

STATE OF ALABAMA)
COUNTY OF SHELBY)

PURCHASE MONEY MORTGAGE

THIS PURCHASE MONEY MORTGAGE ("Mortgage") is made and entered into as of the 19th day of March, 1997 by and between KIMBRELL HOMES, INC., an Alabama corporation ("Borrower"), as mortgagor, and DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Lender"), as mortgagee.

RECITALS:

Borrower is justly indebted to Lender in the principal sum of One Hundred Fifty-Four Thousand and No/100 Dollars (\$154,000.00) as evidenced by a promissory note of even date herewith (said note, as the same may hereafter be renewed, extended or modified, is hereinafter referred to the "Note") in said principal amount executed and delivered by Borrower to Lender.

In order to secure the Note, Borrower has agreed to execute and deliver this Mortgage in favor of Lender.

Mortgage

NOW, THEREFORE, in consideration of the foregoing Recitals, and to induce Lender to make the Loan to Borrower, Borrower and Lender agrees as follows:

ARTICLE 1

SECTION 1.1 Rules of Construction. For the purposes of this Mortgage, except as otherwise expressly provided herein to the contrary 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 Article, Section and captions herein are used for convenience of reference only and do not limit or describe the scope or intent of, or in any way affect, this Mortgage and (c) 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.

SECTION 1.2 Definitions. As used in this Mortgage, capitalized terms that are not otherwise expressly defined herein shall have the following meanings:

- (a) **Default Rate** means a rate of interest equal to two percentage points (200 basis points) in excess of the "prime" or "base" rate of interest announced or published from time to time by SouthTrust Bank of Alabama, National Association, a national banking association, or its successors or assigns, as such "prime" or "base" rate of interest may fluctuate from time to time.
- (b) **Construction Loan** means that certain loan obtained or to be obtained by Borrower from an unrelated third party lending or financial institution in an amount not to exceed the principal sum of \$650,000.00.
- (c) **Construction Loan Documents** means the note and mortgage and other loan documents evidencing or securing the Construction Loan.
- (d) **Event of Default** is defined in Section 5.2. An Event of Default "exists" if the same has occurred and is continuing.
- (e) **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.
- (f) **Governmental Requirements** means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.
- (g) **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 Mortgage, the filing or recording of this Mortgage or the Obligations.
- (h) **Improvements** is defined in Section 2.1(b).
- (i) **Land** is defined in Section 2.1(a).
- (j) **Lien** means any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement.
- (k) **Obligations** means (i) the payment of all amounts now or hereafter becoming due and payable under the

(k) **Obligations** means (i) the payment of all amounts now or hereafter becoming due and payable under the Security Documents, including the principal amount of the Loan, all interest thereon at the Default Rate and all other fees, charges and costs (including attorneys' fees and disbursements) payable in connection therewith; (ii) the observance and performance by Borrower of all of the provisions of the Security Documents; (iii) following an Event of Default, all sums advanced or paid by Lender in exercising any of its rights, powers or remedies under the Security Documents together with interest on such sums at the Default Rate; and (iv) all renewals, extensions, modifications and amendments of any of the Security Documents, whether or not any renewal, extension, modification or amendment to this Mortgage is executed in connection therewith.

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

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

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

(o) **Security Documents** means this Mortgage and the Note.

ARTICLE 2

Granting Clauses

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

(a) **Land.** That certain real property located in Shelby County, Alabama which is more particularly described as follows:

Lot 22, according to the Amended Map of The Crest at Greystone, as recorded in Map Book 18, Pages A, B, C and D in the Office of the Judge of Probate of Shelby County, Alabama.

Together with 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 Borrower, at law or in equity, in possession or expectancy of, in or to any of the same (collectively, 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 Borrower (collectively, the "**Improvements**" and, together with the Land, collectively, the "**Real Property**").

(c) **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 and all rents, profits, issues and revenues of the Real Property and now or hereafter accruing; provided, however, that if no Event of Default exists, Borrower shall have a license (but limited as set forth in Section 5.3(e)) to collect and receive all of such rents, profits, issues and revenues.

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

(e) **Litigation Awards.** All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to Borrower or any subsequent owner of any of the Real Property 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.

(f) **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.

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

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

ARTICLE 3

Representations and Warranties

Borrower represents and warrants to the Lender that:

SECTION 3.1 Valid Title, Debt, etc. 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 Borrower has good right to mortgage, assign the Property as aforesaid; (b) the Property is free of all Liens other than those matters of title in existence as of the date of conveyance of the Property by Lender to Borrower; (c) Borrower has full power to encumber, assign and convey the Property as provided herein; (d) this Mortgage is and will remain a valid and enforceable first priority mortgage lien on the Property, subject only to the Construction Loan Documents; and (e) Borrower shall forever warrant and defend the title to the Property unto Lender against the lawful claims of all persons whomsoever.

SECTION 3.2 Governmental Compliance. To the best knowledge of Borrower, (a) the Property and the use and operation thereof comply with all applicable Governmental Requirements; and (b) except for those matters of title in existence as of the date of conveyance of the Property by Lender to Borrower (and the Construction Loan Documents) no Lien exists on the Property, or any part thereof, in favor of any Governmental Authority or other person under any Governmental Requirement that might have priority over this Mortgage.

SECTION 3.3 Bankruptcy. To the best knowledge of Borrower, Borrower is, and after giving effect to the transactions contemplated under the Security Documents will be, solvent, and no bankruptcy, insolvency or similar proceeding is pending or contemplated by or against Borrower.

ARTICLE 4

Covenants and Agreements of Borrower

SECTION 4.1 Payment and Performance of Obligations and Impositions. Borrower covenants and agrees to pay and perform all of the Obligations in a prompt and punctual manner and in accordance with all of the terms, provisions and requirements of the Security Documents. Borrower shall pay or cause to be paid all Impositions and, at Lender's request, shall furnish evidence of the payment thereof at least 10 days before the Impositions are due. Borrower may, at 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. At all times during which any of the Obligations are outstanding, Borrower shall maintain in full force and effect (a) comprehensive general liability insurance in an amount equal to at least \$1,000,000.00 per occurrence, which liability insurance shall be written on an occurrence basis and shall name Lender as an additional insured and (b) "all-risk" broad form property and casualty insurance coverage for any Improvements, if any, in an amount not less than the full replacement cost thereof, which shall name Lender as mortgagee and loss payee under a standard non-contributory mortgagee and Lender loss payable clause and shall provide that Lender shall receive not less than thirty (30) days written notice prior to cancellation. All insurance proceeds paid with respect to such casualty insurance policy shall be made payable to Lender or jointly payable to Borrower and Lender and may be applied by Lender, at Lender's sole option, either (i) to the payment of the Obligations or (ii) to the repair and/or restoration of any Improvements damaged by such fire or other casualty.

SECTION 4.3 Damage and Destruction. In the event of any damage to or loss or destruction of the Property, Borrower shall (a) promptly notify Lender of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property and (b) unless otherwise instructed by Lender, promptly, regardless whether any insurance proceeds are sufficient for the purpose (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.

SECTION 4.4 Condemnation.

(a) Borrower, immediately upon obtaining knowledge thereof, shall notify 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. Lender may participate in any such proceedings, and Borrower from time to time shall execute and deliver to Lender all instruments reasonably requested by Lender to permit such participation. Borrower shall, at Borrower's expense, diligently prosecute any such proceedings, deliver to Lender copies of all papers served in connection therewith and consult and cooperate with Lender, its attorneys and agents, in carrying on and defending any such proceedings. No settlement of any such proceedings shall be made by Borrower without Lender's consent, which consent shall not be unreasonably withheld or delayed.

(b) 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 Lender. Borrower authorizes Lender to collect

and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. Lender shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) Lender shall have the right to apply any proceeds, judgments, decrees or awards referred to in Section 4.4(b), first, to reimburse 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 shall be applied to the payment of the Obligations.

SECTION 4.5 Liens and Liabilities. 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, Borrower shall do, or cause to be done, at Borrower's sole cost and expense, everything necessary to fully preserve the Lien and priority of this Mortgage. Borrower shall not 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 Mortgage, other than the Construction Loan Documents. If any such Lien is created or placed on the Property without Lender's consent, Borrower shall cause the same to be discharged, released or bonded off to Lender's satisfaction within five (5) days after the filing thereof. Nothing in the Security Documents shall be deemed or construed as constituting the consent or request by 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. Borrower agrees that Lender does not stand in any fiduciary relationship to Borrower by reason of the transactions contemplated by the Security Documents.

SECTION 4.6 Operations; Utilities; Waste; Demolition; Alteration or Replacement. Borrower shall (a) not engage in any activity that would materially and adversely diminish the value of the Property; (b) pay or cause to be paid all bills for utilities and other materials and services used on or in connection with the Property; (c) cause the Property and every part thereof to be maintained and kept in good and safe repair, working order and condition; (d) not commit any waste thereon; (e) not remove, demolish or alter the design or structural character of any Improvements; and (f) 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. Borrower shall not remove from the Real Property any of the fixtures included in the Property unless the same are immediately replaced with like property of at least equal value and utility.

SECTION 4.7 Sale, Lease or Transfer, etc. Borrower shall not (a) sell, assign, transfer, convey, lease with an option to purchase, exchange or otherwise dispose of, any of the Real Property or any interest therein or (b) subject any of the Real Property or any interest therein to any additional Lien (other than the Construction Loan Documents), either voluntarily or involuntarily. The occurrence of any of the events described in this Section 4.7 will constitute an Event of Default under this Mortgage, and Lender may, in its sole discretion, exercise any of its rights and remedies on default under Section 5.3.

SECTION 4.8 Development, Use, Governmental Compliance, etc. In connection with the development, ownership, operation or use of the Real Property, Borrower shall (a) use the Property solely for the uses contemplated by the Security Documents or otherwise permitted by any Governmental Authority; (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, 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; (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; and (e) not take any action (or allow others to take any action) which would materially and adversely affect any of the rights, interests or agreements made or granted by Borrower in favor of Lender in this Mortgage.

SECTION 4.09 Maintenance of Lien Priority. Borrower shall take all steps necessary to preserve and protect the perfection, validity and priority of the Lien on the Property purported to be created by this Mortgage. Borrower shall execute, acknowledge, deliver, file and record such additional instruments as Lender may deem necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as a first priority Lien on the Property, subject to the Construction Loan Documents, or to subject after-acquired property or proceeds to such Lien. If the Lien, validity or priority of this Mortgage, or if title to any of the rights of Borrower or 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 Borrower or Lender with respect thereto, Borrower shall promptly notify 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 Lender's approval, the compromise, release or discharge of any and all adverse claims other than the Construction Loan Documents. 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 Lien, validity or priority of this Mortgage, 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. Borrower shall, on demand, reimburse Lender for all reasonable expenses (including attorneys' fees and disbursements) reasonably incurred by Lender in connection with any of the foregoing matters.

ARTICLE 5

Defeasance, Default and Remedies

SECTION 5.1 Defeasance. This Mortgage is made upon the condition that if (a) all of the Obligations are paid in full and (b) Borrower reimburses Lender for any amount Lender has paid in respect of Liens, impositions, prior Liens, insurance premiums, repairing or maintaining the Property, performing Borrower's obligations under any lease related to the Real Property and in performing Borrower's obligations under any other provisions of this Mortgage, then this conveyance shall be null and void.

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 Mortgage (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 Mortgage or in any of the other Security Documents shall prove to be false or misleading in any material respect as of the time made; or
- (b) any default or event of default occurs under any of the terms and provisions of the Construction Loan Documents; or
- (c) default shall be made in the payment when due of any of the Obligations;
- (d) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of Borrower to be observed or performed pursuant to the terms of this Mortgage and such default shall continue unremedied for 30 days after written notice thereof has been given by Lender to Borrower; or
- (e) any event of default, as therein defined, shall occur under any of the other Security Documents;
- (f) Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or other custodian of Borrower or any of Borrower's properties or assets (including the Property), (ii) fail or admit in writing Borrower's inability to pay its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) suffer or permit an order for relief to be entered against Borrower in any proceeding under the federal Bankruptcy Code or (v) 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 Borrower in any proceeding under such law or statute; or
- (g) a petition shall be filed, without the application, approval or consent of Borrower in any court of competent jurisdiction, seeking bankruptcy, reorganization, rearrangement, dissolution or liquidation of Borrower or of all or a substantial part of the properties or assets of Borrower, or seeking any other relief under any law or statute of the type referred to in Section 5.2(f)(v) against Borrower, or the appointment of a receiver, trustee, liquidator or other custodian of Borrower or of all or a substantial part of the properties or assets of Borrower, and such petition shall not have been stayed or dismissed within 60 days after the filing thereof; or
- (h) Borrower 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 Borrower 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 Borrower and the same shall remain undischarged for a period of 60 days during which execution shall not be effectively stayed.

SECTION 5.3 Rights and Remedies of Lender Upon Default.

- (a) **Acceleration of Obligations.** If any Event of Default exists, Lender shall have the right without further notice to Borrower 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 Lender, Lender (or any person designated by Lender) may, but will not be obligated to, (i) enter upon the Real Property and take possession of any or all of the Property without being guilty of trespass or conversion, exclude Borrower therefrom, and hold, use, administer, manage and operate the same to the extent that Borrower could do so, without any liability to Borrower resulting therefrom; (ii) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (iii) make repairs and purchase needed additional property; (iv) insure or reinsure the Property; (v) maintain and restore the Property; (vi) prepare the Property for resale, lease or other disposition; (vii) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (viii) exercise every power, right and privilege of Borrower with respect to the Property.
- (c) **Judicial Proceedings: Right to Receiver.** If an Event of Default exists, 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 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. Lender shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to 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 Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and 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 Lender may from time to time elect to sell) under the power of sale which is hereby given to 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. Lender may bid at any sale held under this Mortgage 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, Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case 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 Mortgage shall have been terminated as provided herein.

(e) **Rents and Leases.** If an Event of Default exists, Lender, at its option, shall have the right, power and authority to terminate the license granted to Borrower in Section 2.1(c) to collect the rents, profits, issues and revenues of the Real Property, and, without taking possession, in 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 thereof, and to apply the proceeds thereof as set forth in Section 5.3(g).

(f) **Foreclosure Deeds.** To the extent permitted by applicable law, Borrower hereby authorizes and empowers Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of 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.

(g) **Order of Application of Proceeds.** All payments received by Lender as proceeds of any of the Property, as well as any and all amounts realized by Lender in connection with the enforcement of any right or remedy under this Mortgage, shall be applied by Lender as follows: (i) to the payment of all expenses incident to the exercise of any remedies under this Mortgage, including attorneys' fees and disbursements as provided in the Security Documents, appraisal fees, environmental site assessment fees, title search fees and foreclosure notice costs, (ii) to the payment in full of the Obligations in such order as Lender may elect in its sole discretion and (iii) the remainder, if any, shall be paid to Borrower or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(h) **Waiver of Certain Laws.** Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisal before sale of any portion of the Property (commonly known as appraisal laws), or (ii) 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). Borrower also waives any and all rights Borrower may have to a hearing before any Governmental Authority prior to the exercise by Lender of any of its rights or remedies under the Security Documents and applicable law.

SECTION 5.4 Default Rate. If an Event of Default exists, the Obligations shall bear interest at the Default Rate until such time as the Event of Default has been cured.

SECTION 5.5 Remedies Cumulative. The rights, powers and remedies of the Lender under this Mortgage 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 Mortgage to be made upon, given or furnished to, or filed with, Borrower or Lender must (except as otherwise expressly provided in this Mortgage) be in writing and be delivered by one of the following

methods: (i) by personal delivery at the hand delivery address specified below, (ii) by first-class, registered or certified mail, postage prepaid, addressed as specified below, or (iii) 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:

If to Borrower:

By hand or mail:

Kimbrell Homes, Inc.
2035 Country Ridge Circle
Birmingham, Alabama 35243
Attention: John C. Kimbrell, Jr.
Facsimile: (205) 967-0574 JCK

If to Lender:

By hand or mail:

Daniel Oak Mountain Limited Partnership
1200 Corporate Drive
Meadow Brook Corporate Park
Birmingham, Alabama 35242
Attention: Mr. Donald K. Lloyd
Facsimile: (205) 995-0526

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) **Delivery.** 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 days after such notice or document is deposited in the United States mail, addressed as provided above.

SECTION 6.2 Expenses. Following the occurrence of an Event of Default, Borrower shall promptly on demand pay all reasonable costs and expenses of Lender, including the fees and disbursements of counsel to Lender, in connection with the enforcement of this Mortgage.

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

SECTION 6.4 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage and any and all of the other Security Documents.

SECTION 6.5 Governing Law. This Mortgage 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 Separability Clause. If any provision of the Security 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 6.7 No Oral Agreements. This Mortgage is the final expression of the agreement between the parties hereto and this Mortgage 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 Mortgage and the other Security Documents, and there is no unwritten oral agreement between the parties hereto in existence.

SECTION 6.8 Waiver and Election. The exercise by Lender of any option given under this Mortgage shall not constitute a waiver of the right to exercise any other option. The filing of a suit to foreclose the Lien granted by this Mortgage shall not be considered an election so as to preclude foreclosure by judicial foreclosure of the Lien granted by this Mortgage. No failure or delay on the part of Lender in exercising any right, power or remedy under this Mortgage 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 Security Documents, nor consent to any departure by Borrower therefrom, shall be effective unless in writing and signed by 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 Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

SECTION 6.9 No Obligations of Lender. Lender does not by virtue of this Mortgage or any of the transactions contemplated by the Security Documents assume any duties, liabilities or obligations with respect to any of the Property unless expressly assumed by Lender under a separate agreement in writing, and this Mortgage shall not be deemed to confer on Lender any duties or obligations that would make Lender directly or derivatively liable for any person's negligent, reckless or wilful conduct.

***SECTION 6.10 Advances by the Lender.** If Borrower shall fail to comply with any of the provisions of this Mortgage, 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 Borrower's obligations under any such provision. 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 Lender of any Event of Default resulting from Borrower's failure to pay such amounts.

SECTION 6.11 Rights, Liens and Obligations Absolute. All rights of Lender hereunder, all Liens granted to Lender hereunder, and all obligations of 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 Security 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 Security 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 6.12 Landlord-Tenant Relationship. Any sale of the Property under Section 5.3 of this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and Borrower.

SECTION 6.13 Purchase Money Mortgage. This Mortgage is a purchase money mortgage given to secure a portion of the purchase price for the Property. The entire proceeds of the Note have been applied to the purchase price of the Property which has been conveyed simultaneously herewith by Lender to Borrower.

SECTION 6.14. Subordination. Lender agrees that this Mortgage is subject and subordinate to the Lien of the Construction Loan Documents and, upon request, Lender agrees to execute a separate instrument acknowledging such subordination. Notwithstanding the foregoing, the holder of the Construction Loan Documents shall provide written notice of any default under the Construction Loan Documents to Lender at the address specified in this Mortgage.

IN WITNESS WHEREOF, the undersigned Borrower has caused this Mortgage to be executed as of the day and year first above written.

KIMBRELL HOMES, INC., an Alabama corporation

By: [Signature]

Its: [Signature]

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that John C. Kimbrell, Jr. whose name as President of KIMBRELL HOMES, 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 said 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 and official seal this 19th day of March, 1997.

[Signature]

Notary Public

My commission expires: 2/26/98

[NOTARIAL SEAL]

This instrument was prepared by:

Stephen R. Monk, Esq.
Bradley Arant Rose & White LLP
2001 Park Place North, Suite 1400
Birmingham, Alabama 35203
(205)521-8429

Inst # 1997-08797

03/21/1997-08797
01:40 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
-8- 008 NCD 257.00