

STATE OF ALABAMA)

SHELBY AND JEFFERSON COUNTIES)

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES**

THIS MORTGAGE, security agreement and assignment of rents and leases (the "mortgage") is made and entered into this 29th day of May, 1997, by and between **Crowne Woods Associates, Ltd.**, an Alabama limited partnership (the "Mortgagor"), whose address is 1015 Financial Center, 505 North 20th Street, Birmingham, Alabama 35203, and **AmSouth Bank of Alabama**, a state banking corporation (the "Mortgagee"), whose address is P.O. Box 11007, Birmingham, Alabama 35288, Attention: Commercial Real Estate Loan Department.

Inst # 1997-16731

Recitals

A. The Mortgagor is, or hereafter shall be, justly indebted to the Mortgagee in the aggregate principal amount of \$14,620,000, as evidenced by (i) a promissory note of even date herewith, in the principal amount of \$9,860,000, which note bears interest as provided therein and (ii) a promissory note of even date herewith, in the principal amount of \$4,760,000, which note bears interest as provided therein (jointly, the "Notes").

B. To secure the Notes, and to induce the Mortgagee to extend credit to the Mortgagor on the strength of the security provided by this mortgage and convey the property described herein to the Mortgagee as hereinafter set forth, the Mortgagor has agreed to execute and deliver this mortgage to the Mortgagee.

Agreement

NOW, THEREFORE, in consideration of the Recitals and to secure the payment of the following (hereinafter collectively referred to as the "Debt"):

(1) the payment of the debt evidenced by the Notes, and interest thereon and any and every extension, renewal and modification thereof, or of any part thereof, and all interest on all such extensions, renewals and modifications;

(2) all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee of every kind and description whatsoever, arising directly between the Mortgagor and the Mortgagee or acquired outright, as a participation or as collateral security from another by the Mortgagee, direct or indirect, absolute or contingent, due or to become due, now

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existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, and any and all extensions, renewals and modifications of any of the same; and

(3) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in this mortgage;

the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses A through E, both inclusive, and does grant to the Mortgagee a security interest in said property and interests in property:

(All of the property and interests in property described in the foregoing Granting Clauses A through E, both inclusive, are herein sometimes collectively called the "Property". The personal property described in Granting Clause D and all other personal property covered by this mortgage are herein sometimes collectively called the "Personal Property".)

SUBJECT, HOWEVER, to the easements, rights-of-way and other exceptions described on Exhibit B hereto ("Permitted Exceptions").

To have and to hold the Property unto the Mortgagee, its successors and assigns forever.

1. Future Advance Mortgage. This mortgage is a future advance mortgage and the \$14,620,000 debt evidenced by the Notes is to be advanced by the Mortgagee to the Mortgagor in accordance with the terms of a loan agreement of even date herewith, entered into by and between the Mortgagor and the Mortgagee (the "Loan Agreement").

2. Warranties of Title. The Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Real Estate and is the lawful owner of, and has good title to, the Personal Property, Improvements and other Property and has a good right to sell and convey the Property as aforesaid; that the Property is free of all encumbrances, unless otherwise provided hereinbefore; and that the Mortgagor will warrant and forever defend the title to the Property unto the Mortgagee against the lawful claims of all persons.

3. Maintenance of Lien Priority. The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignment of, the Property created hereby. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Property, except as otherwise permitted under the terms of this mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by the Mortgagor.

4. Representations and Warranties Related to Rents and Leases.

(a) The Mortgagor has good title to the Rents and Leases hereby assigned and good right to assign the same, and no other person, corporation or entity has any right, title or interest therein.

(b) The Mortgagor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due.

(c) No Rents due for any period subsequent to the month next succeeding the date of this mortgage have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised.

(d) The Mortgagor has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents.

5. Covenants To Pay Liens and Maintain Insurance. For the purpose of further securing the payment of the Debt, the Mortgagor agrees to: (a) pay all taxes, assessments, and other liens taking priority over this mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may pay the same; (b) keep the Property continuously insured, in such manner and with such companies as may be satisfactory to the Mortgagee, against loss by flood (if the Property is located in a flood-prone area), fire, windstorm, vandalism and malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable (pursuant to loss payable clauses in form and content satisfactory to the Mortgagee) to the Mortgagee, as its interests may appear. Such insurance shall be in an amount at least equal to the full insurable value of the Personal Property and Improvements

unless the Mortgagee agrees in writing that such insurance may be in a lesser amount. The original insurance policy and all replacements therefor, shall be delivered to, and held by, the Mortgagee until the Debt is paid in full. The original insurance policy and all replacements therefor must provide that they may not be canceled without the insurer's giving at least thirty days' prior written notice of such cancellation to the Mortgagee.

6. Assignment of Insurance Policies, etc. The Mortgagor hereby assigns and pledges to the Mortgagee, as further security for the payment of the Debt, each and every policy of hazard insurance now or hereafter in effect which insures the Property, or any part thereof (including without limitation the Personal Property and Improvements, or any part thereof), together with all right, title and interest of the Mortgagor in and to each and every such policy, including, but not limited to, all the Mortgagor's right, title and interest in and to any premiums paid on each such policy, including all rights to return premiums.* If the Mortgagor fails to keep the Property insured as specified above then, at the election of the Mortgagee and without notice to any person, the Mortgagee may, but shall not be obligated to, insure the Property for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss and for its own benefit. The proceeds from such insurance (less the costs of collecting the same), if collected, shall be credited against the Debt, or, at the election of the Mortgagee, such proceeds may be used to purchase additional Personal Property to replace Personal Property which has been damaged or destroyed and to repair or reconstruct the Improvements. Notwithstanding the immediately preceding sentence, the following conditions shall apply so long as no Event of Default has occurred and is continuing hereunder: (a) if such damage results in the payment of insurance proceeds in an aggregate amount of less than \$50,000, said proceeds shall be made available to the Mortgagor for the sole purposes of repair and restoration of the Property, and (b) if such damage results in the payment of insurance proceeds in excess of \$50,000, such proceeds shall be deposited into an account maintained by the Mortgagee and disbursed in accordance with its standard construction loan procedures for the sole purpose of repair and restoration of the Property. All amounts spent by the Mortgagee for insurance or for the payment of Liens or for environmental testing or remediation shall become a debt due by the Mortgagor to the Mortgagee and at once payable, without demand upon, or notice to, the Mortgagor, and shall be secured by this mortgage, and shall bear interest at the rate of interest set forth in the Notes, or such lesser rate of interest as shall then be the maximum amount permitted by law, from the date of payment by the Mortgagee until paid by the Mortgagor.

7. Assignment of Condemnation Proceeds, etc. As further security for the Debt and the full and complete performance of each and every obligation, covenant, agreement and duty of the

Mortgagor contained herein, and to the extent of the full amount of the Debt secured hereby and of the costs and expenses (including reasonable attorney's fees) incurred by the Mortgagee in the collection of any award or payment, the Mortgagor hereby assigns to the Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Mortgagor with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in value of the Property. All such damages, condemnation proceeds and consideration shall be paid directly to the Mortgagee, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in obtaining such sums, the Mortgagee may, at its option, apply the balance on the Debt in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Debt, or apply such balance to the restoration of the Property, or release the balance to the Mortgagor; provided, however, that so long as no Event of Default has occurred and is continuing, if the condemnation, eminent domain or other taking results in the payment of sums in an aggregate amount of less than \$50,000 prior to six months before the maturity date of the Notes, such proceeds shall be made available to the Mortgagor for the sole purpose of repair and restoration of the Property. No such application, holding in reserve or release shall cure or waive any default of the Mortgagor. In the event the Debt is reduced by at least 20% as a result of the application of condemnation proceeds, the monthly principal installments shall be recalculated based on the then outstanding principal portion of the Debt.

8. Covenant Against Waste. The Mortgagor agrees to take good care of the Real Estate and all Improvements and Personal Property and not to commit or permit any waste thereon, and at all times to maintain such Improvements and Personal Property in as good condition as they now are, reasonable wear and tear excepted.

9. Hazardous Substances.

(a) Except for the hazardous materials and substances and the use thereof required to construct and to operate and maintain the Improvements, the Mortgagor shall not make, store, use, treat, release or dispose of any hazardous substances, pollutants or other contaminants ("Prohibited Substances") on or under the Real Estate. If any such Prohibited Substances are nonetheless made, stored, used, treated, released, disposed of or found to exist on or under the Real Estate, the Mortgagor shall give immediate written notice to the Mortgagee of such occurrence or existence. If the Mortgagor fails to keep the Real Estate or Improvements free of such Prohibited Substances, the Mortgagee may, but shall not be obligated to, do or cause to be done such acts as are necessary or desirable in the Mortgagee's opinion to remove and

dispose of such Prohibited Substances. All amounts spent by the Mortgagee for the removal and disposal of such Prohibited Substances and the return of the Real Estate and Improvements to a condition free of Prohibited Substances shall become a debt due by the Mortgagor to the Mortgagee and at once payable, without demand or notice, and shall become a part of the Debt secured by this mortgage, to bear interest as provided in the Note from the date of payment by the Mortgagee until paid by the Mortgagor.

(b) The Mortgagor hereby warrants that (i) there are no civil, criminal or administrative environmental proceedings involving the Real Estate that are pending or to the Mortgagor's knowledge threatened; (ii) the Mortgagor knows of no facts or circumstances that might give rise to such a proceeding in the future; (iii) the Real Estate is in compliance with all applicable federal, state and local statutory and regulatory environmental requirements; and (iv) the Real Estate is free from any and all "hazardous substances," "pollutants" and other "contaminants," as those terms are defined in the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and rules and regulations thereunder. The Mortgagor shall give immediate written notice to the Mortgagee of any actual or threatened "release" (as defined in CERCLA and rules and regulations thereunder) of such substances on or from the Real Estate or any portion thereof at any time during or preceding the Mortgagor's ownership of the Real Estate. The Mortgagor shall indemnify and hold the Mortgagee harmless from and against all loss, damages, fines, penalties, liability and expenses (including, but not limited to reasonable attorneys' fees and costs of investigation and litigation) caused by or in any manner resulting from such substances on or under the Real Estate or any portion thereof at any time during or preceding the Mortgagor's ownership of the Real Estate. The indemnity provisions of this paragraph 9 shall survive the satisfaction of this mortgage and shall continue in full force and effect notwithstanding the payment of the Debt in full.

10. Covenants Related to Rents and Leases. The Mortgagor covenants and agrees that the Mortgagor shall:

(a) observe, perform and discharge all obligations, covenants and warranties provided for under the terms of the Leases to be kept, observed and performed by the Mortgagor, and shall give prompt notice to the Mortgagee in the event the Mortgagor fails to observe, perform and discharge the same;

(b) enforce or secure in the name of the Mortgagee the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the Leases unless such performance has been waived by the Mortgagor in the ordinary course of the apartment leasing business;

(c) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the Mortgagor and any lessee thereunder, and, upon request by the Mortgagee to do so in the name and on behalf of the Mortgagee but at the expense of the Mortgagor, and to pay all costs and expenses of the Mortgagee, including reasonable attorneys' fees, in any action or proceeding in which the Mortgagee may appear;

(d) except in the ordinary course of the apartment leasing business, not receive or collect any Rents from any present or future lessee of the Real Estate or any of the Improvements, or any part thereof, for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents;

(e) except in the ordinary course of the apartment leasing business, not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any lessee of the Real Estate or any of the Improvements of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Lease;

(f) except in the ordinary course of the apartment leasing business, not cancel, terminate or consent to any surrender of any Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of the Mortgagee;

(g) lease the Property only under arms length leases for a rental rate, which, in the Mortgagor's best judgment, represents a fair market rental rate;

(h) promptly upon the request of the Mortgagee, furnish the Mortgagee with a current rent roll; and

(i) promptly upon the execution by the Mortgagor of any future Lease not pertaining to the leasing by a tenant for an apartment unit, (i) furnish the Mortgagee with the name and address of the lessee thereunder, the term of such Lease and a description of the premises covered thereby and, upon request of the Mortgagee, a copy of such Lease, and (ii) execute all such further assignments of such Lease and the Rents therefrom as the Mortgagee may require.

11. Covenant Against Sale, Lease or Transfer, etc. Notwithstanding any other provision of this mortgage or the Notes, if the Real Estate or the Improvements, or any part thereof, or any interest therein, is sold, leased (other than in the ordinary course of business), conveyed or transferred, without the Mortgagee's prior written consent, or if the Real Estate or the Improvements, or any part thereof, or any interest therein, becomes

subject to any voluntary additional lien, mortgage or other encumbrance, or involuntary additional lien or encumbrance that is not set aside within 90 days of filing, without the Mortgagee's prior written consent, the Mortgagee may, at its sole option: (a) declare the Debt immediately due and payable in full; or (b) require the payment, after the date of such sale, lease, conveyance or transfer, of a higher rate of interest on the unpaid principal portion of the Debt as a condition to not exercising such option to accelerate the Debt, whether such rights be exercised by the Mortgagee to obtain a higher rate of interest on the Debt or to protect the security of this mortgage.

12. Defeasance. This mortgage is made upon the condition that if the Mortgagor pays the Debt, as defined in this mortgage (which Debt includes without limitation the debt evidenced by the Notes, and interest thereon), and reimburses the Mortgagee for any amounts the Mortgagee has paid in respect of Liens or insurance premiums, and interest thereon, and fulfills all of its other obligations under this mortgage, this conveyance shall be null and void.

13. Events of Default. The Mortgagor shall be deemed in default hereunder upon the occurrence of any of the following events which continues after the notice and expiration of the right to cure as provided herein ("Events of Default"): (a) if an Event of Default occurs under either or both of the Notes, the Loan Agreement or any of the other Security Documents (as defined in the Loan Agreement) that has not been cured within any applicable cure period; or (b) if the interest of the Mortgagee in any of the Property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon; or (c) if any law is passed imposing, or authorizing the imposition of, any specific tax upon this mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Debt, or by virtue of which any tax, lien or assessment upon the Property shall be chargeable against the owner of this mortgage unless the Mortgagor reimburses and holds harmless the Mortgagee from the imposition of such tax, lien or assessment within 90 days from the date the Mortgagee demands such reimbursement or payment; or (d) if any of the stipulations contained in this mortgage is declared invalid or inoperative by any court of competent jurisdiction and such declaration materially affects the Lender's rights hereunder, as determined by the Lender in its sole and absolute discretion.

14. Rights and Remedies of Mortgagee upon Default.

(a) Acceleration of Debt. Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee may at its option and with notice to the Mortgagor, declare all or any part of the Debt immediately due and payable, whereupon all such Debt shall forthwith become due and payable, without presentment,

demand, protest or further notice of any kind, all of which are hereby expressly waived by the Mortgagor, and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this mortgage, the Notes, any of the other Security Documents and applicable law. The Mortgagor also waives any and all rights the Mortgagor may have to a hearing before any judicial authority prior to the exercise by the Mortgagee of any of its rights under this mortgage, the Notes, any of the other Security Documents and applicable law.

(b) Access to Property; Operation of Property by Mortgagee. Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person, firm or corporation designated by the Mortgagee) may, but will not be obligated to, enter upon, and without taking possession thereof, inspect or cause to be inspected, the Property, including testing for hazardous substances, and/or to take possession of any or all of the Property, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; and the Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of the Mortgagor with respect to the Property.

(c). Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee, in lieu of, or in addition to, exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Property, to sue the Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee 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 the Mortgagor or any other party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) Foreclosure Sale. Upon the occurrence of an Event of Default, or at any time thereafter, this mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one days notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Property or any part thereof is

located, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, 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 Debt secured hereby shall have been paid in full.

(e) Personal Property and Fixtures. Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee shall have and may exercise with respect to the Personal Property and fixtures included in the Property (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral, or any other items in which a security interest has been granted herein, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. The Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Mortgagee; at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At the Mortgagee's request, the Mortgagor shall assemble the Collateral and make the Collateral available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of the Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of the Mortgagee existing after default. To the extent that such notice is required and

cannot be waived, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of paragraph 27 below, at least five days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

The Mortgagor agrees that the Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under this mortgage with respect to the real property covered hereby. The Mortgagor hereby grants the Mortgagee the right, at its option after default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Debt in such order and amounts and manner as the Mortgagee may elect. The Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) Rents and Leases. Upon the occurrence of an Event of Default or at any time thereafter:

(i) The Mortgagee, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(A) to terminate automatically, without the necessity of taking any action, the license granted to the Mortgagor in Granting Clause C(iii) hereof to collect the Rents, and, without taking possession, in the Mortgagee's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Debt in such order and amounts as the Mortgagee may choose (or hold the same in a reserve as security for the Debt);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of the Mortgagor, make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any

act or incur any cost or expenses the Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the Mortgagor could do if in possession, and in such event to apply any funds so collected to the operation and management of the Property (including payment of reasonable management, brokerage and attorney's fees) and payment of the Debt in such order and amounts as the Mortgagee may choose (or hold the same in reserve as security for the Debt); and

(C) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Mortgagor under this mortgage.

(ii) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Mortgagee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

(g) Application of Proceeds. All payments received by the Mortgagee as proceeds of the Property, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this mortgage, shall be applied by the Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this mortgage, including reasonable attorneys' fees as provided herein and in the Notes, the Loan Agreement and the other Security Documents, (ii) to the payment in full of any of the Debt that is then due and payable (including without limitation principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Notes, (iii) to a cash collateral reserve fund to be held by the Mortgagee in an amount equal to, and as security for, any of the Debt that is not then due and payable, and (iv) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(h) Multiple Sales. Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this mortgage, but

without declaring the whole Debt due. Any such sale may be made subject to the unmatured part of the Debt secured by this mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Debt secured by this mortgage, but as to such unmatured part of the Debt this mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Debt whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Debt without exhausting any power of foreclosure and the power to sell the Property for any other part of the Debt, whether matured at the time or subsequently maturing.

(i) Waiver of Appraisement Laws. The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Debt or any creation or extension of a period of redemption from any sale made in collecting the Debt (commonly known as stay laws and redemption laws).

(j) Prerequisites of Sales. In case of any sale of the Property as authorized by this paragraph 14, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Debt or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

15. Collection Costs. The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in collecting or securing, or attempting to collect or secure, the Debt, or any part thereof, or in defending or attempting to defend the priority of this mortgage against any Lien on the Property, unless this mortgage is herein expressly made subject to any such Lien; and/or all costs incurred in the foreclosure of this mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Debt and shall be secured by this mortgage.

16. No Obligations with Respect to Leases. The Mortgagee shall not by virtue of this mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to Leases, the Improvements, the Personal Property, the

Real Estate or any of the other Property (unless expressly assumed by the Mortgagee under a separate agreement in writing), and this mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action and judgments relating to the Mortgagor's performance of its duties, responsibilities and obligations under Leases and with respect to the Real Estate, the Improvements, the Personal Property, or any of the other Property, except as such claims, causes of action and judgments are caused solely by the gross negligence or willful misconduct of the Mortgagee.

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

18. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and the successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Mortgagee shall inure to the benefit of the Mortgagee's successors and assigns.

19. Waiver and Election. The exercise by the Mortgagee of any option given under the terms of this mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this mortgage, either on any matured portion of the Debt or for the whole of the Debt, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee 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 other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this mortgage and in the other Security Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this mortgage or any of the Security Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which

given. No notice to, or demand on, the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

20. Landlord-Tenant Relationship. Any sale of the Property under this mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Mortgagor.

21. Enforceability. If any provision of this mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Mortgagee to effectuate the provisions hereof.

22. Application of Payments. If the lien, assignment or security interest created by this mortgage is invalid or unenforceable as to any part of the Debt or is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Debt, and all payments made on the Debt, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on, and applied to, the full payment of that portion of the Debt which is not secured or not fully secured by said lien, assignment or security interest created hereby.

23. Meaning of Particular Terms. Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective successors and assigns. Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this instrument, whether one or more natural persons, corporations, associations, partnerships or other entities.

24. Advances by the Mortgagee. If the Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens, the keeping of the Property in repair, the performance of the Mortgagor's obligations under any Lease, the payment of any prior mortgages, or the performance of any other term or covenant herein contained, the Mortgagee may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing any such term or covenant. The Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the Notes, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Debt and shall be secured hereby. The making of any such advances

shall not be construed as a waiver by the Mortgagee of any Event of Default resulting from the Mortgagor's failure to pay the amounts paid.

25. Release or Extension by the Mortgagee. The Mortgagee, without notice to the Mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Debt and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Debt or to waive the prompt and full performance of any term, condition or covenant of the Notes, any of the Security Documents, this mortgage or any other instrument evidencing or securing the Debt.

26. Partial Payments. Acceptance by the Mortgagee of any payment of less than the full amount due on the Debt shall be deemed acceptance on account only, and the failure of the Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Debt has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this mortgage in case of the occurrence of an Event of Default.

27. Addresses for Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing or by telex, telegram or cable and mailed or sent or delivered to the applicable party at its address indicated on the first page of this mortgage or at such other address as shall be designated by such party in a written notice to the other parties hereto.

28. Titles. All section, paragraph, subparagraph or other titles contained in this mortgage are for reference purposes only, and this mortgage shall be construed without reference to said titles.

IN WITNESS WHEREOF, Crowne Woods Associates, Ltd. has caused this mortgage to be executed by its duly authorized general partner on the date first written above.

CROWNE WOODS ASSOCIATES, LTD.

By Crowne Group VI, L.L.C.
Its General Partner

By 
Its Member

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said county in said State, hereby certify that Alan Z. Engel, whose name as an authorized member of Crowne Group VI, L.L.C., a limited liability company, the general partner of Crowne Woods Associates, Ltd., an Alabama limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as general partner of said limited partnership.

Given under my hand and official seal this 29 day of May, 1997.


Notary Public

AFFIX SEAL

My commission expires: 1-4-99

Dawn Helms Sharff
WALSTON, WELLS, ANDERSON
& BAINS, LLP
505 N. 20th Street, Suite 500
P. O. Box 830642
Birmingham, Alabama 35283-0642
(205) 251-9600

EXHIBIT A
TO
MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES

[Legal Description]

LOTS 3 AND 4 OF THE CROWNE RESURVEY OF GALLERIA WOODS, FIRST ADDITION, as recorded in Map Book 30, Page 77, in the Office of the Probate Judge of the Bessemer Division of Jefferson County and in Map Book 21, Page 91, in the Office of the Probate Judge of Shelby County, Alabama.

ALONG WITH THE FOLLOWING DESCRIBED PARCEL A being a parcel located immediately northwest of and adjoining Lot 4, described above, lying in the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 23, Township 19 South, Range 3 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 23, Township 19 South, Range 3 West, Jefferson County, Alabama and run South along the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ Section a distance of 282.58 feet to the POINT OF BEGINNING of the herein described Parcel A, being a 1" open pipe found, lying 1.24 feet South and .036 feet west of a $\frac{3}{4}$ " rebar found; thence deflect $00^{\circ}14'26"$ to the right and run in a Southerly direction a distance of 285.26 feet to a point being a 1" open pipe found lying 0.03 feet north and 0.67 feet west of a $\frac{3}{4}$ " crimped iron pipe found; thence turn an interior angle of $128^{\circ}45'57"$ and run to the right in a Southwesterly direction a distance of 485.46 feet to a 1.5" iron found, said point being the Northerly corner of Lot 4, Crowne Resurvey of Galleria Woods, First Addition, as recorded in Map Book 30, Page 77, in the Office of the Probate Judge of the Bessemer Division of Jefferson County and in Map Book 21, page 91, in the Office of the Probate Judge of Shelby County, Alabama; thence turn an interior angle of $177^{\circ}15'35"$ and run to the right in a southwesterly direction along the Northwesterly line of said Lot 4 a distance of 814.44 feet to a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc., found on the right-of-way line of Galleria Woods Drive, being a point on a curve having a central angle of $72^{\circ}45'10"$ and a radius of 237.43 feet; thence turn an interior angle of $29^{\circ}57'07"$ to tangent of said curve and run along the arc of said curve and the easterly right-of-way of said Drive in a northerly to a Northwesterly direction a distance of 301.48 feet to a point; thence continue tangent to the last described curve in a Northwesterly direction along said right-of-way a distance of 47.26 feet to a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. set during this survey; thence turn an interior angle of $68^{\circ}35'52"$ and run to the right in a Northeasterly direction a distance of 183.77 feet to a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. set during this survey; thence turn an

interior angle of $156^{\circ}43'57''$ and run to the right in an Easterly direction a distance of 57.61 feet to a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. set during this survey; thence turn an interior angle of $205^{\circ}16'14''$ and run to the left in a Northeasterly direction a distance of 115.63 feet to a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. set during this survey; thence turn an interior angle of $179^{\circ}34'35''$ and run to the right in a Northeasterly direction a distance of 200.90 feet to a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. found during this survey; thence turn an interior angle of $208^{\circ}12'29''$ and run to the left in a Northeasterly direction a distance of 216.90 feet to a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. found during this survey; thence turn an interior angle of $246^{\circ}37'07''$ and run to the left in a Northwesterly direction a distance of 22.50 feet to a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. found during this survey; thence turn an interior angle of $79^{\circ}49'54''$ and run to the right in a Northeasterly direction a distance of 192.05 feet to a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. set during this survey; thence turn an interior angle of $204^{\circ}25'25''$ and run to the left in a Northeasterly direction a distance of 37.22 feet to the southwest corner of Lot 5 of the Lot 5 addition to Galleria Woods as recorded in Map Book 31, Page 3, in the Office of the Probate Judge of the Bessemer Division of Jefferson County, Alabama, a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. set during this survey; thence continue along the last described course a distance of 381.38 feet to the southeast corner of said Lot 5 a rebar and cap bearing the certificate of authorization of Paragon Engineering, Inc. found during this survey; thence turn an interior angle of $89^{\circ}05'20''$ and run to the right in a Southeasterly direction a distance of 101.22 feet, more or less, to the POINT OF BEGINNING, containing 7.9760 acres, more or less.

EXHIBIT B
TO
MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES

[Permitted Exceptions]

1. Taxes and assessments for the year 1997, and subsequent years, which are not yet due and payable.
2. Sanitary Sewer Easement and Power Lines as shown by Map Book 30, page 77 in the Probate Office of Jefferson County, Alabama, Bessemer Division, and Map Book 21, page 91 in the Probate Office of Shelby County, Alabama.
3. The rights of upstream and downstream riparian owners with respect to Cahaba River and Patton Creek, bordering subject property.
4. Right of way to Jefferson County, Alabama for sewer purposes, recorded in Real 2780, page 917, in the Probate Office of Jefferson County, Alabama.
5. Mineral and mining rights and rights incident thereto recorded in Bessemer Real 220, page 190, Volume 3642, page 258, Volume 492, page 471 and Instrument No. 9760/2783 in the Probate Office of Jefferson County, Alabama, Bessemer Division.
6. Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Charges and Liens for Riverchase (Business) as recorded in the Office of the Judge of Probate of Jefferson County, Alabama, in Real 1437, page 570, and in the Bessemer Division in Real 348, page 878 and as Instrument No. 9760/2783, and in the Office of the Judge of Probate of Shelby County, Alabama, in Book 19, page 633.
7. Amended and Restated Agreement Regarding Development Densities recorded in Instrument No. 9760/4194 in the Probate Office of Jefferson County, Alabama, Bessemer Division.
8. Right of Way granted to Alabama Power Company by instrument recorded in Volume 351, page 498, in the Probate Office of Jefferson County, Alabama, Bessemer Division.
9. Easement for Sewer Extension recorded as Instrument No. 9761/2272, in the Probate Office of Jefferson County, Alabama, Bessemer Division.
10. Fill Easement recorded as Instrument No. 9761/2271 in the Probate Office of Jefferson County, Alabama, Bessemer Division.

Inst # 1997-16731

05/29/1997-16731
03:51 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
021 MCD \$9.50

State of Alabama - Jefferson County
I certify this instrument filed on:
1997 MAY 29 P.M. 14:38
Recorded and \$21,930.00 Mtg. Tax
and \$ 52.00 Deed Tax and Fee Amt.
\$ Total \$ 21,982.00
GEORGE R. REYNOLDS, Judge of Probate



9761/2498 BESS