THIS INSTRUMENT WAS PREPARED BY:
PLEASE RECORD AND RETURN TO:
Vernita Runfeldt.
FC-V Financial, L.P.
5718 Westheimer, Suite 1450
Houston, Texas 77057

Note to Clerk:
This Mortgage is being rerecorded
to correct the legal description.
Taxes were already paid.
Reference # 2022093000374900

Const - 221510

(Space above this line for recording purposes only)

MORTGAGE AND SECURITY AGREEMENT

STATE OF ALABAMA §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF SHELBY §

This MORTGAGE AND SECURITY AGREEMENT (this "***Mortgage***"), is entered into this 20 day of September 2022, by **BC PALMER COVE, LLC**, an Alabama limited liability company ("***Grantor***"), having an address for notice hereunder at 336 James Record Road SW, Huntsville, Alabama 35824, for the benefit of **FC-V FINANCIAL, L.P.**, a Delaware limited partnership ("***Grantee***"), having an address for notice hereunder at 5718 Westheimer, Suite 1450, Houston, Texas 77057.

WITNESSETH:

ARTICLE 1.
DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

(a) **Additional Utility Capacity:** All licenses, contracts, permits, living unit equivalents, rights, and interests, if any, related or incidental to the Utilities and not dedicated or reserved to the Land, whether considered to be real, personal or mixed property, including the right and authority to transfer or relinquish any or all of the same.

(b) **Advances:** All advances which Grantor is entitled to receive under the Loan Agreement, together with any and all reasonable expenses or costs, including but not limited to attorneys' fees and costs, incurred or expended by, imposed upon, or asserted against Grantee in connection with the following:

(1) The cure by Grantee of any breach by Grantor of any Obligations contained in any Security Document;

(2) Any action deemed reasonably necessary by Grantee to secure, preserve or protect the Mortgaged Property, the Indebtedness, the liens and security interests created by the Security Documents, or their priority and quality, and any of Grantee's rights and remedies under the Security Documents; and

(3) Any actual or asserted matter, claim, demand, lawsuit, condemnation, judgment, liability, loss, injury, damage, or penalty against or adverse to:

(A) the liens and security interests created by the Security Documents or their priority and quality;

(B) the Indebtedness;

(C) the Mortgaged Property;

(D) the Obligations;

(E) Grantee, by reason of performance or non-performance of any act to be performed by Grantor in connection with the Mortgaged Property, the Indebtedness, or the Obligations;

(F) Grantee, by reason of the good faith exercise of any right or remedy; or

(G) Grantee, by reason of any matter or transaction arising out of or in any way connected with the Mortgaged Property, title to the Mortgaged Property, the Security Documents, (including, without limitation, their priority and quality), the Indebtedness, or any escrow connected with any Security Document or the ownership and operation of the Mortgaged Property.

Notwithstanding anything contained in the Security Documents to the contrary, Grantee shall not make any Advances with respect to the items enumerated above prior to the expiration of the applicable curative period with respect to an Event of Default of Grantor under the Security Documents.

(c) **Affiliate:** When used with respect to any Person, any other Person which directly or indirectly, controls or is controlled by or is under common control with such Person and shall specifically include any member, manager and/or general partner of a Person.

(d) **Buildings:** Any and all building structures, improvements, parking areas, air conditioning towers, sidewalks, fences, gates, and any and all additions, alterations, replacements, accessions or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

(e) **Event of Default:** Any act or occurrence described in ***Article 6*** below.

(f) **Financial Statements:** Shall have the same meaning as is ascribed to such phrase in the Loan Agreement.

(g) **Fixtures:** All materials, fixtures, goods and equipment, including additions thereto, which Grantor now has or at any time hereafter acquires, and which are now or at any time hereafter attached to or situated upon or affixed to the Land and Buildings, including but not limited to,

(1) all electrification equipment and power lines (whether owned individually or jointly with others), water supply equipment and water tanks,

(2) all lighting, plumbing, ventilating, and communications equipment, telephone and television equipment and lines, electrical equipment, air conditioning equipment, engines, machinery, transformers, pumps, motors, compressors, sprinklers, electrical wiring and pipe,

(3) all built-in equipment as shown by plans and specifications,

(4) all accessions and appurtenances thereto, and all renewals and replacements of or substitutions for any of the foregoing,

(5) all installations of any kind specially designed for the Mortgaged Property, and

(6) all accessories, parts, replacements and substitutions thereof and additions thereto and any item which now or hereafter constitutes a "fixture" as a matter of law and any item now or hereafter considered a "fixture" under Chapter 9 of the Alabama UCC (Secured Transactions).

(h) **Governmental Authority:** Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(i) **Grantee:** The above defined Grantee, whether one or more, and any subsequent holder or holders, from time to time, of the Note.

(j) **Grantor:** The above defined Grantor, whether one or more, and Grantor's successors, assigns, legal representatives, heirs, executors and administrators and all subsequent owners of the Mortgaged Property, subject however to the provisions of ***Paragraph 5.5*** hereof.

(k) **Impositions:** All real estate and personal property taxes, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of or affecting the Mortgaged Property, and all other taxes or common area charges and assessments and any related interest, costs or penalties, of any kind whatsoever whether general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the ownership, development, use, occupancy or enjoyment thereof.

(l) **Indebtedness:** The principal of, interest on and all other amounts, payments and premiums due under, described in or secured by the Note, the Loan Agreement, and the other Security Documents, including without limitation, all renewals, extensions and modifications thereof and all advances made thereunder (including any Advances made hereunder).

(m) **Land:** The real estate or interest therein described on ***Exhibit A*** which is attached hereto and made part hereof.

(n) **Leases:** Any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, the Mortgaged Property or any portion thereof.

(o) **Legal Requirements:**

(1) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Grantor, or the Mortgaged Property, including those matters affecting the ownership, development, use, occupancy, operation, maintenance, repair or reconstruction thereof,

(2) Grantor's presently or subsequently effective bylaws and articles of incorporation, regulations, articles of organization, partnership agreement, limited partnership agreement, joint venture agreement, trust agreement or organizational documents of any other forms of business association,

(3) any and all Leases,

(4) any and all other contracts of any nature by which Grantor may be bound, and

(5) any and all restrictive covenants applicable to the Mortgaged Property.

(p) **Loan Agreement:** That certain Loan Agreement of even date herewith by and between Grantor and Grantee.

(q) **Lot Sale Contract:** Shall have the same meaning as is ascribed to such phrase in the Loan Agreement.

(r) **Lots (or individually, a "*Lot*"):** Shall have the same meaning as is ascribed to such phrase in the Loan Agreement.

(s) **Mortgaged Property:** The Land, Buildings, Fixtures, Personalty, and Rents, together with:

(1) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of Grantor in anyway appertaining thereto, and all right, title and interest of Grantor in and to (i) any streets, alleys, or strips or gores of land adjoining the Land and any real estate subdivision comprising the same or any part thereof; and (ii) the Oil and Gas Rights, Utilities and Additional Utility Capacity;

(2) all additions, betterments, appurtenances, substitutions, replacements, reversions and proceeds thereof and thereto and all reversions and remainders therein;

(3) all of Grantor's right, title and interest in and to any awards, remuneration, settlements or compensation made or to be made by any Governmental Authority to the present or any subsequent owner of the Land, Buildings, Fixtures or Personalty, including those for any vacation of, or change of grade in, any streets affecting the Land;

(4) all security deposits pursuant to Leases, tax and insurance contributions and escrows or similar contributions;

(5) all proceeds of insurance monies paid by reason of loss or damage by lightning, fire, explosion, tornado, windstorm or other hazard to the whole or any part of the Mortgaged Property;

(6) all of Grantor's right, title and interest (but none of Grantor's obligations) in and to all utility rights, now or hereafter acquired, in connection with (i) the Utilities, (ii) Additional Utility Capacity which is now or hereafter owned or controlled by Grantor or any Affiliate, to the full extent that such Additional Utility Capacity is necessary to allow development, marketing and use of the Mortgaged Property for its highest and best use, and (iii) Utility Reimbursables, and (iv) all commitments issued in connection with the Utilities and the Additional Utility Capacity;

(7) all Utility Reimbursables;

(8) all trademarks, trade names, or symbols under which any of the Mortgaged Property is operated or the business of Grantor at the Mortgaged Property is conducted;

(9) the proceeds from the sale of the Mortgaged Property and property interests comprising the Mortgaged Property that result from the sale or foreclosure thereof by Grantee or any assignee thereof;

(10) all books, records, and documents relating to the Mortgaged Property;

(11) all contracts now or hereafter entered into by and between Grantor and any "original contractor" (as such term is used in Title 35 *et seq.* of the Alabama Code, as amended and in effect from time to time and/or any successor statute; herein called the "***Code***") or between Grantor and any other party as well as all right, title and interest of Grantor under any subcontracts;

(12) all right, title and interest of Grantor in and to permits and licenses, plans, specifications and drawings (including, but not limited to, street plans, plot plans, foundation plans, elevations and architectural plans, studies and analyses), heretofore or hereafter prepared by any architect or engineer relating to the Mortgaged Property or any real estate subdivision comprising the same;

(13) all of Grantor's right, title and interest in and to all present or future contracts, development agreements, reimbursement contracts, contracts of sale and options and contract rights relating to the disposition and/or development of any of the Mortgaged Property, including, without limitation, all proceeds, escrows, earnest money, deposits and bonds held by Grantor in connection therewith;

(14) the balance of (i) every deposit account (general or special, time or demand), now or hereafter existing, of Grantor or third parties held for the benefit of Grantor, (ii) any other accounts (in whatever character the same may appear) of Grantor, (iii) the Interest Reserve (as such phrase is defined in the Loan Agreement), (iv) the Suspense Account (as such phrase is defined in the Loan Agreement), and (v) all interest and earnings on any of the foregoing items (i) through (iv), which balances may at any time (A) be on deposit with, or held by or under the name of Grantee or (B) due from or at any time credited or debited by or due from Grantee in the name of Grantor;

(15) all of Grantor's right, title and interest as "declarant" under any declaration of covenants, conditions and restrictions or similar instrument now or hereafter associated with or recorded in the Office of the Judge of Probate of Shelby County, Alabama, which encumber and bind the Land or any real estate subdivision comprising the same and all rights of Grantor to use the amenities constructed or to be constructed for the use of owners of the Land;

(16) All of Grantor's right, title, and interest in and to all present or future licenses, authorizations, permits, certificates, variances, consents, approvals and other permits necessary or appropriate to permit the development, construction, reconstruction, alteration, addition, improvement, repair, restoration, use, operation and management of the Mortgaged Property and Improvements (as such term is defined in the Loan Agreement); and

(17) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

As used in this Mortgage, the term "***Mortgaged Property***" shall be expressly defined as meaning all, or where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

(t) **Net Sales Proceeds:** The total amount of consideration received either directly or indirectly by Grantor pursuant to a sale of all or any portion of the Mortgaged Property, less all reasonable and customary closing costs and adjustments paid by Grantor to bona fide third parties (e.g., Persons unrelated to Grantor or any Person controlled by or under common control with Grantor) in connection with the granting and approval of any partial release, including, without limitation, title insurance premiums, title company charges, the "***Release Processing Fee***" (hereafter defined), brokerage commissions (not to exceed 6% of the gross sales price, including those paid to Affiliates), for the final twenty-seven (27) Lots sold, a return of earnest money from the Lot Sale Contract with the builder in an amount not to exceed $14,200.00 per Lot sold until all such earnest money has been applied, attorneys' fees, recording costs, surveys, and environmental reports, and current year's ad valorem tax prorations in connection with the granting and approval of any partial release. For the avoidance of doubt, it is understood and agreed that there shall be no earnest money returned to builder under the Lot Sale Contract for the first twenty-seven (27) Lots sold.

(u) **Note:** The promissory note of even date herewith, executed by Grantor, payable to the order of Grantee, in the amount of TWO MILLION FIVE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($2,550,000.00), or so much thereof as may be advanced, due as provided therein, secured by, among other things, this Mortgage, and all renewals, modifications and extensions thereof.

(v) **Obligations:** Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor to Grantee, Trustee or others as set forth in the Security Documents.

(w) **Oil and Gas Rights:** All existing and future minerals, oil, gas, and other hydrocarbon substances in, upon, or through the Land.

(x) **Partial Release Price:** Shall have the meaning ascribed in ***Paragraph 12.21(b)***.

(y) **Permitted Encumbrances:** The liens, easements, restrictions, reservations, security interests and other matters (if any) reflected on ***Exhibit B*** attached hereto, but only to the extent such matters from time to time are valid, subsisting and continue to affect the Mortgaged Property.

(z) **Person:** Any person, corporation, partnership or other entity (including Governmental Authority).

(aa) **Personalty:** All of the right, title and interest of Grantor in and to all "equipment" (as such term is defined in Chapter 9 of the Uniform Commercial Code in effect in the State of Alabama from time to time, and referred to herein as the "***Alabama UCC***"), and all other "goods" (other than Fixtures) of any kind or character (as such term is defined in Chapter 9 of the Alabama UCC), now or hereafter located upon, within or about the Land and the Buildings, together with all accessions thereto, replacements and/or substitutions thereof and the proceeds thereof, and all "documents," "commercial tort claims," "instruments," "letter-of-credit rights," "accounts," "chattel paper," and "general intangibles" (as such terms are defined in Chapter 9 of the Alabama UCC) relating, directly or indirectly, in whole or in part, to the ownership, construction, operation or development of the Land or any part thereof and/or any real estate subdivision comprising the same or any part thereof, including, without limitation, all claims for any tax refunds, or other payments and all monetary deposits given to any public or private utility with respect to utility services furnished to the Mortgaged Property, and the proceeds of all of the foregoing.

(bb) **Release Processing Fee:** Shall have the same meaning as is ascribed to such phrase in the Loan Agreement.

(cc) **Rents:** All of the rents, revenues, income, proceeds, profits, issues and other benefits paid or payable by parties to the Leases other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property.

(dd) **Security Documents:** The Note, the Loan Agreement, this Mortgage, those certain Financing Statements of even date herewith, and all other documents and instruments, as the same may be amended, modified, renewed, or extended, from time to time, to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

(ee) **Utilities:** All (1) sanitary sewer discharge capacity related to the Land, (2) water capacity available or allocable to the Land or dedicated to or reserved for the Land, and (3) storm sewer capacity of the facilities located or to be located on the Land.

(ff) **Utility Reimbursables:** All right, title and interest of Grantor in and to (1) all credits, refunds, reimbursements or rebates for any reservation fee, stand-by fee, capital recovery charge or other sums accruing and to accrue in favor of Grantor or any of Grantor's Affiliates arising from or in connection with any Utilities or Additional Utility Capacity, including any such agreements with the County of Shelby and/or the City of Birmingham and accounts receivable of Grantor (including, without limitation, those owing by the County of Shelby and/or the City of Birmingham to Grantor), and (2) all other utility reimbursables (including, without limitation, gas reimbursables) arising from or by virtue of any transactions related to the Land (including, without limitation, any (i) water wells and/or lift stations, (ii) water detention ponds incident or necessary to serve the Land, (iii) utility lines, (iv) streets and roads, (v) grading, excavation, and clearing of the Land, and (vi) all other improvements to the infrastructure of the Land necessary to cause the Land is be platted and put into a buildable condition for the commencement of construction of residences), the Improvements (as such term is defined in the Loan Agreement), or the Personalty.

ARTICLE 2.
GRANT

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Grantor does hereby GRANT, SELL, BARGAIN, CONVEY, MORTGAGE and ASSIGN to Grantee, its successors and assigns, WITH POWER OF SALE, and does hereby grant to Grantee, its successors and assigns, a security interest in the Mortgaged Property, subject, however, to the Permitted Encumbrances, and TO HAVE AND TO HOLD the Mortgaged Property unto Grantee, and its successors and assigns, IN FEE SIMPLE forever, subject, however, to those encumbrances which the Lender has approved in the Loan Agreement or otherwise approved in writing (collectively, the "***Permitted Encumbrances***"; and Grantor hereby binds itself, its heirs, successors and assigns, to warrant and forever defend the title to the Mortgaged Property against every Person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Encumbrances; provided, however, that if Grantor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the dates the same are to be performed and discharged and all commitments of Grantee to make advances to Grantor under the Note, the Loan Agreement, and/or any other Security Document have terminated, then, if requested in writing by Grantor, Grantee shall prepare, execute, and deliver to Grantor, at Grantor's expense, a release of all the liens, security interests, estates and rights granted by the Security Documents and, upon the execution of the same by Grantee, such liens, security interests, estates, and rights shall terminate; otherwise the same shall remain in full force and effect.

This conveyance is further made in trust to secure (i) the payment when and as due and payable of the principal and interest on the Loan or so much thereof, including all loans and future advances as may be advanced from time to time, all late charges, and all other indebtedness evidenced by or owing under the Note and any of the other Loan Documents, together with any extensions, modification, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Security Instrument by its terms secures, (iii) the performance and observance of the covenants and agreements contained in this Security Instrument, the Loan Agreement, the Note and each of the other Loan Documents, and (iv) any and all obligations of Grantor to Grantee or any affiliate of Grantee, whether absolute, contingent or otherwise and howsoever and whensoever (whether now or hereafter) created, arising, evidenced or acquired (including renewals, extensions and modifications thereof and substitutions theretofore), it being contemplated by Grantor that future advances (including, without limitation, Advances) may be made by Grantee.

ARTICLE 3.
WARRANTIES AND REPRESENTATIONS

Grantor hereby unconditionally warrants and represents to Grantee as follows:

3.1 Validity of Loan Instruments. The execution, delivery and performance by Grantor of the Security Documents and the borrowing evidenced by the Note

(a) if such party is a corporation, are within its corporate powers, have been duly authorized by its board of directors and shareholders and comply with all other corporate requirements,

(b) if such party is a partnership or a joint venture, are within its partnership or joint venture powers, have been duly authorized by its partners or joint venturers so as to be the binding act of the partnership or joint venture and comply with all other partnership or joint venture requirements,

(c) if such party is a limited liability company, are within its company powers, have been duly authorized by its managers and members and comply with all articles of organization, regulations, and other company requirements,

(d) have received all required governmental approval in order to be legally binding and enforceable, and

(e) to Grantor's knowledge, will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of such party's property or assets except in favor of Grantee.

The Security Documents constitute the legal, valid, and binding obligations of Grantor and others obligated under the Security Documents, in accordance with their respective terms, subject to any applicable creditor's rights laws.

3.2 Title to Mortgaged Property. Grantor has good and indefeasible fee simple title to the Land and Buildings, and good title to the Leases, Rents, Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances. This Mortgage creates a valid and subsisting, first lien Mortgage on the Land, the Buildings and the Fixtures and a valid, subsisting, first priority security interest in the Personalty, Leases and Rents.

3.3 Compliance with Legal Requirements. To Grantor's actual knowledge, the location, construction, occupancy and use of the Mortgaged Property does not and in the future, will not violate any Legal Requirements. Without limiting the generality of the foregoing, to Grantor's actual knowledge, the Mortgaged Property and Grantor are not in violation of or subject to any existing, pending or threatened investigation or inquiry of any Governmental Authority pertaining to health or the environment, including, without limitation, any violation of CERCLA (as such term is defined in Article 11), RCRA (as such term is defined in Article 11), the Texas Water Code or similar Alabama law and the Federal Solid Waste Disposal Act of 1965, as amended, or any amendments thereto or similar statutes hereinafter enacted in addition, replacement, or substitution thereof (in whole or in part). The term "hazardous substance" shall have the meaning specified in CERCLA, and the terms "solid waste" and "dispose" shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA, TSCA (as such term is defined in Article 11), the Texas Water Code or similar Alabama law, and the Texas Solid Waste Disposal Act or similar Alabama law, or any amendments thereto or similar statutes hereinafter enacted in addition, replacement, or substitution thereof (in whole or in part) so as to broaden the meaning of any term defined therein, then such broader meaning shall apply subsequent to the effective date of such amendment.

3.4 Use of Mortgaged Property. The Mortgaged Property is "residential real property" as that term is defined in the Depositary Institutions Deregulation and Monetary Control Act of 1980, as amended (12 U.S.C. § 1735f-7 *et seq.*) and the regulations promulgated thereunder, as amended (contained in 12 C.F.R. § 590.1 *et seq.*) (collectively hereinafter referred to as "***DIDMCA***").

ARTICLE 4.
AFFIRMATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Grantee as follows:

4.1 Payment and Performance. Grantor shall pay or cause to be paid the Indebtedness, as and when called for in the Note and Security Documents and on the due dates thereof, and will perform all of the Obligations, in full on the dates the same are to be performed. Grantor acknowledges that time is of the essence with respect to Grantor's payment of the Indebtedness and performance of the Obligations pursuant to this Mortgage.

4.2 Compliance with Legal Requirements. Grantor shall promptly and faithfully comply with and obey all Legal Requirements.

4.3 Payment of Impositions. Grantor shall duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof. In the event a law, ordinance or regulation is passed after the date of this Mortgage deducting from the value of the Mortgaged Property for the purpose of taxation of any lien thereon, or changing in any way the laws in force for the taxation of mortgages, deeds of trust or indebtedness thereby secured, or the manner or the operation of any such taxes so as to affect adversely the interest of Grantee, then Grantor shall pay the full amount of such taxes, unless and to the extent the payment by Grantor either would be unlawful or would constitute usury or render the

Indebtedness wholly or partially in violation of Applicable Law (*as defined in the Note*), Grantor may contest the validity of any such Impositions and pending the determination of such contest, postpone payment of such Impositions, provided that (1) Grantor shall have first given Grantee such security as it may request, in its good faith judgment, to ensure such payment (in the event of a determination of such contest adversely to Grantor) and to secure and indemnify Grantee against any cost, expense, loss or damage in connection with such contest or such postponement of payment; and (2) Grantor shall not so postpone payment if Grantee would thereby be subject to potential fine or penalty or prosecution for a crime or the Mortgaged Property or any part thereof might thereby be condemned, foreclosed upon, sold, forfeited, or vacated or the value of the Mortgaged Property might thereby, in the good faith judgment of Grantee, be materially impaired.

4.4 Repair. Grantor shall keep the Mortgaged Property in its present condition and appearance and will make all repairs, replacements, additions, improvements and alterations, interior and exterior, structural and non-structural, which are necessary or reasonably appropriate to keep the same in such condition (reasonable wear and tear excepted), and, without limiting the foregoing, shall prevent waste to the Mortgaged Property. Grantor shall guard every part of the Mortgaged Property from removal, destruction and damage, and shall not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened.

4.5 Insurance. Grantor shall obtain and maintain, with insurers of recognized responsibility as are acceptable to Grantee, insurance covering the Mortgaged Property, with Grantee to be named as a "loss payee," as follows:

(a) Damage or loss by fire and such other hazards (including lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, vandalism, malicious mischief, aircraft, boilers, sprinklers, vehicle and smoke) as are covered by the broadest form of extended coverage endorsement as is available from time to time, notwithstanding any nonconforming use of the Mortgaged Property in the amount of full replacement value of the Improvements (as such term is defined in the Loan Agreement), with a loss payable endorsement in favor of Grantee and without any deduction being made for depreciation. Notwithstanding the foregoing, Grantor shall not be required to carry the insurance set forth in this subparagraph (a) unless and until requested by Grantee.

(b) If any portion of the Mortgaged Property is situated in an area or subsequently designated as having flood hazards, (1) as defined by the Flood Disaster Protection Act of 1973, as amended from time to time, or any similar legislation, or (2) as identified by the Federal Emergency Management Agency, Grantee may require flood insurance in an amount equal to the replacement cost of the Buildings or the maximum amount of flood insurance available, whichever is the lesser,

(c) Commercial general liability insurance against claims for bodily injury or death or property damage occurring in, upon, or about or resulting from the Mortgaged Property, or any street, drive, sidewalk or curb adjacent thereto, naming Grantee as an additional insured (rather than a "loss payee" as contemplated in the first sentence of this section) pursuant to a CG Form 2026 1185 endorsement with no qualifications. In no event will the commercial general liability policy be written for an amount less than $2,000,000.00 combined single limit for bodily injury and property damage liability,

(d) Such other insurance with respect to the Mortgaged Property and in such amounts as Grantee from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against in respect of property similar to the Mortgaged Property.

In the event of a foreclosure pursuant to this Mortgage or any other transfer of the Mortgaged Property in lieu of foreclosure or in extinguishment, in whole or in part, of the Indebtedness, all right, title and interest of Grantor in and to such insurance policies and all rights to any unearned premiums and sums held in escrow to pay such premiums, shall vest in the purchaser at such foreclosure or transferee, as the case may be. If any of the Mortgaged Property covered by such insurance is destroyed or damaged by fire or other hazard, casualty or contingency, (1) Grantee may, but shall not be obligated to, make proof of loss if such is not promptly made by Grantor, (2) each insurance company is hereby authorized and directed to make payment of such loss directly to Grantee, and (3) Grantee shall have the right at its sole discretion to apply the insurance proceeds first, to reimburse Grantee for all costs and expenses, including reasonable attorneys' fees incurred in connection with the collection of such proceeds, and second, the remainder of such proceeds shall be applied in accordance with the provisions of ***Paragraph 4.7***; provided that any insurance proceeds held by Grantee that are to be applied to the repair, restoration or replacement of all or any portion of the Mortgaged Property may be commingled with other funds of Grantee and shall be so held without payment of or credit for interest to Grantor and shall be paid to or for the benefit of Grantor only upon compliance by Grantor with such terms, conditions and requirements as may be imposed by Grantee at such time. No such insurance policy shall be canceled, endorsed, altered or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insurer shall have first given Grantee thirty (30) days prior written notice. Grantee may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent the same. Grantee shall be furnished with a certificate of insurance evidencing the required insurance coverage coincident with the execution of this Mortgage, and a certificate of insurance evidencing the timely renewal of each initial insurance policy or renewal policy, together with receipts or other evidence that the premiums thereon have been paid. If requested by Grantee, Grantee also shall be furnished with the original of each initial insurance policy and the original of each renewal policy not later than fifteen (15) days following written request therefor.

Grantor expressly agrees that all insurance policies shall provide that the proceeds thereof shall be payable to Grantee as its interest may appear and subject to a standard mortgagee clause (without contribution). All insurance policies are to be issued by companies acceptable to Grantee, having a Best's Insurance Guide Rating of A, Class XIV or higher. Grantor shall maintain insurance in an amount sufficient to prevent Grantee from becoming a co-insurer under any required policy.

4.6 Escrow. After an Event of Default that is not cured within any curative period, by written notice to Grantor, Grantee may require Grantor to pay to Grantee on the date installments are payable under the Note, escrowed sums equal to one-twelfth (1/12th) of the sum estimated by Grantee for payment of the annual sum for funding all taxes assessed against the Mortgaged Property (estimated whenever necessary), and premiums for all insurance. If Grantee determines that any amounts previously paid by Grantor are insufficient for the payment in full of such taxes or insurance, Grantee shall notify Grantor of the increased amounts required to provide a sufficient fund, whereupon Grantor shall pay to Grantee within thirty (30) days thereafter the additional amount as stated in Grantee's notice. The escrowed sums may be held by Grantee in non-interest-bearing accounts and may be commingled with Grantee's other funds. Upon assignment of this Mortgage, Grantee shall have the right to pay the balance of the escrowed sums then in its possession to its assignee whereupon Grantee shall be completely released from all liability with respect thereto. Upon full payment of the Indebtedness, or at such earlier time as Grantee may elect, the balance of the escrowed sums in its possession shall be paid to Grantor and no other party shall have any right or claim thereto. If no Event of Default shall have occurred and be continuing hereunder, the escrowed sums shall be repaid to Grantor in sufficient time to allow Grantor to satisfy Grantor's obligations under the Security Documents to pay the taxes or, at the option of Grantee, shall be paid directly to the Governmental Authority entitled thereto. If an Event of Default shall have occurred and be continuing hereunder, however, Grantee may credit the full amount of the escrowed sums or any part thereof against the Indebtedness. Notwithstanding anything to the contrary contained in this ***Paragraph 4.6*** or elsewhere in this Mortgage, Grantee may waive the right to receive the payment by Grantor of the escrowed sums, but waiver of such payment is without prejudice to Grantee's right to insist at any subsequent time or times that such payments be made in accordance with the provisions of this ***Paragraph 4.6***.

4.7 Restoration Following Casualty. If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, Grantor shall promptly give notice thereof to Grantee. In such event, the following provisions shall apply:

(a) if

(1) all of the Mortgaged Property is demolished, destroyed or so substantially damaged, that the remainder thereof cannot (in Grantee's sole and absolute discretion) continue to be operated profitably for the purpose for which it was being used immediately prior to such damage to or loss or destruction of the Mortgaged Property;

(2) an Event of Default shall have occurred; or

(3) the Mortgaged Property is partially destroyed and (in Grantee's reasonable discretion) need not be rebuilt, restored or repaired in any manner in order to comply with Legal Requirements (as opposed to rebuilt, restored, or repaired to (i) the condition existing at the time before the destruction or (ii) a condition so that the remaining portion of the Mortgaged Property can be operated), then in any such event the entirety of the sums so paid to Grantee shall be applied by it in the order recited in ***Paragraph 4.8***; or

(b) if

(1) such loss is twenty percent (20%) or less (an "***Insubstantial Casualty***") of the Buildings;

(2) none of the other facts recited in ***Paragraph 4.7(a)(1)*** or ***4.7(a)(3)*** exists;

(3) Grantor shall deliver to Grantee plans and specifications for such rebuilding, restoration or repair acceptable to Grantee and comply with such other terms and conditions relating thereto which Grantee may then require in its good faith business judgment;

(4) fee simple title to the Mortgaged Property is owned by Grantor;

(5) the restoration of the improvements on the Mortgaged Property can be completed at a cost that does not exceed the net amount of the available insurance proceeds; or in the event that such insurance proceeds are inadequate, Grantor shall have deposited with Grantee, within thirty (30) days following Grantee's receipt of the insurance proceeds, an amount equal to the excess of the estimated cost of restoration over the amount of such insurance proceeds; and

(6) Grantor shall commence the rebuilding, restoration or repair and complete same, all in accordance with the plans and specifications approved by Grantee, then Grantee shall, subject to the conditions in this ***Paragraph 4.7***, make available to Grantor amounts expended or incurred by Grantor in connection with the restoration of the Mortgaged Property, the net proceeds of any hazard insurance received by Grantee in

payment for any loss under the aforesaid fire and extended coverage insurance for the restoration of the Mortgaged Property.

Advances of net insurance proceeds shall be made to Grantor in accordance with such general procedures as are required by Grantee, including without limitation, the submission of invoices, certificates of architects, and lien waivers and otherwise in accordance with Grantee's requirements, but in no event more frequently than monthly, less, in each case, all amounts previously advanced and a retainage of ten percent (10%) ("***Retainage***") of such advance. The Retainage shall be returned after the completion of all work, receipt of final lien waivers or the expiration of the time period under Alabama law during which a mechanic's/ materialmen's lien may be filed by a contractor and/or subcontractor. If such restoration and repair is not substantially completed in a good and workmanlike manner within four (4) months (or any earlier time required by any of the Leases) after the date of such casualty loss, the undisbursed balance of insurance proceeds may, at the option of Grantee, be applied against the reduction of the Note or the completion of the Improvements (as such term is defined in the Loan Agreement).

(c) if any act or occurrence of any casualty on which insurance was not obtained or obtainable shall result in damage to, or loss or destruction of the Mortgaged Property, Grantor shall give immediate notice thereof by mail to Grantee and, unless otherwise so instructed by Grantee, shall promptly, at Grantor' sole cost and expense, restore, repair, replace and rebuild the Mortgaged Property to the condition and character immediately prior to such damage, loss or destruction.

4.8 Application of Proceeds. All proceeds received by Grantee with respect to a casualty loss or diminution in value of the Mortgaged Property shall be applied in the following order of priority:

(a) first, to reimburse Grantee for all costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of such proceeds; and

(b) thereafter, if there shall be any balance, to the order of priority recited in ***Paragraph 7.10(b)*** through ***(g)***; subject, however, to the provisions of ***Paragraph 4.7(b)*** requiring (under the circumstances therein specified) that such proceeds be applied to the rebuilding, restoration or repair of the Mortgaged Property.

4.9 Performance of Leases. Grantor shall (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements binding upon it under each of the Leases, if any, (b) except in the ordinary course of business, and exercising reasonable care of a prudent operator or manager of properties similarly situated to the Mortgaged Property in Shelby County, Alabama, not voluntarily terminate, cancel or waive its rights or the obligations of any other party under any of the Leases, (c) use all efforts to maintain each of the Leases in force and effect during the full term thereof, and (d) appear in and defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of it or the other party or parties thereto.

4.10 Inspection. Grantor shall permit Grantee, and their agents, representatives and employees, to inspect the Mortgaged Property at all reasonable times during reasonable business hours, and Grantor shall reimburse Grantee for Grantee's reasonable out-of-pocket costs and expenses with respect to such inspections.

4.11 Hold Harmless. Except for actions or claims resulting from Grantee's gross negligence or willful misconduct, Grantor shall defend, at its own expense, and hold Grantee harmless from any and all reasonable costs and expenses, including legal fees, in connection with or incurred by Grantee with regard to (a) any action or claim with respect to title to the Mortgaged Property, (b) the preparation, amendment, interpretation and administration of this Mortgage or any of the other Security Documents in any action defending any claim or liability asserted by a third party arising out of or related to the transactions contemplated by this Mortgage. If, pursuant to any covenant contained in this Mortgage, Grantee shall pay out any money chargeable to Grantor, or subject to reimbursement by Grantor under the terms of this Mortgage, Grantor shall repay the same to Grantee immediately at the place where the Note hereby secured is payable, together with interest thereon, at the default rate of interest set forth in the Note (but in no event at a rate in excess of the maximum rate which may be permitted by law). The sum of each such payment shall be added to the Indebtedness hereby secured and thereafter shall form a part of the same and shall be secured by this Mortgage.

4.12 Books and Records and Financial Statements of Grantor. Grantor shall maintain full and accurate books of account and other records reflecting the results of its operations, and will furnish or cause to be furnished to Grantee, (a) within twenty (20) days after the end of each fiscal quarter of Grantor, (1) a status report detailing the sales and development activity for such quarter; and (2) such other financial and accounting information as Grantee may reasonably require; (b) on or before ninety (90) days after the close of the fiscal year, (1) a balance sheet and a statement of the income and expenses of Grantor for the preceding calendar year, (2) a cash flow statement for the preceding calendar year, and budgeted for the next calendar year, including all supporting schedules and comments, (3) an operating statement, in such detail as Grantee may require, which accurately, fairly and separately presents Grantor's operations of the Mortgaged Property for the fiscal year then ended; and (4) annual Financial Statements of Grantor and of Grantor's members certified to by an officer of Grantor; and (c) such other financial and accounting information as Grantee may reasonably require. The balance sheets shall be prepared in accordance with generally accepted tax accounting principles applied consistently as was done in the preparation of the Financial Statements heretofore prepared in connection with the Indebtedness, with such changes or modifications thereto as may be approved in writing by Grantee. Within one hundred twenty (120) days after the close of the fiscal year, Grantor will furnish or cause to be furnished copies of Grantor's tax returns or extensions thereof, and, if extensions are filed, copies of returns within thirty (30) days of the filing thereof. At any time and from time to time Grantor shall deliver to Grantee such other financial data as Grantee shall request with respect to the ownership, maintenance, use and operation of the Mortgaged Property and amenities serving the Mortgaged Property, and Grantee shall have the right to audit, at Grantor's expense, Grantor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Grantee and Grantee's representatives for such purpose at the Mortgaged Property or at such other location as Grantee may approve.

4.13 Payment of Certain Costs. Upon demand by Grantee, Grantor shall promptly pay all reasonable costs and expenses previously or hereafter incurred by Grantee for legal, architectural, appraisals, accounting, engineering or other professional services rendered by third parties to or for the benefit of Grantee in connection with the making of the initial or any subsequent loan to Grantor constituting any portion of the Indebtedness, or in the enforcement of any of Grantee's rights or remedies hereunder or all of the foregoing. Grantor shall also promptly pay all bills for labor and materials incurred in connection with the Mortgaged Property and shall never permit to be filed against the Mortgaged Property, or any portion thereof, any lien, superior or inferior to the lien hereof, for any such bill that is valid and legally due and payable. Upon request of Grantee, Grantor shall furnish satisfactory proof of payment of all such bills prior to delinquency.

4.14 Estoppel Certificate. Grantor acknowledges that the Indebtedness hereby secured and/or the lien hereby created may from time to time be assigned by Grantee, and Grantor agrees to execute and cause to be executed estoppel affidavits certifying as to such matters (which are true) with respect to the Indebtedness, this Mortgage and the Mortgaged Property and other similar documentation as may be reasonably necessary or required by Grantee in connection with any such assignment. Such documents shall be executed and returned to Grantee within ten (10) business days after their delivery to Grantor.

4.15 Further Assurances. Upon the request of Grantee, Grantor will execute, acknowledge, deliver and record and/or file such further instruments, certificates and documents and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of the Security Documents and to subject to the liens and security interests of this Mortgage any property intended by the terms hereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the then Mortgaged Property.

4.16 Specific Indemnity. Without limiting the liability of Grantor for the breach of any warranty, representation or covenant herein, Grantor agrees to protect, defend, indemnify and hold Grantee harmless from and against and to reimburse Grantee with respect to any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, known or unknown, fixed or contingent, without limit and without regard to the cause or causes thereof or the negligence (except as set forth below as to gross negligence or willful misconduct of Grantee) of any party or parties, asserted against or incurred by Grantee at any time arising out of the breach of any warranty, representation or covenant of Grantor set forth herein, and irrespective of whether the Indebtedness has been paid or this Mortgage has been released, irrespective of whether Grantee has committed negligence, it being specifically intended by Grantor and Grantee that all indemnity obligations and liabilities assumed by Grantor hereunder be without limit and without regard to the cause or causes thereof (including preexisting conditions), strict liability, or the negligence of any party or parties (including Grantee, except as set forth below with respect to gross negligence or willful misconduct of Grantee), whether such negligence be gross, sole, joint or concurrent, active or passive. **The parties specifically intend that, pursuant to this *Paragraph 4.16*, Grantee is to be indemnified against Grantee's own negligence; however, Grantee is not and shall not be indemnified from its own gross negligence or willful misconduct. The foregoing indemnity applies, without limitation, to any Legal Requirement pertaining to health or the environment, regardless of whether the act, omission, event or circumstance constituted a violation of such Legal Requirement at the time of its existence or occurrence, including, without limitation, any violation of CERCLA or RCRA or TSCA and is cumulative of the indemnity contained in *Paragraph 11.5* hereof.**

ARTICLE 5.
NEGATIVE COVENANTS

Grantor hereby covenants and agrees with Grantee that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 Use Violations. Grantor shall not use, maintain, operate or occupy, or knowingly allow the use, maintenance, operation or occupancy of the Mortgaged Property or any portion thereof in any manner that (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law (c) constitutes a public or private nuisance, or (d) makes void, voidable or cancelable, or increases the premium of any insurance then in force (except for increases in insurance due to the addition of tenants to the Mortgaged Property).

5.2 Alterations. Grantor will not commit or permit any waste of the Mortgaged Property and shall not (subject to the provisions of ***Paragraph 4.4***) without the prior written consent of Grantee, make or permit to be made any alterations or additions (except in the ordinary course of business) to the Mortgaged Property.

5.3 Replacement of Fixtures and Personalty. Grantor shall not, without the prior written consent of Grantee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Buildings unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is immediately replaced by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest except such as may be first approved in writing by Grantee.

5.4 No Further Encumbrances. Except as provided in ***Paragraph 4.2(a)*** of the Loan Agreement, to the extent permitted by law, Grantor will not, without the prior written consent of Grantee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether the same are expressly subordinate to the liens of the Security Documents, related to the Mortgaged Property, the Leases or the Rents, other than the Permitted Encumbrances. Grantor shall not initiate, join in, or consent to any change in restrictive covenants, zoning ordinances or other private or public restrictions limiting or defining the uses that may be made of the Mortgaged Property or any part thereof or any easements or other agreements benefitting the Mortgaged Property without the prior written consent of Grantee, which consent shall not be unreasonably withheld or delayed. Grantee agrees to approve the contemplated restrictions for the Mortgaged Property as more particularly described in the Loan Agreement. Furthermore, Grantor shall not grant any easement, right-of-way, drill site designation, or mineral lease or conduct any mineral development without the prior written consent of Grantee.

5.5 No Sales, Leases or Other Transfers. Except for (i) sales in the ordinary course of business to unrelated third parties (including sales to builders pursuant to a Lot Sale Contract) in accordance with the provisions of ***Paragraph 12.21*** of this Mortgage, (ii) conveyance of rights-of-way (including streets and roads) to a governmental entity or dedication of such rights-of-way to the public pursuant to a final recorded subdivision plat approved by Lender, (iii) conveyance of common areas to a property owners' association created for the benefit of the owners of the Lots, and (iv) conveyance of any planned stormwater detention facilities to any governmental entity, Grantor expressly agrees that in the event that Grantor, without the prior written consent of Grantee, sells, exchanges, assigns or otherwise disposes of all or any portion of the Mortgaged Property or rents or leases any of the Mortgaged Property for any period in excess of one (1) year, Grantee, to the extent permitted by law, shall have the right and option, subject to any applicable cure period for default under this Mortgage, to declare the entire amount of the Indebtedness immediately due and payable. Any sale, transfer, pledge, or other disposition of more than twenty-five percent (25%) of the stock, securities, membership interests, or other interest in Grantor (or any general partner or joint venturer in Grantor, if Grantor or such general partners or joint venturers are corporations or limited liability companies) whether accomplished in one transaction or a series of related transactions, or a sale, transfer, pledge or other disposition of more than twenty-five percent (25%) of the partnership or joint venture interests in Grantor (or any general partner or joint venturer in Grantor, if Grantor or such general partners or joint venturers are persons, partnerships or joint ventures [specifically not including transfers between limited partners]) whether accomplished in one transaction or a series of related transactions, shall be deemed to be within the prohibition contained within this paragraph and shall require the prior written consent of Grantee. The right and option granted hereunder, to the extent permitted by law, shall be absolute, irrespective of whether the sale, exchange, assignment or transfer would or might (a) diminish the value of the security for the Indebtedness, (b) result in an Event of Default hereunder, (c) compel the holder hereof to seek any remedies available to it, whether at law or in equity, or (d) add or remove the liability of any Person for payment or performance of the Indebtedness or any covenant or obligation under this Mortgage.

5.6 Residential Real Property. Grantor shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property or any portion thereof in any manner that would cause the Mortgaged Property to fall outside the definition of "residential real property" as that term is set forth in DIDMCA.

ARTICLE 6.
EVENTS OF DEFAULT

The term "***Event of Default,***" as used in this Mortgage, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1 Payment of Indebtedness. If Grantor or any party liable therefor shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Note, the other Security Documents, or at a date fixed for prepayment or by acceleration or otherwise, which failure, refusal or neglect continues for five (5) days following written notice of such default from Grantee to Grantor; provided, however, that Grantee shall not be required to give Grantor more than three (3) such notices of a monetary default within any twelve (12) consecutive month period during the term of the Note.

6.2 Performance of Obligations. Other than a failure to pay any sum required to be paid under the Note or the Security Documents (which is not subject to the hereinafter provided notice and cure period), if Grantor shall fail, refuse or neglect to perform and discharge fully and in a timely manner any of the Obligations as and when required, if such failure, refusal or neglect shall either be incurable (it being agreed that the occurrence of the events described in ***Paragraphs 6.5***, ***6.8***, ***6.9***, and ***6.10*** are incurable, but that all other failures or refusals to perform any of the Obligations or other performance defaults by Grantor under any of the Security Documents are potentially curable) or, if curable, shall remain uncured for a period of thirty (30) days after written notice thereof from Grantee to Grantor; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be reasonably performed, done or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred if Grantor commences same within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion within ninety (90) days after such notice. Notwithstanding the foregoing, (a) no notice shall be given and an Event of Default shall automatically occur if Grantor shall fail, refuse or neglect to comply with the insurance obligations set forth in ***Paragraph 4.5***, and (b) no notice shall be given pursuant to this ***Paragraph 6.2*** if notice is provided by another provision of this Mortgage or afforded by any Legal Requirement.

6.3 Default on Other Matters. If Grantor defaults on any other promissory note, Mortgage, pledge, guaranty, security agreement, assignment, or contract of any kind executed by or on behalf of Grantor in any capacity in favor of Grantee.

6.4 False Representation. If any statement, representation or warranty made by Grantor in, under or pursuant to the Security Documents, any financial statements or any other writing delivered to Grantee in connection with the Indebtedness shall be false, misleading or erroneous in any material respect (as determined in Grantee's good-faith business judgment).

6.5 Voluntary Bankruptcy. If Grantor shall (a) voluntarily be adjudicated a bankrupt or insolvent, (b) seek, consent to or not contest the appointment of a receiver or trustee for itself or for all or any part of its property, (c) file a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or any other competent jurisdiction, (d) make a general assignment for the benefit of its creditors, or (e) admit in writing its inability to pay its debts as they mature.

6.6 Involuntary Bankruptcy. If (a) a petition is filed against Grantor and/or partner of Grantor seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or other competent jurisdiction, or (b) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Grantor and/or partner of Grantor, a receiver or trustee for such party, or for all or any part of its property or any of the Mortgaged Property, and such petition, order, judgment or decree shall not be and remain discharged or stayed within a period of sixty (60) days after its entry.

6.7 Dissolution of Grantor. If Grantor or any party comprising Grantor shall dissolve or liquidate, have its certificate of limited partnership or articles of organization or incorporation forfeited, or merge or be consolidated into any company, corporation, partnership, or other entity, or shall attempt to do any of the same.

6.8 Destruction or Condemnation of Improvements. Subject to the provisions of ***Paragraphs** 4.7* and ***8.1***, if the Mortgaged Property is so demolished, destroyed or substantially damaged or taken that (in Grantee's sole and absolute discretion) it cannot be restored or rebuilt with available funds to a profitable condition within four (4) months of the date of the casualty.

6.9 Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property (without hereby implying Grantee's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

6.10 Process Against the Mortgaged Property. The levy of any execution, attachment, sequestration, or other writ against the Mortgaged Property or any part thereof.

6.11 Non-Compliance with Legal Requirements. The failure or refusal or neglect of Grantor to comply, at its own cost and expense, with all Legal Requirements of any Governmental Authority having jurisdiction over the Mortgaged Property or the operations conducted thereon.

6.12 Failure to Use as Residential Real Property. If Grantor shall use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property or any portion thereof in any manner which causes the Mortgaged Property to fall outside the definition of "residential real property" as that term is set forth in DIDMCA.

6.13 Default under Loan Agreement. The occurrence of an Event of Default under the Loan Agreement. Notwithstanding any provision of this Mortgage to the contrary, in no event shall Grantor be entitled to more than one opportunity to cure, pursuant to ***Paragraph 6.2***, above, any failure, refusal or neglect to perform and discharge fully and in a timely manner any of the Obligations as and when required (e.g., the occurrence of certain events or the existence of certain conditions does not constitute an "***Event of Default***" under the Loan Agreement until expiration of the cure period provided in ***Paragraph 6.2***, above; and this ***Article 6*** shall not be construed as providing any additional cure period under ***Paragraph 6.2*** once such event or condition has become an "***Event of Default***" under the Loan Agreement).

6.14 Default under Inferior Liens. The occurrence of a default by Grantor under any inferior liens secured by the Mortgaged Property which remains uncured following the expiration of the applicable notice and cure period. Nothing in this ***Paragraph 6.14***, however, shall be construed as allowing the creation or existence of any such inferior liens except as otherwise specifically provided in the Loan Agreement.

ARTICLE 7.
DEFAULT AND FORECLOSURE

7.1 Remedies. If an Event of Default shall occur and remain uncured, Grantee may, at Grantee's election and by or through Grantee or others, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare all or any portion of the principal balance, the accrued interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without notice of intent to accelerate, notice of acceleration, or any further notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter upon the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto whether or not situated thereon. If Grantor remains in possession of all or any part of the Mortgaged Property after an Event of Default without Grantee's prior written consent thereto, Grantee may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution.

Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.

(c) **Operation of Mortgaged Property.** Hold, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either by itself or by other Persons, in such manner, for such time and upon such other terms as Grantee may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Grantee shall deem necessary or desirable), and apply all Rents and other amounts collected by Grantee in connection therewith in accordance with the provisions of ***Paragraph 7.10***.

(d) **Foreclosure and Sale.** If an Event of Default shall have occurred, then in addition to all other rights and remedies provided for in this Security Instrument, any other Loan Document or under Applicable Laws, then at the option of Lender this Security Instrument may be foreclosed in any manner now or hereafter provided by Alabama law, and to the extent provided or allowed by Alabama law, Lender, or its agent, may, pursuant to the power of sale granted herein, sell the Mortgaged Property or any part of the Mortgaged Property at one or more public sales before the front or main door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, as may be required. At any such sale, Lender may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property. Lender shall have the right to enforce any of its remedies set forth herein without notice to Borrower, except for such notice as may be required by law. In the event of any sale under this Security Instrument by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect, and if Lender so elects, Lender may sell the UCC Collateral covered by this Security Instrument at one or more separate sales in any manner permitted by the Code, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or the Debt is paid and performed in full. If the Debt is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Lender at its option may exhaust the remedies granted under any of said security instruments or this Security Instrument either concurrently or independently, and in such order as Lender may determine. Any sale pursuant to this section (ii) may be adjourned by Lender, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set. In the event of any sale of all or any portion of the Mortgaged Property as authorized by this Section, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment or non-performance of the Debt or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true. Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

7.2 Other Aspects of Foreclosure. Grantor covenants and stipulates that the recitals in the conveyance made to the purchaser at a foreclosure sale shall be full proof of the matters therein stated, and Grantor agrees and stipulates that all prerequisites of a sale shall be presumed to have been performed and that the sale made under the powers of this Mortgage shall be a perpetual bar against Grantor. The right of sale hereunder shall not be exhausted by one or more postings or sales, but so long as any of the Indebtedness remains unpaid, the Trustee may make other successive sales.

7.3 Occupancy after Foreclosure. The purchaser at any foreclosure sale pursuant to ***Paragraph*** *7.1(d)* shall become the legal owner of the Mortgaged Property, subject to the Permitted Encumbrances. All occupants of the Mortgaged Property, or any part thereof, shall become tenants at sufferance of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at such sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any Justice Court having jurisdiction over the Mortgaged Property.

7.4 Grantee or Receiver. Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, Grantee may make application to a court of competent jurisdiction as a matter of strict right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, for appointment of a receiver of the Mortgaged Property and Grantor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of ***Paragraph 7.10***. Any monies advanced by Grantee in connection with any receivership, shall be payable upon demand by Grantor and shall bear interest from the date of advancement by Grantee until paid at a rate of interest equal to the highest rate allowed by applicable usury laws. Grantor does further waive any and all defenses to appointment of a receiver and agrees not to oppose any application by Grantee.

7.5 Separate Sales. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Grantee, in its sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales but other and successive sales may be made until all of the Mortgaged Property has been sold or until the Indebtedness has been fully satisfied.

7.6 Installment Sales. In the event the Indebtedness is payable in installments or includes, at any time, items of matured as well as unmatured sums, Grantee shall have the right to have the Mortgaged Property sold, subject to the part of the Indebtedness which is unmatured at the time the Grantee has been requested to make such sale. The Grantee is expressly authorized and empowered by Grantor to conduct such sale(s) which are herein called an "***Installment Foreclosure***." Any Installment Foreclosure made under this ***Paragraph 7.6*** shall not affect the lien of this Mortgage to secure that portion of the Indebtedness to which the sale is to be made subject. No Installment Foreclosure shall exhaust the power of the Trustee to conduct future Installment Foreclosures nor in any way limit the powers of sale provided elsewhere in this Mortgage. The provisions in this ***Article 7*** relating to the manner of conducting the Grantee's sale, including notice and advertising thereof, shall also apply to any Installment Foreclosure and the same presumptions shall be applicable to any Grantee's deed or recital therein made at an Installment Foreclosure.

7.7 Release of and Resort to Collateral. Grantee may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Security Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Grantee may resort to any other security therefor held by Grantee in such order and manner as Grantee may elect.

7.8 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default (except as may be provided for in ***Paragraph 6.2***) or of Grantee's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Security Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

7.9 Discontinuance of Proceedings. In case Grantee shall have proceeded to invoke any right, remedy or recourse permitted under the Security Documents and shall thereafter elect to discontinue or abandon same for any reason, Grantee shall have the unqualified right so to do and, in such an event, Grantor and Grantee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Security Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Grantee shall continue as if same had never been invoked.

7.10 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of, the Mortgaged Property shall be applied by Grantee (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following order of priority:

(a) first, to the payment of the costs and expenses of enforcing Grantee's rights with respect to the Mortgaged Property and of taking possession of, holding, using, operating, leasing, repairing, improving and selling the same, including, without limitation, (1) trustees' and receivers' fees, (2) court costs, (3) attorneys' and accountants' fees, (4) costs of advertisement, (5) environmental hazard reports and appraisal fees, (6) title report premiums and/or nothing further certificates, and (7) the payment of any and all Impositions, liens, security interests or other rights, title or interests equal or superior to the lien and security interest of this Mortgage (except those to which the Mortgaged Property has been sold subject to and without in any way implying Grantee's prior consent to the creation thereof);

(b) second, to the payment of all amounts, other than the unpaid principal balance and accrued but unpaid interest thereon, which may be due to Grantee under the Security Documents, together with interest thereon as provided therein;

(c) third, to the payment of all accrued but unpaid interest due on the Note;

(d) fourth, to the payment of the principal balance owed on the Note;

(e) fifth, to any other advances made by Grantee (only to the extent the same are not represented by the Note);

(f) sixth, to the extent funds are available therefor out of the sale proceeds or the Rents and, to the extent known by Grantee, to the payment of any indebtedness or obligation secured by a subordinate Mortgage on or security interest in the Mortgaged Property; and

(g) seventh, to Grantor.

7.11 Remedies Cumulative, Concurrent and Non-Exclusive. Grantee shall have all rights, remedies and recourses granted in the Security Documents, Legal Requirements or those which are available at law or in equity, all of which (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Grantee, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise or failure to exercise any such rights, remedies or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, non-exclusive.

ARTICLE 8.
CONDEMNATION

8.1 General. Promptly upon its obtaining knowledge of the institution of any proceeding, or threatened proceeding, for a condemnation affecting the Mortgaged Property, Grantor shall notify Grantee of such fact. Grantor shall upon the institution of any such proceeding, if requested by Grantee, file or defend its claim thereunder and pursue the defense with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Grantee for disposition pursuant to the terms of this Mortgage. Grantor may be the nominal party in such proceeding but Grantee shall be entitled to participate in and to be represented therein by counsel of its own choice, and Grantor will deliver, or cause to be delivered, to Grantee such instruments as may be requested by it from time to time to permit such participation. Grantee shall in no event be liable or responsible for failure to collect, or exercise diligence in the collection of, any condemnation proceeds, judgments, decrees or awards. If the Mortgaged Property is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Grantor by virtue of its interest in the Mortgaged Property shall be, and is hereby, assigned, transferred and set over unto Grantee to be held by it, subject to the lien and security interest of this Mortgage, and disbursed as follows:

(a) if (1) all of the Mortgaged Property is taken, (2) so much of the Mortgaged Property is taken, or the Mortgaged Property is so diminished in value, that the remainder thereof cannot (in Grantee's reasonable discretion) continue to adequately secure payment of the Note, (3) an Event of Default shall have occurred, or (4) the Mortgaged Property is partially taken or diminished in value and (in Grantee's reasonable discretion) need not be rebuilt, restored or repaired in any manner in order to comply with Legal Requirements (as opposed to rebuilt, restored, or repaired to the condition existing prior to the taking), then in any such event the entirety of the sums so paid to Grantee shall be applied by it in the order recited in ***Paragraph 8.2***; or

(b) if (1) only twenty percent (20%) or less of the Mortgaged Property is taken and the portion remaining can (in the exercise of Grantee's good faith business judgment), with rebuilding, restoration or repair adequately secure payment of the Note as referred to in clauses (3) and (4) of ***Paragraph 8.1(a)***; (2) none of the other facts recited in ***Paragraph 8.1(a)*** exists; (3) Grantor has delivered to Grantee, evidence satisfactory in the exercise of Grantee's good faith business judgment indicating that the Mortgaged Property has access to public streets and roads and to all water, sanitary sewer and storm drainage facilities necessary for the intended use of the Mortgaged

Property immediately after such taking or diminution; (4) fee simple title to the Mortgaged Property is held by Grantor; (5) Grantor shall have delivered to Grantee the plans and specifications for such rebuilding, restoration or repair acceptable to Grantee and comply with such other terms and conditions relating thereto which Grantee may then require in its sole discretion; (6) the restoration of the improvements, if any, on the Mortgaged Property can be completed at a cost which does not exceed the net amount of the available condemnation proceeds; and (7) Grantor shall thereafter commence the rebuilding, restoration or repair and complete same, all in accordance with the plans and specifications approved by Grantee and within six (6) months after the date of such taking or diminution in value or such earlier time as may be required by any Leases, then such sums shall be advanced to Grantor pursuant to the Loan Agreement to pay for the cost of the rebuilding, restoration or repair; otherwise the same shall be applied by Grantee in the order recited in ***Paragraph 8.2***.

8.2 Application of Proceeds. All proceeds received by Grantee with respect to a taking or a diminution in value of the Mortgaged Property shall be applied in the following order of priority:

(a) first, to reimburse Grantee for all reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of such proceeds; and

(b) thereafter, if there shall be any balance, to the order of priority recited in ***7.10(a)*** through ***(g)***; subject, however, to the provisions of ***Paragraph 8.1(b)*** requiring (under the circumstances therein specified) that such proceeds be applied to the rebuilding, restoration or repair of the Mortgaged Property.

ARTICLE 9.
SECURITY AGREEMENT

9.1 Security Interest. This Mortgage shall be construed as a Mortgage on real property and it shall also constitute and serve as a security agreement on all property and property rights covered by Chapter 9 of the Alabama UCC. Accordingly, Grantor hereby Grants, Bargains, Sells, Conveys, Assigns, Transfers and Sets Over unto Grantee a first and prior security interest on all of Grantor's right, title and interest in and, to the following to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations:

(a) the Mortgaged Property (other than the Land) and all amounts deposited or otherwise paid by Grantor and held by Grantee from time to time including, without limitation, all held amounts and all amounts held for the payment of Impositions and insurance;

(b) the capacity assigned to Grantor in the amount of the per-day average daily dry-weather flow of normal strength waste and the per-day average daily dry-weather flow of capacity for carrying of waste now or hereafter available to the Mortgaged Property. Grantor hereby agrees to maintain the Utilities and the Additional Utility Capacity to the Mortgaged Property so long as the Indebtedness is unpaid. Grantor shall not permit the termination, transfer and/or sale of the Utilities or the Additional Utility Capacity without the express prior written consent of Grantee;

(c) all Utility Reimbursables;

(d) any subdivision construction agreement, any writings now or hereafter existing by Grantor and/or any Governmental Authority whereby such Governmental Authority agrees to provide matching funds to Grantor and/or Grantee for development of park improvements upon a portion of the Land, and all other development agreements; and

(e) all products and proceeds arising by virtue of any transaction related to the disposition of the Utilities, the Additional Utility Capacity, the Utility Reimbursables, the Personalty and Fixtures and the Mortgaged Property.

9.2 Financing Statements. Grantor hereby agrees with Grantee to execute and deliver to Grantee, in form and substance satisfactory to Grantee, such financing statements and further assurances as Grantee may, from time to time consider reasonably necessary to attach, perfect, and continue Grantee's security interest herein granted, and Grantee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. In addition to all rights granted to Grantee in this Mortgage, Grantor hereby irrevocably authorizes Grantee at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the collateral (1) as all assets of Grantor or words of similar effect, regardless of whether any particular assets comprised in the Mortgaged Property falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (2) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State for the sufficiency or filing office acceptance of any financing statements or amendment.

9.3 Alabama UCC. Grantee shall have all the rights and remedies with respect to the Personalty and Fixtures afforded a secured party by Chapter 9 of the Alabama UCC in addition to, and not in limitation of, the other rights and remedies afforded Grantee by the Security Documents In exercising its rights and remedies under ***Article 9*** of this Mortgage, Grantee may proceed separately as to the Personalty and Fixtures (or any of them) or Grantee may proceed as to all (or any of them) with respect to the foreclosure provisions contained in ***Article 7***.

9.4 Fixture Filing. Portions of the Mortgaged Property are or will become fixtures relating to the Land, and Grantor expressly covenants and agrees that the filing of this Mortgage in the Real Property Records in the county where the Mortgaged Property is located shall also operate from the time of filing therein as a financing statement in accordance with Section 9.502(c) of the Alabama UCC. Grantor shall not change Grantor's name or "location" (as determined in accordance with Section 9.307 of the Alabama UCC) without the prior express written consent of Grantee. The name of the record owner of the Land covered hereby is the party or parties defined herein as Grantor. Grantor's Alabama registration number is 001-034-820.

9.5 Grantor's Title. Grantor agrees that, except for the security interest granted hereby in the Personalty and Fixtures, Grantor is the owner of the Personalty and Fixtures free of any adverse claim, security interest or encumbrance, and Grantor shall defend the Personalty and Fixtures against all claims and demands of any Person at any time claiming the same or any interest therein. Grantor has not heretofore signed any financing statement and no financing statement signed by Grantor is now on file in any public office except those statements, true and correct copies of which have been delivered to Grantee. So long as any amount remains unpaid on the Indebtedness, Grantor shall not execute and there shall not be filed in any public office any such financing statement or statements affecting the Personalty and Fixtures other than financing statements in favor of Grantee hereunder.

9.6 No Mortgagee in Possession. The security interest granted herein shall not be construed or deemed to constitute Grantee or Trustee as a trustee or mortgagee in possession of the Mortgaged Property so as to obligate Grantee or Trustee to lease the Mortgaged Property or attempt to do the same, or to take any action, incur any expenses or perform or discharge any obligation, duty or liability with respect to the Mortgaged Property or any part thereof or otherwise.

ARTICLE 10.
CONCERNING THE TRUSTEE

~~INTENTIONALLY DELETED~~

ARTICLE 11.
HAZARDOUS MATERIALS

11.1 Definitions. For the purposes of this Mortgage, Grantor, Grantee and Trustee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(a) "***Hazardous Materials***" shall mean

(1) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder ("***RCRA***");

(2) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), as amended from time to time, and regulations promulgated thereunder ("***CERCLA***");

(3) asbestos, polychlorinated biphenyls or other substances specifically regulated under the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), as amended from time to time, and regulations promulgated thereunder ("***TSCA***");

(4) storage tanks, whether or not underground and whether empty, filled or partially filled with any substance;

(5) the presence of oil, petroleum products and their by-products;

(6) any substance the presence of which on the Mortgaged Property is prohibited by any Governmental Authority or which is hereafter classified by any Governmental Authority as a hazardous or toxic waste, material, substance, or similar phraseology; and

(7) any other substance which by any Governmental Authority requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal.

(b) "***Hazardous Materials Contamination***" shall mean the contamination (whether formerly existing, presently existing or hereafter occurring) of the Buildings, facilities, soil, groundwater, air or other elements **ON OR OF THE MORTGAGED PROPERTY BY HAZARDOUS MATERIALS, OR THE CONTAMINATION OF THE** buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Mortgaged Property.

11.2 Grantor's Warranties. Grantor hereby represents and warrants that:

(a) To Grantor's actual knowledge, no Hazardous Materials are now located on the Mortgaged Property, and neither Grantor nor, to the best of Grantor's actual knowledge (without any duty of investigation or inquiry, other than the review of the Environmental Assessment Report), any other Person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, under, from or at the Mortgaged Property or any part thereof;

(b) No part of the Mortgaged Property is being used or, to Grantor's actual knowledge (without any duty of investigation or inquiry, other than the review of the Environmental Assessment Report), has ever been used at any previous time for the disposal, storage (except for Hazardous Materials in quantities and concentrations typically found in properties such as the Mortgaged Property that do not violate any Legal Requirements), treatment, processing, or other handling of Hazardous Materials, nor is any part of the Mortgaged Property affected by any Hazardous Materials Contamination;

(c) To Grantor's actual knowledge (without any duty of investigation or inquiry, other than the review of the Environmental Assessment Report), no property adjoining or adjacent to the Mortgaged Property is being used, or has ever been used at any previous time for the disposal, storage, treatment, processing or other handling of Hazardous Materials nor is any other property adjoining the Mortgaged Property affected by Hazardous Materials Contamination;

(d) No investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination of which Grantor is aware is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property. To the best of Grantor's actual knowledge (without any duty of investigation or inquiry, other than the review of the Environmental Assessment Report), the Mortgaged Property is not currently on and has never been on, any federal or state "Superfund" or "Superlien" list, and Grantor has no actual knowledge or any facts that, if known to Governmental Authorities, reasonably might be anticipated to cause Governmental Authorities to consider placing the Mortgaged Property on any such list;

(e) Grantor has not received any written notice from any Governmental Authority with respect to any violation of any Legal Requirements or the existence of any Hazardous Materials Contamination;

(f) The use that Grantor makes and intends to make of the Mortgaged Property will not result in the disposal or release of any Hazardous Materials on, in, from or to the Mortgaged Property;

(g) Grantor shall not knowingly cause any violation of any Legal Requirements, nor knowingly permit any environmental liens to be placed on any portion of the Mortgaged Property; and

(h) If and to the extent there are now or hereafter located any underground storage tanks on the Mortgaged Property, Grantor has registered all underground storage tanks which are now located on the Mortgaged Property and has paid all fees assessed by the Texas Water Commission or the Texas Natural Resource Conservation Commission, or similar Alabama law, in connection with such tanks (and Grantor will so register and pay said fees with respect to any underground storage tanks hereafter located on the Mortgaged Property), as required by Chapter 26 of the Texas Water Code and Chapter 334 of Title 31 of the Texas Administrative Code, or similar Alabama law. Grantor will fully comply with the above-mentioned statute and regulations, the Federal Solid Waste Disposal Act, and 40 C.F.R. Part 280, as supplemented and amended, including without limitation, requirements for financial assurance, tank replacement and monitoring.

11.3 Grantor's Covenants. Grantor shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to cleanup and remove Hazardous Materials on, in, from or affecting any portion of the Mortgaged Property (a) in accordance with all Legal Requirements, (b) to the satisfaction of Grantee, and (c) in accordance with the orders and directives of all Governmental Authorities. Grantor agrees to (a) give written notice to Grantee promptly upon Grantor's acquiring knowledge of the presence of any Hazardous Materials on the Mortgaged Property or of any Hazardous Materials Contamination with a full description thereof; (b) promptly comply with any Legal Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Grantee with satisfactory evidence of such compliance and, upon request of Grantee, to provide from time to time during the course of any such work, Site Assessments (as hereinafter defined) verifying such compliance; and (c) provide Grantee, within forty-five (45) days after demand by Grantee, with a bond, letter of credit or similar financial assurance evidencing to Grantee's reasonable satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which Grantee reasonably anticipates may be established on the Mortgaged Property as a result thereof.

11.4 Site Assessments. If (a) Grantee (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, (1) has a good faith belief that there may exist Hazardous Material Contamination, or (2) is required under regulations governing Grantee, or (b) after the occurrence of an Event of Default, Grantee determines for any reason, in its sole reasonable discretion, that it would like to contract for the services of Persons (the "***Site Reviewers***") to perform environmental site assessments ("***Site Assessments***") on the Mortgaged Property for the purpose of determining whether there exists on or near the Mortgaged Property any environmental condition which could reasonably be expected to result in any liability, cost or expense to the owner, occupier or operator of such Mortgaged Property arising under any state, federal or local law, rule or regulation relating to Hazardous Materials, then such Site Assessments shall be performed at the cost of Grantor and the cost of the same shall be secured by the lien of this Mortgage and Security Agreement. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Grantor which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Mortgaged Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials on the Mortgaged Property and such other tests on the Mortgaged Property as may be appropriate to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. To the extent such information is in Grantor's possession, Grantor will supply to the Site Reviewers such historical and operational information regarding the Mortgaged Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Grantee shall make the results of such Site Assessments fully available to Grantor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The reasonable cost of performing such Site Assessments shall be paid by Grantor upon demand of Grantee and any such obligations shall be Indebtedness secured by this Mortgage.

11.5 Indemnification. Regardless of whether any Site Assessments are conducted hereunder, and without limiting the liability of Grantor for the breach of any warranty or representation contained in any other Security Document, Grantor shall defend, indemnify and hold harmless Grantee and Trustee from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, reasonable attorneys' fees and expenses, and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release or other termination of this Mortgage) be paid, incurred or suffered by or asserted against Grantee or Trustee by any Person or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Mortgaged Property of any Hazardous Materials or any Hazardous Materials Contamination or arising out of or resulting from the environmental condition of the Mortgaged Property or the applicability of any Legal Requirements relating to Hazardous Materials (including, without limitation, CERCLA or any federal, state or local so-called "Superfund" or "Superlien" laws, statute, law, ordinance, code, rule, regulation, order or decree), regardless of whether or not caused by or within the control of Grantor, except that any claims resulting from acts taken by Grantee constituting gross negligence or willful misconduct are excluded from this indemnity. The representations, covenants, warranties and indemnifications contained in this ***Article 11*** (a) shall survive the release of this Mortgage, the foreclosure or other termination of the lien of this Mortgage or conveyance in lieu thereof or the conveyance of the Mortgaged Property (without, in any manner, implying, Grantee's consent to any such conveyance) and (b) are not limited by any limitation of liability on the part of Grantor (or its general partner or any other parties, if applicable) under the Note or any other Security Documents.

11.6 Grantee's Right to Remove Hazardous Materials. Grantee shall have the right, but not the obligation, subsequent to an Event of Default, without in any way limiting Grantee's other rights and remedies under this Mortgage, to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination which Grantee has reasonable grounds to believe may be on the Mortgaged Property which, if true, could result in an order, suit, imposition of a lien on the Mortgaged Property, or other action and/or which, in Grantee's sole opinion, could jeopardize Grantee's security under this Mortgage. All costs and expenses paid or incurred by Grantee in the exercise of any such rights shall be Indebtedness secured by this Mortgage and shall be payable by Grantor upon demand.

ARTICLE 12.
MISCELLANEOUS

12.1 Third-Party Pledge. To the extent Grantor is executing this Mortgage for the benefit of a third party obligated on the Indebtedness (or any portion thereof), Grantor hereby waives all rights available to a surety at law or in equity including, without limitation, (a) any rights of a surety to insist upon a creditor first exhausting all remedies against the original obligor of a debt or other collateral securing the Indebtedness, and (b) the rights and benefits afforded by Rule 31 of the Texas Rules of Civil Procedure, Sections 17.001 and 34.005 of the Texas Civil Practice and Remedies Code or similar Alabama Law, Chapter 34 of the Alabama UCC or any similar rules and provisions that may be enacted from time to time.

12.2 Grantee's Right to Perform the Obligations. If Grantor shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents, then at any time thereafter, and without further notice to or demand upon Grantor and without waiving or releasing any other right, remedy or recourse Grantee may have by reason thereof, Grantee may (but shall not be obligated to) make such payment or perform such act for the account of and at the reasonable expense of Grantor, and shall have the right to enter the Land and Buildings for such purpose and to take all such action thereon and with respect to the Mortgaged Property as it may deem necessary or appropriate. Grantor shall indemnify Grantee for all losses, expenses, damage, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Grantee pursuant to the provisions of this ***Paragraph 12.2*** or by reason of any other provision in the Security Documents. All sums paid by Grantee pursuant to this ***Paragraph 12.2*** and all other sums expended by Grantee to which it shall be entitled to be indemnified, together with interest thereon at the maximum non-usurious rate allowed by law from the date of such payment or expenditure, shall constitute additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Grantor to Grantee upon demand.

12.3 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Security Documents, and the consummation of the loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

12.4 Subrogation. If any and all of the proceeds of the Note have been or ever shall be used to extinguish, extend or renew any indebtedness previously existing against any portion of the Mortgaged Property, then, to the extent of such funds so used, the Indebtedness and the lien of this Mortgage shall be subrogated to all of the rights, claims, liens, title and interests previously existing against the Mortgaged Property to secure the indebtedness so extinguished, extended or renewed and the former rights, remedies, claims, liens, titles and interests, if any, are not waived but rather are continued in full force and effect in favor of Grantee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations.

12.5 Successors and Assigns. All of the terms of the Security Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives, and all other Persons claiming by, through or under them, however, this provision shall not constitute or be construed as a consent of Grantee to the sale of all or any portion of the Mortgaged Property.

12.6 Severability. The Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other Persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.7 Usury Laws. It is the intention of the parties hereto to act in strict compliance with Applicable Law. Accordingly, it is agreed that notwithstanding any provision to the contrary in the Note, the Loan Agreement, this Mortgage, any of the other Security Documents, or any other instrument securing or evidencing the Indebtedness, or in any other arrangements or agreements, no such provision shall ever be construed to create a contract to pay, as consideration for use, forbearance or detention of money, "interest," as that term may be defined by Applicable Law, at a rate in excess of the maximum lawful rate of nonusurious interest permitted by Applicable Law. If any excess of interest in such respect is provided for, or shall be adjudicated to be so provided for, in the Note, the Loan Agreement, this Mortgage, any of the other Security Documents, or in any other instrument securing or evidencing the Indebtedness, then in such event (a) the provisions of this paragraph shall govern and control; (b) neither Grantor nor its successors or assigns or any other party liable for the payment of the Indebtedness shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum lawful amount of nonusurious interest permitted by Applicable Law, and the same shall be construed as a mutual mistake of the parties hereto, and of any legal holder of the Note, and (c) such excess of interest over the maximum lawful amount of nonusurious interest permitted by Applicable Law shall either be applied as credit against the then unpaid principal amount of the Indebtedness or refunded to Grantor, Any commitment, extension, brokerage, loan or other fees or sums paid pursuant to the Note, the Loan Agreement or any of the other Security Documents or the loan evidenced thereby, and which under Applicable Law are deemed to constitute interest shall be treated as interest and taken into account in calculating the maximum lawful rate of nonusurious interest permitted by Applicable Law. If the holder of the Note shall ever receive anything of value that is characterized as interest under Applicable Laws and that would apart from this provision be in excess of the maximum lawful rate of nonusurious interest permitted by Applicable Law, an amount equal to the amount that would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Grantor or the other payor thereof if and to the extent such amount, which would have been excessive, exceeds such unpaid principal. The right to accelerate maturity of the Note, or any part of the Indebtedness or any other indebtedness, does not include the right to accelerate any interest that has not otherwise accrued on the date of such acceleration, and the holder thereof does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the holder thereof shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of such Indebtedness so that the amount of interest on account of such Indebtedness does not exceed the maximum lawful amount of nonusurious interest permitted by Applicable Law. Further, notwithstanding anything to the contrary contained in the Note, the Loan Agreement, this Mortgage, or any of the other Security Documents, if the Indebtedness is paid in full by Grantor or its successors or assigns prior to the full stated term of the Note (as such term may have been extended pursuant to the terms therein) and the interest received for the actual period of the existence of the Indebtedness exceeds the maximum lawful rate of nonusurious interest permitted by Applicable Law, then Grantee, or its successors or assigns, shall refund to Grantor, or its successors or assigns, the amount of the excess of such interest over the maximum amount of nonusurious interest permitted by Applicable Law, and neither Grantee, nor its successors or assigns, shall be subject to any of the penalties, if any, provided by Applicable Law for contracting for, charging, or receiving interest in excess of the maximum lawful rate of nonusurious interest permitted by Applicable Law. To the extent that Title 4 of the Texas Finance Code is relevant for purposes of determining the maximum lawful rate of nonusurious interest permitted by Applicable Law, the parties hereby elect to determine the applicable rate ceiling under such article by using the indicated (weekly) rate ceiling from time to time in effect, subject to Grantee's right subsequently to change such method in accordance with Applicable Law.

12.8 Entire Agreement and Modification. The Security Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. The Security Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

12.9 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

12.10 Applicable Law. The Security Documents shall be governed by and construed according to the laws of the State of Alabama and, to the extent applicable, any federal law.

12.11 Covenants Running with the Land. All Obligations contained in the Security Documents are intended by the parties to be, and shall be construed as, covenants running with the Land.

12.12 Recording and Filing. Grantor will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Trustee or Grantee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

12.13 Notices. Except as otherwise set forth in ***Paragraphs 7.1(d)*** and ***7.2*** hereof, or the Code, all notice, or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given if mailed first class United States Mail, postage prepaid, registered or certified with return receipt requested, or by delivering the same in person to the intended addressee or by prepaid telegram. Any notice so sent by United States Mail, as aforesaid, shall be deemed received, if not actually received previously, on the third (3rd) day after deposit in the United States Mail. For purposes of notice, the addresses of the parties shall be as set forth herein; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of at least ten (10) days' notice to the other party in the manner set forth above.

12.14 No Waiver. Any failure by Trustee or Grantee to insist, or any election by Trustee or Grantee not to insist, upon strict performance by Grantor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Trustee or Grantee shall have the right at any time or times thereafter to insist upon strict performance by Grantor of any and all of such terms, provisions and conditions.

12.15 Election of Remedies. The exercise of any right, power or remedy given under the terms of this Mortgage shall not be considered a waiver of the right to exercise any other right, power or remedy given herein; and the filing of a suit to foreclose this Mortgage, either on any matured portion of the Indebtedness or for the whole Indebtedness, shall never be considered an election of remedies so as to preclude foreclosure under power of sale or to preclude pursuit of any right or remedy under the Security Documents after a dismissal of such a suit; nor shall the filing of the necessary notices for or holding of sale for foreclosure by power of sale or pursuit of any right or remedy under the Security Documents contained herein preclude the prosecution of a later suit or sale to foreclose this Mortgage or to sell the Personalty and Fixtures pursuant to the Security Documents.

12.16 Partial Invalidity of Lien. If the lien or security interest secured by this Mortgage is invalid or unenforceable as to any part of the Indebtedness secured hereby, or if such lien or security interest is invalid or unenforceable as to any part of the Mortgaged Property, any unsecured portion of such Indebtedness shall be completely paid prior to the payment of the remaining and secured, or partially secured, portion of said Indebtedness. All payments made on the Indebtedness secured hereby, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of any portion of such Indebtedness which is not secured by the lien or security interest of this Mortgage.

12.17 Partial Invalidity of Mortgage. The invalidity or unenforceability in any particular circumstance of any provision of this Mortgage shall not extend beyond such provision or such circumstance, and no other provision of this instrument shall be affected thereby.

12.18 Payment on Account. Acceptance by Grantee of any payment in an amount less than the amount then due on the Indebtedness evidenced by the Note or due hereunder or under any other Security Documents shall be deemed an acceptance on account only, and the failure to pay the entire amount then due under the Note, hereunder, and under any other Security Documents shall be and continue to be a default. Until the entire amount due under all Security Documents has been paid in full, Grantee shall be entitled to exercise all rights and remedies conferred upon it in this instrument upon the occurrence of an Event of Default.

12.19 Errors and Defects. Grantor shall, on request of Grantee, (a) promptly correct any defect, error or omission that may be discovered in the contents of this Mortgage or in any other Security Documents or in the execution or acknowledgment of any of them; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of leases and cash collateral) and do such further acts as may be necessary, or proper to carry out more effectively the purposes of this Mortgage and such other instruments given to collateralize the indebtedness secured hereby, and (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including without limitation, any financing statement) deemed advisable by Grantee to protect the lien or the security interest granted herein against the rights or interests of third Persons, and Grantor will pay all costs connected with any of the foregoing actions.

12.20 Credit Reports. Grantor hereby authorizes Grantee to obtain, from time to time, credit reports, through reputable credit reporting agencies, relating to Grantor and/or Grantor's members.

12.21 Partial Releases. Upon compliance with the payment requirements of the Note, Grantor shall have the right to obtain partial releases of all liens securing the payment of the Note on the following basis:

(a) No partial release shall be given if there exists an Event of Default at the time of the request for such partial release. No partial release shall be given if there exists, at the time such release is to be granted, a default in the payment of any sum or the performance of any Obligation securing the Indebtedness, whether such debt is presently existing or hereinafter created;

(b) For each of the Lots to be partially released, Grantor shall pay to Grantee the greater of (i) one hundred percent (100%) of Net Sales Proceeds or (ii) (a) $69,000.00 per Lot sold and released for the first twenty-seven (27) Lots sold and released, and (b) $56,000.00 per Lot sold and released for the remaining twenty-seven (27) Lots sold and released, plus the Release Processing Fee for each partial release. The payment described in this ***Paragraph 12.21(b)*** is hereafter referred to as the "***Partial Release Price***." Notwithstanding the foregoing in this ***Paragraph 12.21(b)***, Grantor shall not be required to pay any Partial Release Price for partial releases necessary to (i) the conveyance of rights-of-way (including streets and roads) to a governmental entity or dedication of such rights-of-way to the public pursuant to a final recorded subdivision plat approved by Grantee, or (ii) the conveyance of common areas to a property owners' association created for the benefit of the owners of the Lots;

(c) Grantor shall pay all reasonable legal expenses incurred by Grantee in connection with the granting and approval of any partial release. Grantor shall also pay to Grantee the Release Processing Fee for each partial release;

(d) No partial release shall have the effect of depriving any unreleased portion of the Mortgaged Property from access to a dedicated public road or right-of-way;

(e) Grantee shall be furnished evidence satisfactory to it that the available sewer treatment capacity allocated or reserved for the portions of the Land that will continue to secure the Indebtedness is adequate in amount to serve such property assuming no material change in Grantor's land use or development plan for such portion of the Land;

(f) Any change in the location, configuration, or size of any Lot contained in the final recorded subdivision plat of the applicable subdivision must be approved by Grantee in its sole discretion;

(g) In the event that Grantor requests a partial release of any portion of the Land which has not been improved into Lots, Grantee shall be furnished evidence satisfactory to Grantee that the available sewer treatment capacity allocated or reserved for the portions of the Land which will continue to secure the Indebtedness is adequate in amount to serve such property assuming no material change in Grantor's land use or development plan for such portion of the Land;

(h) For any portion of the Land to be released other than the Lots, calculation of the partial release price, if any, and the location, configuration and size shall be approved in writing by Grantee in the exercise of Grantee's sole good faith discretion; and

(i) If requested by Grantee, simultaneous with each partial release, Grantor will provide Grantee with a Form 212 endorsement to the mortgagee policy of title insurance insuring this Mortgage.

12.22 Intentionally Deleted.

12.23 Additional Platting. Grantor's right to plat or replat portions of the Mortgaged Property shall be conditioned upon Grantee's approval (which shall not be withheld except in the exercise of Grantee's good-faith business judgment).

12.24 Resolution of Drafting Ambiguities. Grantor acknowledges that it was represented by counsel in connection with this Mortgage and that it or its counsel reviewed and revised this Mortgage and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party or Grantee shall not be employed in the interpretation of this Mortgage.

12.25 Waiver of Deficiency Offset. To the maximum extent permitted by Applicable Law, Grantor hereby waives any right to a determination of fair market value and to an offset against any deficiency resulting from a foreclosure sale of the Mortgaged Property (or any portion thereof) pursuant to Section 51.002 of the Code, or pursuant to a judicial foreclosure, including, without limitation, any such rights that Grantor may otherwise have had under Section 51.003, Section 51.004 and/or Section 51.005 of the Code. Grantor expressly recognizes that this section will constitute a waiver of the above-cited provisions of the Code which would otherwise permit Grantor and other Persons against whom recovery of deficiencies is sought or guarantors independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of foreclosure and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver will create an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Grantor, other borrowers on the Note, guarantors, and others against whom recovery of a deficiency is sought.

Alternatively, in the event this waiver is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Code:

(a) The Mortgaged Property shall be valued "AS IS" and "WITH ALL FAULTS" and there shall be no assumption of restoration of or refurbishment of improvements, if any, after the date of the foreclosure;

(b) There shall be an assumption of a prompt resale of the Mortgaged Property for an all cash sales price by the purchaser at the foreclosure sale (but no later than twelve (12) months following the foreclosure sale) so that no extensive holding period should be factored into the determination of "fair market value" of the Mortgaged Property;

(c) An offset to the fair market value of the Mortgaged Property as determined hereunder shall be made by deducting from such value the reasonable estimated closing costs relating to the sale of the Mortgaged Property, including but not limited to brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges which are incurred by a seller of property;

(d) The gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments, and other maintenance expenses;

(e) Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five years' experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above; and

(f) After consideration of the factors required by law and those required above, and if not already taken into consideration, an additional discount factor shall be calculated based upon the estimated time it would take to effectuate such sale of the Mortgaged Property so that if appropriate, "fair market value" as so determined is discounted to be as of the date of the foreclosure sale of the Mortgaged Property.

12.26 Recordation. This Mortgage shall be duly recorded in such manner and in such places as may be required by any present or future law in order to provide notice of and to protect fully the lien of this Mortgage, as modified, amended and restated by this Mortgage, and the interests of the Trustee and Grantee in, the Mortgaged Property. Grantor will pay all filing, registration and recording fees, and all expenses incidental to the preparation, execution and acknowledgment of this Mortgage.

12.27 Arbitration. To the maximum extent not prohibited by law, any controversy, dispute or claim arising out of, in connection with, or relating to the Note or any of the other Security Documents or any transaction provided for therein, including, but not limited to, any claim based on or arising from an alleged tort or an alleged breach of any agreement contained in any of the Security Documents, shall, at the request of any party to the Security Documents (either before or after the commencement of judicial proceedings), be settled by arbitration pursuant to Title 9 of the United States Code, which the parties hereto acknowledge and agree applies to the transaction involved herein, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "***AAA***"). In any such arbitration proceeding: (i) all statutes of limitation which would otherwise be applicable shall apply; and (ii) the proceeding shall be conducted in Houston, Texas, by a single arbitrator, if the amount in controversy is $1,000,000.00 or less, or by a panel of three arbitrators if the amount in controversy is over $1,000,000.00. All arbitrators shall be selected by the process of appointment from a panel pursuant to Section 13 of the AAA Commercial Arbitration Rules and each arbitrator will have AAA-acknowledged expertise in the appropriate subject matter. Any award rendered in any such arbitration proceeding shall be final and binding, and judgment upon any such award may be entered in any court having jurisdiction.

If any party to the Note or other Security Documents files a proceeding in any court to resolve any such controversy, dispute or claim, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration under the provisions of this ***Paragraph 12.27*** of that or any other claim, dispute or controversy, and the court shall, upon motion of any party to the proceeding, direct that such controversy, dispute or claim be arbitrated in accordance with this ***Paragraph 12.27***.

Notwithstanding any of the foregoing, the parties hereto agree that no arbitrator or panel of arbitrators shall possess or have the power to (a) assess punitive damages, (b) dissolve, rescind or reform (except that the arbitrator may construe ambiguous terms) the Note or any other Security Document, (c) enter judgment on the debt, (d) exercise equitable powers or issue or enter any equitable remedies, or (e) allow discovery of attorney/client privileged information, and the parties hereby waive the aforementioned remedies. The Commercial Arbitration Rules of the AAA are hereby modified to this extent for the purpose of arbitration of any dispute, controversy or claim arising out of in connection with, or relating to any Security Document.

No provision of, or the exercise of any rights under, this ***Paragraph 12.27*** shall limit or impair the right of any party to the Security Documents before, during or after any arbitration proceeding to: (a) exercise self-help remedies such as set off or repossession; (b) foreclose (judicially or otherwise) any lien on or security interest in any real or personal property collateral; (c) obtain emergency relief from a court of competent jurisdiction to prevent the dissipation, damage, destruction, transfer, hypothecation, pledging or concealment of assets or of collateral securing any indebtedness, obligation or guaranty referenced in the Security Documents; or (d) obtain emergency relief from a court of competent jurisdiction to prevent, if applicable, a party from exercising the remedies set forth in (a) and (b) above. Such emergency relief may be in the nature of, but is not limited to: pre-judgment attachments, garnishments, sequestrations, appointments of receivers, restraining orders, or other emergency injunctive relief to preserve the status quo.

In the event Applicable Law prohibits the submission of a particular controversy, dispute, or claim arising out of or in connection with any of the Security Documents or transactions contemplated therein to arbitration, Grantor and Grantee agree that any actions or proceedings in connection therewith shall be tried and litigated only in the state and federal courts located in the jurisdiction in which the Mortgaged Property is located or any other court in which Grantee shall initiate legal or equitable proceedings that has subject matter jurisdiction over the matter in controversy. Grantor and Grantee, to the extent permitted by Applicable Law, waive any right to assert the doctrine of *forum non-conveniens* or to object to the venue to the extent any proceeding is brought in accordance with this paragraph.

12.28 Intentionally Deleted.

12.29 Loan Agreement. In addition to the other obligations described in this instrument, this Mortgage secures the payment of all sums and the performance of all obligations and covenants of Grantor contained or referred to in the Loan Agreement. A default in the payment or performance of the obligations set forth in the Loan Agreement shall constitute a default hereunder, and at the option of Grantee, the principal sum and all interest and other charges provided for herein and secured hereby shall become due and payable without further notice, anything herein contained to the contrary notwithstanding. In the event of any conflict between the terms of this Mortgage and the Loan Agreement, the Loan Agreement shall be the governing instrument.

12.30 Headings. The article, paragraph and subparagraph titles of this Mortgage are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such articles, paragraphs or subparagraphs.

[SIGNATURE PAGE(S) FOLLOW]

EXECUTED on the date of the acknowledgment below to be effective as of the date first set forth above.

BC PALMER COVE, LLC,
an Alabama limited liability company

By: ______________________
Levi Mixon, Authorized Officer

STATE OF ALABAMA §
§
COUNTY OF JEFFERSON §

I, the undersigned authority, a Notary Public in and for said county and state, hereby certify that Levi Mixon, Authorized Officer of BC Palmer Cove, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Authorized Officer and with full authority, executed the same voluntarily for and as the act of BC Palmer Cove, LLC.

Given under my hand this the 16th day of September 2022.

Sarah J. Gooden
Notary Public

(Affix Seal)

Commission Expires: 02-19-2023

SARAH J. GOODEN
NOTARY PUBLIC
STATE OF ALABAMA
COMM. EXP. 02-19-2023

Units 1-44, and 55-64, of Palmer Cove, a Condominium, as set out in that Declaration of Condominium of Palmer Cove, A Condominium, as recorded in Instrument Number 20220801000299160 and also that final plat of PALMER COVE, BEING A CONDOMINIUM SUBDIVISION, as recorded as Instrument Number 20220712000274230 on Map 56, Page 59A in the Office of the Judge of Probate of Shelby County.

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel, in, on, under and that may be produced from the Property, together with all rights, privileges, and immunities relating thereto.

2. All matters according to the final plat of PALMER COVE, BEING A CONDOMINIUM SUBDIVISION, as recorded in Map Book 56, Pages 59A, 59B, and 59C, and also as Instrument Number 20220712000274230 in the Office of the Judge of Probate of Shelby County, Alabama.

3. Right of Way granted to Alabama Power Company as recorded in Volume 109, Page 504, in the Office of the Judge of Probate of Shelby County, Alabama.

4. Right of Way granted to Alabama Power Company as recorded in Volume 111, Page 403, in the Office of the Judge of Probate of Shelby County, Alabama.

5. Right of Way for Public Road in favor of Shelby County, as recorded in Deed Record 135, Page 124 in the Office of the Judge of Probate of Shelby County, Alabama.

6. Palmer Cove Subdivision Water Easement in favor for Shelby County recorded as Instrument Number 20210521000250810 in the Office of the Judge of Probate of Shelby County, Alabama.

7. Grant of Easement for Overhead and Underground Facilities Within A Subdivision in favor of Alabama Power Company, its successors and assigns, as recorded in Instrument Number 20210914000446390 in the Office of the Judge of Probate of Shelby County, Alabama.

8. Declaration of Condominium of Palmer Cove, A Condominium, as recorded in Instrument Number 20220801000299160 in the Office of the Judge of Probate of Shelby County, Alabama.

9. Easement as recorded in Instrument Number 20020515000229770 in the Office of the Judge of Probate of Shelby County, Alabama.

Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County Clerk
Shelby County, AL
10/03/2022 09:59:38 AM
$134.00 BRITTANI
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