

THIS INSTRUMENT PREPARED BY:
Adam J. Sigman, Esq.
Berkowitz, Lefkovits, Isom & Kushner, P.C.
1600 SouthTrust Tower
420 North 20th Street
Birmingham, Alabama 35203

Note to Probate Judge: This Second Mortgage and Security Agreement is given as additional security and collateral in connection with that certain Second Mortgage and Security Agreement dated as of June 21, 2002 and recorded at Instrument No. 200208/9590 in the Office of the Judge of Probate of Jefferson County, Alabama.

STATE OF ALABAMA)
)
SHELBY COUNTY)

SECOND MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE, executed and delivered on this 21st day of June, 2002, by and between:

MORTGAGOR: APPLEGATE REALTY, INC.
 C/o Randall H. Goggans
 30 Boulder Ridge
 Columbiana, Alabama 35051
 (hereinafter referred to as "Mortgagor"), and

MORTGAGEE: CREED DEVELOPMENT, LLC
 c/o W. Larry Clayton
 P.O. Box 602
 Pelham, Alabama 35080
 (hereinafter referred to as "Mortgagee").

WITNESSETH:

WHEREAS:

(a) Randall H. Goggans is justly indebted to Mortgagee in the principal sum of One Million Thirteen Thousand One Hundred Ninety-Seven and 00/100 Dollars (\$1,013,197.00) as evidenced by and in accordance with that certain Term Note of even date herewith (the "Note"), payable as provided therein, until June 18, 2003 when the entire balance of principal and earned interest shall become due and payable.

(b) Randall H. Goggans is further bound to perform and fulfill certain obligations as more particularly set forth in that certain Settlement Agreement of even date herewith (the "Settlement Agreement").

(c) Mortgagor desires to secure (i) the prompt payment of the indebtedness evidenced by the Note, together with additional sums expended by Mortgagee pursuant to this Second Mortgage, and (ii) the performance of all obligations under the Settlement Agreement.

NOW, THEREFORE, the undersigned Mortgagor, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, with interest thereon in accordance with the Note, and any extension or renewals of same, and further to secure the performance of the covenants, conditions and agreements under the Note and the Settlement Agreement and as hereinafter set forth, have bargained and sold and do hereby GRANT, BARGAIN, SELL and CONVEY and ASSIGN unto the Mortgagee, its successors and assigns, the following described land, real property, buildings, improvements, and fixtures and other property owned by the Mortgagor (hereinafter sometimes referred to as the "Mortgaged Property"), to-wit: **See Exhibit "A" attached hereto.**

TOGETHER WITH all buildings, structures and improvements ("Improvements") of every nature whatsoever now or hereafter situated on the land described above, and all fixtures thereto;

TOGETHER WITH all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

TOGETHER WITH all leases, undertakings to lease, contracts to rent, usufructs and other agreements for use, occupancy or possession now or hereafter in force with respect to the Mortgaged Property or any part or parcel of the Mortgaged Property or any of the Improvements, and any and all other agreements, contracts, licenses, permits and arrangements now or hereafter affecting the Mortgaged Property or any part or parcel of the Mortgaged Property or any of the Improvements, whether written or oral and whether now or hereafter made or executed and delivered (hereinafter collectively called the "Leases") and all rents, issues, income, revenues and profits now or hereafter accruing from, and all those accounts and contract rights now or hereafter arising in connection with, the Mortgaged Property or any part or parcel of the Mortgaged Property or any of the Improvements, including without limitation all rents, issues, income, revenues and profits accruing from, and all accounts and contract rights arising in connection with, the Leases, together with all monies and proceeds now or hereafter due or payable with respect thereto or on account thereof, and all security deposits, damage deposits and other funds paid by any lessee, sublessee, tenant, subtenant, licensee, permittee or other obligee under any of the Leases, whether paid in a lump sum or installments (all of which are hereinafter collectively called the "Rents");

TOGETHER WITH all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto,

including any award for change of grade or streets;

TOGETHER WITH all unexpired warranties and guarantees covering the buildings, structures, fixtures and improvements of every nature whatsoever now or hereafter situated on the Mortgaged Property;

TOGETHER WITH all insurance policies now or hereafter in effect relating to the Mortgaged Property; and together with all right, title and interest of Mortgagor in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums; and

TOGETHER WITH 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 together with the right to the insurance proceeds.

SUBJECT TO the following described obligations being herein referred to as the "Prior Mortgage". It is understood and agreed that this Second Mortgage shall be a second lien on the Mortgaged Property described in **Exhibit "A"**, subject only to that particular first mortgage and the amounts listed below (the "Stated Prior Mortgage Amount").

Union State Bank Mortgage securing \$277,403.74; said Mortgage being recorded in the Office of the Judge of Probate of Shelby County, Alabama.

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 herein:

AND the Mortgagor hereby represents to and covenants and agrees with the Mortgagee as follows:

ARTICLE I

REPRESENTATIONS, WARRANTIES AND COVENANTS OF MORTGAGOR

1.01 WARRANTY OF TITLE AND AUTHORITY: The Mortgagor is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid and that the same is free and clear of all liens, charges, and encumbrances whatsoever, except for matters of record and as reflected herein. Any person or party signing this Second Mortgage is duly authorized to do so whereafter this Second Mortgage shall be a valid and legally binding obligation of the Mortgagor, enforceable according to its terms without any further consent required. Mortgagor further represents and warrants to Mortgagee that (i) Mortgagor is in good standing with respect to the Prior Mortgage; (ii) there are no defaults or incipient defaults under the Prior Mortgage; and (iii) there are no liens, judgments or other title matters requiring the payment of a sum of money affecting the Mortgaged Property except for the Prior Mortgage.

1.02 PERFORMANCE BY MORTGAGOR: 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 sums of money expressed in the Note with interest thereon and all other sums required to be paid by the Mortgagor pursuant to the provisions of this Second Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor. Notwithstanding the foregoing, or anything to the contrary in this Second Mortgage, it is understood that Applegate Realty, Inc. is not responsible for the repayment of the indebtedness in accordance with and as set forth in the Note.

1.03 COVENANT TO PAY TAXES: The Mortgagor, from time to time when the same shall become due, will fully 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 them 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 being hereinafter sometimes collectively referred to as "taxes and other assessments."

1.04 INSURANCE:

(a) 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.

(b) 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 shall be delivered to the Mortgagee concurrently with the execution and delivery hereof and, thereafter, all renewal or replacement policies shall be so 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 and 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 at least ten (10) days' written notice to Mortgagee before cancellation. The Mortgagee, at its sole option, may accept duplicate original policies or certificates evidencing the issuance of such policies. All such policies shall contain a New York standard, non-contributory mortgage endorsement making losses payable to the Mortgagee, as an additional insured, subject only to the rights of the mortgagee of the Prior Mortgage (the "Prior Mortgage").

(c) If any portion of the Mortgaged Property or any improvements, or fixtures thereof, thereon or therein or appurtenant thereto are 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 subject to the rights of the Prior Mortgages as aforesaid.

1.05 CONDEMNATION: In the event that the Mortgaged Property or any part thereof, is taken under the power of eminent domain or by condemnation, the Mortgagee, its successors and assigns, shall, as a matter of right, be entitled to the entire proceeds of the award to the extent of the indebtedness and obligations secured hereby to be applied to the payment and performance of the same (after payment and expenses incurred by Mortgagee in the collection thereof including appeals), but subject to the rights of the Prior Mortgage. Mortgagee is authorized in the name of Mortgagor to execute and deliver valid acquittances thereof and to appeal from any such award.

1.06 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 and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof; will not permit nor perform any act which would in any way impair the value of the Mortgaged Property; and shall not demolish any building or improvement located on said Property without the written consent of Mortgagee.

1.07 INSPECTION: The Mortgagee or its duly authorized representative is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

1.08 COMPLIANCE: 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.

1.09 PERFORMANCE BY MORTGAGEE OF DEFAULTS BY MORTGAGOR: If the Mortgagor default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance 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 Second 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, at its option, may, subject to the rights of the Prior Mortgage, perform or pay the same, and all payments made for costs or incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be upon demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the rate of ten percent (10%) per annum. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor, or any person in possession holding under the Mortgagor.

1.10 TRANSFER OF MORTGAGED PROPERTY: The Mortgagor shall not sell, transfer, assign, encumber, pledge, hypothecate, alienate or otherwise convey the Mortgaged Property or any part thereof, without obtaining the prior written consent of Mortgagee. Any such sale, transfer, conveyance or encumbrance made without Mortgagee's prior written consent shall be void.

1.11 ENTITY OWNING MORTGAGED PROPERTY: If all or any portion of the Mortgaged Property conveyed hereby is owned by a corporation, partnership, limited liability company or other entity, then no ownership or equity interest therein shall be sold, encumbered, pledged, transferred, assigned or otherwise conveyed or merged without the prior written consent of the Mortgagee. Any such sale, transfer, conveyance or encumbrance or merger made without such consent shall be void.

1.12 LIENS: Any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Mortgagor and shall not be permitted to take priority over the lien of this Second Mortgage, provided that Mortgagor, upon first furnishing to Mortgagee such security as shall be satisfactory to Mortgagee for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens.

1.13 SUBSEQUENT LEGISLATION: In the event of the enactment of any law by the State of Alabama, after the date of this Second Mortgage, deducting from the value of the land for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this Second Mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby, and in the event Mortgagor fail to pay such obligation or is prohibited by law from making such payment, the whole of the principal sum secured by this Second Mortgage, together with the interest due thereon shall, at the option of Mortgagee, without notice to any party, become immediately due and payable.

1.14 FURTHER ASSURANCES: Mortgagor shall at any time, and from time to time, upon request by Mortgagee, make, execute and deliver, or cause to be made, executed and delivered, any and all other and further instruments, documents, certificates, agreements, letters, representations and other writings as may be necessary or desirable, in the opinion of Mortgagee, in order to effectuate, complete, correct, perfect or continue and preserve the liability and obligation of Mortgagor for payment of the Indebtedness and the lien, security interest and security title of Mortgagee under this Second Mortgage. Mortgagor shall, upon request by Mortgagee, certify in writing to Mortgagee, or to any proposed assignee of this Second Mortgage, the amount of principal and interest then owing on the Indebtedness and whether or not any setoffs or defenses exist against all or any part of the Indebtedness.

1.15 HAZARDOUS MATERIALS:

(a) Mortgagor hereby represents and warrants to and for the benefit of Mortgagee that the Mortgaged Property will not be used or operated in any manner that will result in the storage,

use, treatment, manufacture or disposal of any Hazardous Materials (hereinafter defined) upon the Mortgaged Property or any portion thereof or which will result in Hazardous Materials Contamination (hereinafter defined). For purposes hereof, the term "Hazardous Materials" shall mean and refer to (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder, or as defined by the applicable laws of the State of Alabama, as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) any substance the presence of which on the Premises is prohibited by any Laws or by any other legal requirements affecting the Mortgaged Property; (vi) petroleum based materials; and (vii) any other substance which is defined as hazardous, toxic, infectious or radioactive by any Laws or by any other legal requirements affecting the Mortgaged Property, but shall exclude those hazardous items known as ordinary household cleaning items, such as 409, Wisk and the like. The term "Hazardous Materials Contamination" shall mean and refer to the unlawful contamination of the Mortgaged Property, soil, surface water, ground water, air, or other elements on, or of, the buildings, facilities, soil, surface water, ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating or being released from the Mortgaged Property.

(b) In addition to and without limiting the generality of any other provisions of this Second Mortgage, Mortgagor shall and hereby does indemnify and hold Mortgagee harmless from and against any and all losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs, and liabilities, including, but not limited to, reasonable attorneys' fees and costs of litigation, and costs and expenses of response, remedial and investigative and corrective work and other clean up activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by Mortgagor or Mortgagor's employees, agents, delegees, invitees, licensees, concessionaires, lessees, tenants, contractors or representatives, of any Hazardous Materials, or (ii) an occurrence of Hazardous Materials Contamination, arising out of or in any manner connected with the use or occupancy of the Mortgaged Property. The provisions of this Section 1.15 shall survive any payment or satisfaction of the Indebtedness and any acquisition of the Premises by Mortgagee pursuant to the power of sale contained in this Second Mortgage, by conveyance in lieu of foreclosure or otherwise; and such provisions shall remain in full force and effect as long as the possibility exists that Mortgagee may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs and liabilities.

1.16 ASSIGNMENT OF RENTS: Subject to the rights of the Prior Mortgage, if any, the Mortgagor hereby assign 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, during the lifetime of this Second 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 for the Mortgaged Property, or any part thereof.

1.17 SECURITY AGREEMENT: This Second Mortgage and Security Agreement is also intended to constitute a security agreement within the meaning of the Uniform Commercial Code as in effect in the State of Alabama, with respect to all those parts of the Mortgaged Property which constitute personal property.

1.18 REPRESENTATIONS, WARRANTIES AND COVENANTS WITH RESPECT TO PRIOR MORTGAGES: This is a Second Mortgage, subject and subordinate to the Prior Mortgages described above, but not subject to any modification, extension, replacement or renewal thereof, and only to the amounts remaining unpaid thereon as of the date hereof. The Mortgagor hereby represents and warrants to Mortgagee that there is no other indebtedness secured by or in any way pertaining to the Mortgaged Property other than the Prior Mortgages and only to the extent of the Stated Prior Mortgage Amounts. The Mortgagor shall perform, observe and comply with all provisions of the Prior Mortgages. If any default occurs in the performance, observance or compliance with any provision of the Prior Mortgage, or the Note secured thereby, such default shall constitute an Event of Default hereunder, and in such event, the entire sum secured hereby shall at once become due and payable without notice at the option of Mortgagee. The Mortgagor shall, immediately upon receiving any knowledge or notice of any default under the Prior Mortgages, 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 any Prior Mortgages or the performance or enforcement thereof, or to any default thereunder. It is specifically agreed that in the event default should be made in the payment of principal, interest or any other sums payable under the terms and provisions of said Prior Mortgages, the Mortgagee herein, or its assigns, shall have the right, without notice to anyone, to cure such default by paying whatever amounts may be due under the terms of said Prior Mortgages so as to put the same in good standing, and any and all payment shall be added to the indebtedness secured by this Second Mortgage, and the same, with interest thereon, shall be immediately due and payable, and this Second Mortgage subject to foreclosure in all respects as provided by law and by the provisions hereof.

ARTICLE II

EVENTS OF DEFAULT; REMEDIES OF MORTGAGEE

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

(a) Failure by Randall H. Goggans to pay when due any installments of principal or interest or any other sum owed under the Note or failure by the Mortgagor to pay when due any other sum owed with respect to the Mortgaged Property when the same becomes due and payable;

(b) Failure by the Mortgagor to duly observe any other covenant, condition or agreement contained in this Second Mortgage, in the Note, or in any other document executed by the Mortgagor relating to this Second Mortgage loan transaction within thirty (30) days after notice of default except that the thirty (30) days notice requirement shall not apply to violations of subparagraph (c), (h), (j) and (k) below and Section 1.10, 1.11 and 1.18 hereinabove and Section

3.02 hereinbelow;

(c) The breach or untruth of any representation or warranty contained in this Second Mortgage or the Settlement Agreement;

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

(e) The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against any of the Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence by the Mortgagor which appointment shall remain unvacated and unstayed for an aggregate for thirty (30) days (whether or not consecutive);

(f) The occurrence of any act or condition whereby the interest of Mortgagee in said Mortgaged Property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon;

(g) The occurrence of any act or condition occasioned or suffered to be occasioned by the Mortgagor whereby the security of this Second Mortgage shall be weakened, diminished, or impaired, in the reasonable judgment of the Mortgagee;

(h) The death or incompetency or insolvency of the Mortgagor;

(i) Any alteration or modification to or construction on the Mortgaged Property or any improvement thereon (except for normal maintenance and repair) without prior written consent from Mortgagee;

(j) The breach of any agreement or covenant or the occurrence of any event of default or any acceleration under the Prior Mortgage; and

(k) The breach of any agreement or covenant or the occurrence of any event of default under the Settlement Agreement or that certain Second Mortgage and Security Agreement executed

by Randall H. Goggans and delivered to Mortgagee simultaneously herewith or that certain Second Mortgage and Security Agreement executed by Randall H. Goggans and Holly H. Goggans and delivered to Mortgagee simultaneously herewith.

2.02 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 other obligations, 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.

2.03 RIGHT OF MORTGAGEE TO ENTER AND TAKE POSSESSION:

(a) Subject to the rights of the Prior Mortgage, 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 its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property, 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 its name or otherwise, 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 the Mortgagee, all as the Mortgagee from time to time may determine to be to its best advantage; and the Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting: (1) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (2) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions; (3) the cost of such insurance; (4) such taxes and other assessments and other charges prior to the lien of this Second Mortgage as the Mortgagee may determine to pay; (5) other proper charges upon the Mortgaged Property or any part thereof; and (6) the reasonable compensation, expenses and disbursements of the attorneys and agent of the Mortgagee; shall apply the remainder of the moneys so received by the Mortgagee, first to the payment of accrued interest; then to the payment of tax deposits; and finally to the payment of overdue installments of principal and interest.

2.04 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 Second Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law; and (c) to pursue any other remedy available to it, all as the 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.

2.05 POWER OF SALE: If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Courthouse 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 a general circulation 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.

2.06 APPLICATION OF FORECLOSURE PROCEEDS: The proceeds of any foreclosure sale pursuant to Section 2.05 of Article II shall be applied as follows:

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

(b) Second, to the repayment of any money, with interest thereon, 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) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale;

(d) 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.

2.07 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 Second 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.

2.08 SUITS TO PROTECT THE MORTGAGED PROPERTY: The Mortgagee 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 Second 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.

2.09 DELAY OR OMISSION-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 Second Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

2.10 DISCONTINUANCE OF PROCEEDINGS - POSITION OF PARTIES RESTORED: In case the Mortgagee shall have proceeded to enforce any right or remedy under this Second 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.

2.11 REMEDIES CUMULATIVE: No right, power, or remedy conferred upon or reserved to the Mortgagee by this Second 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.

ARTICLE III

MISCELLANEOUS

3.01 CONDITION: This Second Mortgage is given upon the condition that if the Mortgagor shall pay or cause to be paid to the Mortgagee the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, 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 Second Mortgage expressed to be kept, performed and observed by and on the part of the Mortgagor, all without fraud or delay, then this Second Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, and be void whereupon Mortgagee shall, at Mortgagor's expense, file a satisfaction and release in the appropriate Probate Office, but otherwise this Second Mortgage shall remain in full force and effect.

3.02 SUCCESSORS AND ASSIGNS INCLUDED IN PARTIES: Whenever in this Second Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Second Mortgage by or on behalf of the Mortgagor or by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

3.03 CAPTIONS: The captions of the articles, section subparagraphs and subdivisions

of this Second Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.04 SEVERABILITY: In case any one (1) or more of the covenants, agreements, terms or provisions contained in this Second Mortgage or in the Note shall be invalid, illegal or unenforceable in any respect, or in case any of the Prior Mortgages is foreclosed with respect to any one (1) of the Parcels comprising the Mortgaged Property, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note shall be in no way affected, prejudiced or disturbed thereby.

3.05 INDEMNIFICATION: This Second Mortgage is intended 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 obligations, duty or liability of Mortgagor. Mortgagor shall and do 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 agree to reimburse Mortgagee immediately upon demand for the amount thereof, together with costs, expenses and reasonable attorneys' fees.

3.06 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 items, Mortgagor shall reimburse 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.

3.07 GOVERNING LAW: This Second Mortgage, and the right of the parties hereunder, shall be interpreted and governed in accordance with the laws of the State of Alabama.

3.08 NOTICES: All notices under this Second 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, or when deposited with a nationally recognized overnight courier 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.

[Signatures appear on the following page]

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

MORTGAGOR:

APPLEGATE REALTY, INC.

By: _____

RANDALL H. GOGGANS

Its: President and Sole Director

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **RANDALL H. GOGGANS**, whose name as President and Sole Director of **APPLEGATE REALTY, INC.**, an Alabama corporation, is signed to the foregoing Second Mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of the Second Mortgage, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 21st day of June, 2002.

[NOTARIAL SEAL]

Notary Public

My Commission Expires: 4-19-2003

EXHIBIT "A"

MORTGAGED PROPERTY LEGAL DESCRIPTION

Lots 1, 2, 3, 4, 5, 20, 23 and 24 according to the Map of the Twin Oaks Subdivision as recorded in Map Book 22, Page 108 in the Office of the Judge of Probate of Shelby County, Alabama.