

PREPARED BY AND AFTER RECORDING, MAIL TO:
WILLIAM C. BYRD, II
BURR & FORMAN LLP
P. O. Box 830719
BIRMINGHAM, ALABAMA 35203
TELEPHONE: (205) 251-3000

STATE OF ALABAMA)
COUNTY OF SHELBY)

Inst # 2000-33972

09/27/2000-33972
09:01 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
4986.00
024 NEL

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), made as of this 26th day of September, 2000, is between **THE COTTAGE AT RIVERCHASE, LLC**, an Alabama limited liability company (hereinafter called the "Borrower"), whose address is 2176 Parkway Lake Drive, Birmingham, Alabama 35244, and **HERITAGE BANK**, an Alabama banking corporation (hereinafter called the "Lender"), Mortgagee, whose address is Heritage Bank Tower, 301 North 20th Street, Birmingham, Alabama 35203, Attention: R. Cooper Lindsey.

RECITALS:

A. Borrower is indebted to the Lender for money loaned in the principal sum of Three Million Two Hundred Eighty Thousand and No/100 Dollars (\$3,280,000) (the "Loan"), as is evidenced by that certain Promissory Note of even date herewith from the Borrower (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein called the "Note"), and by that certain Loan Agreement of even date herewith between the Borrower and the Lender, as the same may hereafter be amended (as so amended, the "Loan Agreement").

B. As a condition precedent to making the Loan, the Lender has required that the Borrower execute this Mortgage as security for the Loan and the other Loan Obligations (as hereinafter defined).

AGREEMENT

NOW, THEREFORE, the undersigned, for and in consideration of the indebtedness above mentioned and the Loan Obligations, and to secure the prompt payment and performance of the Loan Obligations, does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage, pledge and set over unto Lender, its successors and assigns, all Borrower's right, title and interest in and to the following described land and interests in land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, and including

replacements, additions, accessions, substitutions and products thereto, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

A. All the tract(s) or parcel(s) of land located in Shelby County, Alabama, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property");

B. All Improvements and Equipment (as such terms are defined in Article I hereof);

C. All Appurtenant Rights (as defined in Article I hereof); and

D. All Rents (as defined in Article I hereof); and

E. All Accounts, General Intangibles, Instruments, Inventory, Money, and (to the full extent assignable) Permits and Reimbursement Contracts (as such terms are defined in Article I hereof); and

F. All Proceeds (as defined in Article I hereof).

G. The Plans and Specifications (as defined in the Loan Agreement); Borrower's books and records relating to the Property or construction of the Improvements; and all contracts now or hereafter made by Borrower relating to the Property or the construction, equipping, marketing, management, sale or lease of all or any part of the Property or Improvements, and all bonds and other guarantees of performance in favor of Borrower with respect to any such contracts (and Borrower agrees that upon any Event of Default under this Mortgage, Lender shall have the absolute right to make such use of the property so assigned in this subparagraph (G) as Lender shall desire, and that Lender will not be limited to remedies available under the Uniform Commercial Code, but may at its option avail itself of the rights to use such property as set forth herein or in the Loan Agreement in addition to or in substitution for its Uniform Commercial Code remedies).

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay to the Lender the Loan Obligations, at the times and in the manner stipulated herein, in the Note and in the other Loan Documents, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall, and shall cause all other obligated parties to, keep, perform, and observe all and singular the covenants and promises herein, in the Note and in each of the other Loan Documents expressed to be kept, performed, and observed, all without fraud or delay, then this Mortgage, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

AND the Borrower covenants and agrees with the Lender and represents and warrants unto Lender as follows:

ARTICLE I

DEFINED TERMS

1.1 **Defined Terms.** As used herein, the following terms will have the following meanings:

"Accounts" means all accounts (including accounts receivable) arising from the operation of the Facility, including but not limited to, rights to payment for goods sold or leased or for services rendered, not evidenced by an Instrument, and specifically including rights to payment from Reimbursement Contracts.

"Appurtenant Rights" means all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, flowers, shrubs, timber and other emblements now or hereafter appurtenant to, or used or useful in connection with, or located on, under or above the Property, or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any other Mortgaged Property, or any part thereof.

"Equipment" means all fixtures and equipment located on, attached to or used or useful in connection with the Property or the Facility, including, but not limited to, beds, linen, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation equipment and restaurant and kitchen equipment; provided, however, that with respect to any items which are leased and not owned, the Equipment shall include the leasehold interest only together with any options to purchase any of said items and any additional or greater rights with respect to such items hereafter acquired (but nothing herein shall permit the leasing of any Equipment except as otherwise expressly permitted herein unless Lender's written consent is first obtained).

"Facility" means the 48-bed licensed assisted living facility to be constructed at the Property and to be known as The Cottage at Riverchase, together with any other general or specialized care facilities now or hereafter located at the Property.

"General Intangibles" means all general intangibles and other intangible personal property arising out of or connected with the Property or the Facility (other than Accounts, Rents, Instruments, Inventory, Money, Permits, and Reimbursement Contracts), including, without limitation, things in action, contract rights and other rights to payment of money.

"Improvements" means all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Property, including, but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, air conditioning equipment, carpeting and other floor coverings, water heaters, awnings and storm sashes, cleaning apparatus, signs, landscaping, and parking areas, which are or shall be attached to the Property or said buildings, structures or improvements.

"Instruments" means all instruments, chattel paper, documents or other writings obtained from or in connection with the operation of the Property or the Facility (including, without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account and files relating thereto).

"Inventory" means all inventory from time to time used at the Facility, including, but not limited to, food, beverages, other comestibles, soap, paper supplies, medical supplies, drugs and all other such goods, wares and merchandise held for sale to or for consumption or use by guests or residents of the Property or the Facility, including all such goods that are returned or repossessed.

"Loan Documents" means, collectively, this Mortgage, the Loan Agreement, the Note, the Indemnity Agreement, the Guaranty, the Manager's Subordination, together with any and all other documents executed by Borrower or others, evidencing, securing, or otherwise relating to the Loan.

"Loan Obligations" means the aggregate of all principal and interest owing from time to time under the Note and all expenses, charges and other amounts from time to time owing under the Note, this Mortgage, or the other Loan Documents and all covenants, agreements and other obligations from time to time owing to, or for the benefit of, Lender pursuant to the Loan Documents.

"Money" means all monies, cash, rights to deposit or savings accounts or other items of legal tender obtained from or for use in connection with the operation of the Facility.

"Permits" means all licenses, permits, certificates, approvals, authorizations and registrations obtained from any governmental or quasi-governmental authority and used or useful in connection with the ownership, operation, use or occupancy of the Property or the Facility, including, without limitation, building permits, residential care facility licenses, business licenses, state health department licenses, food service licenses, licenses to conduct business, certificates of need and all such other permits, licenses and rights.

"Permitted Encumbrances" means all matters set forth in Exhibit B hereto, provided that to the extent any of the same are listed as subordinate, such matters are permitted only so long as they are in fact subordinate to this Mortgage.

"Proceeds" means all proceeds (whether cash or non-cash, moveable or immoveable, tangible or intangible), including proceeds of insurance and condemnation, from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Mortgaged Property.

"Reimbursement Contracts" means all contracts and rights pursuant to reimbursement or third party payor programs and contracts for the Facility which are now or hereafter in effect with respect to residents qualifying for coverage under the same, including, but not limited to, Medicare, Medicaid, any successor program or other similar reimbursement program (whether operated by a

governmental or quasi-governmental agency or by a private Person) and private insurance agreements.

"Rents" means all rent and other payments of whatever nature from time to time payable pursuant to any lease of the Property or the Facility, or any part thereof, including, but not limited to, leases of individual apartments or units to residents, leases of retail space or other space at the Property for businesses such as newsstands, barbershops, beauty shops, physicians' offices, pharmacies and specialty shops.

1.2 **Singular and Plural.** Singular terms shall include the plural forms and vice versa, as applicable of the terms defined.

1.3 **References.** All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

1.4 **Loan Agreement.** All other capitalized terms not otherwise defined in this Mortgage shall have the meanings set forth in the Loan Agreement.

1.5 **Medicaid and Medicare.** All references herein to "Medicaid" and "Medicare" shall be deemed to include any successor program thereto.

ARTICLE II

COVENANTS, AGREEMENTS, AND REPRESENTATIONS OF BORROWER

2.1 **Performance of Loan Documents.** The Borrower will perform, observe, and comply with all provisions hereof and of each of the other Loan Documents and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

2.2 **Warranty of Title.** The Borrower is lawfully seized of an indefeasible estate in fee simple in the Property hereby mortgaged and has good and absolute title to all other Mortgaged Property in which a security interest is herein granted and has good right, full power and lawful authority to sell, convey, mortgage, and grant a security interest in the same in the manner and form aforesaid; that, except for Permitted Encumbrances the same are free and clear of all liens, charges, and encumbrances whatsoever, including, as to the Equipment, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature (provided, however, that the Borrower shall have the right to acquire additional personal property for use in connection with the operation of the Mortgaged Property via purchase money financing or lease-sale financing, and such financing shall not constitute a violation of the covenants or representations set

forth herein); and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

2.3 Taxes, Liens and Other Charges.

(a) Borrower shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Mortgaged Property or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. Borrower shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless Borrower has given prior written notice to Lender of Borrower's intent to so contest or object, and unless (i) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) if required by Lender, Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender in an amount sufficient to fully pay the contested amount, with penalties, interest and other charges if Borrower should be unsuccessful in such contest; and (iii) Borrower shall diligently pursue such contest.

(b) Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees, if any, which may now or hereafter be levied upon, or assessed or charged against the Note, this Mortgage or any other Loan Documents.

(c) Borrower shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Mortgaged Property, as required by the Loan Agreement; and all utility charges which are incurred by Borrower for the benefit of the Mortgaged Property, or which may become a charge or lien against the Mortgaged Property for gas, electricity, water and sewer services and the like furnished to the Mortgaged Property, and all other public or private assessments or charges of a similar nature affecting the Mortgaged Property or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. Borrower shall submit to Lender such evidence of the due and punctual payment of all such premiums, rentals and other sums as Lender may reasonably require.

(d) Borrower shall not suffer any mechanic's, materialmen's, laborer's, statutory or other Lien (except as expressly permitted by the Loan Agreement) to be created or remain outstanding against the Mortgaged Property; provided, however, that Borrower may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded off and removed as

an encumbrance upon the Mortgaged Property. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

(e) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or security agreements or debts secured thereby or the manner of collecting such taxes so as to adversely affect Lender, Borrower will pay any such tax on or before the due date thereof. If Borrower fails to make such prompt payment or if, in the opinion of Lender, any such state, federal, municipal, or other governmental law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment or if, in the opinion of Lender, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Loan Obligations shall, at the option of Lender, become immediately due and payable.

(f) The Borrower hereby indemnifies and holds Lender harmless from any sales or use tax, if any, that may be imposed on the Lender by virtue of Lender's Loan to Borrower.

2.4 **Monthly Deposits.** After an Event of Default, Borrower shall deposit with Lender, on the due date of each installment under the Note, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments and insurance premiums as reasonably estimated by the Lender to be sufficient to pay such charges; said deposits to be held and to be used by Lender to pay current taxes and assessments, insurance premiums and other charges on the Mortgaged Property as the same accrue and are payable. Payment from said sums for said purposes shall be made by Lender at its discretion and may be made even though such payments will benefit subsequent owners of the Mortgaged Property. Said deposits shall not be, nor be deemed to be, trust funds, but may be, to the extent permitted by applicable law, commingled with the general funds of Lender; Lender agrees to deposit such funds in an interest bearing account acceptable to Lender, and to pay such interest to Borrower upon the payment in full of the sums secured by this Mortgage. If said deposits are insufficient to pay the taxes and assessments, insurance premiums and other charges in full as the same become payable, Borrower will deposit with Lender such additional sum or sums as may be required in order for Lender to pay such taxes and assessments, insurance premiums and other charges in full. Upon any Event of Default, Lender may, at its option, apply any money in the fund relating from said deposits to the payment of the Loan Obligations in such manner as it may elect.

2.5 **Condemnation.** If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, other than a taking of a part of the Mortgaged Property which does not in Lender's reasonable opinion adversely affect access to or use of the Mortgaged Property or operation of the Facility, the entire Loan Obligations secured hereby shall at the option of the Lender become immediately due and payable.

Borrower, immediately upon obtaining knowledge of any institution, or any proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation of the Mortgaged Property or any part thereof, will notify Lender, and Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Borrower's name, any action or proceeding relating to any condemnation. Borrower may compromise or settle any claim for compensation so long as no Event of Default exists and any compromise or settlement results in a payment to Lender not less than the entire Loan Obligations. If an Event of Default exists, Lender shall have the sole and exclusive right to compromise or settle any claim for compensation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, and Lender is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittances therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of its reasonable out-of-pocket expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Lender may release any moneys so received by it for the repair or restoration of the Mortgaged Property taken, or may apply the same in such manner as the Lender shall determine to reduce the Loan Obligations in such order as Lender may elect, whether or not then due, and without affecting this Mortgage as security for any remaining Loan Obligations, and any balance of such moneys shall be paid to the Borrower.

2.6 Care of Mortgaged Property.

- (a) Borrower will keep the Improvements in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Mortgaged Property or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Mortgaged Property.
- (b) Borrower will not remove, demolish or alter the structural character of any Improvements without the written consent of Lender, which such consent shall not be unreasonably withheld, nor make or permit use of the Mortgaged Property for any purpose other than as an assisted living facility.
- (c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice thereof to Lender.
- (d) Lender or its representative is hereby authorized to enter upon and inspect the Mortgaged Property during normal business hours.
- (e) Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority, including without limitation, the Americans

with Disabilities Act, the Fair Housing Act and regulations thereunder, affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition provided that insurance proceeds are made available to Borrower as provided in the Loan Agreement; and if a part of the Mortgaged Property shall be taken or damaged through condemnation, Borrower will promptly restore, repair or alter the remaining portions of the Mortgaged Property in a manner reasonably satisfactory to Lender.

2.7 **Leases and Management Agreement.** Borrower shall not, without the prior written consent and approval of Lender (which consent shall not be unreasonably withheld), enter into any lease or permit any tenancy (except for admission of Facility residents), or enter into or permit any management agreement (other than the Management Agreement, as such term is defined in the Loan Agreement), of or affecting the Mortgaged Property without the prior written consent of the Lender which consent shall not be unreasonably withheld.

2.8 **Further Assurances; After-Acquired Property.** At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be reasonably deemed necessary by Lender (i) to perfect and protect the security interest created or purported to be created hereby; (ii) to enable the Lender to exercise and enforce its rights and remedies hereunder in respect of the Mortgaged Property; or (iii) to effect otherwise the purposes of this Mortgage, including, without limitation: (A) executing and filing such financing or continuation statements, or amendments thereto, as may be reasonably necessary or that the Lender may request in order to perfect and preserve the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower; (B) if certificates of title are now or hereafter issued or outstanding with respect to any of the Mortgaged Property, by immediately causing the interest of Lender to be properly noted thereon at Borrower's expense; and (C) furnishing to the Lender from time to time statements and schedules further identifying and describing the Mortgaged Property and such other reports in connection with the Mortgaged Property as the Lender may reasonably request, all in reasonable detail. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such financing statements, continuation statements, or amendments thereto, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien of this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

2.9 **Indemnity; Expenses.** Borrower will pay or reimburse Lender for all reasonable attorney's fees, costs and expenses incurred by Lender in any suit, action, trial, appeal, bankruptcy or other legal proceeding or dispute of any kind in which Lender is made a party or appears as party

plaintiff or defendant, affecting the Loan Obligations, this Mortgage or the interest created herein, or the Mortgaged Property, or any appeal thereof, including, but not limited to, any foreclosure action, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, any bankruptcy or other insolvency proceeding commenced by or against the Borrower, any lessee of the Mortgaged Property (or any part thereof), or any guarantor of any of the Loan Obligations, and any such amounts paid by Lender shall be added to the Loan Obligations and shall be secured by this Mortgage. Borrower will indemnify and hold Lender harmless from and against all claims, damages, and out-of-pocket expenses, including reasonable attorney's fees and court costs, resulting from any action by a third party against Lender relating to this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those Applicable Environmental Laws, provided Borrower shall not be required to indemnify Lender for matters directly and solely caused by Lender's misconduct or negligence. Borrower acknowledges that it has undertaken the obligation to pay all intangibles taxes and documentary taxes now or hereafter due in connection with the Loan Obligations and the Loan Documents, and Borrower agrees to indemnify and hold Lender harmless from any intangibles taxes and documentary stamp taxes, and any interest or penalties, which the Lender may hereafter be required to pay in connection with the Loan Obligations or Loan Documents. The agreements of this Section shall expressly survive satisfaction of this Mortgage and repayment of the Loan Obligations.

2.10 **Estoppel Affidavits.** Borrower, upon ten (10) days prior written notice, shall furnish the Lender a written statement, duly acknowledged, based upon its records, setting forth the unpaid principal of, and interest on, the Loan Obligations, stating whether or not to its knowledge any off-sets or defenses exist against the Loan Obligations, or any portion thereof, and, if such off-sets or defenses exist, stating in detail the specific facts relating to each such off-set or defense.

2.11 **Limit of Validity.** If from any circumstances whatsoever, fulfillment of any provision of this Mortgage, the Note or any other Loan Document, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage, the Note, or any other Loan Document that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section shall control every other provision of this Mortgage, the Note and any other Loan Documents.

2.12 **Legal Actions.** In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Mortgaged Property, the Note, the Loan Obligations or the validity or priority of this Mortgage, Borrower shall immediately, upon demand, reimburse Lender for all reasonable out-of-pocket costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such

amounts paid by Lender shall be added to the Loan Obligations and shall be secured by this Mortgage.

2.13 **Compliance with Applicable Environmental Law.** Borrower represents and warrants to the Lender that, to the best of Borrower's knowledge, the Mortgaged Property and the Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property. Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any Improvements or Equipment by reason of any Applicable Environmental Law. Borrower further represents and warrants that, to the best of Borrower's knowledge, no petroleum products, oil, hazardous substances, or solid wastes have been disposed of, or otherwise released on, or are otherwise located on the Property. The use of the Mortgaged Property as previously operated and hereafter intended to be operated by the Borrower will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on the Property in violation of any Applicable Environmental Law. Borrower has entered into a separate Indemnity Agreement with respect to Applicable Environmental Law, the provisions of which are deemed incorporated herein by this reference.

ARTICLE III

EVENTS OF DEFAULT; REMEDIES

3.1 **Events of Default.** The terms "Event of Default" or "Events of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

(a) The occurrence of any Event of Default (as therein defined) under any other Loan Documents; or

(b) The sale, transfer, lease, assignment, or other disposition, voluntarily or involuntarily, of the Mortgaged Property, or any part thereof or any interest therein, including a sale or transfer in lieu of condemnation, or, except for Permitted Encumbrances, any further encumbrance of the Mortgaged Property, unless the prior written consent of Lender is obtained (which consent may be withheld with or without cause in Lender's discretion).

3.2 **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire Loan Obligations shall, at the option of the Lender, immediately become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

3.3 **Performance by Lender.** Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

3.4 **Receiver.** If any Event of Default shall have occurred, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the sufficiency or value of any security for the Loan Obligations, the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Property is situated. Borrower will pay unto Lender upon demand all reasonable expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section, and upon any Borrower's failure to pay the same, any such amounts shall be added to the Loan Obligations and shall be secured by this Mortgage.

3.5 **Lender's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by applicable Alabama law, and (c) to pursue any other remedy available to it hereunder, or under any other Loan Documents, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

3.6 **Purchase by Lender.** Upon any foreclosure sale of the Mortgaged Property, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Loan Obligations as a credit to the purchase price.

3.7 **Application of Foreclosure Proceeds.** In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the reasonable expenses of such sale and of all proceedings in connection therewith, including reasonable attorney's fees and expenses (and attorney's fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens,

assessments, taxes and charges, including utility charges and any other amounts advanced by Lender hereunder, and interest thereon; then to payment of the Loan Obligations in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower or to the person or entity lawfully entitled thereto.

3.8 **Waiver of Exemption.** Borrower hereby waives and renounces all exemption rights, if any, provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Loan Obligations, or any part thereof.

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

3.10 **Right to Enter and Take Possession.**

(a) If an Event of Default shall have occurred, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower;

(b) If Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Mortgaged Property to Lender. Borrower will pay to Lender, upon demand, all reasonable expenses of obtaining such judgment or decree, including compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Loan Obligations and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise

by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (A) all reasonable expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the reasonable cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits for taxes and insurance required in this Mortgage and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal and any other unpaid Loan Obligations then due. Anything in this Section to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(d) Borrower hereby absolutely and unconditionally assigns and transfers to Lender all Rents and Accounts whether now due, past due or to come due, and hereby gives to and confers upon Lender the right, power and authority to collect the Rents and Accounts, except Lender grants Borrower a license to collect the same prior to an Event of Default, and upon such Event of Default Borrower's license shall be deemed automatically revoked. It is agreed that neither the foregoing assignment of Rents and Accounts to Lender, nor the exercise by Lender of any of its rights or remedies under this Section, nor the appointment of a receiver or possession of the Property by a receiver shall make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy or enjoyment or operation of all or any portion thereof, unless and until Lender in person assumes actual possession thereof, nor shall it obligate Lender under any lease or rental agreement. Nothing herein shall require Lender to have a receiver appointed to collect any Rents and Accounts, but Lender shall be entitled to such appointment at its option in accordance with this Mortgage. If an Event of Default shall exist, Lender may require that Borrower cause all of its Accounts and Rents to be paid to Lender or one or more deposit accounts with Lender, or at Lender's option, with another financial institution approved by Lender. Borrower assigns and grants to Lender a security interest in, pledge of and right of setoff against all moneys from time to time paid to Lender or held in such deposit accounts. Borrower agrees to promptly notify all of its account debtors and tenants, including all third-party payors pursuant to any Reimbursement Contracts then in effect, to make payments to Lender or one or more such deposit accounts upon Lender's request and as designated by Lender, Borrower agrees to provide any necessary endorsements to checks, drafts and other forms of payment so that such payments will be properly collected and/or deposited in such accounts. Lender may require that the deposit accounts be established so as to comply with any applicable Reimbursement Contracts and other legal requirements, if any, applicable to payments of any accounts receivable. Lender may

apply moneys held by it to the Loan Obligations, or may cause moneys to be withdrawn from such deposit accounts and applied to the Loan Obligations, all in such order as Lender may elect, whether or not then due. Borrower appoints Lender as its attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to provide any notice, endorse any check, draft or other payment for deposit, or take any other action which Borrower agrees to take in this Section. Notwithstanding the foregoing sentence, Lender shall not act upon Lender's appointment as Borrower's attorney-in-fact until after (i) a Default or (ii) Lender has given the Borrower five (5) days notice to take certain actions and the Borrower has failed to take such action within such notice period. Lender shall not be liable for failure to collect any Accounts or Rents, or to enforce the contracts or leases pursuant to which such Accounts or Rents are payable, or for any action or omission on the part of Lender, its officers, agents and employees in collecting or enforcing such Accounts, Rents, contracts or leases.

(e) Whenever all the Loan Obligations shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Mortgaged Property to Borrower and its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

3.11 **Power of Sale.** If an Event of Default shall have occurred, Lender may sell the Mortgaged Property (or any part thereof) at public outcry to the highest bidder for cash in front of the Court House door in the county where said Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property maybe offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

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

3.13 **Borrower as Tenant Holding Over.** In the event of any such foreclosure sale, Borrower (if it shall remain in possession) shall be deemed a tenant holding over and shall forthwith

deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

3.14 **Waiver of Appraisal, Valuation, Etc.** Borrower agrees, to the full extent permitted by law, that in case of a Default hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under Borrower, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

3.15 **Discontinuance of Proceedings.** In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

3.16 **Remedies Not Exclusive.** Lender shall be entitled to enforce payment and performance of the Loan Obligations and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Loan Obligations may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and it may pursue inconsistent remedies.

3.17 **Waiver.**

(a) No delay or omission by Lender or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every

right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Borrower in the performance of the obligations of Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Mortgage, other Loan Documents, or any other obligation of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Loan Obligations; (ii) take other or additional security for the payment of any of the Loan Obligations; (iii) waive or fail to exercise any right granted herein, in the Note, in other Loan Documents; (iv) release any part of the Mortgaged Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note, this Mortgage, other Loan Documents; (v) consent to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consent to the granting of any easement or other right affecting the Mortgaged Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the other Loan Documents, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Loan Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property, the Loan Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Borrower, Guarantor or others.

(c) Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. To the fullest extent that Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Borrower and its representatives, successors and assigns, and for any and all persons

ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisal, marshalling, stay of execution, and extension. Borrower further agrees that if any law referred to in this paragraph and now in force, of which Borrower or its representatives, successors or assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Borrower expressly waives and relinquishes any and all rights and remedies that it may have or be able to assert by reason of the laws of the state of jurisdiction pertaining to the rights and remedies of sureties.

(d) The Borrower, for itself and all other parties claiming under the Borrower, hereby waives all claims for marshalling-of-assets under applicable law.

Borrower makes these arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan, after consulting with and considering the advice of independent legal counsel selected by Borrower.

3.18 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

ARTICLE IV

SECURITY AGREEMENT; MISCELLANEOUS

4.1 **Security Agreement.** This Mortgage creates a lien on and a security interest in that part of the Mortgaged Property which constitutes personal property under any applicable Uniform Commercial Code, and shall constitute a security agreement under the applicable Uniform Commercial Code or other law applicable to the creation of liens on personal property. This Mortgage shall constitute a financing statement under the applicable Uniform Commercial Code with Borrower as the "debtor" and Lender as the "secured party." If an Event of Default occurs, the Lender shall have all rights and remedies of a secured party under the applicable Uniform Commercial Code. Written notice shall be mailed to Borrower as provided herein five (5) days prior to the date of public sale of the Mortgaged Property or prior to the date after which private sale of the Mortgaged Property will be made shall constitute reasonable notice. Any sale of all or any part of the Mortgaged Property shall be deemed to have been conducted in a commercially reasonable manner if held contemporaneously with, or included with, the sale of real property described herein under power of sale as provided in this Mortgage.

4.2 **Assembly of Mortgaged Property.** Upon the occurrence of an Event of Default, the Borrower shall assemble, if requested by the Lender, at its expense, all of the personal property which is part of the Mortgaged Property and the documents evidencing such personal property and the books and records applicable thereto and make them available to the Lender at a place to be designated by the Lender.

4.3 **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

4.4 **Terminology.** All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

4.5 **Severability; Complete Agreement.** If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Note and the other Loan Documents constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

4.6 **Applicable Law.** This Mortgage shall be governed by the laws of the State of Alabama. If, for any reason or to any extent any word, term, provision, or clause of this Mortgage or any of the other Loan Documents, or its application to any person or situation, shall be found by a court or other adjudicating authority to be invalid or unenforceable, the remaining words, terms, provisions or clauses shall be enforced, and the affected word, term, clause or provision shall be applied, to the fullest extent permitted by law.

4.7 **Limitation of Interest.** It is the intent of Borrower and Lender in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan evidenced by the Note. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan evidenced by the Note. Borrower or any guarantor, endorser or other party now

or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan evidenced by the Note, and the provisions of this paragraph shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws governing the Loan evidenced by the Note, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Note and if in excess of such balance, shall be immediately returned to the Borrower upon such determination.

4.8 **Notices, etc.** All notices and other communications provided hereunder shall be in writing and shall be given in accordance with the provisions of the Loan Agreement.

4.9 **Replacement of Note.** Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower at Lender's expense will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to such Note and dated as of the date of such Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement note.

4.10 **Assignment.** This Mortgage is assignable by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

4.11 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Note and all other Loan Documents.

4.12 **Release.** Provided that no Event of Default then exists, Lender agrees to release this Mortgage upon payment and performance in full of all Loan Obligations.

4.13 **Waiver of Jury Trial.** BORROWER HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS MORTGAGE OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS MORTGAGE OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND

WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF LENDER TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

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

BORROWER:

THE COTTAGE AT RIVERCHASE, LLC,
an Alabama limited liability company

By: Gordon L. Smith
Gordon L. Smith
Its Manager

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Gordon L. Smith, whose name as Manager of The Cottage at Riverchase, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Manager executed the same voluntarily and with full authority for and as the act of said limited liability company.

Given under my hand and official seal this the 26th day of September 2000.

Shirley C. Hampton
Notary Public

My Commission Expires: April 7, 2001

EXHIBIT A

LEGAL DESCRIPTION

Lot 3-B, according to the Resurvey of Lots 2-B and 3, Revised Map of Wyatt's Subdivision No. 2 as recorded in Map Book 27, page 45 in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Taxes due and payable October 1, 2000.
2. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Deed Book 127, page 140 and Deed Book 4, page 464.
3. Restrictions and easements appearing of record in Deed Book 330, page 449.
4. Easement and right-of-way granted the City of Hoover recorded in Real Volume 62, page 64 as shown on Survey of Laurence D. Weygand, dated July 3, 2000, and revised September 1, 2000.
5. Agreement and restrictions between The Harbert-Equitable Joint Venture and Blue Cross-Blue Shield as recorded in Misc. Book 19, page 690.
6. Right-of-way granted Alabama Power Company recorded in Deed Book 252, page 182 and Deed Book 252, page 184.
7. Easements along Parkway Lake Drive, dedicated by map recorded in Map Book 8, page 131, in the Probate Office of Shelby County, Alabama, located as shown on said Survey of Laurence D. Weygand, dated July 3, 2000, and revised September 1, 2000.
8. Declaration of Protective Covenant, Agreements, Easements, Charges and Liens for Riverchase (Business) as recorded in Misc. Book 13, page 50 and amended by Misc. Book 15, page 189 and Misc. Book 19, page 633.
9. Easement over the rear 15 feet of said parcel for public utilities, sanitary sewers, storm sewers, storm ditches as shown on recorded Map Book 27, page 45 and Map Book 24, page 6 and as shown on Survey of Laurence D. Weygand, dated July 3, 2000, and revised September 1, 2000.
10. A 15 foot easement running east to west through the rear of said parcel for public utilities, sanitary sewers, storm sewers, storm ditches as shown on recorded Map Book 27, page 45 and Map Book 24, page 6 and as shown on Survey of Laurence D. Weygand, dated July 3, 2000, and revised September 1, 2000.

11. A 30 foot slope easement along Parkway Lake Drive for public utilities, sanitary sewers, storm sewers, storm ditches as shown on recorded Map Book 27, page 45 and Map Book 24, page 6 and as shown on Survey of Laurence D. Weygand, dated July 3, 2000, and revised September 1, 2000.
12. A 20 foot easement running over a portion of the front of said parcel to Parkway Lake Drive for public utilities, sanitary sewers, storm sewers, storm ditches as shown on recorded Map Book 27, page 45 and Map Book 24, page 6 and as shown on Survey of Laurence D. Weygand, dated July 3, 2000, and revised September 1, 2000.
13. Conditions as set forth in the Notes as shown on Map recorded in Map Book 9, page 40 and Map Book 27, page 45.
14. Walkway encroachment along southwest lot line as shown on Survey of Laurence D. Weygand, dated July 3, 2000, and revised September 1, 2000

Inst # 2000-33972

09/27/2000-33972
09:01 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
024 MEL 4986.00