

THIS INSTRUMENT PREPARED BY:

Felton W. Smith
Balch & Bingham
P. O. Box 306
Birmingham, Alabama 35201
Tel: (205) 251-8100

STATE OF ALABAMA)

COUNTY OF SHELBY)

ACCOMMODATION MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE IS FILED AS, AND SHALL CONSTITUTE, A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9-402(6) OF THE CODE OF ALABAMA.

THIS INDENTURE made this 21st day of December, 1995, between **THE CREST AT GREYSTONE, INC.**, an Alabama corporation (hereinafter called the "Accommodation Mortgagor"), mortgagor, and **COMPASS BANK**, an Alabama state banking corporation incorporated under the laws of the State of Alabama (hereinafter called "Bank"), mortgagee.

WITNESSETH:

WHEREAS, TAYLOR PROPERTIES, L.L.C., an Alabama limited liability company (hereinafter called the "Borrower"), is justly indebted to Bank on (i) a loan in the principal sum of up to **FOURTEEN MILLION EIGHTY-TWO THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$14,082,800.00)** (the "Taylor Loan") or so much as may from time to time be disbursed thereunder, as evidenced by a \$6,150,000.00 Promissory Note dated July 15, 1994 (from Greystone Ridge, Inc. and as amended pursuant to Loan Modification Agreements of January 18, 1995 and February 1, 1995), a \$1,232,600.00 Promissory Note dated August 18, 1994 (as amended pursuant to Loan Modification Agreement of January 18, 1995), a \$2,533,850.00 Promissory Note dated December 1, 1994 (as amended pursuant to Loan Modification Agreement of January 18, 1995), a \$2,000,000 Promissory Note dated February 23, 1995 (as amended pursuant to that certain Note Modification Agreement dated October 23, 1995), a \$1,321,200 Promissory Note dated May 22, 1995, and a \$2,510,000 Promissory Note dated October 23, 1995, all payable to Bank with interest thereon, on demand or as otherwise provided therein (collectively, the "Taylor Notes") and (ii) a loan (originally borrowed by School House Properties) in the principal sum of up to **TWO MILLION NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$2,950,000.00)** (the "School House Loan"; together with the Taylor Loan, the "Loan") or so much as may from time to time be disbursed thereunder, as evidenced by a \$3,930,000.00 Promissory Note dated September 11, 1995, payable to Bank with interest thereon, on demand or as otherwise provided therein, as amended by that certain Third Loan Modification Agreement and Mortgage Amendment dated December 21, 1995 (collectively, the "School House Note"; together with the Taylor Notes, the "Note"); and

WHEREAS, Borrower may hereafter become indebted to Bank or to a subsequent holder of this Mortgage on loans or otherwise (said Bank and any subsequent holder of this Mortgage being referred to herein as "Lender"); and

WHEREAS, in order to induce Lender to make the Loan or loans to Borrower, Accommodation Mortgagor desires to make this Mortgage to secure said \$14,082,800.00 and \$2,950,000.00 principal amounts with interest, and

12/29/1995-37355
02:41 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
018 MCD 53.00

CAHABA Title, Inc

Inst # 1995-37355

all renewals, extensions and modifications thereof, and any and all other additional indebtedness of Borrower to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions and modifications thereof, and whether incurred or given as maker, endorser, guarantor or otherwise (herein "Other Indebtedness").

NOW, THEREFORE, the Accommodation Mortgagor, in consideration of Lender making the Loan or loans above-mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals and modifications of same, and any charges herein incurred by Lender on account of Borrower or Accommodation Mortgagor, including but not limited to attorneys' fees, and any and all Other Indebtedness of Borrower to Lender as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and set forth in all other documents evidencing, securing or executed in connection with the Loan (together with the Note and this Mortgage, the "Loan Documents"), and as may be set forth in instruments evidencing or securing Other Indebtedness of Borrower to Lender (the "Other Indebtedness Instruments") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of the Lender or hereafter acquired by the Accommodation Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All that tract or parcel or parcels of land particularly described in Exhibit A attached hereto and made a part hereof;

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described on Exhibit A, and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Accommodation Mortgagor and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property are actually located on or adjacent to the property described in Exhibit A or not and whether in storage or otherwise wheresoever the same may be located;

(c) All accounts, general intangibles, contracts and contract rights relating to the Land and Improvements, whether now owned or existing or hereafter created, acquired or arising, including, without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and Improvements;

(d) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Accommodation Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Accommodation Mortgagor of, in and to the same, including but not limited to:

(i) All rents, royalties, profits, issues and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Accommodation Mortgagor, however, so long as Borrower or Accommodation Mortgagor is not in default hereunder, the right to receive and retain the rents, issues and profits thereof; and,

(ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender is hereby authorized on behalf and in the name of Accommodation Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released;

(e) All rights now existing or hereafter arising in favor of Mortgagor with respect to (i) dwelling unit development density rights under the Greystone Planned Unit Development Zoning Application and Development Plan dated January 18, 1991, as the same has been or may be amended and approved by the City of Hoover and (ii) all utility reservations, allocations or other rights with respect to water, sewer, storm sewer, telephone, gas, electric or other utilities, including, without limitation, any rights with respect to sewage treatment or stormwater drainage; and

(f) All proceeds, cash or non-cash (including, but not limited to, all inventory, accounts, chattel paper, documents, instruments, tort and insurance proceeds, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the property described above) of any of the foregoing types or items of property described in subparagraphs (a), (b), (c), (d) or (e) above.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower or Accommodation Mortgagor shall pay or cause to be paid to the Lender the principal and interest payable in respect to the Note, and any extensions, renewals and modifications of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower or Accommodation Mortgagor, and shall pay all charges incurred herein by Lender on account of Borrower or Accommodation Mortgagor, including, but not limited to, attorney's fees, and shall pay any and all Other Indebtedness of Borrower to Lender, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of the Borrower or Accommodation Mortgagor, all without fraud or delay, and if all commitments and agreements by the Lender to make advances or loans, incur obligations, or otherwise give value under or pursuant to the Note, this Mortgage, any other Loan Document, any Other Indebtedness Instrument, or any other agreement, document, or instrument evidencing, securing, or given in connection with the Note or the Other Indebtedness, including, without limitation, agreements providing for future advances, letters of credit, guaranties, and agreements related to indebtedness of others guaranteed or endorsed by the Borrower, have expired and terminated irrevocably and without condition, then, and in that event only, this Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed shall cease, determine and be void, but shall otherwise remain in full force and effect.

AND the Borrower and Accommodation Mortgagor covenant and agree with the Lender as follows:

ARTICLE I

1.01 Performance of Mortgage, Note and Loan Documents. The Accommodation Mortgagor, to the full extent applicable, will perform, observe and comply with all provisions hereof, and of the Note, and of the Loan

Documents, and of the Other Indebtedness Instruments, and will duly and punctually pay to the Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by the Borrower or Accommodation Mortgagor pursuant to the provisions of this Mortgage, of the Loan Documents, and of the Other Indebtedness Instruments, all without any deductions or credit for taxes or other similar charges paid by the Borrower or Accommodation Mortgagor.

1.02 Warranty of Title. Accommodation Mortgagor hereby warrants that, subject to any exceptions shown on such Exhibit A hereto, it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Accommodation Mortgagor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Future Advances and Other Debts. It is expressly understood that this Mortgage is intended to and does secure, not only the indebtedness herein specifically mentioned, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of said Borrower to said Lender, whether now existing or hereafter arising, and any and all extensions, renewals and modification of same, or any part thereof, at any time before actual cancellation of this instrument on the probate records of the county where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise.

1.04 Monthly Tax Deposit. If required by Lender, Accommodation Mortgagor, will pay on the first day of each month, as applicable, one-twelfth (1/12th) of the yearly taxes on the Mortgaged Property, as estimated by Lender, together with and in addition to each regular installment of principal and interest. Such sums shall not draw interest, and shall not be, nor deemed to be, trust funds, but may be commingled with the general funds of Lender. Accommodation Mortgagor agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such applicable taxes when due. Such sums may be applied by the Lender to the reduction of the indebtedness secured hereby in the event of a default under this Mortgage, this Note, the Loan Documents, or the Other Indebtedness Instruments.

1.05 Other Taxes, Utilities and Liens.

(a) The Accommodation Mortgagor shall pay promptly, when and as due, and, if requested, will promptly exhibit to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Accommodation Mortgagor shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force

governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Accommodation Mortgagor shall immediately pay any increased taxes if allowed by law, and if Accommodation Mortgagor fail to pay such additional taxes, or if Accommodation Mortgagor is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in either of such events, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.06 Insurance. The Accommodation Mortgagor will procure for, deliver to, and maintain for the benefit of the Lender during the life of this Mortgage, insurance policies in such amounts as the Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgage endorsement making losses payable to the Lender. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Accommodation Mortgagor shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Accommodation Mortgagor in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Lender instead of the Accommodation Mortgagor and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Lender may apply net proceeds, at its option, either toward restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Borrower's indebtedness selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Accommodation Mortgagor to be used to repay such improvements, or to build new improvements in their place or for any other purpose or object satisfactory to the Lender without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If required by the Lender, the Accommodation Mortgagor will pay on the first day of each month, together with and in addition to the regular installment of principal and interest and monthly tax deposit (as required by Paragraph 1.04 of Article I herein), one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payment shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Accommodation Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums. In the event of a default by Borrower or Accommodation Mortgagor under this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments, the Lender may apply such sums to the reduction of the indebtedness secured hereby.

1.07 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Accommodation Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the

Accommodation Mortgagor to the Lender, which, after deducting therefrom all its expenses, including attorneys' fees, may release any money so received by it to the Accommodation Mortgagor without affecting the lien on this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Accommodation Mortgagor. The Accommodation Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.08 Care of the Property.

(a) The Accommodation Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Accommodation Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Five Thousand Dollars (\$5,000.00) for any single transaction, or a total of Twenty Thousand Dollars (\$20,000.00) per parcel in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Accommodation Mortgagor and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property, or any part thereof is damaged by fire or any other cause, the Accommodation Mortgagor will give immediate written notice of the same to the Lender.

(d) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Accommodation Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Accommodation Mortgagor will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor; provided, however that if there are insurance proceeds, the Accommodation Mortgagor shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds from the casualty in question and held by Lender, as allowed under Paragraph 1.06, toward restoring the damaged improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Accommodation Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to the Lender.

1.09 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Accommodation Mortgagor will make, execute and deliver or cause to be made, executed and delivered to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments, of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this Mortgage, and the lien of this

Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owed or hereafter acquired by the Accommodation Mortgagor. Upon any failure by the Accommodation Mortgagor so to do, the Lender may make, execute and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Accommodation Mortgagor, and the Accommodation Mortgagor hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Accommodation Mortgagor so to do. The lien hereof will automatically attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.10 Additional Security. The Lender shall also have a security interest in all other property of the Borrower and Accommodation Mortgagor, now or hereafter assigned, or coming into the possession, control, or custody of the Lender by or for the account of the Borrower or Accommodation Mortgagor (including indebtedness due from the Lender to the Borrower or Accommodation Mortgagor) whether expressly as collateral security or for any other purpose, including any dividends declared, or interest accruing thereon, and proceeds thereof. The Lender may, but shall not be obligated to, apply to the payment of the Note, on or after demand, any funds or credit held by the Lender on deposit, in trust or otherwise, for the account of the Borrower or Accommodation Mortgagor.

1.11 Leases Affecting Mortgaged Property. The Accommodation Mortgagor shall comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Accommodation Mortgagor will furnish Lender with executed copies of all leases now or hereafter created on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Accommodation Mortgagor will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by the Lender, the Accommodation Mortgagor will execute and deliver to Lender, as additional security, such other documents as may be requested by Lender to further evidence the assignment to Lender hereunder, and to assign any and all such leases whether now existing or hereafter created, including without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing, and will not cancel, surrender or modify any lease so assigned without the written consent of the Lender.

1.12 Expenses. The Accommodation Mortgagor will pay or reimburse the Lender for all reasonable attorneys' fees, costs and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, the Loan Documents, the Other Indebtedness Instruments, Borrower, Accommodation Mortgagor or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall be added to the indebtedness secured hereby and shall be further secured by the lien of this Mortgage.

1.13 Performance by Lender of Defaults by Borrower or Accommodation Mortgagor. If the Borrower or Accommodation Mortgagor, as the case may be, shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, of the Loan Documents, or of the Other Indebtedness Instrument, then the Lender, at its option, may perform or observe the same, and all payments made for costs or expenses incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower and/or Accommodation Mortgagor to the Lender with interest thereon at the rate of ten percent (10%) per annum or at the rate set forth in the Note, whichever is greater. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such

defaulted covenant, condition or term, without thereby becoming liable to the Accommodation Mortgagor or any person in possession holding under the Accommodation Mortgagor.

1.14 Books and Records. The Accommodation Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of the Lender, the Accommodation Mortgagor will furnish to the Lender, within ninety (90) days after the end of its fiscal year, a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by a Certified Public Accountant, and, if applicable, a rent schedule of the Mortgaged Property, certified by the Accommodation Mortgagor showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date and the rent paid.

1.15 Estoppel Affidavits. The Borrower, and to the extent applicable, the Accommodation Mortgagor, within ten (10) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Note and whether or not any offsets or defenses exist against such principal and interest.

1.16 Energy, Environmental or Utility Problems. In the event of unreasonable delay in the construction of the improvements secured hereby, as a direct or indirect result of energy shortages, or municipal, county, state, federal or other governmental law, order, rule or regulation relating to environmental protection, sewage treatment, zoning, or energy conservation, or lack of utilities (which includes, but is not limited to, gas, electricity, water, telephone and sewage treatment) or in the event that it reasonably appears that, upon completion of such improvements, energy (including all utilities) will not be available in sufficient quantities to permit the operation of the Mortgaged Property, then in either of such events, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.17 Alienation or Sale of Mortgaged Property. The Accommodation Mortgagor shall not sell, assign, mortgage, encumber, or otherwise convey the Mortgaged Property without obtaining the express written consent of the Lender at least thirty (30) days prior to such conveyance. If Accommodation Mortgagor should sell, assign, mortgage, encumber or convey all, or any part of, the Mortgaged Property without such consent by Lender, then, in such event, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon, and all Other Indebtedness secured hereby, shall without notice become due and payable forthwith at the option of the Lender.

1.18 Environmental Matters. Accommodation Mortgagor represents, warrants and covenants as follows:

(a) No Hazardous Materials (hereinafter defined) have been, are, or will be while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "Hazardous Materials" include without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 *et seq.*), the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Sections 6901, *et seq.*), the Clean Water Act, as amended (33 U.S.C. Sections 1251, *et seq.*), the Clean Air Act, as amended (42 U.S.C. Sections 7401, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601 *et seq.*), and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to asbestos, as amended, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

(b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;

(c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

(d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property; and

(e) Accommodation Mortgagor shall give immediate oral and written notice to Bank of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.18, or of any notice of other claim relating to the environmental condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Accommodation Mortgagor hereby agrees to indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation, warranty or covenant set forth in this Paragraph 1.18, (ii) Accommodation Mortgagor's failure to perform any obligations of this Paragraph 1.18, (iii) Accommodation Mortgagor's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, the termination of Borrower's right to receive advances under the Note, the payment of the Loan and the Other Indebtedness, the exercise of any right or remedy under any Loan Document or any Other Indebtedness Instrument, any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences.

ARTICLE II

2.01 Event of Default. The term "Event of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by the Borrower or Accommodation Mortgagor to pay as and when due and payable any installment of principal, interest or escrow deposit, or charge payable under the Note, this Mortgage, any of the other Loan Documents, or any of the Other Indebtedness Instruments; or

(b) Failure by the Borrower or Accommodation Mortgagor to duly observe any other covenant, condition or agreement of this Mortgage, of the Note, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments; or

(c) The filing by the Borrower or Accommodation Mortgagor of a voluntary petition in bankruptcy or the Borrower's or Accommodation Mortgagor's adjudication as a bankrupt or insolvent, or the filing by the Borrower or Accommodation Mortgagor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Borrower's or Accommodation Mortgagor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Borrower or Accommodation Mortgagor of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

(d) The entry by a court of competent jurisdiction of any order, judgment, or decree approving a petition filed against the Borrower or Accommodation Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrower or of the Accommodation Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Borrower or Accommodation Mortgagor which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(e) The filing or enforcement of any other mortgage, lien or encumbrance on the Mortgaged Property or any part thereof, or of any interest or estate therein; or

(f) Any other event of default set forth in any of the Loan Documents or any of the Other Indebtedness Instruments.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon, and all Other Indebtedness secured hereby (or such parts as Lender may elect) shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.03 Right of Lender to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, the Accommodation Mortgagor, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Lender may enter and take possession of all the Mortgaged Property, and may exclude the Accommodation Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Accommodation Mortgagor in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect, receive and commingle all the income, revenues, rents, issues and profits of all of the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating all of the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other charges prior to the lien of this Mortgage as the Lender may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender, first to the payment of accrued interest under the Note; second to the payment of all tax deposits required in Paragraph 1.04; third to the payment of any other sums required to be paid by Borrower and Accommodation Mortgagor under this Mortgage or under the Loan Documents; fourth to the payment of overdue installments of principal; fifth to the

payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, to the Accommodation Mortgagor, or as otherwise may be provided by law.

(c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Accommodation Mortgagor and its heirs, successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04 Receiver.

(a) If an Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Accommodation Mortgagor will pay to the Lender upon demand all expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 2.04; and all such expenses shall be secured by this Mortgage.

2.05 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law; and (c) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes.

2.06 Power of Sale. If an Event of Default shall have occurred Lender may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect. The provisions of paragraph 3.05 of this Mortgage shall apply, at Lender's option, with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

2.07 Application of Foreclosure Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 2.06 of Article II shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness of the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Loan Documents;

(c) Third, to the payment and satisfaction of the indebtedness hereby specifically secured with interest to date of sale, and to the payment of any and all Other Indebtedness, obligations and liabilities hereby secured, principal and interest, whether such Other Indebtedness, obligations and liabilities be then due or not;

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Property at the time of the sale after deducting any expense of ascertaining who is such owner, or as may otherwise be provided by law.

2.08 Lender's Option on Foreclosure. At the option of the Lender this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower or by Accommodation Mortgagor, a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.09 Waiver of Exemption. Accommodation Mortgagor hereby waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Accommodation Mortgagor hereby waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

2.10 Suits to Protect the Mortgaged Property. The Lender shall have power (a) to institute and maintain such suits and proceeds as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

2.11 Borrower to Pay the Note on any Default in Payment, Application of Moneys by Lender. If default shall be made in the payment of any amount due under this Mortgage, the Note, the Loan Documents or the Other Indebtedness Instruments, then, upon demand of the Lender, the Borrower will pay to the Lender the whole amount due and payable under the Note and under all Other Indebtedness Instruments; and in case the Borrower shall fail to pay the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Lender's agents and attorneys.

2.12 Delay or Omission; No Waiver. No delay or omission of the Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, the Loan Documents, or by the Other Indebtedness Instruments to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

2.13 No Waiver of One Default to Affect Another, etc. No waiver of any default hereunder, under the Loan Documents, or under the Other Indebtedness Instruments shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Lender (a) grants forbearance of an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein,

in the Note, in the Loan Documents, or in the Other Indebtedness Instruments; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, the Loan Documents or the Other Indebtedness Instruments; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments of the Borrower and, to the extent applicable, of the Accommodation Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, without notice to any person, corporation or other entity, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.14 Discontinuance of Proceedings -- Position of Parties, Restored. In case the Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrower, the Accommodation Mortgagor, and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

2.15 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, or under the Loan Documents, or under the Other Indebtedness Instruments, or now or hereafter existing at law or in equity or by statute.

2.16 Additional Agreements of Accommodation Mortgagor. Accommodation Mortgagor further agrees as follows:

(a) **Actions of Lender With Respect to Indebtedness.** Lender is authorized, without notice or demand and without affecting this Mortgage, from time to time to (i) renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Note or any Other Indebtedness of Borrower, or any part thereof, including increase or decrease of the rate of interest thereof; (ii) take and hold security for the payment of the Note or any Other Indebtedness of Borrower, and exchange, enforce, waive and release any such security; and (iii) apply such security and direct the order or manner of sale thereof as Lender in its discretion may determine. Lender may without notice assign this Mortgage in whole or in part.

(b) **Waiver of Accommodation Mortgagor; No Right of Subrogation.** Accommodation Mortgagor waives any right to require Lender to (i) proceed against Borrower or any guarantor or other person or entity whatsoever; (ii) proceed against or exhaust any security held from Borrower; (iii) pursue any other remedy in Lender's power whatsoever. Accommodation Mortgagor waives any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of the liability of Borrower. Until the Note and all Other Indebtedness of Borrower to Lender shall have been paid in full and all obligations on the part of Lender to make advances under the Note, any of the other Loan Documents, or any of the Other Indebtedness Instruments have been terminated, Accommodation Mortgagor shall have no right of subrogation, and waives any right to enforce any remedy which Lender now has or may hereafter have against Borrower, and waives the benefit of, and any right to participate in any security now or hereafter held by Lender. Accommodation Mortgagor waives

all presentments, demands for performance, notices of nonperformance, protests, notices of protest, and notices of dishonor, and of the existence, creation, or incurring of new or additional indebtedness.

(c) **Other Security or Collateral of Lender.** It is the intent hereof that this Mortgage shall be and remain unaffected, (i) by the existence or non-existence, validity or invalidity of any pledge, assignment or conveyance given as security for the Note or Other Indebtedness of Borrower or (ii) by any understanding or agreement that any other person, firm or corporation was or is to execute any other instrument, or the Note or notes evidencing any indebtedness of Borrower, or any part thereof; or (iii) by resort on the part of the Lender to any other security or remedy for the collection of any indebtedness of Borrower; or (iv) by the bankruptcy of Borrower and in case of any such bankruptcy, by failure of Lender to file claim against such bankrupt's estate, for the amount of such bankrupt's liability to Lender.

(d) **Mortgage Independent of Obligations of Borrower.** This Mortgage is independent of the obligations of Borrower, and Lender may exercise its rights under this Mortgage whether or not action is brought against Borrower or any other person or entity liable for the indebtedness secured hereby or any part thereof; and Accommodation Mortgagor waives the benefit of any statute of limitations or other defenses affecting this Mortgage or the enforcement thereof.

ARTICLE III

3.01 Successors and Assigns Included in Parties. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower, or by or on behalf of the Accommodation Mortgagor, or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

3.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.03 Gender. Whenever the context so requires, the masculine includes the feminine and neuter, and the singular includes the plural.

3.04 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, in the Loan Documents, or in the Other Indebtedness Instruments shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, the Loan Documents and the Other Indebtedness Instruments shall be in no way affected, prejudiced or disturbed thereby.

3.05 Lien on Personal Property. This Mortgage creates a lien on certain personal property of the Accommodation Mortgagor described herein, and it shall constitute a security agreement under the Uniform Commercial Code of the state in which the Mortgaged Property is located, or other law applicable to the creation of liens on personal property. Accommodation Mortgagor covenants and agrees to execute, file and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. If an Event of Default occurs, the Lender shall have and may exercise all rights and remedies of a secured party under the Uniform Commercial Code of such state, including without limitation, any of all of the following to the extent allowed by law:

(a) The right to take possession of the collateral without judicial process and to enter upon any premises where the collateral may be located for the purposes of taking possession of, securing, removing, and/or

disposing of the collateral without interference from Borrower or Accommodation Mortgagor and without any liability for rent, storage, utilities or other sums;

(b) The right to sell, lease, or otherwise dispose of any or all of the collateral, whether in its then condition or after further processing or preparation, at public or private sale. Unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Accommodation Mortgagor at least ten (10) days' prior notice of the time and place of any public sale of the collateral or of the time after which any private sale or other intended disposition of the collateral is to be made, all of which Accommodation Mortgagor agrees shall be reasonable notice of any sale or disposition of the collateral;

(c) The right to require Accommodation Mortgagor, upon request of Lender, to assemble and make the collateral available to Lender at a place reasonably convenient to Accommodation Mortgagor and Lender; and

(d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the right and remedies of Lender upon default, Accommodation Mortgagor does hereby irrevocably appoint Lender attorney-in-fact for Accommodation Mortgagor, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Accommodation Mortgagor could do, and to sell, assign, and transfer any collateral to Lender or any other party.

3.06 Conflict in Loan Documents. In the event of conflict in the terms of any provision in this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments, the terms of the provision most favorable to the Lender shall apply.

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

3.08 Addresses and Other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements.

(a) Name of Accommodation Mortgagor
(Debtor):

Address of Accommodation Mortgagor:

The Crest at Greystone, Inc., an
Alabama corporation
601 Beacon Parkway West
Suite 211
Birmingham, Alabama 35209
Attention: Mr. Gary R. Dent

(b) Name of Lender (Secured Party):
Address of Lender:

Compass Bank
15 South 20th Street
Birmingham, Alabama 35233
Attention: Alabama Real Estate
Department

(c) Record Owner of Real Estate
described on Exhibit A hereto:

Accommodation Mortgagor (Debtor)

IN WITNESS WHEREOF, Accommodation Mortgagor has caused this instrument to be executed as of the day and year first above written.

ACCOMMODATION MORTGAGOR:

THE CREST AT GREYSTONE, INC.,
an Alabama corporation

WITNESS:

Arthur W. Smith

By: *W.D. B. Co.*

Its: PRESIDENT

LENDER:

COMPASS BANK

WITNESS:

Susan L. Hutches

By: *J.R. Miller*

Its: VICE PRESIDENT

STATE OF ALABAMA)

COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that WILLIAM L. THORNTON, III, whose name as PRESIDENT of THE CREST AT GREYSTONE, INC., an Alabama corporation, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 24th day of December, 1995.

Carly J. Gubler
Notary Public
My commission expires: 11-16-96

[NOTARIAL SEAL]

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that J. R. Miller, whose name as Vice-President of COMPASS BANK, an Alabama state banking corporation, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 27th day of December, 1995.

Dee A. Asher
Notary Public
My commission expires: 3/23/99

[NOTARIAL SEAL]

EXHIBIT A

DESCRIPTION OF PROPERTY

PHASE II - PARCEL E - CREST

To locate the point of beginning commence at the Southeast corner of Section 27, Township 18 South, Range 1 West, Shelby County, Alabama; thence run on an assumed bearing of said south section line of South 89° 35' 37" West a distance of 2741.84 feet to a point; thence North 00° 24' 23" West a distance of 1084.62 feet to THE POINT OF BEGINNING; thence South 55° 43' 23" East for a distance of 782.71 feet to a point on a line located 20 feet horizontally, above and outside of the normal pool elevation of a lake that is under construction; thence South 61° 38' 34" West a distance of 81.58 feet to a point; thence South 15° 02' 10" East a distance of 74.87 feet to a point; thence South 35° 22' 50" East a distance of 130.94 feet to a point; thence North 84° 05' 46" East a distance of 44.33 feet to a point; thence South 23° 31' 47" East a distance of 62.39 feet to a point; thence South 39° 29' 29" East a distance of 83.39 feet to a point; thence South 51° 24' 33" East a distance of 66.58 feet to a point; thence South 66° 41' 49" West a distance of 28.33 feet to a point; thence South 65° 56' 14" West a distance of 123.99 feet to a point; thence South 56° 31' 11" West a distance of 91.70 feet to a point; thence South 25° 27' 17" West a distance of 88.98 feet to a point; thence South 38° 43' 46" West a distance of 72.14 feet to a point; thence North 89° 17' 02" West a distance of 81.19 feet to a point; thence South 35° 46' 19" West a distance of 47.83 feet to a point; thence South 05° 59' 34" West a distance of 85.45 feet to a point; thence South 17° 00' 06" West a distance of 70.96 feet to a point; thence departing said line located 20 feet horizontally, above and outside of the normal pool elevation of a lake that is under construction; run North 67° 52' 47" West for a distance of 523.08 feet to a point; thence South 30° 16' 36" West for a distance of 232.18 feet to a point; thence South 12° 03' 42" West for a distance of 602.02 feet to a point; thence South 20° 52' 47" East for a distance of 128.56 feet to a point; thence South 69° 07' 13" West for a distance of 203.56 feet to a point; thence North 55° 44' 00" West for a distance of 765.27 feet to a point; thence North 34° 16' 37" East for a distance of 1949.38 feet to a point, said point being the Point of Beginning of the herein described parcel, containing 36.4716 acres, more or less.

Inst # 1995-37355

12/29/1995-37355
02:41 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
D18 MCD 53.00