the Property that could migrate to, through or under the Property; (e) the

past, current and intended uses of the Property comply and will comply with all Environmental Laws; and (f) the Borrower has obtained all certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities required by Environmental Laws.

SECTION 3.3 Construction Documents. (a) There is in effect no other assignment to any other person of any of the Lender's rights under the Construction Documents, nor any Lien thereon; (b) the Borrower has done no act nor omitted to do any act that might prevent the Lender from, or limit the Lender in, acting under any of the provisions of this Agreement with respect to the Construction Documents; (c) there exists no default under the terms of any of the Construction Documents; (d) the Borrower is not prohibited under any agreement with any other person or any Governmental Requirement from (1) the granting of the Liens hereunder on the Construction Documents, (2) the performance of each and every covenant of the Borrower hereunder and in the Construction Documents, and (3) the meeting of each and every condition herein and therein contained.

SECTION 3.4 Certificates and Permits. (a) The Borrower has obtained all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the operation of the Property, the conduct of the Borrower's business at the Real Property, and the construction of the Project, including all required zoning, building, land use, environmental, occupancy, fire and other approvals, (b) to the best of the Borrower's knowledge, the present and contemplated use and occupancy of the Property do not conflict with or violate any of the same, and (c) the Borrower, promptly upon request by the Lender, shall deliver to the Lender copies of all of the same.

ARTICLE 4

Covenants and Agreements of Borrower

SECTION 4.1 Payment of Impositions. Unless the Borrower is making monthly deposits pursuant to Section 4.6, the Borrower shall pay or cause to be paid all Impositions and at the Lender's request shall furnish evidence of the payment thereof at least 10 business days before the Impositions are due. The Borrower may, at the Borrower's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of the contested items shall be effectively stayed.

SECTION 4.2 Insurance. The Borrower shall keep or cause to be kept the Property insured against loss or damage by flood (if the Property is located in a flood-prone area) fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties and other contingencies as from time to time may be required by the Lender, all in such manner and with such companies and in such amounts as the Lender may approve. All such policies shall be subject to the Lender's approval and shall name the Lender as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses,

in form and content acceptable to the Lender, to be attached to each policy) be payable to the Lender, subject to the rights of the holders of any prior mortgages. Without limiting the generality of the foregoing, such insurance shall comply with the requirements contained in Exhibit D hereto. The Borrower shall cause duplicate originals of such insurance policies (or, at the Lender's option, certificates satisfactory to the Lender) to be deposited with the Lender. If requested by the Lender, the Borrower shall furnish to the Lender evidence of the payment of the premiums for such policies. The Borrower shall cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to the Lender) to give the Lender at least 10 business days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. The Borrower shall not take any action or fail to take any action that would result in the invalidation of any insurance policy required hereunder. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Property in extinguishment of the Obligations, complete title to all insurance policies held by the Lender and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Property.

SECTION 4.3 Damage and Destruction.

(a) **Borrower's Responsibilities.** In the event of any damage to or loss or destruction of the Property, the Borrower shall (1) promptly notify the Lender of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property, and (2) unless otherwise instructed by the Lender, promptly, regardless whether any insurance proceeds are sufficient for the purpose or (unless such insurance proceeds are otherwise applied by the Lender as provided herein), commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction and in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by the Lender.

(b) **Lender's Rights; Application of Proceeds.** If any portion of the Property is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance described in Section 4.2, then (1) the Lender may, but shall not be obligated to, make proof of loss, and may settle, adjust or compromise any claims thereunder, (2) each insurance company concerned is hereby authorized and directed to make payment therefor directly to the Lender, and (3) subject to the provisions of Section 4.3(c), the Lender shall have the right to apply the insurance proceeds, first, to reimburse the Lender for all reasonable costs and expenses, including all attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and second, the remainder of such proceeds shall be applied, at the Lender's option, (A) in payment of all or any part of the Obligations in the order and manner determined by the Lender in its sole discretion (provided that the remainder of the Obligations shall continue in full force and effect and the Obligors who are obligated therefor shall not be excused from the payment thereof), (B) to the cure of any then-existing Event of Default, or (C) to the repair, restoration, or replacement, in whole or in part, of the Property. The Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any casualty whatsoever, whether or not insurable or insured against. The Lender

shall not be liable for any failure to collect, or exercise any due diligence in the collection of, any insurance proceeds.

(c) **Availability of Proceeds for Restoration.** If the amount of any such insurance proceeds for damage, destruction or loss does not exceed \$750,000 and no Event of Default then exists, or if the Lender in its sole discretion elects to permit any such proceeds in excess of \$750,000 to be used by the Borrower for the restoration of the Improvements, then the Lender shall pay such amount to the Borrower for the repair of the damaged Improvements or for the erection of new Improvements in their place, to the extent necessary to restore the Property as nearly as possible to the condition, character and value thereof existing immediately prior to such damage or destruction, but only upon satisfaction of each of the following conditions:

(1) The Borrower shall furnish evidence satisfactory to the Lender that (A) the restoration can be completed prior to the earlier of (i) the date that is six months after the date the damages or destruction occurred or (ii) the Maturity Date; and (B) the amount of business interruption insurance to be paid during the restoration period shall equal or exceed the loss in rental income (if any) from the Property during the period required for restoration;

(2) If the estimated costs of restoration (as reasonably estimated by an architect approved by the Lender) shall exceed the insurance proceeds available, the Borrower shall either deposit with the Lender the amount of such deficit or furnish a satisfactory bond of completion or other evidence satisfactory to the Lender of the Borrower's ability to meet such excess costs;

(3) The Lender shall be furnished, for its approval (in its sole discretion) (A) with an estimate for its approval of the cost of restoration of the Improvements, accompanied by the architect's certification as to such costs and appropriate final plans and specifications for such restoration; and (B) with evidence that all Improvements to be so restored and their contemplated use will, when completed, fully comply with all zoning, environmental, building laws, ordinances and regulations and other Governmental Requirements and with the requirements of the Loan Documents;

(4) Disbursement of the proceeds during the course of reconstruction shall be upon the architect's certification as to the cost of materials furnished and work done and evidence that such work and materials are free and clear of Liens; no payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed or materials furnished and incorporated into the structure from time to time, and at all times the undisbursed balance of said proceeds, together with all amounts deposited, bonded or otherwise funded pursuant to this Section 4.3(c), shall at least be sufficient to pay for the cost of completion of the work, free and clear of Liens;

(5) Final payment shall be made upon receipt by the Lender of a certification by the architect as to the completion substantially in accordance with the approved plans and specifications, the issuance of a permanent certificate of occupancy (or local

equivalent) and the expiration of the period provided under the laws of Alabama for the filing of mechanic's and materialmen's liens or receipt by the Lender of proof, to the reasonable satisfaction of the Lender, of final payment in full of all mechanics, materialmen or any other persons who have provided services in connection with the restoration; and

(6) Disbursement shall otherwise be made substantially in accordance with the procedures established in the Credit Agreement for the initial construction of the Project, with such changes as the Lender may require in its sole discretion.

If any of the foregoing conditions is not satisfied, then all insurance proceeds may be retained and applied by the Lender toward payment of all or part of the Obligations in such order as the Lender may determine in its sole discretion. If all or a portion of the insurance proceeds are paid to the Borrower, the Lender shall not be obligated to see to the proper application of any amount paid to the Borrower.

SECTION 4.4 Condemnation.

(a) **Borrower's Responsibilities; Proceedings.** The Borrower, immediately upon obtaining knowledge thereof, shall notify the Lender of any pending or threatened proceedings for the condemnation of any of the Property or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to any of the Property. The Lender may participate in any such proceedings, and the Borrower from time to time shall execute and deliver to the Lender all instruments requested by the Lender to permit such participation. The Borrower shall, at the Borrower's expense, diligently prosecute any such proceedings, deliver to the Lender copies of all papers served in connection therewith and consult and cooperate with the Lender, its attorneys and agents, in carrying on and defending any such proceedings. No settlement of any such proceedings shall be made by the Borrower without the Lender's consent, not to be unreasonably withheld.

(b) **Lender's Rights to Proceeds.** All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to the Lender. The Borrower authorizes the Lender to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Lender shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) **Application of Proceeds.** The Lender shall have the right to apply any proceeds, judgments, decrees or awards referred to in Section 4.4(b), first, to reimburse the Lender for all reasonable costs and expenses, including attorneys' fees and disbursements, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof in the same manner as provided in Section 4.3(b) with respect to insurance proceeds. Notwithstanding the provisions of the first sentence of this Section 4.4(c), if (1) the amount of such proceeds does not exceed \$500,000, (2) the remaining Property may be restored to an economically viable property having a value of not less than 95 % of its value prior to such

taking and (3) the income, revenues and profits from the Property are not materially decreased by reason of such condemnation, then any such condemnation proceeds or award received by the Lender shall be paid over wholly or in part to the Borrower for the restoration of the Improvements located on the Property in the manner provided in Section 4.3(c), provided that the conditions set forth in Section 4.3(c) are satisfied and no Event of Default then exists.

SECTION 4.5 Liens and Liabilities.

(a) **Discharge of Liens.** The Borrower shall pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others that, if unpaid, might result in, or permit the creation of, a Lien on any of the Property, and in general, the Borrower shall do, or cause to be done, at the Borrower's sole cost and expense, everything necessary to fully preserve the Lien and priority of this Agreement.

(b) **Creation of Liens.** The Borrower shall not, without the Lender's consent, create, place or permit to be created or placed, or allow to remain, any voluntary or involuntary Lien on any of the Property, whether prior to, on a parity with or subordinate to the Lien of this Agreement, other than Permitted Encumbrances. If any such Lien is created or placed on the Property without the Lender's consent, the Borrower shall cause the same to be discharged, released or bonded off to the Lender's satisfaction within 10 days after the filing thereof.

(c) **No Consent.** Nothing in the Credit Documents shall be deemed or construed as constituting the consent or request by the Lender, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, renovation, alteration or repair of the Property. The Borrower agrees that the Lender does not stand in any fiduciary relationship to the Borrower by reason of the transactions contemplated by the Credit Documents.

SECTION 4.6 Tax and Insurance Deposits. On the first day of each and every month during the Permanent Phase, the Borrower shall deposit with the Lender a sum equal to one-twelfth of the Impositions assessed against the Property for the then-current tax year, so that as each installment of such Impositions shall become due and payable, the Borrower shall have deposited with the Lender a sum sufficient to pay the same. At any time during the term of this Agreement if an Event of Default exists, upon demand by the Lender, the Borrower shall also deposit with the Lender a sum that bears the same relation to the annual insurance premiums for all insurance required by the terms hereof for the insurance period then in effect as the number of months elapsed as of the date of such demand since the last preceding installment of said premiums shall have become due and payable bears to twelve (12). For the purpose of this computation, the month in which the last preceding installment of premiums became due and payable and the month in which such demand is given shall be included and deemed to have elapsed. On the first day of the month next succeeding the month in which such demand is given, and thereafter on the first day of each and every month during the term of this Agreement, the Borrower shall deposit with the Lender a sum equal to one-twelfth of such

insurance premiums for the then-current annual insurance period, so that as each installment of such premiums shall become due and payable, the Borrower shall have deposited with the Lender a sum sufficient to pay the same. All such deposits for insurance and Impositions shall be received and held by the Lender in a money market account, and shall be applied to the payment of each installment of such premiums and Impositions as they shall become due and payable. The Lender shall, upon demand, furnish evidence to the Borrower of the making of each such payment. If the amount of such premiums and Impositions has not been definitely ascertained at the time when any such monthly deposits are required to be made, the Borrower shall make such deposits based upon the amount of such premiums and Impositions for the preceding year, subject to adjustment as and when the amount of such premiums and Impositions are ascertained. If at the time when any installment of such premiums and such Impositions becomes due and payable the Borrower shall not have deposited a sum sufficient to pay the same, the Borrower shall, within 10 days after demand, deposit any deficiency with the Lender. Upon the termination of this Agreement in accordance with Section 6.18, any remaining amount on deposit with the Lender shall be repaid to the Borrower with interest accrued to the date of payment. The Borrower shall deliver to the Lender all insurance and tax bills promptly following receipt during any period when such monthly deposits are to be made with the Lender. If the Obligations are accelerated as provided in Section 5.3(a), all funds so deposited may, at the Lender's option, be applied to the Obligations in any order determined by the Lender or to cure any existing Event of Default or to the payment of insurance premiums and Impositions as provided in this Section 4.6.

SECTION 4.7 Operations; Utilities; Waste, Demolition, Alteration or Replacement.

The Borrower shall (a) subject to Sections 4.3 and 4.4, continuously operate the Borrower's business (if any) on any existing Improvements, and upon completion will continuously operate the Project, in accordance with sound business practices; (b) not engage in any activity that would diminish the value of the Property or decrease the income from the Property; (c) pay or cause to be paid all bills for utilities and other materials and services used on or in connection with the Property; (d) cause the Property and every part thereof to be maintained and kept in good and safe repair, working order and condition; (e) not commit or permit waste thereon; (f) except as contemplated by the Plans, not remove, demolish or alter the design or structural character of any Improvements; and (g) make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Except as contemplated by the Plans, the Borrower shall not remove from the Real Property any of the fixtures or Personal Property included in the Property unless the same are immediately replaced with like property of at least equal value and utility.

SECTION 4.8 Sale, Lease or Transfer, etc.

(a) **Real Property.** The Borrower shall not (1) sell, assign, transfer, convey, lease with an option to purchase, exchange or otherwise dispose of, any of the Real Property or any interest therein; (2) contract with any person for any of the foregoing; or (3) subject any of the Real Property or any interest therein to any additional Lien, either voluntarily or involuntarily.

(b) **Equity Interests in Borrower.** Any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in the Borrower or the general partner, or any other transaction whereby the legal or beneficial ownership of the Borrower or the general partner is changed, including the issuance of additional partnership, stock or other equity interests, the termination, liquidation or dissolution of the Borrower or the general partner, the merger or consolidation of the Borrower or the general partner with any other person, or the participation by the Borrower or the general partner in a statutory share exchange with any other person, shall be treated as a transfer of the Real Property for purposes of this Section 4.8. The limited partners of the Borrower are and shall continue to be J. R. Hyde III, John H. Pontius, Schaedle-Worthington Residential, L.P., a Tennessee limited partnership having Schaedle/Worthington Properties, Inc., a Tennessee corporation wholly-owned by Robert G. Schaedle III and Robert W. Worthington, as its sole general partner, and Henry P. Doggrell. The sole general partner of the Borrower is and shall be HSW Riverchase, Inc., a Tennessee corporation wholly-owned by J. R. Hyde III. There shall be no change in the partners of the Borrower or the ownership of the general partner, and the persons listed above shall continue to own, directly or indirectly, 100% of the partnership interests of Borrower. Notwithstanding the foregoing, each of Messrs. Hyde, Pontius and Doggrell shall be entitled to transfer all or a portion of his respective limited partnership interest to a trust or partnership owned or controlled by such transferor, and Messrs. Schaedle and Worthington shall be entitled to transfer all or a portion of their respective interest in Schaedle-Worthington Residential, L.P., or that partnership's interest in the Borrower to a trust or partnership owned or controlled by Mr. Schaedle and/or Mr. Worthington, as the case may be; provided, however, that following any such transfer, the failure of any such transferee to continue to be so controlled shall constitute an Event of Default.

(c) **Lender's Rights.** The occurrence of any of the events described in Section 4.8(a) or 4.8(b) will constitute an Event of Default under this Agreement, and the Lender may, in its sole discretion, exercise any of its rights and remedies on default under Section 5.3 or require the payment after the date of such occurrence of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such rights and remedies, whether such rights and remedies be exercised by the Lender to obtain a higher rate of interest on the Obligations or to protect the security afforded by this Agreement.

(d) **Lender's Reliance.** The Borrower acknowledges the Lender's express reliance on this Section 4.8 in extending Credit under the Credit Documents based on the security of this Agreement.

SECTION 4.9 Use, Governmental Compliance, etc. The Borrower shall (a) use the Property solely for the uses contemplated by the Credit Documents or otherwise permitted in writing by the Lender; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the use of the Property and the conduct of any business or activity on the Real Property, and the construction, completion and occupancy of the Project, including all required zoning, building, land use, environmental, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Property or any business or activity conducted on

the Real Property; and (d) not permit any act to be done on the Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto.

SECTION 4.10 Zoning; Title Matters. The Borrower shall not: (a) initiate or support any zoning reclassification of the Property or seek any variance under existing zoning laws or use or permit the use of the Property in a manner that would result in such use becoming a non-conforming use under, or otherwise violate, applicable zoning laws; (b) modify, amend or supplement any Permitted Encumbrances in any manner that would materially increase the obligations or decrease the rights of the Borrower or adversely affect the rights of the Lender under the Credit Documents; (c) subject the Property to any restrictive covenants or encumbrances (other than the Permitted Encumbrances), execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality; or (d) permit the Property to be used by the public or any person in any manner that might make possible a claim of adverse possession or of any implied dedication easement or easement by prescription.

SECTION 4.11 Environmental Compliance. The Borrower shall (a) not, and shall not permit any other person to, bring any Hazardous Substances on to the Property; (b) if any Hazardous Substances are brought or found on the Property, immediately and properly remove and dispose of them in accordance with applicable Environmental Laws; (c) cause the Property and all operations conducted thereon (including all operations conducted thereon by other persons) to comply with all Environmental Laws; (d) permit the Lender from time to time to inspect the Property and observe the Borrower's operations thereon and to perform tests (including soil and ground water tests) for Hazardous Substances on the Property; (e) undertake all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (1) required by any applicable Environmental Law or (2) necessary to prevent or minimize any property damage (including damage to any of the Property), personal injury or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or the operations of the Borrower on the Property; (f) promptly give notice to the Lender in writing if the Borrower should become aware of (1) any spill, release or disposal of any Hazardous Substances, or imminent threat thereof, at the Property, in connection with the operations on the Property, or at any adjacent property that could migrate to, through or under the Property, (2) any violation of Environmental Laws regarding the Property or operations on the Property, and (3) any investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving the Borrower or the Property; and (g) deliver to the Lender, at the Lender's request, copies of any and all documents in the Borrower's possession or to which the Borrower has access relating to Hazardous Substances or Environmental Laws and the Property, and the operations on the Property, including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports. If the Lender at any time reasonably believes that the Borrower is not complying with all applicable Environmental Laws or the requirements of this Agreement regarding the same, or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, or if any other Event of Default exists, the

Lender may require the Borrower to furnish to the Lender an environmental audit or site assessment reasonably satisfactory to the Lender with respect to the matters of concern to the Lender. Such audit or assessment shall be performed at the Borrower's expense by a qualified consultant approved by the Lender.

SECTION 4.12 Maintenance of Lien Priority. The Borrower shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property purported to be created by this Agreement. The Borrower shall execute, acknowledge, deliver, file and record such additional instruments as the Lender may deem necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as first priority Liens on the Property, subject to Permitted Encumbrances, or to subject after-acquired property or proceeds to such Liens. If the Liens, validity or priority of this Agreement, or if title to any of the rights of the Borrower or the Lender in or to the Property shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against the Borrower or the Lender with respect thereto, the Borrower shall promptly notify the Lender thereof and shall diligently endeavor to cure any defect that may be claimed, and shall take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of the litigation, and subject to the Lender's approval, the compromise, release or discharge of any and all adverse claims other than Permitted Encumbrances. The Lender (whether or not named as a party to such actions or proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the Liens, validity or priority of this Agreement, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of adverse claims, and the removal of prior Liens. The Borrower shall, on demand, reimburse the Lender for all expenses (including attorneys' fees and disbursements) reasonably incurred by the Lender in connection with any of the foregoing matters.

SECTION 4.13 Permitted Encumbrances. The Borrower shall not permit any default or violation to occur with respect to any agreement, covenant or restriction included in Permitted Encumbrances.

SECTION 4.14 Construction Documents. (a) The Borrower shall (1) perform and observe each and every condition and obligation of the Borrower contained in the Construction Documents; (2) give prompt notice to the Lender of any claim of default under the Construction Documents given to the Borrower or by the Borrower, together with a complete copy of any such claim; (3) at the sole cost and expense of the Borrower, enforce the performance and observance of each obligation and condition of the Construction Documents to be performed or observed by any other person thereunder; and (4) appear in, and defend any action growing out of, or in any manner connected with, the Construction Documents or the obligations of the Borrower or any guarantor thereunder; and (b) the Borrower shall not (1) modify the terms of the Construction Documents unless required so to do by the terms of the Construction Documents; or (2) waive or release the observance or performance of any obligation or condition of the Construction Documents or any liability on account of any representation or warranty given by any other person thereunder.

ARTICLE 5

Defeasance, Default and Remedies

SECTION 5.1 Defeasance. This Agreement is made upon the condition that if (a) all of the Obligations (as defined in Section 1.2(w), including all future advances and other future indebtednesses, obligations and liabilities included therein) are paid in full, and (b) the Borrower reimburses the Lender for any amounts the Lender has paid in respect of Liens, Impositions, prior mortgages, insurance premiums, repairing or maintaining the Property, performing the Borrower's obligations under any lease related to the Real Property, performing the Borrower's obligations under Section 4.11 with respect to environmental matters, and any other advancements hereunder, and interest thereon, and (c) the Borrower fulfills all of the Borrower's other obligations under this Agreement, and (d) the Lender has no obligation to extend any further Credit to or for the account of the Borrower and there is in existence no contingent liability of the Borrower that is secured by this Agreement, and (e) any other conditions set forth in Section 6.18 are fulfilled, this conveyance shall be null and void upon the filing by the Lender of the written instrument of termination described in Section 6.18.

SECTION 5.2 Events of Default. The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Agreement (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, order, rule or regulation of any Governmental Authority):

(a) any representation or warranty made in this Agreement or in any of the other Credit Documents shall prove to be false or misleading in any material respect as of the time made; or

(b) any report, certificate, financial statement or other instrument furnished in connection with the Credit, this Agreement or any of the other Credit Documents, shall prove to be false or misleading in any material respect as of the time furnished; or

(c) default shall be made in the payment when due of any of the Obligations, and such default shall continue unremedied for five Business Days; or

(d) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of the Borrower to be observed or performed pursuant to the terms of this Agreement (other than any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 5.2 specifically dealt with) and such default shall continue unremedied until the first to occur of (1) the date that is 20 days after written notice by the Lender to the Borrower; or (2) the date that is 20 days after the Borrower first obtains knowledge thereof; or

(e) any event of default, as therein defined, shall occur or continue under any of the other Credit Documents (after giving effect to any applicable notice, grace or cure period specified therein); or

(f) any Obligor shall (1) apply for or consent to the appointment of a receiver, trustee, liquidator or other custodian of such Obligor or any of the Property, (2) fail or admit in writing such Obligor's inability to pay such Obligor's debts generally as they become due, (3) make a general assignment for the benefit of creditors, (4) suffer or permit an order for relief to be entered against such Obligor in any proceeding under the federal Bankruptcy Code, or (5) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against such Obligor in any proceeding under any such law or statute, or if partnership or corporate action shall be taken by any Obligor for the purpose of effecting any of the foregoing; or

(g) a petition shall be filed, without the application, approval or consent of any Obligor in any court of competent jurisdiction, seeking bankruptcy, reorganization, rearrangement, dissolution or liquidation of such Obligor or of all or a substantial part of the properties or assets of such Obligor, or seeking any other relief under any law or statute of the type referred to in Section 5.2(f)(5) against such Obligor, or the appointment of a receiver, trustee, liquidator or other custodian of such Obligor or of all or a substantial part of the properties or assets of such Obligor, and such petition shall not have been stayed or dismissed within 60 days after the filing thereof; or

(h) any Obligor shall become insolvent, suspend its business or be dissolved or liquidated or any writ of execution, attachment or garnishment shall be issued against the assets of any Obligor and such writ of execution, attachment or garnishment shall not be dismissed, discharged or quashed within 60 days of issuance; or

(i) any final judgment for the payment of money shall be rendered against any Obligor and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed; or

(j) any guarantor of any of the Obligations shall default in the due observance or performance of any covenant, condition or agreement on such guarantor's part to be observed or performed under such guarantor's guaranty agreement (after giving effect to any applicable notice, grace or cure period specified therein) or shall terminate or attempt to terminate such guarantor's guaranty agreement; or

(k) if the Borrower or SWH Construction-Alabama, Limited Partnership, the general contractor for the Project, at any time prior to the completion of the Project abandons the Project, or ceases to work thereon for a period of more than 15 consecutive days, or fails diligently to prosecute the work on the Project; or

(l) if in the judgment of the Lender the proceeds of the Loan or any part thereof are being or at any time have been diverted to a purpose other than the reimbursement for or payment of costs of construction of the Project that have been approved by the Lender; or

(m) except for Permitted Encumbrances, if any Lien, statement of Lien or suit to enforce a Lien is filed against any of the Property and the Borrower fails to have such Lien satisfied or suit dismissed or to secure the payment of the amount claimed by such Lien, statement of Lien or suit by a bond, letter of credit or other security satisfactory to the Lender within ten days of the day such Lien, statement of Lien or suit is filed.

For purposes of this paragraph, Robert G. Schaedle III and Robert W. Worthington are together called the "Excepted Obligor," each of them individually is called an "Excepted Obligor," and the Obligor other than the Excepted Obligor are together called the "Other Obligor." Notwithstanding anything to the contrary set forth in this Section 5.2, the occurrence after the Conversion Date of any one or more of the events or conditions set forth in Section 5.2(f) through 5.2(i) with respect to either of the Excepted Obligor alone shall not constitute an Event of Default so long as, during the existence of any such event or condition, none of the events or conditions specified in Section 5.2(f) through 5.2(i) shall exist with respect to the other Excepted Obligor or any of the Other Obligor. However, the existence of any one or more of the events or conditions set forth in Section 5.2(f) through 5.2(i) with respect to either of the Excepted Obligor prior to the Conversion Date, or with respect to both of the Excepted Obligor at the same time after the Conversion Date, or with respect to any one or more of the Other Obligor at any time, shall constitute an Event of Default.

SECTION 5.3 Rights and Remedies of Lender Upon Default.

(a) **Acceleration of Obligations.** If an Event of Default exists under Section 5.2(f) or 5.2(g), all of the Obligations shall automatically become immediately due and payable. If any other Event of Default exists, the Lender shall have the right without further notice to the Borrower (except any such notice as may be specifically required under the other Credit Documents) to declare all of the Obligations immediately due and payable.

(b) **Possession and Operation of Property.** If an Event of Default exists, in addition to all other rights herein conferred on the Lender, the Lender (or any person designated by the Lender) may, but will not be obligated to, (1) enter upon the Real Property and take possession of any or all of the Property without being guilty of trespass or conversion, exclude the Borrower therefrom, and hold, use, administer, manage and operate the same to the extent that the Borrower could do so, without any liability to the Borrower resulting therefrom; (2) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (3) make repairs and purchase needed additional property; (4) insure or reinsure the Property; (5) maintain and restore the Property; (6) prepare the Property for resale, lease or other disposition; (7) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (8) exercise every power, right and privilege of the Borrower with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** If an Event of Default exists, the Lender, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property, to sue the Borrower for damages on account of said default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Lender shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Agreement, to the appointment by any competent court or tribunal, without notice to the Borrower or any other party, of a receiver of the rents, issues, profits and revenues of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Power of Sale.** If an Event of Default exists, this Agreement shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Lender may from time to time elect to sell) under the power of sale which is hereby given to the Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Lender may bid at any sale held under this Agreement and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, the Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Agreement shall have been terminated as provided herein.

(e) **Personal Property and Fixtures.** If an Event of Default exists, the Lender shall have with respect to the UCC Property all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the UCC Property or its value and without the necessity of a court order. At the Lender's request, the Borrower shall assemble the UCC Property and make it available to the Lender at any place designated by the

Lender. To the extent permitted by law, the Borrower expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of the UCC Property or exercise of any other right or remedy upon default. The Borrower agrees that the Lender may sell or dispose of both the Real Property and the UCC Property in accordance with the rights and remedies granted under this Agreement with respect to Real Property.

(f) **Rents and Leases.** If an Event of Default exists, the Lender, at its option, shall have the right, power and authority to terminate the license granted to the Borrower in Section 2.1(d) to collect the rents, profits, issues and revenues of the Real Property, and, without taking possession, in the Lender's own name to demand, collect, receive, sue for, attach and levy such rents, profits, issues and revenues, to give proper receipts, releases and acquittances therefor, and to apply the proceeds thereof as set forth in Section 5.3(i).

(g) **Construction Documents.** If an Event of Default exists, the Lender may exercise any or all of the rights and remedies of the Borrower under the Construction Documents to the same extent as the Borrower could in the absence of such Event of Default, including the completion of the construction of the Project pursuant to the Construction Documents and in the course of such construction the making of such changes in the Plans and other Construction Documents as the Lender in its sole discretion may deem advisable. The Lender may (but without obligation to do so and without notice to or demand on the Borrower or releasing the Borrower from its obligations to do so) perform any covenant or condition of the Borrower under the Construction Documents and, to the extent that the Lender shall incur any costs or pay any monies in connection therewith, including any costs or expenses of litigation, then such costs, expense or payment shall be included in the Obligations and shall bear interest from the incurring or payment thereof at the Default Rate. The Lender shall have the right to call on the Architects, the Contractors, the Engineers and any other party to the Construction Documents, to advise and consult with the Lender concerning construction of the Project and other matters relating thereto, and to furnish to the Lender information concerning the Project. If the Lender calls on the Architects, the Contractors, the Engineers or any other person for such services, the Borrower agrees to pay all charges thereof for performing such services.

(h) **Foreclosure Deeds.** To the extent permitted by applicable law, the Borrower hereby authorizes and empowers the Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(i) **Order of Application of Proceeds.** All payments received by the Lender as proceeds of any of the Property, as well as any and all amounts realized by the Lender in connection with the enforcement of any right or remedy under this Agreement, shall be applied by the Lender as follows: (1) to the payment of all expenses incident to the exercise of any remedies under this Agreement, including attorneys' fees and disbursements as provided in the Credit Documents, appraisal fees, environmental site assessment fees, title search fees and foreclosure notice costs, (2) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) in such

order as the Lender may elect in its sole discretion, (3) to a cash collateral reserve fund to be held by the Lender in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (4) the remainder, if any, shall be paid to the Borrower or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(j) **Multiple Sales.** If an Event of Default exists, the Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Agreement, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations this Agreement shall remain in full force and effect as though no sale had been made under this Section 5.3(j). Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Obligations, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting the power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(k) **Waiver of Certain Laws.** The Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (1) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (2) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws). The Borrower also waives any and all rights the Borrower may have to a hearing before any Governmental Authority prior to the exercise by the Lender of any of its rights or remedies under the Credit Documents and applicable law.

(l) **Prerequisites of Sales.** In case of any sale of the Property as authorized by this Section 5.3, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

SECTION 5.4 Default Rate. If an Event of Default exists, the Obligations shall bear interest at the Default Rate, until the earlier of (a) such time as all of the Obligations are paid in full or (b) no such Event of Default exists.

SECTION 5.5 Remedies Cumulative. The rights, powers and remedies of the Lender under this Agreement are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.

ARTICLE 6

Miscellaneous

SECTION 6.1 Notices.

(a) Methods. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, the Borrower or the Lender must (except as otherwise expressly provided in this Agreement) be in writing and be delivered by one of the following methods: (1) by personal delivery at the hand delivery address specified below, (2) by first-class, registered or certified mail, postage prepaid, addressed as specified below, or (3) if facsimile transmission facilities for such party are identified below or pursuant to a separate written notice from such party, sent by facsimile transmission to the number specified below or in such notice.

(b) Addresses. The hand delivery address, mailing address and (if applicable) facsimile transmission number for receipt of notice or other documents by such parties are as follows:

(1) Borrower:

By hand:

HSW Riverchase Associates, L.P.
Attn: Mr. Robert W. Worthington
Schaedle-Worthington Residential
28 Perimeter Center East, Suite 250
Atlanta, Georgia 30346

with a copy to:

Mr. John H. Pontius
330 Poplar Avenue
Memphis, Tennessee 38111

and a copy to:

Henry P. Doggrell, Esq.
Baker, Donelson, Bearman & Caldwell
20th Floor, First Tennessee Building
165 Madison Avenue
Memphis, Tennessee 38103

By mail:

Same

By facsimile: HSW Riverchase Associates, L.P.
Attn: Mr. Robert W. Worthington
(404) 393-2727

with a copy to:

Attn: Mr. John H. Pontius
(901) 325-5235

and a copy to:

Attn: Henry P. Doggrell, Esq.
(901) 577-2303

(2) Lender:

By hand: AmSouth Bank of Alabama
Attn: Mr. William C. McKinnon
Vice President
9th Floor - AmSouth/Sonat Tower
Birmingham, Alabama 35203

By mail: AmSouth Bank of Alabama
Attn: Mr. William C. McKinnon
Vice President
9th Floor - AmSouth/Sonat Tower
Birmingham, Alabama 35203

By facsimile: AmSouth Bank of Alabama
Attn: Mr. William C. McKinnon
(205) 583-4436

Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Section 6.1.

(c) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, director, partner or other legal representative of the party) at the address or number specified pursuant to Section 6.1(b), or, if sent by mail, three Business Days after such notice or document is deposited in the United States mail, addressed as provided above.

(d) Five Business Days' written notice to the Borrower as provided above shall constitute reasonable notification to the Borrower when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five Business

Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

SECTION 6.2 Expenses. The Borrower shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to the Lender, incurred by the Lender in connection with (a) the negotiation, preparation and review of this Agreement (whether or not the transactions contemplated by this Agreement shall be consummated), (b) the enforcement of this Agreement, (c) the custody and preservation of the Property, (d) the protection or perfection of the Lender's rights and interests under this Agreement in the Property, (e) the exercise by or on behalf of the Lender of any of its rights, powers or remedies under this Agreement, and (f) the prosecution or defense of any action or proceeding by or against the Lender, the Borrower, any other Obligor, or any one or more of them, concerning any matter related to this Agreement, any of the Property, or any of the Obligations. All such amounts shall bear interest from the date demand is made at the Default Rate and shall be included in the Obligations secured hereby. The Borrower's obligations under this Section 6.2 shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 6.3 Heirs, Successors and Assigns. Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party, except that the Borrower may not assign or transfer this Agreement without the prior written consent of the Lender; and all covenants and agreements of the Borrower contained in this Agreement shall bind the Borrower's heirs, successors and assigns and shall inure to the benefit of the successors and assigns of the Lender.

SECTION 6.4 Independent Obligations. The Borrower agrees that each of the obligations of the Borrower to the Lender under this Agreement may be enforced against the Borrower without the necessity of joining any other Obligor, any other holders of Liens in any Property or any other person, as a party.

SECTION 6.5 Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the Liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.

SECTION 6.6 Date of Agreement. The date of this Agreement is intended as a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on that date.

SECTION 6.7 Separability Clause. If any provision of the Credit Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 6.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

SECTION 6.9 No Oral Agreements. This Agreement is the final expression of the agreement between the parties hereto, and this Agreement may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Agreement and the other Credit Documents, and there is no unwritten oral agreement between the parties hereto in existence.

SECTION 6.10 Waiver and Election. The exercise by the Lender of any option given under this Agreement shall not constitute a waiver of the right to exercise any other option. The filing of a suit to foreclose the Liens granted by this Agreement, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later or simultaneous suit to collect the Obligations or foreclose by judicial foreclosure the Liens granted by this Agreement. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Credit Documents, nor consent to any departure by the Borrower therefrom, shall be effective unless in writing and signed by an authorized officer of the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

SECTION 6.11 No Obligations of Lender; Indemnification. The Lender does not by virtue of this Agreement or any of the transactions contemplated by the Credit Documents assume any duties, liabilities or obligations with respect to any of the Property unless expressly assumed by the Lender under a separate agreement in writing, and this Agreement shall not be deemed to confer on the Lender any duties or obligations that would make the Lender directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Borrower agrees to indemnify and hold the Lender harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including attorney's fees) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments (collectively, "claims and losses") directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the Borrower or any Obligor in this Agreement or any other Credit Document; (b) any breach of any of the warranties or obligations of the Borrower or any Obligor under this Agreement or any other Credit Document; and (c) the Property, or the Liens of the Lender thereon. Without limiting the generality of the foregoing, the Borrower agrees that the Borrower's obligation to defend, indemnify and save harmless the Lender set forth in this Section 6.11 shall specifically include all claims and losses asserted against or suffered by the Lender that are related to or arise out of (1) any representations or warranties in Section 3.2 that prove to be false or untrue in any

material respect, (2) any default in the performance or nonperformance of the Borrower's covenants and agreements in Section 4.11, and (3) any clean up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Property, that may be required by any Environmental Law or Governmental Authority. The provisions of this Section 6.11 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Agreement.

SECTION 6.12 Advances by the Lender. If the Borrower shall fail to comply with any of the provisions of this Agreement, the Lender may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing the Borrower's obligations under any such provision. The Borrower agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at the Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Lender of any Event of Default resulting from the Borrower's failure to pay such amounts.

SECTION 6.13 Rights, Liens and Obligations Absolute. All rights of the Lender hereunder, all Liens granted to the Lender hereunder, and all obligations of the Borrower hereunder, shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any of the Credit Documents, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Credit Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

SECTION 6.14 Construction of Mortgage. This Agreement is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, fixture filing, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and agreements herein set forth.

SECTION 6.15 Fixture Filing. This Agreement shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Real Property. The goods are described by item or type in Section 2.1. The Borrower is the debtor, and the Lender is the secured party. The names of the debtor (Borrower) and the secured party (Lender) are given in the first paragraph of this Agreement. This Agreement is signed by the debtor (Borrower) as a fixture filing. The mailing address of the Lender set out in Section 6.1(b)(2) is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Borrower set out in Section 6.1(b)(1) is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section 6.15 and in Section 2.1. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Borrower is a record owner of the real estate.

SECTION 6.16 Landlord-Tenant Relationship. Any sale of the Property under this Agreement shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Borrower.

SECTION 6.17 Other Mortgages Encumbering the Real Property.

(a) **Authorization to Disclose.** The Borrower hereby authorizes the holder of any other mortgage encumbering any of the Real Property to disclose to the Lender at any time the following information: (1) the amount of debt secured by such mortgage; (2) the amount of such debt that is unpaid; (3) whether such debt is or has been in arrears; (4) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (5) any other information regarding such mortgage or the debt secured thereby that the Lender may request from time to time.

(b) **No Amendments; Default, etc.** The Borrower agrees to comply with the terms of any other mortgage encumbering any of the Real Property and agrees not to consent to or permit any amendment or modification thereof without the prior written consent of the Lender. The Borrower further agrees not to permit any default to occur under any other mortgage encumbering any of the Real Property, but that if any default should be made in the payment of principal, interest or any other sum secured by any such mortgage, the Lender may (but shall not be required to) pay all or any part of such amount in default, without notice to the Borrower. Any such action by the Lender shall not cure any Event of Default created under this Agreement by virtue of the default in the other mortgage.

SECTION 6.18 Termination. This Agreement and the Lender's Liens under this Agreement in the Property will not be terminated until a written mortgage satisfaction instrument executed by one of the Lender's officers is filed for record in the county in which the Land is located. Except as otherwise expressly provided in this Agreement, no satisfaction of this Agreement shall in any way affect or impair the representations, warranties, agreements or other obligations of the Borrower or the powers, rights and remedies of the Lender under this Agreement with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction. Even if all of the Obligations owing to the Lender at any one time should be paid in full, this Agreement will continue to secure any Obligations that might later be owed to the Lender until such mortgage satisfaction instrument has been executed and recorded. In no event shall the Lender be obligated to satisfy its Liens under this Agreement or return or release any of the Property to the Borrower (a) until the payment in full of all Obligations then outstanding, (b) if the Lender is obligated to extend Credit to the Borrower, (c) if any contingent obligation of the Borrower to the Lender remains outstanding or (d) until the expiration of any period for avoiding or setting aside any payment to Lender under bankruptcy or insolvency laws.

SECTION 6.19 Reinstatement. This Agreement, the obligations of the Borrower hereunder, and the Liens, rights, powers and remedies of the Lender hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or

returned to the Borrower, any Obligor, or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, any Obligor or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

SECTION 6.20 Submission to Jurisdiction. The Borrower irrevocably (a) acknowledges that this Agreement will be accepted by the Lender and performed by the Borrower in the State of Alabama; (b) submits to the jurisdiction of each state or federal court sitting in Jefferson County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement or any of the other Credit Documents (individually, an "Agreement Action"); (c) waives, to the fullest extent permitted by law, any objection or defense that the Borrower may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; (d) agrees that final judgment in any Agreement Action brought in any of the Courts shall be conclusive and binding upon the Borrower and may be enforced in any other court to the jurisdiction of which the Borrower is subject, by a suit upon such judgment; (e) consents to the service of process on the Borrower in any Agreement Action by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the Borrower at the Borrower's address designated in or pursuant to Section 6.1; (f) agrees that service in accordance with Section 6.20(e) shall in every respect be effective and binding on the Borrower to the same extent as though served on the Borrower in person by a person duly authorized to serve such process; and (g) **AGREES THAT THE PROVISIONS OF THIS SECTION, EVEN IF FOUND NOT TO BE STRICTLY ENFORCEABLE BY ANY COURT, SHALL CONSTITUTE "FAIR WARNING" TO THE BORROWER THAT THE EXECUTION OF THIS AGREEMENT MAY SUBJECT THE BORROWER TO THE JURISDICTION OF EACH STATE OR FEDERAL COURT SITTING IN JEFFERSON COUNTY, ALABAMA WITH RESPECT TO ANY AGREEMENT ACTIONS, AND THAT IT IS FORESEEABLE BY THE BORROWER THAT THE BORROWER MAY BE SUBJECTED TO THE JURISDICTION OF SUCH COURTS AND MAY BE SUED IN THE STATE OF ALABAMA IN ANY AGREEMENT ACTIONS.** Nothing in this Section 6.20 shall limit or restrict the Lender's right to serve process or bring Agreement Actions in manners and in courts otherwise than as herein provided.

IN WITNESS WHEREOF, the undersigned HSW Riverchase Associates, L.P. has caused this Agreement to be executed by its duly authorized general partner on the date of the acknowledgment of the Borrower's signature below.

HSW RIVERCHASE ASSOCIATES, L.P.,
a Tennessee limited partnership

By HSW Riverchase, Inc.
a Tennessee corporation
Its sole general partner

By John Pontius
Its Vice President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John Pontius, whose name as Vice President of HSW Riverchase, Inc., a Tennessee corporation, as general partner of HSW Riverchase Associates, L.P., a Tennessee limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner of said partnership as aforesaid.

Given under my hand and official seal, this 20th day of December, 1994.

Patricia S. Heiring
Notary Public

AFFIX SEAL

My commission expires: MY COMMISSION EXPIRES OCTOBER 28, 1996

This instrument prepared by:
Douglas T. Arendall
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000

EXHIBIT A

Lot 1, according to the Map and Survey of Southwood Park Estates, Second Addition to Hoover, as recorded in Map Book 17, page 90, in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT B

The "Credit Documents" referred to in this Agreement include the following:

(h) Credit Agreement (Construction Loan) dated December 20, 1994 executed by the Borrower in favor of the Lender.

(i) Promissory Note dated December 20, 1994 executed by the Borrower in favor of the Lender in the face amount of \$13,500,000.

(j) Future Advance Mortgage dated December 20, 1994 executed by the Borrower in favor of the Lender.

(k) Absolute Assignment of Rents and Leases dated December 20, 1994 executed by the Borrower in favor of the Lender.

(l) Environmental Indemnity Agreement dated December 20, 1994 executed by the Borrower, the General Partner and the Guarantors in favor of the Lender.

(m) Guaranty Agreement dated December 20, 1994 executed by Robert G. Schaedle, III in favor of the Lender.

(n) Guaranty Agreement dated December 20, 1994 executed by Robert W. Worthington in favor of the Lender.

(o) Guaranty Agreement dated December 20, 1994 executed by J. R. Hyde III in favor of the Lender.

(p) Guaranty Agreement dated December 20, 1994 executed by SWH Construction-Alabama, Limited Partnership in favor of the Lender.

(q) Guaranty Agreement dated December 20, 1994 executed by SWH Construction - Tennessee, L.P. in favor of the Lender.

(r) Guaranty Agreement dated December 20, 1994 executed by SWH Construction - Georgia, L.P. in favor of the Lender.

EXHIBIT C

(Permitted Encumbrances)

1. The Lien for ad valorem taxes on the Property so long as such taxes are not delinquent.

2. The exceptions set forth in Schedule B of the mortgagee's title insurance policy issued or to be issued pursuant to that certain Commitment to Issue Title Insurance bearing File No. 94-27200-V (Revised) prepared by Alabama Title Co., Inc., as agent for Commonwealth Land Title Insurance Company, having an effective date of December 9, 1994, at 8:00 a.m. (as marked down by said title insurance agent through the date of closing), to the extent only that such exceptions refer expressly to instruments recorded against, or otherwise specifically affect, the Property and not to any general, standard or similar exceptions that may appear in said policy.

EXHIBIT D

INSURANCE REQUIREMENTS

I. GENERAL REQUIREMENTS

The General Requirements set forth herein shall be applicable to the insurance requirements outlined below in Paragraphs II and III throughout the term of this Commitment Agreement.

(A) RELATING TO INSURER.

All insurance coverages required by the Commitment must be provided by insurance companies acceptable to the Lender that are rated at least an "A-XII" or better by Best's Insurance Guide and Key Ratings and a claim payment rating by Standard & Poor's Corporation of AA or better. The aggregate amount of coverage provided by a single company must not exceed 5% of the company's policyholders' surplus. All insurance companies must be licensed and qualified to do business in the state where the insured collateral is located.

Each insurance policy must (i) provide primary insurance without right of contribution from any other insurance carried by the Lender, (ii) contain an express waiver by the insurer of any right of subrogation, setoff or counterclaim against any insured party thereunder including the Lender, (iii) permit the Lender to pay premiums at the Lender's discretion and (iv) as respects any third party liability claim brought against the Lender, obligate the insurer to defend Lender as an additional insured thereunder.

(B) RELATING TO DOCUMENTATION OF COVERAGE.

The original copy of each insurance policy required hereunder shall be furnished to the Lender, or in the case of a blanket policy, a copy of the original policy certified in writing by a duly authorized Agent for the insurance company as a "true and certified" copy of the policy. The Borrower shall not submit a Certificate of Insurance, in lieu of the certified copy of the policy. The original policy(ies) or certified copy of the policy(ies) must be delivered to the Lender, effective with the commencement of the Project and furnished annually thereafter, prior to the expiration date of the preceding policy(ies).

(C) CANCELLATION AND MODIFICATION CLAUSE.

1. The insurer hereby agrees that its policy will not lapse, terminate, or be canceled, or be amended or modified to reduce limits or coverage terms unless and until AmSouth Bank of Alabama has received not less than thirty 60 days' prior written notice thereof at the following address:

AmSouth Bank of Alabama, Attention:
Commercial Real Estate Department, P.O.
Box 11007, Birmingham, Alabama 35288.

2. Notwithstanding the foregoing, in the event of cancellation due to non-payment of premium, the insurer shall provide not less than ten (10) days' Notice of Cancellation to AmSouth Bank, of Alabama, Attention: Commercial Real Estate Department, P.O. Box 11007, Birmingham, Alabama 35288.

(D) MORTGAGEE CLAUSE.

All policies providing physical damage type coverages on the building or improvements shall show the mortgage interest as follows:

AmSouth Bank of Alabama, its successors and assigns, Attention: Commercial Real Estate Department, P.O. Box 11007, Birmingham, Alabama 35288

(E) LOSS PAYABLE CLAUSE.

All policies providing physical damage type coverages on the personal property or construction materials not yet a part of the improvements shall show a Loss Payee interest as follows:

Loss, if any, under this policy shall be payable to AmSouth Bank of Alabama, its successors and assigns, as their interests may appear.

Attention: Commercial Real Estate Department,
P.O. Box 11007, Birmingham, Alabama 35288

II. TYPES OF INSURANCE - DURING THE CONSTRUCTION PERIOD

The Borrower will at all times keep the Project insured prior to completion of the improvements against loss or damage from such causes as are customarily insured against, by prudent owners of similar facilities. Without limiting the generality of the foregoing, the Borrower will obtain or shall cause its contractor to obtain, and maintain in effect the following amounts and types of insurance.

(A) "ALL RISKS" or "SPECIAL" FORM BUILDERS' RISKS INSURANCE.

All Risks or Special Form Builder's Risk insurance against loss or damage to the Project, including but not limited to, perils of fire, lightning, water, wind theft, vandalism and malicious mischief, plate glass breakage, off-site materials storage, in-transit coverage, expediting expense coverage and perils typically provided under an Extended Coverage Endorsement and other forms of broadened risk perils, and insured on a "replacement cost" value basis to the extent of the full replacement value of the Project. The deductible amount thereunder shall be borne by the Borrower in the event of a loss and the deductible must not exceed \$5,000 per occurrence. Further, in the event of a loss, the Borrower shall abide by all provisions of the insurance contract, including proper and timely notice of the loss to the insurer, and the Borrower further agrees it will notify Lender of any loss in the amount of \$25,000 or greater and that no claim at or in excess of \$25,000 thereunder shall be settled without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed by the Lender.

Subject to notice provisions contained above in Paragraph I(C), Cancellation and Modification Clause, the Builders Risk policy shall contain a Standard Mortgage Holder Endorsement to guarantee to the benefit of Lender said coverages shall not be voided or canceled, without proper notice, by reason of (i) any act of negligence, or breach of any condition, declaration or warranty contained in any such policy by the Borrower or any third party, (ii) the occupation, operation or use of the Project for purposes more hazardous than those permitted by the terms of the policy, (iii) any foreclosure or other proceeding or notice of sale relating to the Project, or (iv) any change in the title to or ownership of all or any portion of the Project.

Debris Removal coverage shall be included in an amount deemed appropriate by the Borrower, but in no event less than \$250,000 for removal from a casualty loss and no less than \$10,000 for debris removal of pollutants.

(B) BOILER AND MACHINERY EQUIPMENT INSURANCE.

Such form of coverage whether permanent or under the Builders Risk shall be in place at the appropriate time during the Project period in order to include and insure "Hot Testing" of the new equipment and systems for a minimum of thirty days prior to Project completion and occupancy. The Boiler and Machinery Equipment policy shall then remain in force after Project completion throughout the term of the Loan as part of the required coverages enumerated in Paragraph III. Amount of insurance shall be in an amount equal to the replacement cost value of the equipment, and shall include coverage for expediting permanent repairs and permanent replacement. The deductible for any loss thereunder shall not exceed \$5,000 per occurrence.

(C) FLOOD AND EARTHQUAKE INSURANCE.

Insurance in an amount equal to the full replacement cost value of the Project, subject to no more than a \$25,000 per occurrence deductible. The policy shall include coverage for subsidence.

(D) DELAY-LOSS OF EARNINGS AND RENTS INSURANCE.

Throughout the Project construction period until its completion, insurance against loss of earnings and rents as a result of delay (when delay is caused by an insured peril under the Builder's Risk Policy, Boiler and Machinery Policy and any other property insurance covering the Project) written in an "all risks" form, either as an endorsement to the insurance required under Paragraph I(A), or under a separate policy, in an amount sufficient (in the Lender's opinion) to cover mortgage payments for a period of at least six months.

(E) WORKERS COMPENSATION INSURANCE.

Workers Compensation insurance covering all employees of the Borrower and its contractor and subcontractors for the Project to the extent required by Statutory Law, including an "All States Endorsement".

Policy shall also provide Employer's Liability coverage for

Bodily Injury by Accident \$1,000,000 Each Accident
Bodily Injury by Disease \$1,000,000 Policy Limit
Bodily Injury by Disease \$1,000,000 Each Employee

The Borrower shall require or shall cause its general contractor to require evidence of Workers Compensation coverage from each and every subcontractor in form and limits acceptable to the Lender.

(F) LIABILITY INSURANCE.

COMMERCIAL GENERAL LIABILITY:

Commercial General Liability in a primary amount of at least \$500,000 per occurrence, Bodily Injury for injury or death of any one person and \$100,000 for Property Damage for damage to or loss of property of others, subject to a \$1,000,000 annual aggregate policy limit for all Bodily Injury and Property Damage claims occurring on or about the Land or in any way related to the Project. Such policy shall include coverages of a Broad Form nature, including, but not limited to, Explosion, Collapse and Underground (XCU), Products Liability, Completed Operations, Broad Form Contractual Liability, Broad Form Property Damage, Personal Injury, Incidental Malpractice Liability, and Host Liquor Liability.

VEHICLE LIABILITY: Automobile and Vehicle Liability insurance coverage for all owned, non-owned, leased or hired automobiles and vehicles in a primary limit amount of \$500,000 per occurrence for Bodily Injury; \$100,000 per occurrence for Property Damage.

UMBRELLA LIABILITY: Umbrella Liability insurance in the minimum amount of \$10,000,000 for each occurrence and aggregate combined single limit for all liability, with a \$10,000 self-insured retention for exposure not covered in underlying primary policies. The Umbrella Liability policy shall name in its underlying schedule the policies of Commercial General Liability, Automobile/Vehicle Liability and Employer's Liability under the Workers Compensation Policy.

(G) COMMERCIAL BLANKET FIDELITY BOND INSURANCE.

A Commercial Blanket Bond covering employees of the Borrower and the general contractor, including their officers, and the individual owners, of the insured business entity, whether a joint-venture, partnership,

proprietorship or incorporated entity, against loss as a result of their dishonesty. Policy limit shall be in an amount of at least \$1,000,000, subject to a deductible of no more than \$25,000 per occurrence.

(H) CONTRACTOR'S EQUIPMENT.

The Borrower shall require or shall cause its general contractor to require, insurance to protect the contractor or its subcontractors for damage to, including loss use of any tools, equipment or vehicles whether licensed or not for road use, including owned, leased, hired or borrowed equipment or vehicles. The Lender shall assume no responsibility for loss or damage to the above.

III. TYPES OF PERMANENT INSURANCE - AFTER THE CONSTRUCTION PERIOD

The Borrower will at all times keep the Project insured after completion of the improvements against loss or damage from such causes as are customarily insured against, by prudent owners of similar facilities. Without limiting the generality of the foregoing, the Borrower will obtain and maintain in effect the following amounts and types of insurance throughout the term of the Loan.

(A) "ALL RISKS" or "SPECIAL" FORM PROPERTY INSURANCE.

All Risks or Special Form Property insurance against loss or damage to the building and improvements, including but not limited to, perils of fire, lightning, water, wind theft, vandalism and malicious mischief, plate glass breakage, and perils typically provided under an Extended Coverage Endorsement and other forms of broadened risk perils, and insured on a "replacement cost" value basis to the extent of the full replacement value of the Project. The deductible amount thereunder shall be borne by the Borrower in the event of a loss and the deductible must not exceed \$5,000 per occurrence. Further, in the event of a loss, the Borrower shall abide by all provisions of the insurance contract, including proper and timely notice of the loss to the insurer, and the Borrower further agrees it will notify Lender of any loss in the amount of \$25,000 or greater and that no claim at or in excess of \$25,000 thereunder shall be settled without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed by the Lender.

(B) BOILER AND MACHINERY EQUIPMENT INSURANCE.

Such permanent form of coverage shall be in place at the appropriate time during the Project period in order to include and insure "Hot Testing" of the new equipment and systems for a minimum of thirty days prior to Project completion and occupancy. The Boiler and Machinery Equipment policy shall then remain in force after Project completion throughout the term of the Loan. Amount of insurance shall be in an amount equal to the replacement cost value of the equipment, and shall include coverage for expediting permanent repairs and permanent replacement. The deductible for any loss thereunder shall not exceed \$5,000 per occurrence.

(C) FLOOD AND EARTHQUAKE INSURANCE.

Insurance in an amount equal to the full replacement cost value of the Project, subject to no more than a \$25,000 per occurrence, deductible. The policy shall include coverage for subsidence.

(D) LOSS OF EARNINGS AND RENTS INSURANCE.

Insurance against loss of earnings and rents in an amount sufficient (in the Lender's opinion) to cover not less than 12 months' lost earnings and rents written in an "all risks" form, either as an endorsement to the insurance required under Paragraph II(A), or under a separate policy.

(E) WORKERS COMPENSATION INSURANCE.

Workers Compensation insurance covering all employees of the Borrower, or any contractor employed to run or maintain the facility to the extent required by Statutory Law, including an "All States Endorsement". Policy shall also provide Employer's Liability coverage for

Bodily Injury by Accident \$1,000,000 Each Accident
Bodily Injury by Disease \$1,000,000 Policy Limit
Bodily Injury by Disease \$1,000,000 Each Employee

The Borrower shall require any contractor hired to manage or maintain the facility to provide evidence of Workers Compensation coverage to Borrower in such form and with such limits deemed acceptable to Borrower.

(F) LIABILITY INSURANCE.

COMMERCIAL GENERAL LIABILITY:

Commercial General Liability in a primary amount of at least \$500,000 per occurrence, Bodily Injury for injury or death of any one person and \$100,000 for Property Damage for damage to or loss of property of others, subject to a \$1,000,000 annual aggregate policy limit for all Bodily Injury and Property Damage claims, occurring on or about the Land or in any way related to the Project, including but not limited to, any swimming pools, golf courses or other recreational facilities or areas that are located on the Land or otherwise related to the Project. Such policy shall include coverages of a Broad Form nature, including, but not limited to, Explosion, Collapse and Underground (XCU), Products Liability, Completed Operations, Broad Form Contractual Liability, Broad Form Property Damage, Personal Injury, Incidental Malpractice Liability, and Host Liquor Liability.

VEHICLE LIABILITY: Automobile and Vehicle Liability insurance coverage for all owned, non-owned, leased or hired automobiles and vehicles in a primary limit amount of \$500,000 per occurrence for Bodily Injury; \$100,000 per occurrence for Property Damage; subject to an annual aggregate policy limit of \$1,000,000.

UMBRELLA LIABILITY: Umbrella Liability insurance in the minimum amount of \$10,000,000 for each occurrence and aggregate combined single limit for all liability, with a \$10,000 self-insured retention for exposure not covered in underlying primary policies. The Umbrella Liability policy shall name in its underlying schedule the policies of Commercial General Liability, Garage Keepers Liability, Automobile/Vehicle Liability and Employer's Liability under the Workers Compensation Policy.

(G) COMMERCIAL BLANKET FIDELITY BOND INSURANCE.

A Commercial Blanket Bond covering all employees of the Borrower, including its officers, and the individual owners of the insured business entity, whether a joint-venture, partnership, proprietorship or incorporated entity, against loss as a result of their dishonesty. Policy limit shall be in an amount of at least \$100,000, subject to a deductible of no more than \$10,000 per occurrence.