

STATE OF ALABAMA)

SHELBY COUNTY)

PURCHASE MONEY
JUNIOR WRAPAROUND MORTGAGE AND
SECURITY AGREEMENT

Inst # 2001-40925
09/21/2001-40925
09:09 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
017 MSB 16562.00

THIS INDENTURE, made and executed on this 19th day of September, 2001, by and between:

MORTGAGOR: HORIZON CONDOMINIUM DEVELOPMENT,
 INC., an Alabama corporation (hereinafter referred
 to as "Mortgagor"),
 One Morning Sun Drive
 Birmingham, Alabama 35242; and

MORTGAGEE: MORNING SUN VILLAS, L.L.C, an Alabama
 limited liability company (hereinafter referred to as
 "Mortgagee")
 1950 Stonegate Drive
 Birmingham, Alabama 35242

RECITALS:

A. The Mortgagor is justly indebted to Mortgagee in the principal sum of Eleven Million Dollars (\$11,000,000.00) representing the unpaid portion of the purchase price of the real estate described on Exhibit A hereto (the "Mortgaged Property"), as evidenced by a certain Wraparound Promissory Note (the "Note") of even date herewith, payable as provided therein.

B. Mortgagor is desirous of securing the prompt payment of the indebtedness evidenced by the Note, including principal, interest, additional interest, prepayment penalties and costs of collection authorized thereunder, together with additional sums expended by Mortgagee under the provisions of this Indenture.

C. The lien of this Indenture is and shall remain junior and subordinate to that certain Amended and Restated Mortgage and Security Agreement (the "Prior Mortgage") executed by Mortgagee to Protective Life Insurance Company, a Tennessee corporation ("Protective") and recorded as Instrument 2001/01350 in the Probate Office of Shelby County, Alabama.

NOW, THEREFORE, the undersigned Mortgagor, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, with the interest and additional interest

thereon and prepayment penalties and costs of collection, if any, and any extension or renewals of same, and to secure the performance of the covenants, conditions and agreements hereinafter set forth, hereby agrees as follows:

1. GRANT OF MORTGAGE: Mortgagor does hereby GRANT, BARGAIN, SELL and CONVEY unto the Mortgagee, its successors and assigns, the Mortgaged Property specified in Paragraph 2 below TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Mortgagee, its successors and assigns forever, subject, however, to the terms and conditions set forth in this Mortgage.
2. MORTGAGED PROPERTY: The property conveyed hereby (the "Mortgaged Property") shall consist of all of the following:
 - (a) Land: The land situated in Shelby County, Alabama and interests therein, as particularly described on Exhibit A attached hereto, together with any additional property hereafter acquired by the Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted;
 - (b) Improvements: All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the land described above, and all fixtures, furniture and furnishings brought thereon and owned by Mortgagor;
 - (c) Appurtenances: All easements,, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;
 - (d) Income: All rents, profits, issues and revenues, including sales proceeds, of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Mortgagor, however, so long as Mortgagor is not in default hereunder the right to receive and retain the rents, issues, sales proceeds and profits thereof;
 - (e) Proceeds: All judgments, awards of damages, settlements and proceeds resulting from condemnation proceedings, the taking of the premises or any part thereof under the power of eminent domain or by private sale in lieu thereof, or for any damage to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto;
 - (f) Trade Name: All of the Mortgagor's right, title and interest, if any, in and to the business or trade name "Horizon Condominium", and/or any similar business or trade names used or adopted by Mortgagor in connection with the operation of the property, with full right to use the same in whatever manner Mortgagee shall deem necessary or convenient, reserving, however, to the Mortgagor, the non-exclusive right to use said business or trade names while it is operating the improvements on said real estate;

(g) Warranties: All unexpired warranties and guarantees covering the buildings, improvements, fixtures, appliances equipment and personal property encumbered hereby;

(h) Prepaid Items: All funds held in any escrow account to cover taxes and insurance with respect to said property and all right, title and interest in and to any prepaid items, including, without limitation, insurance premiums paid with respect to said property;

(i) Further Encumbrances: All of Mortgagor's rights and privileges to further encumber the Mortgaged Property for debt, except as specifically permitted under this Indenture or under the Prior Mortgage; and

(j) After Acquired Property: 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.

3. CONDITION OF CONVEYANCE: The Mortgaged Property is conveyed to Mortgagee upon the condition that if the Mortgagor shall pay or cause to be paid to the Mortgagee the principal and interest payable under the Note, and any penalties and costs of collection due thereunder, all at the times and in the manner stipulated therein and herein, and shall keep, perform and observe all and singular the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage expressed to be kept, performed and observed by and on the part of the Mortgagor, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, determine and be void, but otherwise they shall remain in full force and effect.

4. WARRANTY OF TITLE: The Mortgagor represents and warrants to Mortgagee that it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, subject to the Prior Mortgage and the matters, if any, set forth on Exhibit C attached hereto; that it has a good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form herein provided; and that the same is free and clear of all liens, charges, and encumbrances whatsoever, except as reflected herein.

5. PERFORMANCE OF NOTE AND MORTGAGE: The Mortgagor will perform, observe and comply with all provisions hereof and of the Note secured hereby and will duly and punctually pay to the Mortgagee the sum of money expressed in the Note with interest thereon and all applicable penalties and costs of collection, if any, and all other sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage.

6. COVENANT TO PAY TAXES: The Mortgagor, from time to time when the same shall become due, will pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, inspection and licenses fees, all water and sewer rents and charges, all charges for public utilities, and all other public charges whether of a like or different nature, ordinary or extraordinary, foreseen or unforeseen, imposed upon or assessed against Mortgagor or the Mortgaged Property or any part thereof or upon the revenues, rents,

issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof.

7. INSURANCE REQUIREMENTS:

(a) Obligations of Mortgagor: The Mortgagor will at all times keep the Mortgaged Property insured, for the mutual benefit of the Mortgagee and the Mortgagor, as their respective interests may appear, with insurance against loss or damage by fire and other casualty with extended coverage and vandalism, malicious mischief and flood insurance covering the Mortgaged Property and all improvements thereon, together with all replacements, additions and improvements thereof, and all fixtures therein, in an amount not less than the full insurable value thereof, with loss payable to the Mortgagee. The Mortgagor shall also procure such other insurance and in such amounts as from time to time may be required by Mortgagee against other insurable casualties which at the time are commonly insured against in the case of premises similarly situated.

(b) Documentation: Such insurance shall be evidenced by a valid and enforceable policy in form and substance, and issued by and distributed among insurers of recognized responsibility, in all respects reasonably satisfactory to the Mortgagee. All such policies (or certified copies thereof) shall be delivered to the Mortgagee concurrently with the execution and delivery hereof and, thereafter, all renewal or replacement policies (or certified copies thereof) shall be delivered to the Mortgagee not less than ten (10) days prior to the expiration date of the policy to be renewed or replaced accompanied, if requested by the Mortgagee, by evidence satisfactory to the Mortgagee that all premiums payable with respect to such policies have been paid. All such policies shall contain (i) no endorsement permitting cancellation for default in payment of a loan whereby the premium has been financed and (ii) a provision for fifteen (15) days written notice to Mortgagee before cancellation.

(c) Procedure Upon Loss: If any portion of the Mortgaged Property shall be damaged or destroyed by fire or other cause, Mortgagor shall forthwith give notice thereof to Mortgagee, and shall make prompt proof of loss to the applicable insurance companies, whereupon all insurance proceeds shall be payable to Mortgagee, to the extent of the indebtedness secured hereby, to be applied to the payment of installments last due under the Note secured hereby.

8. CONDEMNATION: In the event that the Mortgaged Property or any part thereof, is taken under the power of eminent domain or by condemnation, or sold at private sale in lieu thereof, the Mortgagee shall as a matter of right be entitled to the entire proceeds of the award to the extent of the indebtedness secured hereby, to be applied (after payment of any expenses incurred by Mortgagor in the collection thereof) to the payment of installments last due under the Note secured hereby. Mortgagee is authorized in the name of Mortgagor to execute and deliver valid acquittances thereof and to appeal from any such award.

9. CARE OF THE PROPERTY: The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair; and will not commit or suffer any waste or do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or

any part thereof, permit or perform any act which would in any way impair the value of the Mortgaged Property, or demolish any building or improvement located on the Mortgaged Property without the written consent of Mortgagee.

10. INSPECTION BY MORTGAGEE: The Mortgagee and its duly authorized representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

11. COMPLIANCE WITH LAWS: The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

12. PERFORMANCE BY MORTGAGEE: If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, and the period applicable thereto within which Mortgagor may correct the same has expired (provided that in the event of an emergency or where in Mortgagee's reasonable judgment its rights or security hereunder would be impaired by delay, Mortgagee may act without notice or delay of any kind) , then the Mortgagee shall have the right and option, but not the obligation, to perform or observe the same, and all payments made or costs incurred by the Mortgagee in connection therewith shall be secured hereby and shall be payable by the Mortgagor to the Mortgagee immediately upon demand, together with interest thereon at a rate equal to the lesser of twenty percent (20%) per annum or the maximum rate allowable by Alabama law under the circumstances. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor, or any person in possession holding under the Mortgagor. In no event, however, shall any payment or performance by Mortgagee constitute a waiver of Mortgagee's rights hereunder and any nonpayment or nonperformance by Mortgagor shall constitute a default under this Mortgage (subject to applicable grace provisions) notwithstanding any such payment or performance by Mortgagee.

13. ASSIGNMENT OF RENTS AND SALES PROCEEDS:

(a) Assignment to Mortgagee: The Mortgagor hereby assigns unto the Mortgagee, its successors and assigns, the rents accrued and to accrue from all tenants in occupancy of the Mortgaged Property, or any part thereof, and the proceeds from the sale of any portion of the Mortgaged Property during the term of this Mortgage, it being understood that as long as there is no default in the performance or observance of any of the covenants or agreements herein contained Mortgagor shall have the privilege of collecting and receiving all rents accruing under leases or contracts of tenancy and sales proceeds from the sale of any portion of the Mortgaged Property for the Mortgaged Property, or any part thereof. Mortgagor shall assign to the Mortgagee, upon request, as further security for the indebtedness secured hereby, its interest in

any or all leases or sales contracts, and in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments in form satisfactory to the Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any lease agreement, contract, license or permit so assigned, or to impose upon the Mortgagee any obligations with respect thereto.

(b) Covenants of Mortgagor: Mortgagor shall not cancel any of the leases now or hereafter assigned to Mortgagee, nor terminate or accept a surrender thereof or reduce the payment of the rent thereunder or modify any of said leases or accept any prepayment of rent therein (except any amount which may be required to be prepaid by the terms of any such lease) without first obtaining, on each occasion, the written approval of the Mortgagee. Mortgagor shall faithfully keep and perform all of its obligations under all of the leases now or hereafter assigned to the Mortgagee above and shall not permit to accrue to any tenant under any such lease any right to prepaid rent pursuant to the terms of any lease other than the usual prepayment of rent as would result from the acceptance on the first day of each month of the rent for the ensuing month, according to the terms of the various leases.

(c) Effect of Foreclosure: All leasehold interests, contracts of tenancy, rights of parties in possession and other contracts and agreements relating to the Mortgaged Property (other than the Prior Mortgage) shall be junior and subordinate to this Indenture. However, upon foreclosure of this Indenture, Mortgagee shall be entitled, as a matter of right, at its option to: (i) terminate any or all such leasehold interests, contracts of tenancy, rights, contracts and agreements; or (ii) to enforce the terms of any or all such leaseholds, contracts and agreements, without liability for the obligations or any defaults of Mortgagor thereunder (and notwithstanding any such defaults thereunder by Mortgagor), subject only to the requirement that Mortgagee in connection with such enforcement, perform and discharge any obligations of Mortgagee accruing under such leasehold, contract or agreement from and after the date Mortgagee notifies the other party or parties thereto of its election to enforce such leasehold, contract or agreement (which notification shall be given not later than sixty [60] days after foreclosure).

14. SECURITY AGREEMENT: This Indenture is also intended to constitute a security agreement within the meaning of the Uniform Commercial Code as in effect in the State of Alabama, Section 7-1-101, et seq., Code of Alabama (1975) with respect to all those parts of the Mortgaged Property which constitute personal property.

15. COVENANT WITH RESPECT TO PRIOR MORTGAGE:

(a) Subordinated Nature: This is a junior mortgage, subject and subordinate to the Prior Mortgage, but not subject to any modification, extension, replacement or renewal thereof and only to the amounts from time to time remaining unpaid thereon (except to the extent provided under Paragraph 16 below).

(b) Covenants of Mortgagor: The Mortgagor shall perform, observe and comply with all provisions of the Prior Mortgage, and the Notes secured thereby and the Additional Interest Agreement and other loan documents evidencing and securing such loan (collectively the "Senior

Loan Documents”), other than the payment of principal, interest and additional interest thereunder. If any default occurs in the performance, observance or compliance with any provision of the Senior Loan Documents, other than the payment of principal, interest, or additional interest, such default shall constitute an event of default hereunder. The Mortgagor shall, immediately upon receiving any knowledge or notice of any default under the Senior Loan Documents give written notice thereof to the Mortgagee herein and shall give to the Mortgagee herein immediately upon receipt thereof, a true copy of each and every notice, summons, legal process, or other communication relating in any way to the Senior Loan Documents or the performance or enforcement thereof, or to any default thereunder.

(c) Rights Reserved to Mortgagee: It is specifically agreed that in the event default should be made under the terms and provisions of said Senior Loan Documents, other than the payment of principal, interest, and additional interest, the Mortgagee herein, or its assigns, shall have the right and option, but not the obligation, without notice to anyone, to cure such default by paying whatever amounts may be required and taking such actions as may be advisable so as to put the Senior Loan Documents in good standing, and any and all such payments and expenses incurred in connection therewith shall constitute indebtedness secured by this Mortgage, and the same, with interest thereon at the rate specified in Paragraph 12 above, shall be immediately due and payable to Mortgagee upon demand.

16. WRAPAROUND PROVISIONS:

(a) Nature of Transaction: This is a purchase money mortgage securing the unpaid consideration for the transfer of the Mortgaged Property from Mortgagee to Mortgagor by Statutory Warranty Deed of even date herewith. In connection with such conveyance, Mortgagor has neither assumed the Prior Mortgage, nor taken the Mortgaged Property subject to the Prior Mortgage. Mortgagor and Mortgagee have agreed to effect such conveyance on a “wraparound basis”, with the payment obligations under the Prior Mortgage remaining exclusively the liability of Mortgagee.

(b) Obligation of Mortgagee: By acceptance of this Mortgage, and the Note secured hereby, the Mortgagee agrees, to the extent of the payments received on the Note secured hereby, to pay all installments of principal, interest and additional interest required by the terms of the Senior Loan Documents, as and when the same become due, but only in accordance with the terms and provisions of this Mortgage and the Note secured hereby. It is understood and agreed that Mortgagee shall be obligated to make such payments on the Senior Loan Documents only so long as Mortgagor is not in default under the terms of this Mortgage or under the terms of the Note secured hereby. The making of any payments by Mortgagee pursuant to the Senior Loan Documents, during the instance of any default in the performance of any provision of this Mortgage or of the Note secured hereby, shall not constitute a waiver of such default, nor modify the remedies of Mortgagee arising from such default. The references contained in this Mortgage, and in the Note secured hereby, concerning the obligations of Mortgagee to pay any sum or sums owing on the Senior Loan Documents shall not constitute an assumption of personal liability for any such payments.

(c) Payments by Mortgagor: The Mortgagor acknowledges and agrees that the Prior Mortgage is the exclusive liability of Mortgagee and that, so long as Mortgagee is not in default in making the required payments of principal, interest and additional interest as the same mature under the Senior Loan Documents, Mortgagor shall have no right to make payments or prepayments of principal or interest due thereunder. In the event Mortgagee does not make all payments of principal and interest required under the Senior Loan Documents, Mortgagor, provided it is not in default under this Mortgage or the Note secured hereby, shall be entitled to make such payments directly to the holder or holders of the Senior Loan Documents, and to receive a credit therefor against amounts otherwise due under the terms of this Mortgage and the Note secured hereby.

17. LIENS: Any lien which may be filed against the Mortgaged Property shall be promptly paid and discharged by Mortgagor and shall not be permitted to take priority over the lien of this Mortgage, provided that Mortgagor, upon first furnishing to Mortgagee such security as shall be satisfactory to Mortgagee for the payment of all liabilities, costs and expenses in connection therewith may, in good faith and at Mortgagor's expense, contest the validity of any such lien or liens.

18. PROHIBITED TRANSFERS:

(a) Prohibition: No interest or title in or with respect to the Mortgaged Property, or any benefit of this Mortgage loan, including its interest rate, shall be transferred without the prior written approval of Mortgagee, excepting only: (i) transfers by will or under the intestate laws; (ii) leasehold interests, contracts of tenancy, rights, contracts and agreements which are junior and subordinate to the lien of this Indenture and are subject to the provisions of Paragraph 13 above, and (iii) the sale of Condominium Units in accordance with Paragraph 19 hereinbelow.

(b) Transfers of Beneficial Interest: It is expressly understood and agreed that if Mortgagor should be a corporation, partnership or other legal entity, any transfer of stock, partnership interests or other beneficial interests in Mortgagor whereby twenty percent (20%) or more Mortgagor shall be owned, directly or indirectly, by any person other than a beneficial owner of record as of the date hereof, other than by will or under the intestate laws, is a transfer prohibited by the provisions of this Paragraph 18.

(c) Conditions of Approval: It is agreed that if Mortgagee is willing to consent to any transfer of the benefits of this Mortgage not expressly authorized hereunder, Mortgagee may impose conditions for such consent, including, without limitation, requirements: (i) that the purchaser establish satisfactory credit and ability to operate the Mortgaged Property to Mortgagee's satisfaction; (ii) that the purchaser specifically assume all obligations of Mortgagor to be performed under this Mortgage and Note secured hereby; (iii) that reasonable fees be paid to the Mortgagee at the time of such transfer in order to cover all costs and expenses, including attorneys' fees, incurred in reviewing the proposed purchaser and determining appropriate conditions to assignment; (iv) that the interest rate provided for under the Note be increased or the maturity date stated therein shortened; or (v) that such purchaser agree to additional restrictions on further transfers.

19. SALE AND RELEASE OF CONDOMINIUM UNITS:

(a) Condominium Offering: The Mortgaged Property comprises 184 units (the "Condominium Units") under the Declaration of Condominium for Horizon, a condominium (the "Declaration"). Pursuant to a Mortgagee's joinder which is attached to the Declaration, the Mortgagee has subordinated its rights under this Mortgage to the Declaration and to the additional Condominium Documents referred to therein. The Mortgagor is expressly authorized to market Condominium Units, and such Condominium Units shall be released from the lien of this Mortgage under the terms and provisions set forth in this Paragraph 19.

(b) Protective Repayment Terms: It is the intent of the Mortgagor and the Mortgagee that payments due from the Mortgagor under the provisions of the Note secured by this Mortgage shall always be sufficient, for each applicable accounting period, for Mortgagee to meet its obligations to Protective under the Senior Loan Documents. For purposes of this Mortgage, the terms Additional Interest, Approved Deduction, Net Cash Flow, Payment Interest, Reserve and Retained Units shall have the respective meanings assigned to such terms under the Additional Interest Agreement. While Mortgagor remains obligated to Mortgagee under this Mortgage and the Note which it secures, no amendment to the Senior Loan Documents shall be made by Mortgagee, or shall be binding on Mortgagor, which would materially affect the obligations of the Mortgagor under the provisions of this Mortgage.

(c) Application of Net Cash Flow: Within 15 days after the end of each calendar month, Mortgagor shall pay or apply any positive Net Cash Flow to the following items, and in the relative priority listed below:

- (i) First, to accrued but unpaid Basic Interest due under the Note secured by this Mortgage;
- (ii) Second, to accrued but unpaid assessment obligations for the Retained Units under the Declaration;
- (iii) Third, to reimbursement of Mortgagor for budgeted development, operating and renovation expenses advanced by Mortgagor from its own funds in any prior months due to the Reserve being under funded;
- (iv) Fourth, to the unfunded portion of the Reserve;
- (v) Fifth, to the principal balance of the Note secured by this Mortgage; and
- (vi) Sixth, to Mortgagor's obligations for Additional Interest under the Note secured by this Mortgage.

(d) Application of Net Sales Proceeds: Until such time (the "Initial Repayment Date") as Mortgagor shall have paid to Mortgagee an amount sufficient for Mortgagee to repay all Principal and Payment Interest due under the terms of the Senior Loan Documents, Mortgagor shall be

required to pay to Mortgagee, at closing of each Retained Unit, the sum of \$57,000, as a release price for each Unit. Any net proceeds from the sale of Retained Units, after reduction for such release payments and for other Approved Deductions shall be applied by the Mortgagee within fifteen (15) days after the end of each calendar month to the following items and in the relative priority listed below:

- (i) First, to accrued but unpaid Basic Interest due under the Note secured by this Mortgage;
- (ii) Second, to accrued but unpaid assessment obligations for the Retained Units under the Declaration;
- (iii) Third, to reimbursement of Mortgagor for budgeted development, operating and renovation expenses advanced by Mortgagor from its own funds in any prior months due to the Reserve being under funded;
- (iv) Fourth, to the unfunded portion of the Reserve;
- (v) Fifth, to repayment of the principal of the loan from Jack Fiorella III to Mortgagor in the principal amount of \$560,000, until paid in full;
- (vi) Sixth, to the principal balance of the Note secured by this Mortgage; and
- (vii) Seventh, to Mortgagee's obligations to Mortgagor for payment of Additional Interest under the Note secured by this Mortgage.

In addition, at the sale of each Retained Unit which closes after the Initial Repayment Date, the Mortgagor shall pay to the Mortgagee an amount equal to the quotient obtained by dividing the sum of \$644,000 by the number of Retained Units which remain on the day immediately following the Initial Repayment Date.

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

- (a) Note Payments: The failure of Mortgagor to pay any amount due under the Note secured hereby (whether principal, interest, or costs of collection) within ten (10) days after such amount is due thereunder;
- (b) Other Payments: Failure by the Mortgagor to pay any other amounts due under this Indenture within ten (10) days after written demand therefor;
- (c) Prior Mortgage Default: Any default under the Prior Mortgage, other than in the payment of principal and interest;
- (d) Other Conditions: Failure by the Mortgagor to duly observe any other covenant, condition

or agreement contained in this Mortgage, in the Note, or in any other document executed by the Mortgagor relating to this Mortgage loan transaction within thirty (30) days after written notice or, in the case of any such covenant, condition or agreement which, for reasons beyond Mortgagor's control, cannot reasonably be observed within thirty (30) days after notice, failure by Mortgagor to commence the observance thereof within such thirty (30) day period or to diligently prosecute the same to completion;

(e) Insolvency or Reorganization: If the Mortgagor shall: (i) apply for or consent to the appointment of a receiver, trustee or liquidator for any portion of the Mortgaged Property or for a substantial part of his assets; (ii) admit in writing its inability to pay its debts as they mature; (iii) make a general assignment for the benefit of creditors; (iv) be adjudicated a bankrupt or insolvent; (v) file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law or similar debtor's relief provision; or (vi) file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or

(h) Involuntary Reorganization: If an order, judgment or decree shall be entered, without the application, approval or consent of the Mortgagor, by any court of competent jurisdiction approving a Petition seeking reorganization of the Mortgagor or of all or a substantial part of his assets,, and such order, judgment or decree shall continue unstayed and in effect for a period of thirty (30) days, whether or not consecutive.

21. ACCELERATION OF MATURITY: If any Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby, with interest accrued thereon and all applicable charges, shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

22. RIGHT OF MORTGAGEE TO ENTER AND TAKE POSSESSION:

(a) Right Reserved: If an Event of Default shall have occurred, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property and, to the extent permitted by law, the Mortgagee may enter and take possession of all the Mortgaged Property, and may exclude the Mortgagor and his agents and employees wholly therefrom.

(b) Procedure on Entry: Upon every such entering upon or taking of possession, the Mortgagee 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 thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor in his name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be to its best advantage; and (v) collect and receive all of the

income, revenues, rents, issues, sales proceeds and profits of the same, including those past due as well as those accruing thereafter, to be applied in the following order of priority: (A) to all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) to the cost of all such maintenance, repairs, renewals, replacements, additions,, betterments, improvements and purchases and acquisitions; (C) to the cost of such insurance; (D) to the payment of such taxes and other assessments and other charges as the Mortgagee may determine to pay; (E) to any other proper charges upon the Mortgaged Property or any part thereof; (F) to the reasonable compensation, expenses and disbursements of the attorneys and agent of the Mortgagee; (G) to the payment of accrued interest, penalties and charges due hereunder or under the Note secured hereby; and (H) to the payment of principal due under said Note.

23. APPOINTMENT OF RECEIVER:

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

(b) Expenses Incurred: The Mortgagor will pay to the Mortgagee upon demand all reasonable expenses, including receiver's fees, attorneys' fees, costs and agents' compensation, incurred pursuant to the provisions contained in this Paragraph 23. All such expenses, together with interest at the rate specified in Paragraph 12 above, shall be secured by this Mortgage.

24. MORTGAGEE'S POWER OF ENFORCEMENT: If an Event of Default shall have occurred and be continuing, the Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term thereof or any other right; (b) to foreclose this Mortgage and to sell the Mortgaged Property as an entirety or in separate lots or parcels; and (c) to pursue any other remedy available to it, all as the Mortgagee shall deem most effectual for such purposes. The Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Mortgagee may determine.

25. POWER OF SALE: If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Property as public outcry to the highest bidder for cash in front of the Shelby County Courthouse door, 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 the Shelby County Reporter or in any other newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold

as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect. The sale en masse of the real, personal and mixed property encumbered by this Mortgage is hereby agreed to be commercially reasonable.

26. APPLICATION OF FORECLOSURE PROCEEDS: The proceeds of any foreclosure sale pursuant to Paragraph 25 shall be applied as follows:

(a) Expenses of Collection: First, to the reasonable expenses of making the sale including reasonable attorneys' fees for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(b) Other Expenses: Second, to the repayment of any money, with interest thereon at the rate specified in Paragraph 12 above, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Indebtedness: Third, to the payment and satisfaction of the indebtedness hereby secured with interest and applicable charges to date of sale;

(d) Remaining Funds: Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

27. MORTGAGEE'S OPTION ON FORECLOSURE: At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event reasonable attorneys' fees shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose the Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

28. WAIVER OF EXEMPTION: Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

29. SUITS TO PROTECT THE MORTGAGED PROPERTY: The Mortgagee shall have power 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 the Mortgage; to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents sales proceeds and profits arising therefrom; and 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.

30. WAIVERS BY MORTGAGEE:

(a) Delay Is No Waiver: No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

(b) Effect of Waiver: No waiver of any default hereunder shall extend to or shall affect any subsequent or any other the existing default or shall impair any rights, powers or remedies consequent thereon. If the Mortgagee: (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment thereof; (iii) waives or does not exercise any right granted herein, in the Note secured hereby or the related guaranties; (iv) releases any part of the Mortgaged Property from the lien of the Mortgage or otherwise changes any of the terms of the Note or Mortgage or guaranties; (v) consents to the granting of an easement affecting the Mortgaged Property; or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, the Mortgage or related guaranties; nor shall any such act or omission preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default; nor, except as otherwise expressly provided in an instrument or instruments executed by the Mortgagee, shall the lien of this Mortgage be altered thereby.

31. DISCONTINUANCE OF PROCEEDINGS: In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been determined adversely to the Mortgagee, then and in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

32. EXCULPATION: It is understood and agreed that Mortgagee shall have no personal recourse against Mortgagor for the payment of any sum secured by this Mortgage. Mortgagee shall not seek any deficiency judgment against Mortgagor for any amounts due hereunder, and shall look solely to the Mortgage Property, its rents, issues, profits, sales proceeds, and revenues, for the payment of any such sums.

33. REMEDIES CUMULATIVE: No right, power, or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

34. MISCELLANEOUS PROVISIONS:

(a) Condition of Title: Mortgagor will not terminate, join in or consent to any change in any private restrictive covenants, zoning ordinances or other public or private restrictions that limit or define the use which may be made of the Mortgaged Property, without having first obtained the written consent of Mortgagee to such action.

(b) Certifications: Mortgagor, upon written request, shall certify, by a writing duly acknowledged, to Mortgagee or to any proposed assignee of this Mortgage and the Note secured hereby, the amount of principal and interest then owing on this Mortgage, and whether, to its best knowledge, information and belief, any offsets or defenses exist against the mortgage debt, within ten (10) days after such request.

(c) Business Records: Mortgagor shall keep proper books and records concerning the operation of its business on the Mortgaged Property, in accordance with generally accepted accounting principals consistently applied. Mortgagee shall be entitled to examine such books and records and to discuss Mortgagor's affairs and finances with Mortgagor's officers and directors at such reasonable times and intervals as Mortgagee may desire. Within thirty (30) days after notice and demand by Mortgagee, Mortgagor shall deliver to Mortgagee (though not more frequently than once in every six [6] month period) a statement in such reasonable detail as Mortgagee may request, certified by a certified public accountant or by Mortgagor's president, as Mortgagee shall elect, setting forth the income, expenses and operations of the Mortgagor on the Mortgaged Property for the last six (6) month calendar period immediately preceding the date of Mortgagor's notice hereunder. On demand, Mortgagor shall furnish to Mortgagee convenient facilities for the audit and verification of any such statement, and shall supply executed counterparts of all leases and other agreements relating to Mortgagor's operations on the Mortgaged Property.

(d) Indemnification: This Mortgage is intended only as a security for the liabilities of Mortgagor. Notwithstanding any rights conveyed on Mortgagee herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur by reason of its exercise of rights hereunder and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained herein. Mortgagee shall not have any responsibility for the inspection, control, care, management or repair of the Mortgaged Property nor for Mortgagor's operations thereon. Should Mortgagee incur any such liability, loss or damage by reason hereof, Mortgagor agrees to reimburse Mortgagee immediately upon demand for the amount thereof, together with costs, expenses and reasonable attorneys' fees.

(e) Costs of Collection: In the event that Mortgagee retains an attorney in order to enforce, collect or secure the Note secured hereby, to enforce any provisions of this Indenture, to collect any sums due hereunder, or in order to attempt to enforce, collect or secure any such items,

Mortgagor shall reimburse Mortgagee promptly upon demand for all expenses incurred by Mortgagee, including reasonable attorneys' fees, whether suit be brought or not. Reasonable attorneys' fees shall include, but not be limited to, reasonable fees incurred in any and all judicial, bankruptcy and other proceedings, including appellate proceedings, whether such proceedings arise before or after entry of a final judgment.

(f) Governing Law: This Mortgage, and the right of the parties hereunder, shall be interpreted and governed in accordance with the laws of the State of Alabama.

(g) Notices: All notices under this Mortgage shall be in writing, duly signed by the party giving such notice, and shall be deemed to have been given when deposited in the United States Mail, postage prepaid, by registered or certified mail, return receipt requested, to the applicable address shown on the first page hereof, or to such other address as either party may from time to time provide by notice hereunder to the other.

(h) Severability: If any provision of this Mortgage, or the application thereof to any party or circumstance, shall be determined by any court of competent jurisdiction to be invalid or inenforceable to any extent, the remainder of this Mortgage, or the application of such provision to any person or circumstance other than that which is determined to be invalid or unenforceable, shall not be affected thereby. Each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

(i) Exhibits: The Exhibits attached hereto are incorporated in and made a part of this mortgage as though set forth in full herein.

(j) Captions: Titles or captions contained in this Mortgage are inserted only as a matter of convenience and for reference and shall in no way define, limit, extend or describe the scope or intent of this Mortgage or of any provision hereof.

(k) Binding Effect: This agreement shall be binding upon all of the parties hereto, and their respective successors and assigns. Subject to the restrictions contained in Paragraph 18 hereof, this agreement shall inure to the benefit of the respective successors and assigns of the parties hereto.

(l) Amendments: This Mortgage may be modified or amended only upon the written agreement of Mortgagor and Mortgagee.

(m) Entire Agreement: This Mortgage constitutes the entire agreement of the parties, and supersedes any prior understandings or agreements with respect to the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, among the parties hereto relating to the subject matter of this Mortgage, except those fully expressed herein.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals on the day and year first above written.

MORTGAGOR:

**HORIZON CONDOMINIUM
DEVELOPMENT, INC** an Alabama
corporation

By: [Signature]
Its: _____

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that JACK FIORELLA III, whose name as president of Horizon Condominium Development, Inc. is signed to the foregoing Purchase Money Junior Wraparound Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date for and as the act of said corporation.

Given under my hand and official seal this the 19th day of September, 2001.

[Signature]
Notary Public
My Commission Expires: 8404

FAUsers\WRS\EQUITY.RES\Horizon Condo\Security Agreement v4.wpd

Inst # 2001-40925

09/21/2001-40925
09:09 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
017 MSB 16562.00