



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

FROM

COLE AND EDDLEMAN DEVELOPMENT COMPANY LLP

TO

CITY OF GARDENDALE, ALABAMA

Dated as of November 1, 2002

**Relating to
\$1,584,000
City of Gardendale, Alabama
Variable Rate Demand Multifamily Housing
Refunding Revenue Bonds
(Meadow Wood Apartments Project)
2002 Series C**

THIS INSTRUMENT PREPARED BY:

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STATE OF ALABAMA)
)
SHELBY COUNTY) ss.

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

MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES
(the "Mortgage") made and entered into as of November 1, 2002, by and between **COLE AND EDDLEMAN DEVELOPMENT COMPANY LLP**, a limited liability partnership duly organized and existing under the laws of the State of Alabama (the "Owner") and the **CITY OF GARDENDALE, ALABAMA**, a municipal corporation organized and existing under the laws of the State of Alabama (the "City" or the "Mortgagee").

WITNESSETH THAT:

WHEREAS, on September 30, 1994, Alabama Housing Finance Authority (the "State Authority") issued and sold its Multi-Family Housing Refunding Revenue Bond , 1994 Series C, in the initial principal amount of \$2,094,447.00 (the "Prior Bonds"), the proceeds of which were used by the State Authority to purchase a Bond Mortgage Loan (the "Original Loan") originated and made by AmSouth Bank of Alabama to the Owner, to refund a previous issue of revenue bonds theretofore issued by the State Authority in order to finance the acquisition and construction of a 96-unit multi-family residential rental project known as Meadow Wood Apartments, located in Pelham, Alabama (the "Project"); and

WHEREAS, the Owner has requested the City to issue and sell its Variable Rate Demand Multifamily Housing Refunding Revenue Bonds (Meadow Wood Apartments Project), 2002 Series C, in the aggregate principal amount of \$1,584,000 and to use the proceeds of the sale of the Bonds to purchase a Bond Mortgage Loan (the "Bond Mortgage Loan") to be originated and made by Collateral Mortgage Capital, L.L.C., a Delaware limited liability company (the "Lender") to the Owner, for the purpose of paying the Original Loan and paying the Prior Bonds, pursuant to a Financing Agreement among the Mortgagee, the Trustee hereinafter referred to, the Lender and the Owner dated as of November 1, 2002 (the "Financing Agreement"); and

WHEREAS, the City will make the proceeds of the Bonds available to the Owner by applying such proceeds to purchase the Bond Mortgage Loan from the Lender concurrently with the issuance of the Bonds; and

WHEREAS, the Owner and the Mortgagee now desire to have the Owner to directly grant to the City a mortgage lien on the Project in order to secure the obligations of the Owner under the Financing Agreement and the Bond Mortgage Note.

NOW, THEREFORE, for the aforesaid purposes and in consideration of the respective agreements herein contained, and in order to induce the Lender to enter into the Financing Agreement and to make the

Bond Mortgage Loan to the Owner, to induce the Mortgagee to purchase the Bond Mortgage Loan from the Lender, it is hereby agreed between the parties signatory hereto as follows:

ARTICLE I

DEFINITIONS AND USE OF PHRASES

Section 1.1 **Definitions.** Unless the context clearly indicates a different meaning, the following words and phrases, as used herein, shall have the following respective meanings:

"Bond Mortgage Loan" means the Bond Mortgage Loan in the amount of \$1,584,000 to be made by the Lender to the Owner and to be acquired by the City, all pursuant to the Financing Agreement.

"Bond Mortgage Note" means the promissory note executed by the Owner, in the principal amount of \$1,584,000, pursuant to the Financing Agreement, and which shall mature on October 1, 2032.

"Bonds" means the City of Gardendale, Alabama Variable Rate Demand Multifamily Housing Refunding Revenue Bonds (Meadow Wood Apartments Project), 2002 Series C, authorized and issued under this Indenture in an aggregate principal amount of \$1,584,000, and which shall mature on October 1, 2032.

"City" means City of Gardendale, Alabama, and its successors and assigns and any municipal or public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Credit Facility" means the Credit Enhancement Agreement or any Alternate Credit Facility, as said terms are defined herein or in the Indenture.

"Credit Guaranty" means that certain Limited Guaranty Agreement dated as of November 1, 2002, between Eugene K. Cole and Billy D. Eddleman, individuals, and the Freddie Mac, pursuant to which said persons jointly and severally guarantee, among other things, the performance of the Owner under the Reimbursement Agreement.

"Event of Bankruptcy" of the Owner shall mean any of the following with respect to such party: (a) the commencement by such party of a voluntary case under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar laws; (b) the filing of a petition with a court having jurisdiction over such party to commence an involuntary case against such party under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable federal or state bankruptcy, insolvency, or similar laws; (c) such party shall admit in writing its inability to pay its debts generally as they become due; (d) the appointment of a receiver, trustee, or liquidator of such party in any proceeding brought against such party; (e) the general assignment by such party for the benefit of its creditors; or (f) the entry by such party into an agreement of composition with its creditors.

"Event of Default" means "Event of Default" as specified in Section V hereof.

"Financing Agreement" means the Financing Agreement dated as of November 1, 2002, among the Lender, the Trustee and the Owner, as supplemented or amended in accordance with the applicable provisions thereof.

"Financing Documents" means the Indenture, the Financing Agreement, the Reimbursement Agreement, the Credit Guaranty and the Reimbursement Mortgage.

"Freddie Mac" means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

"Governing Body" means the governing body of the City, as they may from time to time be elected or appointed.

"Indenture" means that certain Trust Indenture dated as of November 1, 2002 by and between the City and the Trustee, as supplemented and amended by any Supplemental Indenture executed by the Mortgage and the Trustee in accordance therewith.

"Lender" means Collateral Mortgage Capital, LLC, a Delaware limited liability company, in its capacity as originator of the Bond Mortgage Loan.

"Obligations" means (1) any and all sums, principal, interest, premiums and agreed charges becoming due and payable by the Owner under or with respect to the Bond Mortgage Loan and the Bond Mortgage Note; (2) any and all sums becoming due and payable by the Owner to the Mortgagee under the terms of this Mortgage; (3) all renewals, extensions, refinancings and modifications of any or all of the obligations of the Owner described in (1) and (2) above, whether or not any renewal, extension or modification agreement is executed in connection therewith; (4) any and all fees and expenses of the Trustee and the City under the Indenture, the Financing Agreement and the Regulatory Agreement; and (5) each and every obligation, covenant, duty and agreement of the Owner contained in this Mortgage and of the Owner contained in the Financing Agreement, the Regulatory Agreement and the Bond Mortgage Note.

"Owner" means Cole and Eddleman Development Company LLP, an Alabama limited liability partnership, as owner of the Project, and any successor or subsequent owner of the Project.

"Permitted Encumbrances" means (i) the Reimbursement Mortgage (which is expressly subordinate to the lien hereof); (ii) the liens and encumbrances more particularly described on Exhibit 2.1 attached hereto and incorporated herein by this reference; (iii) liens imposed by law, such as mechanics', workmen's, materialmen's, carriers' and other like liens arising in the ordinary course of business, securing obligations which are not more than 30 days overdue or as to which an appropriate bond has been filed in the appropriate court to effectively remove from the claim of lien from the title to the Trust Estate; (iv) liens for property taxes not delinquent or for taxes which are being contested in good faith and by appropriate proceedings (so long as there shall have been set aside on the books of Owner with respect to any such taxes so contested reserves which are adequate in the opinion of the Mortgagee); (v) attachments remaining undischarged for no longer than thirty days after written or actual notice thereof has been received by the Owner or in connection with litigation which is being defended in good faith and by appropriate proceedings; (vi) liens in respect of judgments or awards relative to claims which (A) are fully covered by insurance or (B) have been in force for less than the applicable appeals period, provided execution is not levied thereunder

and/or (C) with respect to which an appeal or proceeding for review is being prosecuted in good faith and a stay of execution has been obtained pending such appeal or review; and (vii) utility, access, drainage and other easements and rights-of-way, mineral rights, covenants running with the land, zoning restrictions, environmental regulations and other restrictions and encumbrances affecting the use of real property, or minor irregularities in the title to real property, none of the foregoing of which, individually or in the aggregate, materially impair the title of the Owner to any part of the Project or the use of the Project for the purpose for which it was acquired by the Owner.

"Prior Bonds" means the State Authority's Multi-Family Housing Refunding Revenue Bond (Meadow Wood Apartments Project), 1994 Series C, issued on September 30, 1994, in the initial principal amount of \$2,094,447.00.

"Project" means the Project Site, the Project Improvements and the Project Equipment, as they may at any time exist, and all other property and rights of every kind that are or become subject to the lien of this Mortgage.

"Project Equipment" means the Project Equipment as defined in Granting Clause (III) of Section 2.1 of this Mortgage.

"Project Improvements" means the Project Improvements as defined in Granting Clause (II) of Section 2.1 of this Mortgage, as such facilities and improvements may at any time exist.

"Project Site" means the parcel of real property specifically described under Section 2.1(I) hereof (to the extent such parcel is at the time subject to the lien hereof).

"Regulatory Agreement" means that certain Regulatory Agreement and Declaration of Restrictive Covenants dated as of November 1, 2002, entered into by and among the Owner, the Mortgagee and the Trustee.

"Reimbursement Agreement" means that certain Reimbursement Agreement, dated as of November 1, 2002 (or other agreement pursuant to which a Substitute Credit Facility is issued), between the Owner and the Freddie Mac, as supplemented or amended in accordance with the application provisions thereof.

"Reimbursement Mortgage" means that certain Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of November 1, 2002, between the Owner and the Freddie Mac, granting a second mortgage on the Project as security for the obligations of the Owner under the Reimbursement Agreement.

"State Authority" means Alabama Housing Finance Authority, a public corporation organized and existing under the laws of the State of Alabama, and includes its successors and assigns and any public corporation surviving or resulting from any merger or consolidation to which it or its successors or assigns may be a party.

"Trust Estate" means all moneys, properties, rights, titles and interests described under Article II hereof.

"Trustee" means The Bank of New York Trust Company of Florida, N.A., or its successors and assigns in trust and any corporation resulting from or surviving any consolidation or merger to which it or the successor may be a party.

Section 1.2 **Definitions Contained in the Indenture.** Unless the context clearly indicates a different meaning, any words, terms or phrases that are used in this Mortgage as defined terms without being herein defined and that are defined in the Indenture shall have the meanings respectively given them in the Indenture.

Section 1.3 **Use of Phrases, Etc.** "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereafter" and other equivalent words refer to this Mortgage and not solely to the particular portion thereof in which any such word is used. All references to "Article", "Section" and other subdivisions apply to the corresponding Article, Section or subdivision of this Mortgage as originally executed. The headings or titles of the Articles and Sections hereof, and the table of contents appended hereto, shall be solely for the convenience of reference and shall not affect the meaning, construction or effect of this Mortgage. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

ARTICLE II

GRANTING CLAUSES

Section 2.1 **Granting Clauses.** In order to secure the Obligations and the performance and observance of the covenants, conditions and agreements contained herein, the Owner does hereby grant, bargain, sell and convey and assign, transfer and pledge to the Mortgagee, its successors and assigns, subject to the Permitted Encumbrances, including without limitation, and the Permitted Encumbrances more particularly described on Exhibit 2.1 hereof, the following described moneys, rights and titles of the Owner, whether the same are now owned or may hereafter be acquired, and hereby grants to the Mortgagee a security interest in the following:

(I)

To the full extent of the Owner's interest therein, the Project Site as more particularly described on Exhibit 2.1(I) attached hereto and incorporated herein by this reference;

(II)

All other buildings, structures and other improvements constituting real property now or hereafter situated on the Project Site, including without limitation all lighting, water and power systems, boilers, furnaces, oil burners, elevators, communication systems, transformers and electrical apparatus, with the tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or appertaining, all permits, easements, licenses, rights-of-way, contracts, leases, privileges, immunities and hereditaments pertaining or applicable to the Project Site and all fixtures now or hereafter owned by the

Owner and installed on the Project Site or in any of such other buildings, structures and other improvements now or hereafter located on the Project Site, it being the intention hereof that all property, rights and privileges hereafter acquired for use as a part of or in connection with or as an improvement to the Project Site shall be as fully covered hereby as if such property, rights and privileges were now owned by the Owner and were specifically described herein (the "Project Improvements");

(III)

All items (whether or not fixtures) of machinery, furniture, fixtures, equipment and other personal property now owned or hereafter acquired by the Owner for the purpose of, or used or useful in connection with, the Project Improvements, including without limitation, all lighting, water and power systems, boilers, furnaces, oil burners, elevators, communication systems, transformers and electrical apparatus, with the tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or appertaining (the "Project Equipment");

(IV)

All Revenues (as defined in the Indenture) received by the Mortgagee or the Trustee under the Indenture, subject to the provisions of the Indenture permitted the application of such amounts for the purposes and on the terms and conditions set forth therein;

III

Any and all other real or personal property of every kind and nature from time to time hereinafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to Mortgagee, or in which the Mortgagee is granted a security interest, as and for additional security hereunder by the Owner or by anyone on behalf of, or with the written consent of the Owner;

(I)

All building materials, tools, apparatus, fittings and other personal property (whether tangible or intangible) of every kind or character now owned or hereafter acquired by the Owner or in which the Owner has an interest, for the purpose of, or used or useful in connection with, the Project, wherever the same may be located, lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wire, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposals, trash compactors, other appliances, carpets, rugs, window treatments, lighting, fixtures, pipes, piping and decorative fixtures;

(II)

(a) All leases, written or oral, and all agreements for use or occupancy of any portion of the Project Site or the Project Improvements with respect to which the Owner is the lessor, any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Project Site or the Project Improvements, all such leases, subleases, agreements and tenancies heretofore mentioned being hereinafter collectively referred to as the "leases";

(b) Any and all guarantees of the lessee's and any sublessee's performance under any of the leases;

(c) The immediate and continuing right to collect and receive all the rents, income, receipts, revenues, issues and profits now due or which may become due or to which the Owner may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the leases or from or out of the Project Site or any of the Project Improvements, or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the leases and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Project Site or the Project Improvements, together with any and all rights and claims of any kind that the Owner may have against any such lessee under the leases or against any subtenant or occupants of the Project Site or any of the Project Improvements, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default has occurred and is continuing under this Mortgage, the Owner shall have the right under a license granted hereby (but limited as provided in Section 5.2 below) to collect, receive and retain the Rents (but not prior to accrual thereof); and

(d) Any award, dividend or other payment made hereafter to the Owner in any court procedure involving any of the lessees under the leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Owner hereby appoints the Mortgagee as the Owner's irrevocably attorney in fact to appear in any action and to collect any such award, dividend or other payment. The foregoing power of attorney is coupled with an interest.

(III)

The properties and interests in and to properties at anytime constituting the Project; and

(IV)

All cash and non-cash proceeds of any of the types or items of property described in Granting Clauses (I) through (VIII), including, but not limited to, all port claims, all insurance claims, contracts and proceeds, and all contract claims and proceeds, and all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, farm products, consumer products, and general intangibles acquired with cash proceeds, and all products of any of the types of items of property described in Granting Clauses (I) through (VIII) above.

(All of the property and interests in property described in the foregoing Granting Clauses (I) through (IX), inclusive, are sometimes collectively referred to herein as the "Collateral". The personal property described in Granting Clauses (III), (IV), (V), (VI) and (VII) and all other personal property covered by this Mortgage are herein sometimes collectively referred to as the "Personal Property").

TO HAVE AND TO HOLD, the same unto the Mortgagee, its successors and assigns forever, subject to the Permitted Encumbrances, including without limitation the Permitted Encumbrances described on Exhibit 2.1 attached hereto.

ARTICLE IV

PARTICULAR COVENANTS OF THE OWNER

Section 4.1 **Warranty of Title.** The Owner represents and warrants that it is lawfully seized in fee simple in and to the Project Site and that the Owner is the lawful owner and has good title to the Personal Property, the Project Improvements and other Collateral, subject only to the Permitted Encumbrances; that the Owner has the right, to the extent of its interest, to mortgage and grant a security interest in the Collateral; that the Collateral is free and clear of every lien, trust or charge, other than the Permitted Encumbrances; and that it will forever defend and warrant the title to the Collateral unto the Owner against the lawful claims of all persons other than those claiming under Permitted Encumbrances.

Section 4.2 **Maintenance of Lien Priority.** The Owner shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignment of, the Collateral created hereby, subject to the Permitted Encumbrances. The Mortgage shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by the Owner.

Section 4.3 **Toxic or Hazardous Substances.** No toxic or hazardous substances (including without limitation, asbestos) have been located, stored or dumped on the Project Site, or used in connection with, or in the construction and operation of the Project, or any part thereof.

Section 4.4 **Maintenance, Repairs, Changes and Alterations.** The Owner shall continuously maintain the Project Improvements and the Project Equipment in good repair and operating condition (reasonable wear and tear excepted), making from time to time all necessary and proper repairs thereto (including, without limitation, exterior and structural repairs), or it shall cause the Project Improvements and Project Equipment to be so maintained and such repairs to be so made.

Section 4.5 **Payment of Taxes and Assessments.** The Owner shall pay, or shall cause to be paid, before they become delinquent,

(a) All taxes and governmental charges of any kind whatsoever that may be lawfully assessed or levied against or with respect to the Project or any part thereof, including, without limiting the generality of the foregoing, any taxes levied upon or with respect to any part of the receipts or income of the Owner from the Project and other taxes levied upon or with respect to the Project which, if not paid, would become a lien on the Project or any part thereof prior to or on a parity with the lien of this Mortgage or a charge on the revenues from the Project prior to or on a parity with the charge thereon and the pledge and assignment thereof made in this Mortgage, and

(b) All assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project, provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Owner shall be obligated to pay, or cause to be paid, only such installments as come due while any part of the Obligations remain outstanding and unpaid.

The Owner may in good faith contest or permit the contest of any such taxes, charges or assessments, and in the event of any such contest, may, if it gives notice of such contest to the Mortgagee or causes such notice to be so given, defer or permit to be deferred the payment of the taxes, charges or assessments to contested during the period of such contest and any appeal therefrom, unless the Mortgagee notifies the Owner that, in the Opinion of Counsel, such actions by the Owner will materially endanger the lien of the Indenture as to any part of the Project, or will cause the Project or any part thereof to become subject to a material risk of loss or forfeiture, or will cause the revenues of the Owner from the Project to become subject to a lien or charge thereon prior to or on a parity with the pledge and assignment thereof made in the Indenture, in which case such taxes, charges or assessments shall (unless they are bonded or superseded in a manner satisfactory to the Mortgagee) be paid prior to their becoming delinquent.

Section 4.6 Insurance. The Owner will take out and continuously maintain in effect or cause to be taken out and thereafter continuously maintained in effect, so long as the Obligations remain outstanding, the following insurance with respect to the Project:

(i) Hazard. Insurance against loss or damage to the Project Improvements and Project Equipment by fire, lightning, windstorm, vandalism and malicious mischief, with uniform standard extended (multi-peril) coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State, to such extent as is necessary to provide for full payment of the costs of repairing, restoring or replacing, the property damaged or destroyed, or, if insurance to such extent is not available, then to the extent of the full insurable value (as determined by a recognized insurer) of the Project Improvements and Project Equipment. Said insurance shall include rental continuation coverage for a period of not less than 12 months during the repair, restoration or replacing of the Project Improvements.

(ii) Liability. Comprehensive general liability insurance against liability for personal or bodily injury to or death of persons and for damage to or loss of property occurring on or about the Project Site or in any way related to the use, occupancy or operation of the Project, which shall consist of coverage such amounts as shall be required pursuant to the Reimbursement Mortgage (or, in the even that an Alternate Credit Facility shall be in effect, as shall be required by the provider of such Alternate Credit Facility).

All such insurance policies shall be with such companies as shall be reasonably satisfactory to the Mortgagee and shall name the Mortgagee as an additional insured, as its interests shall appear. The Owner shall deposit with the Mortgagee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Prior to the expiration or cancellation of any such policy, the Owner will furnish to the Owner evidence reasonably satisfactory to the Owner that such policy has been renewed or replaced by another policy. All insurance proceeds will be applied as provided in Section 3.7 of this Mortgage. The original insurance policy and all replacements therefor must provide that they may not be

cancelled without the insurer's giving at least ten days' prior written notice of such cancellation to the Mortgagee.

Section 4.7 Assignment of Insurance Policies, Etc. The Owner hereby assigns and pledges to the Mortgagee, as further security for the payment of the Obligations, each and every policy of hazard insurance now or hereafter in effect insuring the Collateral, or any part thereof (including without limitation the Personal Property and Project Improvements, or any part thereof), together with all right, title and interest of the Owner in and to each and every such policy, including, but not limited to, all the Owner's right, title and interest in and to any premiums paid on each such policy, including all rights to return premiums. If the Owner fails to keep the Collateral insured as specified above then, at the election of the Mortgagee and without notice to any person, the Mortgagee may, but shall not be obligated to, insure the Collateral for its full insurable value (or for such lesser amount as the Mortgagee may wish in its sole discretion) against such risks of loss and for its own benefit. The loss proceeds from insurance payable with respect to any casualty shall be paid to the Freddie Mac and, after first applying such loss proceeds to the payment of all costs and expenses (including attorneys' fees) reasonably incurred by the Freddie Mac in obtaining such loss proceeds, shall, at the option of the Freddie Mac, be applied to pay the costs of the restoration work and, at the option of the Owner, to the payment of the Obligations and the redemption of Bonds as provided in the Indenture. All amounts advanced by the Mortgagee for insurance or for the payment of Liens shall become a debt due by the Owner to the Mortgagee and at once payable, without demand upon, or notice to, the Owner, and shall be secured by this Mortgage, and shall bear interest at the rate of interest provided for in the Bond Mortgage Note, from the date of payment by the Mortgagee until paid by the Owner.

Section 4.8 Assignment of Condemnation Proceeds, Etc. As further security for the Obligations and the full and complete performance of each and every obligations, covenant, agreement and duty of the Owner contained herein, and to the extent of the full amount of the Obligations secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in the collection of any award or payment, the Owner hereby assigns to the Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Owner with respect to the Collateral as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street or (c) any other injury to or decrease in value of the Collateral. All such damages, condemnation proceeds and consideration less than 15% of the principal amount of the Bonds outstanding shall be payable to the Owner and shall be applied by the Owner either to the repair or replacement of the Collateral or to redeem Bonds. If the damages, condemnation proceeds or consideration is more than 15% of the principal amount of the Bonds outstanding, such amounts shall be paid to the Mortgagee, and after first applying such sums to the payment of all costs and expenses (including attorneys' fees) reasonably incurred by the Mortgagee for the collection of same shall, at the option of the Mortgagee, be applied to the restoration and replacement of the Collateral or to the redemption of the Bonds.

Section 4.9 Covenant Against Waste. The Owner agrees to take good care of the Project Site and all Project Improvements and Personal Property and not to commit or permit any waste thereon, and at all times to maintain such Project Improvements and Personal Property in as good condition as they now are, reasonable wear and tear excepted.

Section 4.10 **Covenants Relating to Rents and Leases.** The Owner covenants and agrees that the Owner shall:

- (a) enter into leases that are in compliance with the Regulatory Agreement;
- (b) observe, perform and discharge all obligations, covenants and Warranties provided for under the terms of the leases to be kept, observed and performed by the Owner, and shall give prompt notice to the Mortgagee in the event the Owner fails to observe, perform and discharge the same;
- (c) use its best efforts to enforce or secure the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the leases;
- (d) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the leases or the obligations, duties or liabilities of the Owner and any lessee thereunder, and, upon request by the Mortgagee to do so in the name and on behalf of the Mortgagee but at the expense of the Owner, and to pay all costs and expenses of the Mortgagee, including reasonable attorneys' fees, in any action or proceeding in which the Mortgagee may appear;
- (e) not receive or collect any Rents (excluding customary security and breakage deposits) from any present or future lessee of the Project Site or any of the Project Improvements, or any part thereof, for a period of more than two months in advance, or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents;
- (f) not waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any lessee of the Project Site or any of the Project Improvements of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, except in accordance with sound and prudent apartment management practices; provided, however, that Owner shall comply with the terms and conditions of the Regulatory Agreement and shall furnish to Mortgagee, upon demand, information and reports pertaining to Owner's practices and policies with respect to enforcement of the said obligations, conditions, covenants and agreements of said lessees;
- (g) execute all such further assignments of such Lease and the Rents therefrom as the Mortgagee may reasonably require; and
- (h) at such times as Mortgagee may require, furnish the Mortgagee with a certified rent roll in form and substance satisfactory to the Mortgagee.

Section 4.11 **Compliance with Other Financing Documents.** The Owner covenants and agrees that it will comply fully with and perform each of its covenants, obligations and agreements set forth in the Financing Agreement, in the Bond Mortgage Note, in the Regulatory Agreement and the other Financing Documents and will not cause, or permit to be caused or to exist, any Event of Default by the Owner under the Financing Documents, it being expressly understood and agreed that the occurrence of an Event of Default under the Financing Documents shall constitute an Event of Default under this Mortgage.

Section 4.12 Transfer Of, or Liens On, Collateral. The Owner covenants and agrees that it will not, without the express prior written consent of the Mortgagee, which consent shall not be unreasonably withheld (and, in the case of a sale, transfer or other disposition of all or any part of the Project Site or any of the Project Improvements, or the placing of any lien thereon, the consent of City of Gardendale, Alabama pursuant to Section 7 of the Regulatory Agreement), sell, transfer, convey or otherwise dispose of, or create, or permit or suffer to exist, any lien, security interest or other encumbrance (other than the lien and security interest of the Mortgage and Permitted Encumbrances) on, all or any part of the Collateral (including but not limited to the Leases and Rents) including sales, transfers, encumbrances and conveyances effected through the sale or assignment of partnership interests in the Owner, it being expressly understood and agreed that a violation by the Owner of the provisions of this Section 3.12 shall constitute an Event of Default under this Mortgage. Any sale, transfer, conveyance, other disposition or act of creating, permitting or suffering to exist any lien, security interest or other encumbrance in violation of this Section 3.12 shall be null, void and of no effect and shall cause a reversion of title to the Owner as to any right, title or interest purported to be sold, transferred, conveyed or subjected to a lien. Notwithstanding the foregoing, the Owner (a) may grant mortgages on the Project Site and the Project Improvements (including, without limitation, the Reimbursement Mortgage) provided they are expressly made subordinate and inferior to this Mortgage, and Owner first obtains the written consent of Mortgagee, which consent shall not be unreasonably withheld; (b) the Owner may sell and otherwise dispose of any of the Project Equipment without the prior written consent of the Mortgagee so long as same is immediately replaced with like property of at least equal value and utility; and (c) may transfer partnership interests in the Owner, as permitted in the Reimbursement Mortgage.

ARTICLE V

DEFEASANCE

Section 5.1 Defeasance. If (A) the Owner shall pay in full (i) all of the Obligations, including but not limited to, all sums (principal, interest, premium and charges) payable under the Bond Mortgage Note and all refinancings of all or any part of the Bond Mortgage Note and any and all extensions, renewals and modifications of the Bond Mortgage Note and (ii) all sums becoming due and payable by the Owner under the terms of this Mortgage and the Financing Agreement; (B) the Owner shall have kept and performed each and every obligations, covenant, duty, condition an agreement herein and in the Financing Agreement and the Regulatory Agreement imposed on or agreed to by the Mortgage; and (C) the Indenture shall have been discharged pursuant to Section 12.1 thereof, then this conveyance and the grants and conveyances contained herein shall become null and void, and the Collateral shall revert to the Owner, as the interest of each Owner may appear, and the entire estate, right, title and interest of the Owner will thereupon cease; and the Mortgagee in such case shall, upon the request of the Owner and at the Owner's cost and expense, deliver to the Owner proper instruments acknowledging satisfaction of this instrument; otherwise, this Mortgage shall remain in full force and effect.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.1 **Events of Default Defined.** The happening of any of the following events or conditions (hereinafter collectively referred to as "Events of Default") shall constitute an Event of Default:

(a) any representation or warranty made by the Owner herein and by the Owner in the Financing Agreement or in the Regulatory Agreement shall prove to be false or misleading in any material respect;

(b) any report, certificate, financial statement or other instrument furnished by the Owner in connection with the Bond Mortgage Loan, the Bond Mortgage Note, the Financing Agreement or the Regulatory Agreement shall prove to be false or misleading in any material respect;

(c) default shall be made in the payment of the principal of, interest on and premium, if any, on the Bond Mortgage Note or any part thereof, as and when the same shall become due and payable, whether by scheduled maturity, mandatory prepayment requirement, acceleration of maturity or otherwise;

(d) default shall be made in the due observance or performance of any other covenant, condition or agreement on the part of the Owner to be observed or performed pursuant to the terms of this Mortgage, the Bond Mortgage Note, the Financing Agreement or the Regulatory Agreement and such default has not been cured within 30 days from receipt of written notice from Mortgagee to the Owner specifying such default or with respect to the Financing Documents, within the applicable grace period, if any, specified therein;

(e) the occurrence of an Event of Bankruptcy; and

(f) any lien, statement of lien or suit to enforce a lien (other than a Permitted Encumbrance) shall be filed against any of the Collateral and shall not be discharged or released within 30 days thereafter, unless the Owner is diligently contesting such claim of lien by appropriate proceedings and has provided a bond acceptable to the Mortgagee to protect the Mortgagee's rights under this Mortgage against the enforcement of such lien.

Section 6.2 **Rights and Remedies of Mortgagee Upon Default.**

(a) Acceleration of Obligations. Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee may at its option and without demand or notice to the Owner, declare all or any part of the Obligations immediately due and payable, whereupon all such debt shall forthwith become due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Owner, and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Bond Mortgage Note, the Financing Agreement, the Regulatory Agreement and applicable law. The Owner also waives any and all

rights the Owner may have to a hearing before any judicial authority prior to the exercise by the Mortgagee of any of its rights under this Mortgage, the Bond Mortgage Note, the Financing Agreement, the Regulatory Agreement and applicable law.

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

(c) Judicial Proceedings; Right to Receive. Upon the occurrence and continuance of an Event of Default, the Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Collateral, to sue the Owner for damages on account of or arising out of said default or breach or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to the Owner or any other party, of a receiver of the rents, issues and profits of the Collateral, with power to lease and control the Collateral and with such other powers as may be deemed necessary.

(d) Foreclosure. Upon the occurrence and continuance of any Event of Default, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Collateral is taken, after giving notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Collateral or any part thereof is located, to sell the Collateral (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Collateral, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Collateral, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Owner hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Collateral in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Collateral not previously sold shall have been sold or all the Obligations secured hereby shall have been paid in full.

(e) Personal Property and Fixtures. Upon the occurrence and continuance of any Event of Default, the Mortgagee shall have and may exercise with respect to the Personal Property, including fixtures included in the Collateral (the "Personal Property") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Personal Property or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Personal Property and any part or parts

thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Personal Property or its value and without the necessity of a court order. The Mortgagee shall have, among other things, the right to take possession of the Personal Property and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages as a result of such entry or repossession and to take any action deemed appropriate or desirable by the Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the Personal Property for sale, lease or other use or disposition. At the Mortgagee's request, the Owner shall assemble the Personal Property and make the Personal Property available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Owner expressly waives any notice of sale or any other disposition of the Personal Property and any rights or remedies of the Mortgagee with respect to, and the formalities prescribed by law related to, the sale or disposition of the Personal Property or to the exercise of any other right or remedy of the Mortgagee existing after default. To the extent that such notice is required and cannot be waived, the Owner agrees that if such notice is given to the Owner in accordance with the provisions of Section 6.12 below, at least five days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

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

(f) Rents and Leases. Upon the occurrence and continuance of an Event of Default, the Mortgagee, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(i) to terminate the license granted to the Owner in Granting Clause (VII) hereof to collect the Rents, and, without taking possession, in the Mortgagee's own name to demand, collect, receive, suit for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorneys' fees, to apply the net proceeds thereof to the Obligations in such order and amounts as the Mortgagee may choose (or hold the same in a reserve as security for the Obligations);

(ii) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Collateral or any part thereof for the account of the Owner, make, modify, enforce, cancel or accept surrender of any lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs and otherwise do any act or incur any cost or expenses the Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the Owner could do if in possession, and in such event to apply any funds so collected to the operation and

management of the Collateral (including payment of reasonable management, brokerage and attorneys' fees) and payment of the Obligations in such order and amounts as the Mortgagee may choose (or hold the same in reserve as security for the Obligations);

(iii) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Owner under this Mortgage.

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

(h) Multiple Sales. Upon the occurrence and continuance of any Event of Default, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations secured by this Mortgage, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmatured the purpose hereof being to provide for a foreclosure and sale of the Collateral for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Collateral for any other part of the Obligations, whether matured at the time or subsequently maturing.

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

(j) Warranties After Sale. The Owner hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Owner, to execute and deliver to the purchaser or purchasers of any of the Collateral sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto, and the Owner binds itself to Bond and forever defend, to the extent of the right, title and interest therein of the Owner, the title of such purchaser or purchasers when so made by the Mortgagee or such auctioneer.

ARTICLE VII

MISCELLANEOUS

Section 7.1 **Collection Costs.** The Owner agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in collecting or securing, or attempting to collect or secure, the Obligations, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any lien on the Collateral, unless this Mortgage is herein expressly made subject to any such Lien; and/or all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Obligations and shall be secured by this Mortgage.

Section 7.2 **No Obligations With Respect to Leases.** The Mortgagee shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to leases, the Project Improvements, the Personal Property, the Project Site or any of the other Collateral (unless expressly assumed by the Mortgagee under a separate agreement in writing), and this Mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or willful conduct. The Owner agrees to defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action and judgments relating to the Owner's performance of its duties, responsibilities and obligations under leases and with respect to the Project Site, the Project Improvements, the Personal Property or any of the other Collateral.

Section 7.3 **Construction of Mortgage.** This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order to effectuate fully the conveyance hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

Section 7.4 **Successors and Assigns.** This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors and assigns.

Section 7.5 **Waiver and Election.** The exercise by the Mortgagee of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein and the filing of a suit to foreclose the lien, security interest and assignment granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage, in the Financing Agreement and in the Regulatory Agreement are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage,

the Financing Agreement or the Regulatory Agreement, nor consent to any departure by the Mortgagee therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to or demand on the Owner in any case shall entitle the Owner to any other or further notice or demand in similar or other circumstances.

Section 7.6 Landlord-Tenant Relationship. Any sale of the Collateral under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Owner.

Section 7.7 Severability. All of the terms, provisions and conditions of this Mortgage shall be deemed to be severable in nature. If for any reason the provisions hereof are held to be invalid or unenforceable to any extent, to the extent that such provisions are valid and enforceable, a court of competent jurisdiction shall construe and interpret this Mortgage to provide for maximum validity and enforceability of this Mortgage.

Section 7.8 Application of Payments. If the lien, assignment or security interest created by this Mortgage is invalid or unenforceable as to any part of the Obligations or is invalid or unenforceable as to any part of the Collateral, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Obligations which is not secured or not fully secured by said lien, assignment or security interest created hereby.

Section 7.9 Disclosure of Other Mortgages. The Owner hereby authorizes the holder of any other mortgage encumbering the Project Site or the Project Improvements, including without limitation the Reimbursement Mortgage, to disclose to the Mortgagee from time to time and at any time the following information: (a) the amount of debt secured by such mortgage; (b) the amount of such debt that is unpaid; (c) whether such debt is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (e) any other information regarding such mortgage or the debt secured thereby that the Mortgagee may reasonably request from time to time.

The Owner expressly agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering the Project Site or the Project Improvements, the Mortgagee may (but shall not be required to) pay all or any part of such amount in default, without notice to the Owner. The Owner agrees to repay any such sum advanced upon demand, with interest from the date such advance is made at the rate provided for in the Bond Mortgage Note, or the highest rate permitted by law, whichever shall be less, and any sum so advanced with interest shall be a part of the Obligations secured by this Mortgage.

Section 7.10 Release or Extension by the Mortgagee. The Mortgagee, without notice to the Owner and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Collateral not expressly released, may release any part of the Collateral or any person liable for any of the Obligations and may agree with any party with an interest in the Collateral to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of the Bond Mortgage Note, the Financing Agreement, the Regulatory Agreement, this Mortgage or any other instrument evidencing or securing the Obligations.

Section 7.11 Partial Payments. Acceptance by the Mortgagee of any payment of less than the full amount due on the Obligations shall be deemed acceptance on account only, and the failure of the Owner to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Obligations has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

Section 7.12 Notices. All notices, certificates or other communications shall be deemed sufficiently given on the second day following the day on which the same have been mailed by certified mail, postage prepaid, addressed to the Mortgagee, the Lender, the Owner or the Trustee, as the case may be, as follows:

(i) If to the Mortgagee:

City of Gardendale, Alabama
970 Main Street
(Post Office Box 889)
Gardendale, Alabama 35071
Attention: Mayor

With a copy to:

Hand Arendall, LLC
900 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203

Johnston Barton Proctor & Powell LLP
2900 AmSouth/Harbert Plaza
1901 - 6th Avenue North
Birmingham, Alabama 35203

(ii) If to the Lender:

Collateral Mortgage Capital, LLC
524 Lorna Square
Birmingham, Alabama 35216
Attention: Brett N. Blackwood

(iii) If to the Owner:

Cole and Eddleman Development Company LLP
1100 East Park Drive
Suite 400
Birmingham, Alabama 35295
Attention: Eugene K. Cole

with a copy to:

Bradley Arant Rose & White LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203
Attention: Charles A.J. Beavers

(iv) If to the Trustee:

The Bank of New York Trust Company of Florida, N.A.
The Financial Center
500 North 20th Street, 7th Floor
Birmingham, Alabama 35203
Attention: Corporate Trust Administration

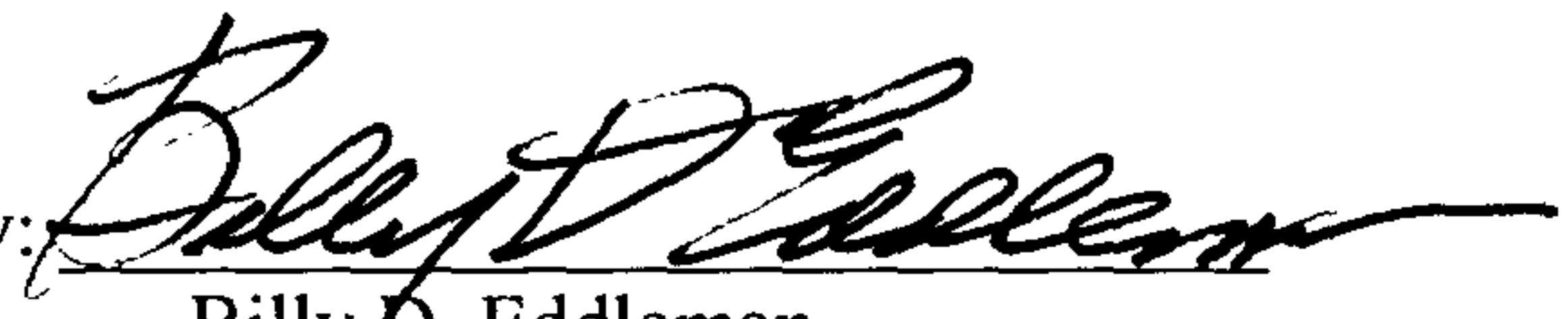
A duplicate copy of each notice, certificate or other communication given by any party hereunder shall be given to each other party listed above. The Mortgagee, the Lender, the Owner and the Trustee may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates or other communications shall be sent.

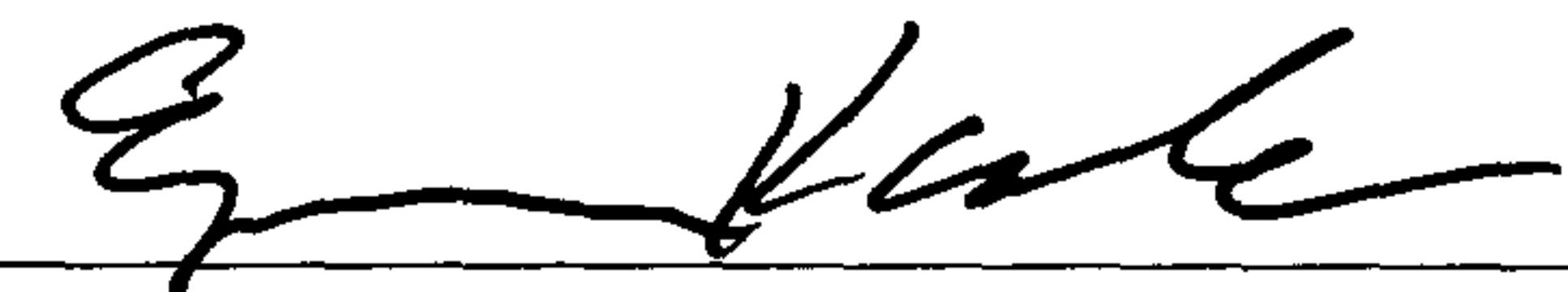
Section 7.13 Construction with Regulatory Agreement and Indenture. In the event of any inconsistency between the provisions hereof and the provisions of the Regulatory Agreement or the Indenture, the provisions of the Regulatory Agreement or the Indenture, as the case may be, shall govern.

IN WITNESS WHEREOF, the Owner has caused this Mortgage to be executed in its name and behalf by its Partners; and the Mortgagee has caused this Mortgage to be executed in its corporate name and behalf by its Mayor, has caused its official seal to be hereunto affixed and has caused this Mortgage to be attested by its City Clerk, all in nine (9) counterparts, each of which shall be deemed an original, and the parties hereunto have caused this Mortgage to be dated as of November 1, 2002, although executed and delivered by the parties hereto on October __, 2002.

COLE AND EDDLEMAN DEVELOPMENT COMPANY
LLP, an Alabama limited liability partnership

By: Southeast Investments LLP
Its: Partner

By: 
Billy D. Eddleman
Its Partner

By: 
Eugene K. Cole
Its Partner

CITY OF GARDENDALE, ALABAMA

By _____
Mayor

ATTEST:

City Clerk

[S E A L]

IN WITNESS WHEREOF, the Owner has caused this Mortgage to be executed in its name and behalf by its Partners; and the Mortgagee has caused this Mortgage to be executed in its corporate name and behalf by its Mayor, has caused its official seal to be hereunto affixed and has caused this Mortgage to be attested by its City Clerk, all in nine (9) counterparts, each of which shall be deemed an original, and the parties hereunto have caused this Mortgage to be dated as of November 1, 2002, although executed and delivered by the parties hereto on October 31, 2002.

COLE AND EDDLEMAN DEVELOPMENT COMPANY
LLP, an Alabama limited liability partnership

By: Southeast Investments LLP
Its: Partner

By: Billy D. Eddleman
Billy D. Eddleman
Its Partner

By: Eugene K. Cole
Eugene K. Cole
Its Partner

CITY OF GARDENDALE, ALABAMA

By: Samuel D. Odom
Mayor

ATTEST:

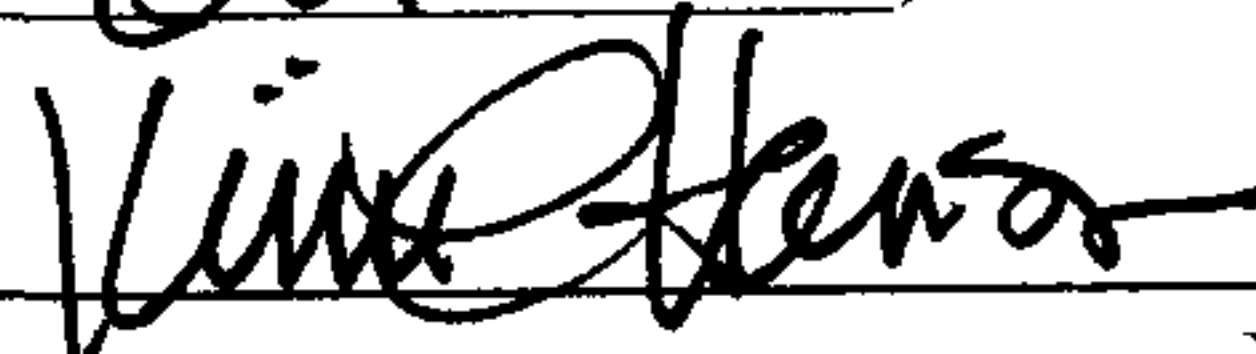
Keith A. Mosley
City Clerk

[SEAL]

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

Before me, a Notary Public in and for said County and said State, personally appeared EUGENE K. COLE, whose name as Partner of COLE AND EDDLEMAN DEVELOPMENT COMPANY LLP, an Alabama limited liability partnership, is signed to the foregoing instrument and who is known to me, and acknowledges before me that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand this 31 day of Oct., 2002.




Notary Public

My Commission Expires: 3/30/03

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

Before me, a Notary Public in and for said County and said State, personally appeared BILLY D. EDDLEMAN, whose name as Partner of COLE AND EDDLEMAN DEVELOPMENT COMPANY LLP, an Alabama limited liability partnership, is signed to the foregoing instrument and who is known to me, and acknowledges before me that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand this 31 day of Oct., 2002.



Notary Public


My Commission Expires: 3/30/03

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned authority, a notary public, hereby certify that KENNETH A. CLEMONS, whose name as Mayor of the CITY OF GARDENDALE, ALABAMA, a municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such officer, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and official seal on this the 31 day of Oct., 2002.

[NOTARIAL SEAL]


Notary Public

My Commission Expires: 3/30/03

W0380954.WPD

EXHIBIT 2.1
to
MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES
FROM
COLE AND EDDLEMAN DEVELOPMENT COMPANY LLP
TO
CITY OF GARDENDALE, ALABAMA

Permitted Encumbrances

1. Taxes and assessments for the year 2003, and subsequent years, which are not yet due and payable.
2. Right of Way granted to Alabama Power Company by instrument recorded in Volume 108, page 379, in the Probate Office of Shelby County, Alabama.
3. Right of way to Southern Bell Telephone and Telegraph Company, recorded in Real 58, page 278, in the Probate Office of Shelby County, Alabama.
4. Rights of others, if any, in and to the use of that certain easement recorded in Real 34, page 432, in the Probate Office of Shelby County, Alabama.
5. Rights of tenants in possession, as tenants only, under prior unrecorded leases.

EXHIBIT 2.1(I)
to
MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES
FROM
COLE AND EDDLEMAN DEVELOPMENT COMPANY LLP
TO
CITY OF GARDENDALE, ALABAMA

Description of Project Site

That certain real estate, including all improvements located thereon, lying and being in Shelby County, Alabama, and more particularly described as follows:

A parcel of land located in the NE ¼ of Section 11 and the NW ¼ of Section 12, all in Township 20 South, Range 3 West, more particularly described as follows:

Commence at the most Southerly corner of Lot 4, Block 6 of Cahaba Valley Estates - Seventh Sector, as recorded in Map Book 6, page 82, in the Probate Office of Shelby County, Alabama; thence in a Southeasterly direction along the projection of the Southwesterly line of said Block 6, a distance of 160.00 feet to the Point of Beginning; thence continue along last described course, a distance of 762.00 feet; thence 90°10' left, in a Northeasterly direction, a distance of 360.00 feet; thence 89°50' left, in a Northwesterly direction, a distance of 762.00 feet; thence 90°10' left, in a Southwesterly direction, a distance of 360.00 feet to the Point of Beginning.

TOGETHER WITH a non-exclusive easement for ingress and egress and utilities over, under, and across the following described parcel:

Begin at the most Easterly corner of said Lot 4; thence in a Southeasterly direction along the projection of the Northeasterly line of said Block 6, a distance of 160.00 feet; thence 90°10' left in a Northeasterly direction a distance of 60.00 feet; thence 89°50' left in a Northwesterly direction a distance of 160.00 feet; thence 90°10' left in a Southwesterly direction a distance of 60.00 feet to the point of beginning.

All being situated in Shelby County, Alabama.