


This instrument was prepared by:
Robert H. Sprain, Jr.
Sprain Law Firm, P.C.
1707 29th Court South
Birmingham, Ala. 35209

STATE OF ALABAMA)
COUNTY OF SHELBY)


20081223000473540 1/16 \$2540.00
Shelby Cnty Judge of Probate, AL
12/23/2008 08:15:07AM FILED/CERT

FUTURE ADVANCE MORTGAGE

Know all men by these presents: That this indenture is made and entered into this 19th day of December, 2008 by and between **Narrows Properties, LLC**, an Alabama limited liability company (hereinafter referred to as “Mortgagor” or “Borrower”), whose address is 151 Narrow Parkway, Suite 110, Birmingham, Alabama 35242, and **Compass Bank**, its successors and assigns (hereinafter called “Mortgagee” or “Lender”), whose address is 15 South 20th Street, Birmingham, Alabama 35233; and

This Mortgage is filed and shall constitute a fixture filing in accordance with the provisions of Section 7-9-402(6) of the Ala. Code.

This Mortgage is a “Construction Mortgage” as defined in section 7-9-313 (1)(c) Ala. Code and secures, among other obligations, an obligation incurred for the construction of improvements on land.

WHEREAS, Mortgagor is justly indebted to the Mortgagee in the amount of One Million Six Hundred and Fifty Six Thousand Dollars and No/100 (\$1,656,000.00) as evidenced by that certain promissory note (the “Note”), dated same date which bears interest as provided therein; and

WHEREAS, the Mortgagor has executed a Loan Agreement with Mortgagee (the “Loan Agreement”) on same date, and Whereas the parties have executed or will execute other instruments securing said loan, including without limitation a Collateral Assignment of Leases and Rents and a Guaranty Agreement, all of which shall be referred to singularly or collectively as the “Loan Documents”.

Now, therefore, in consideration of the premises, and to secure (a) the payment of the debt evidenced by said Note and the Loan Documents, and any future advances under the Note, and any and all extensions and renewals thereof, or of any part thereof, and all interest payable on all of said debt and on any and all such extensions and renewals, and (b) the payment and performance of all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee (including obligations of performance) of every kind whatsoever, arising directly between the Mortgagor and the Mortgagee or acquired outright, as a participation or as collateral security from another person by the Mortgagee, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several,

liquidated or un-liquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, general partner, drawer, tort-feasor, account party with respect to a letter of credit, indemnitor or otherwise (the "Debt") and the compliance with all the stipulations herein contained, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee the following described real estate situated in Shelby County, Alabama (said real estate being hereinafter called the "Land"):

See Exhibit A attached hereto and incorporated by reference herein.

Together with buildings, structures and improvements of every nature or kind now or hereafter situated on the Land (the "Improvements").

Together with all building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Borrower for the purpose of or used or useful in connection with the improvements located or to be located in the Property, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to the Property, and whether in storage or otherwise, wheresoever the same may be located. The personal property and fixtures to be conveyed and mortgaged shall include, without limitation, all lumber and lumber products, bricks, stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, wires and wiring, plumbing and plumbing fixtures, air conditioning and heating equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building materials and equipment of every kind and character used or useful in connection with the Improvements (the "Collateral").

Together with all easements, rights of way, privileges, tenements, appurtenances and other rights belonging, relating, or appertaining to the Property, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, all of which shall be deemed Property and conveyed by this mortgage (the "Property Rights").

The Land, Improvements, Collateral and Property Rights all are subject to this Mortgage and shall from time to time hereafter be referred to as the "Property" or the "Mortgaged Property".

TO HAVE TO HOLD the Property unto the Mortgagee, its successors and assigns, forever. The Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Property and has a good right to sell and convey the Property as aforesaid; that the Property is free of all encumbrances, except as otherwise set forth herein, and the Mortgagor will warrant and forever defend the title to the Property unto the Mortgagee, against the lawful claims of all persons.

Article I
Additional Grants of Security

As additional security for the Note and all indebtedness arising therefrom, the Mortgagor agrees as follows:

1.01 Insurance Policies. The Mortgagor hereby assigns and pledges to the Mortgagee as further security for the payment of the Debt each and every policy of liability, hazard or flood insurance, if applicable, now or hereafter in effect which insures said improvements, or any part thereof, together with all the rights, title and interest of the Mortgagor in and to each and every such policy, including but not limited to all of the Mortgagor's right, title and interest in and to any premiums paid on such hazard insurance or flood insurance, including all rights to return premiums. If the Mortgagor fails to keep the Property insured as specified above then, at the election of the Mortgagee and without notice to any person (with the exception of any notices required to be given by the Mortgagee in accordance with any laws or regulations pertaining to flood insurance), the Mortgagee may declare the entire Debt due and payable and this mortgage subject to foreclosure, and this mortgage may be foreclosed as hereinafter provided; and, regardless of whether the Mortgagee declares the entire Debt due and payable and this mortgage subject to foreclosure, the Mortgagee may, but shall not be obligated to, insure the Property for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss, for its own benefit, such proceeds may be used in repairing or reconstructing the improvements located on the Property. All amounts spent by the Mortgagee for insurance or for the payment of Liens (as defined hereinafter in this instrument) shall become a debt due by the Mortgagor and at once payable, without demand upon or notice to the Mortgagor, and shall be secured by the lien of this mortgage, and shall bear interest from date of payment by the Mortgagee until paid at the After-Maturity Rate as defined in the Note and Loan Agreement.

1.02 Rents and Profits. The Mortgagor hereby pledges and assigns to the Mortgagee as further security for the payment of the Debt the following rights, claims, rents, profits, issues and revenues:

a) all rents, profits, issues, and revenues of the Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to the Mortgagor, so long as the Mortgagor is not in default hereunder, the right to receive and retain such rents, profits, issues and revenues;

b) all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Property, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Property, or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets, and all payments made for the voluntary sale of the Property, or any part thereof, in lieu of the exercise of the power of eminent domain. The Mortgagee is hereby authorized on behalf of, and in the name of, the Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. The Mortgagee may apply all such sums so received, or any part thereof, after the payment of all the Mortgagee's expenses, including court costs and attorney's fees, on the Debt in such manner as the Mortgagee elects, or,

at the Mortgagee's option, the entire amount or any part thereof so received may be released or may be used to rebuild, repair or restore any or all of the Improvements.

1.03 Security Interest. Mortgagor further grants a security interest in any fixtures on or about the Property. This Mortgage shall constitute a security agreement, fixture filing and financing statement as those terms are used in Alabama's version of the Uniform Commercial Code (UCC). For purposes of this provision, the Mortgage is to be filed and recorded in, among other places, the real estate records of the county in which the Property is located and the following information is included: (a) the Mortgagor shall be deemed to be the Debtor with the address set forth for the Mortgagor on the first page of this Mortgage which the Mortgagor certifies is accurate; (b) the Mortgagee shall be deemed to be the "Secured Party" with the address set forth for the Mortgagee on the first page of this Mortgage and shall have all the rights of a secured party under the UCC; (c) this Mortgage covers goods which are or are to become fixtures; (d) the name of the record owner of the Property is the Debtor; (e) the organizational identification number of the Debtor in the State of Alabama is (unknown); (f) the Debtor is a limited liability company organized under the laws of the State of Alabama; and (g) the legal name of the Debtor is Narrows Properties, LLC. The Debtor hereby authorizes the Mortgagee to file any financing statements and terminations thereof or amendments or modifications thereto without the signature of the Debtor, where permitted by law.

Article II

Mortgagor's Covenants and Representations.

For the purpose of further securing the payment of the Debt, the Mortgagor agrees to:

2.01 Debt. Pay the Debt at the time and in the manner provided in the Note, this Mortgage and the other Loan Documents.

2.02 Taxes. Pay all taxes, assessments, and other liens taking priority over this mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may pay the same;

2.03 Insurance. Keep the Property continuously insured, in such manner and with such companies as may be satisfactory to the Mortgagee, against loss by fire, vandalism, malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable to the Mortgagee, as its interest may appear; If any of the improvements located on the Property or if any part thereof is located within an area that has been, or should such area at any time be, designated or identified as an area having special flood hazards by any governmental authority having jurisdiction, obtain such flood insurance as is required by such governmental authority in amounts required by Mortgagee and by any applicable laws or regulations, with loss, if any, payable to the Mortgagee, as its interest may appear. Such insurance shall be in an amount sufficient to cover the Debt and the indebtedness secured by any prior mortgage. The original insurance policies and all replacements therefore, shall be delivered to and held by the Mortgagee until the Debt is paid in full. Each of

the insurance policies must provide that it may not be canceled without the insurer giving at least ten days prior written notice of such cancellation to the Mortgagee at the following address: COMPASS BANK, 15 South 20th Street, Birmingham, Alabama 35233.

2.04 Property Maintenance. Maintain the Property, and all improvements located thereon, in a good and safe condition and repair, and not to commit or permit any waste thereon.

2.05 Compliance with Loan Documents. Comply with all other terms, conditions and covenants of this Mortgage, the Note and the other Loan Documents.

Mortgagor further represents:

2.06 Borrower's Status. The Mortgagor is a duly organized and validly existing corporation under the laws of the State of Alabama, that the undersigned are authorized to execute this Mortgage for the Mortgagor and that all appropriate resolutions and actions have been taken or performed by the Mortgagor for the proper execution of this Mortgage.

ARTICLE III Future Advances.

Lender may advance or loan additional sums (herein "Future Advances") to the Mortgagor. This Mortgage shall secure not only existing indebtedness, but also such Future Advances, with interest thereon, whether such advances are obligatory or to be made at the option of the holder of the Note, or otherwise, to the same extent as if such Future Advances were made on the date of execution of this Mortgage.

Article IV Environmental Warranty.

Mortgagor covenants and represents that (a) the Property is not and never has been in violation of any applicable Environmental Law; (b) the Property is free of Hazardous Substances; and (c) there are no pending investigations, claims or threats of claims with respect to the Property by any governmental authority or other person relating to any Environmental Law.

As used in this mortgage, "Hazardous Substances" shall mean and include all pollutants, contaminants, toxic or hazardous waste, and other substances (including without limitation asbestos and urea formaldehyde foam insulation), the removal of which is required or the manufacture, use, maintenance or handling of which is regulated, restricted, prohibited or penalized by any Environmental Law, or even though not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the occupants of the property on which it is located or the occupants of the property on which it is located or the occupants of the property adjacent thereto. "Environmental Law" shall mean and include any federal, state or local law or ordinance relating to pollution or protection of the environment, including any

relating to Hazardous Substances, and any and all regulations, codes, plans, orders, decrees, judgments, injunctions, notices and demand letters issued, entered, promulgated or approved there under.

The Mortgagor shall: (a) not permit any Hazardous Substances to be brought onto the Property; (b) if any Hazardous Substances are brought or found on the Property, immediately remove and properly dispose thereof and diligently undertake all cleanup procedures required under applicable Environmental Laws; (c) promptly give notice to the Mortgagee in writing if the Mortgagor should receive notice of any investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving the Mortgagor or the Property; and (d) permit the Mortgagee from time to time to inspect the Property and observe the Mortgagor's operations thereon and to perform tests (including soil and ground water tests) for Hazardous Substances on the Property. (Nothing contained in this section shall be deemed to impose any obligations on the Mortgagee with respect to Hazardous Substances or otherwise.)

The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against all claims, causes of action, judgments and other loss, cost and expense that are related to or arise from any clean-up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Property, or any part thereof, that may be required by any Environmental Law or governmental authority.

Article V **General Provisions**

5.01 Due on Sale. Notwithstanding any other provision of this Mortgage or the Note or notes evidencing the Debt, if the Property, or any part thereof, or any interest therein, is sold, conveyed or transferred, without the Mortgagee's prior written consent, the Mortgagee may, at its option, declare the Debt immediately due and payable; and the Mortgagee may, in its sole discretion, require the payment of a higher rate of interest on the unpaid principal portion of the Debt as a condition to not exercising such option to accelerate the Debt. The Mortgagor agrees that the Mortgagee may, if the Mortgagee desires, accelerate the Debt or escalate the rate of interest payable on the Debt for the purpose of (1) obtaining a higher rate of interest on the Debt or (2) protecting the security of this mortgage.

5.02 No Waiver. The Mortgagor agrees that no delay or failure of the Mortgagee to exercise any option to declare the Debt due and payable shall be deemed a waiver of the Mortgagee's right to exercise such option, either as to any past or present default, and it is agreed that no terms or conditions contained in this mortgage may be waived, altered or changed except by a written instrument signed by the Mortgagor and signed on behalf of the Mortgagee by one of its officers.

Article VI **Default and Remedies.**

6.01 Events of Default. The occurrence of any of the following shall constitute and Event of Default: (a) If Borrower shall fail to pay to Lender when due the principal or interest on the Loan or any other sum due under the Note, Mortgage or Loan Documents, or if the Debt, or any part thereof, remains unpaid at maturity; or (b) if in the judgment of Lender the proceeds of the Loan or any part thereof are being, or shall at any time have been, diverted to a purpose other than the payment and discharge of expenses related to the Work (as defined in the loan agreement) which have been approved by Lender; or (c) if Borrower fails to comply with, or perform, any of the covenants, conditions, agreements, or provisions of this Mortgage or of the Note or Loan Agreement, or the other Loan Documents, or if an Event of Default or a default occurs under any of such documents; or (d) if any statement, representation or warranty contained herein or in any certificate or other instrument delivered to the Lender under this agreement shall be untrue in any material respect at the time it was made; or (e) if any lien, statement of lien or suit to enforce a lien is filed against any of the Property or collateral subject to this Loan which is not bonded or discharged by Borrower within ten days; or (f) if Borrower at any time prior to the completion of the Work abandons the Work, or ceases work thereon for a period of more than ten consecutive calendar days, or fails to prosecute diligently the work on the Work; or (g) if Borrower or any co-maker, endorser, surety or guarantor of the Note (collectively, the "Obligor") should die, or if any of the Obligor should fail to pay their debts generally as they come due, or if a receiver is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy is filed by or against any Obligor, or if any Obligor applies for the benefits of, or takes advantage of, any law for relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors, or if any Obligor is adjudicated bankrupt or insolvent; or (h) if Lender at any time in good faith deems itself insecure for any reason with respect to the Loan or the collateral securing the Loan; or (i) if Borrower shall without written consent of Lender, voluntarily or by operation of law, sell, transfer, or convey all, or any part, of Borrower's interest in the Property or in any of the collateral located thereon, or used or intended to be used in connection therewith or if there is a change in the ownership of Borrower; or (j) if the mortgaged property is encumbered without written consent of Lender; or (k) if the Mortgage and the UCC-1 Financing Statement, and addendum thereto, shall not provide Lender with first priority liens on the Property and the other collateral, subject only to any exceptions stated herein or in the Mortgage; (l) if any Guarantor shall fail to comply with any of the covenants, conditions and provisions contained in this Agreement or any Guaranty Agreement or if a Guarantor revokes, terminates, or discontinues a Guaranty or attempts to revoke, terminate or discontinue a Guaranty; or (m) if a suit, action or claim is made or commenced against Borrower or any Guarantor that in the opinion of Lender may substantially impair the ability of Borrower or any Guarantor to perform each and every one of its obligations under and by virtue of the Loan Documents.

6.02 Remedies of Lender upon Default.

A. Upon the happening of any Event of Default hereunder or under any of the Loan Documents, Lender may at its option, without notice or demand to anyone, in addition to and not in lieu of the remedies provided under applicable law, take any of all of the following actions: (a)

refuse to advance any additional funds; (b) accelerate the maturity of the total advances made and declare the same immediately due and payable; (c) declare the Loan in default and subject to foreclosure and foreclose the Mortgage by suit in equity, or by other judicial recourse, or under power of sale. Pursuant to the power of sale, Lender, its successors and assigns, agents or attorneys, are hereby authorized and empowered to sell the Property and all Improvements under the power of sale at auction for cash in compliance with the requirements of applicable law, including Ala. Code Sections 35-10-11 through 35-10-16, at the Shelby County Courthouse door in the City of Columbiana, Alabama, after first giving notice thereof once a week for three (3) successive weeks by publication in any newspaper then published in said county, describing the time, place and terms of such sale, together with a description of the Property to be sold, and upon the sale execute proper conveyance to the purchaser. The auctioneer or person making the sale is hereby empowered and directed to make and execute a deed to the purchaser in the name of the Mortgagor. Upon any foreclosure sale, Lender may bid for and purchase the Property the same as if it were a stranger to the Mortgage, Note and this Loan Agreement and shall be entitled to apply all or any part of the Debt as a credit to the purchase price. Lender, at its option, is authorized to foreclose subject to the rights of any tenants of the Property, and the failure to make any such tenants parties to such foreclosure proceedings and to foreclose their rights will not be, nor will be asserted to be by Mortgagor, a defense to any proceedings instituted by Lender to collect the debt secured by the Mortgage and the Loan Documents; (d) exercise any and all rights and remedies granted to a secured party upon default under Alabama's version of the Uniform Commercial Code, including without limitation, the right to 1) take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and 2) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender; (e) recover judgment on the Note either before, during or after any proceedings for the enforcement of the Mortgage or the other Loan Documents; and (f) take any other action to enforce Lender's rights under the Loan Documents for the satisfaction and payment of the Loan, whether partial satisfaction or in full and to protect Lender's security interest.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, the Mortgage shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all of the Debt shall have been paid in full

B. **Completion.** Borrower agrees, upon request by the Lender, to vacate the Property and Improvements and permit Lender: (a) enter into possession of the Property, perform any work and labor and purchase any materials and fixtures which it deems necessary or desirable to complete the Work substantially in accordance with the plans and specifications or to protect the Work from damage or destruction, and employ watchmen to protect the Work from injury; all sums so advanced or paid by the lender shall be deemed paid to Borrower and shall be secured by the Mortgage (For this purpose Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact, with full power of substitution in premises, to complete the Work in the name of Borrower, and hereby empowers Lender to use any funds of Borrower,

including any funds which remain unadvanced under the Loan, for the purpose of completing the Project, and to perform all acts which in the judgment of lender are desirable or advisable to complete the Work, including, without limitation, the right to make additions, changes or corrections in the plans and specifications; to employ contractors, sub-contractors, agents, architects and inspectors to pay any amounts required by this Agreement, the Note or the Mortgage to have been paid by Borrower, which Borrower has failed to pay; to pay, settle and compromise all bills and claims incurred in completing the Work and all existing bills and claims which may be liens against the Property, Improvements, or any of the collateral securing this loan; to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents entered into by Borrower in connection with the construction of the Project; and to do any other act which Borrower could do in its own behalf in order to enable Lender to complete the Work. This power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked); and (b) exercise any other remedies or rights which Lender may have hereunder, under any other instruments executed in connection with this Loan or under the law.

C. **Set Off.** Lender is hereby given a continuing lien as additional security for the Note upon any and all deposit balances (general or special) and credits of Borrower and each Guarantor with, any and all claims of Borrower and each Guarantor against Lender at any time existing, and upon the occurrence of any Event of Default hereunder, the Lender may apply or set off the same against the indebtedness due under or secured by the Mortgage and the other Loan Documents.

D. **Appointment of Receiver.** After default on the part of the Mortgagor, the Mortgagee, upon bill filed or other proper legal proceeding being commenced for the foreclosure of this mortgage, shall be entitled to the appointment by any competent court, without notice to any party, of a receiver for the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

E. **Rights of a Secured Party.** Mortgagor shall have all the rights and remedies as set forth in Alabama's version of the Uniform Commercial Code, and upon the event of a default may immediately and without demand, exercise any and all of the rights of a secured party.

6.03 **Application of Proceeds of Sale.** The Mortgagee shall apply the proceeds of said sale as follows; first, to the expense of advertising, selling and conveying the Property and foreclosing this mortgage, including appraisal fees, title search fees, foreclosure notice costs and reasonable attorney's fees (provided, however, that if this mortgage is subject to § 5-19-10. Code of Alabama 1975, such attorney's fees shall not exceed 15% of the unpaid Debt after default and referral to an attorney not a salaried employee of the Mortgagee and no such attorney's fees shall be collected if the original principal amount or the original amount financed does not exceed \$300); second, to the payment of any amounts that have been spent, or that may then be necessary to spend, in paying insurance premiums, Liens, or other encumbrances, with interest thereon; third, to the payment in full of the balance of the Debt (which includes principal, accrued interest and all other sums secured hereby), whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of the sale; and

fourth, the balance, if any, to be paid to the party or parties appearing of record to be the owner of the Property at the time of the sale, after deducting the cost of ascertaining who is such owner.

6.04 Waiver of Marshaling and Certain Rights. To the extent that Mortgagor may lawfully do so, Mortgagor hereby expressly waives any right pertaining to the marshaling of assets or marshaling of liens, the equity of redemption, any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, or other matter which might defeat, reduce or affect the right of Mortgagee to sell the Property for the collection of the secured obligations under the Loan, or the right of Mortgagee to the payment of the secured obligations hereby out of the sale of the mortgaged Property, or the proceeds of the rents and leases, in preference to every other person and claimant.

6.05. Expenses. Borrower shall pay or reimburse Lender for all reasonable attorney's fees, costs and expenses incurred by Lender in connection with the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the other Loan Documents, or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as a party plaintiff or defendant, affecting this Mortgage, the Note, or any of the other Loan Documents, Borrower or the Mortgaged Property, any environmental condition of or affecting the Mortgaged Property, or any action to protect the security hereof; any such amounts paid or incurred by the Lender shall be added to the indebtedness secured by this Mortgage and shall be further secured hereby.

6.06. Cross-Default. This Mortgage is and shall be cross-defaulted with all other Loan Documents so that a default under this Mortgage shall constitute a default under any other Loan Document and a default under any other Loan Document shall constitute a default under this Mortgage.

Article VII **General Conditions.**

7.01 Heirs, Successors and Assigns Included in Parties. Wherever in this Mortgage, one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by and on behalf of the Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

7.02. Assignment. Borrower may not assign this Mortgage or any of its rights or obligations hereunder without the prior written consent of Lender.

7.03. Guaranty of Performance. Without in any way limiting the generality of the Guaranty Agreement and other documents executed by each Guarantor, each Guarantor

expressly guarantees the full, complete, and timely performance of all obligations of Borrower in this Mortgage.

7.04. Participation. Notwithstanding any other provision of this Agreement, the Borrower and each Guarantor each understands and agrees that the Lender may at any time enter into participation agreements with one or more participating banks whereby the Lender will allocate to such participants certain percentages of the Loan, the Loan Documents, and/or the Collateral. The Borrower and each Guarantor acknowledges that, for the convenience of all parties, the Mortgage is being entered into with the Lender only and that its obligations under this Mortgage are undertaken for the benefit of, and as an inducement to, any such participating bank as well as the Lender, and the Borrower and each Guarantor hereby grants to each such participating bank, to the extent of its participation in the Loan, the right to set off deposit accounts maintained by the Borrower and each Guarantor with such bank. Borrower and each Guarantor each authorizes Lender to furnish each participant with all information furnished to Lender.

7.05. Delay; No Waiver. No delay or failure of Lender to exercise any option or right given or reserved herein or in any other Loan Document shall constitute a waiver of such option or right or estop Lender thereafter to exercise the same or any other option or right at any time, and Lender's payment or contracting to pay anything Borrower has herein agreed to pay shall not constitute a waiver of the default of Borrower in failing to make any such payment. A waiver by Lender of any option or right given or reserved herein or in any other Loan Document on any one occasion shall not be deemed a waiver of said option or right on any future occasion. Lender may in its discretion extend the time of payment of the principal evidenced and secured by the Note and other Loan Documents and any extension so granted shall be deemed to be made in pursuance of this Agreement and not in modification thereof.

7.06. Modifications; Waiver. Neither this Mortgage nor any provision hereof may be changed, modified, amended, waived, discharged, abandoned or terminated except by an instrument in writing signed by the party against whom enforcement of the change, modification, amendment, waiver, discharge, abandonment or termination is sought. In the event that Lender shall waive in writing any provision or requirement hereunder, such waiver shall be effective only for the specific purposes, circumstances and duration stated in said waiver.

7.07. Remedies Cumulative. No right or remedy conferred upon Lender in this Mortgage is intended to be exclusive of any other right or remedy contained in the Note, the Loan Agreement, or any other Loan Document, and every such right or remedy shall be cumulative and in addition to every other right or remedy contained herein or therein or now or hereafter available to the Lender at law, in equity, by statute or otherwise.

7.08. Indemnification. Each of Borrower and each Guarantor shall and does hereby indemnify and hold harmless Lender from and against any and all claims, charges, losses, expenses and costs, including without limitation reasonable attorneys fees, resulting from any claims, actions or proceedings in connection with the execution, delivery and performance of this Mortgage, the Note or the other Loan Documents. The indemnification provided in this section

shall survive the payment in full of the Loan. In the event that Lender shall assign or transfer the Note and its rights hereunder, this indemnification shall continue in favor the Lender as well as any successor or assign of the Lender, and any such provision may be enforced severally by the original Lender named herein or any such successor or assign or, at their option, by all of such parties acting jointly.

7.09. **Governing Law; Place of Execution.** This Mortgage, the Note, and the other Loan Documents, and the rights and obligations of the parties hereunder and thereunder shall be governed by and be construed in accordance with the laws of the State of Alabama, unless otherwise provided therein or except where required to be governed by the laws of another jurisdiction to be enforceable. Borrower and each Guarantor acknowledge that the negotiation of the provisions of this Mortgage, the Note and the other Loan Documents took place in the State of Alabama, that all such documents are being executed in the State of Alabama, or if executed elsewhere, will become effective only upon Lender's receipt and acceptance thereof in said State; provided, however, that Lender shall have no obligation to give, nor shall Borrower, any Guarantor or any other person or entity be entitled to receive, any notice of such receipt and acceptance in order for said Loan Documents to become effective and valid and binding obligations of the Borrower and each Guarantor. Borrower and each Guarantor acknowledge further that all of such documents were or will be executed and delivered to Lender to induce Lender to make the Loan. Borrower and each Guarantor acknowledge further that the negotiation, execution, and delivery of the Loan Documents constitutes the transaction of business within the State of Alabama and that any cause of action arising under any of said Loan Documents will be a cause of action arising from such transaction of business. Borrower and each Guarantor each hereby submits itself to jurisdiction in the State of Alabama for any action or cause of action arising out of or in connection with the Loan or the Loan Documents, agrees that venue for any such action shall be in Shelby County, Alabama, and waives any and all rights under the laws of any state to object to jurisdiction or venue within Shelby County, Alabama. Notwithstanding the foregoing, nothing contained in this section shall prevent Lender from bringing any action or exercising any rights against Mortgagor, any Guarantor, any security for the Loan, or any of Mortgagor's properties in any other county, state or jurisdiction. Initiating such action or proceeding or taking any such action in any other state shall in no event constitute a wavier by Lender of any of the foregoing.

7.10. **Headings; Under Seal; Entire Agreement.** Article and section headings in this Mortgage are included herein for convenience of reference only and shall not constitute a part of this Mortgage or be used to construe any provision hereof or for any other purpose. This Mortgage is intended to be under the seal of all parties hereto and to have the effect of a sealed instrument in accordance with the law. This Mortgage, together with the other Loan Documents, embodies the entire agreement and understanding between the parties, supersedes all prior agreements and understandings related to the subject matter hereof and thereof; and may not be amended except by written agreement between Mortgagor and Lender.

7.11. **Invalid Provisions; No Conflict.** If any of the provisions of this Mortgage, the Note, or the other Loan Documents or the application thereof to any person, entity or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of said documents

and instruments, or the application of such provision or provisions to persons, entities or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Mortgage shall be valid and enforceable to the fullest extent permitted by law. No provision of this Mortgage, the Note, or the other Loan Documents shall be deemed in conflict with any other provision hereof or thereof; and the Mortgagor and Guarantor acknowledge that no such provision or any interpretation thereof shall be deemed to diminish the rights of the Lender, any assignee, or the holder of the Note under the terms and conditions or any other provisions hereof or thereof. Lender may at its option exhaust its remedies hereunder, under the Note, and under the other Loan Documents, either concurrently or-independently, and in such order as it may determine.

7.12. **Number and Gender.** Plural or singular words used herein to designate Borrower shall be construed to refer to the person or persons, firm, partnership, or corporation, whether one or more than one, obtaining the Loan from Lender; all covenants and agreements made herein by Mortgagor shall bind the heirs, personal representative, successors and assigns of all those undersigned designated as borrower; and every option, right and privilege herein reserved or secured to Lender shall inure to the benefit of Lender's successors and assigns.

Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall include the other.

7.13. **Notices.** Any notice, request, demand/or other communication required or permitted under this Mortgage or the other Loan Documents (unless otherwise expressly provided therein) shall be given in writing and shall be deemed received and effective (a) on the date received (to the person or department specified in the address), (b) one (1) business day following the date sent, by FedEx or other recognized overnight courier, or (c) three (3) days following the date sent by U.S. certified mail, fees prepaid, return receipt requested, and in each case addressed and sent to the other party at the address of such party set forth below or to such different address as either Mortgagor shall have designated by written notice to the other sent in accordance herewith (which will then be the notice address for purposes of this Mortgage).

If to the Borrower: **Narrows Properties, LLC**
 151 Narrow Parkway
 Suite 110
 Birmingham, Ala. 35242

If to the Guarantor: **Same as above**

If to the Lender: **Compass Bank**
 15 South 20th Street
 Birmingham, Ala. 35233

7.14 Capitalized Terms. Any capitalized term not defined herein shall have the meaning assigned to said term as described in the Loan Agreement.

7.15. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND THE GUARANTOR HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS MORTGAGE, THE NOTE, THE LOAN AGREEMENT, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THE NOTE OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT, THE NOTE, THE MORTGAGE, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF ANY PARTYS RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. MORTGAGOR AND GUARANTOR AGREE THAT LENDER MAY FILE A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF MORTGAGOR AND GUARANTOR TO IRREVOCABLY WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[REMAINDER OF PAGE LEFT BLANK; SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned Mortgagor has (have) executed this instrument on the date first written above.

Mortgagor: **Narrows Properties LLC, an
Alabama limited liability company**

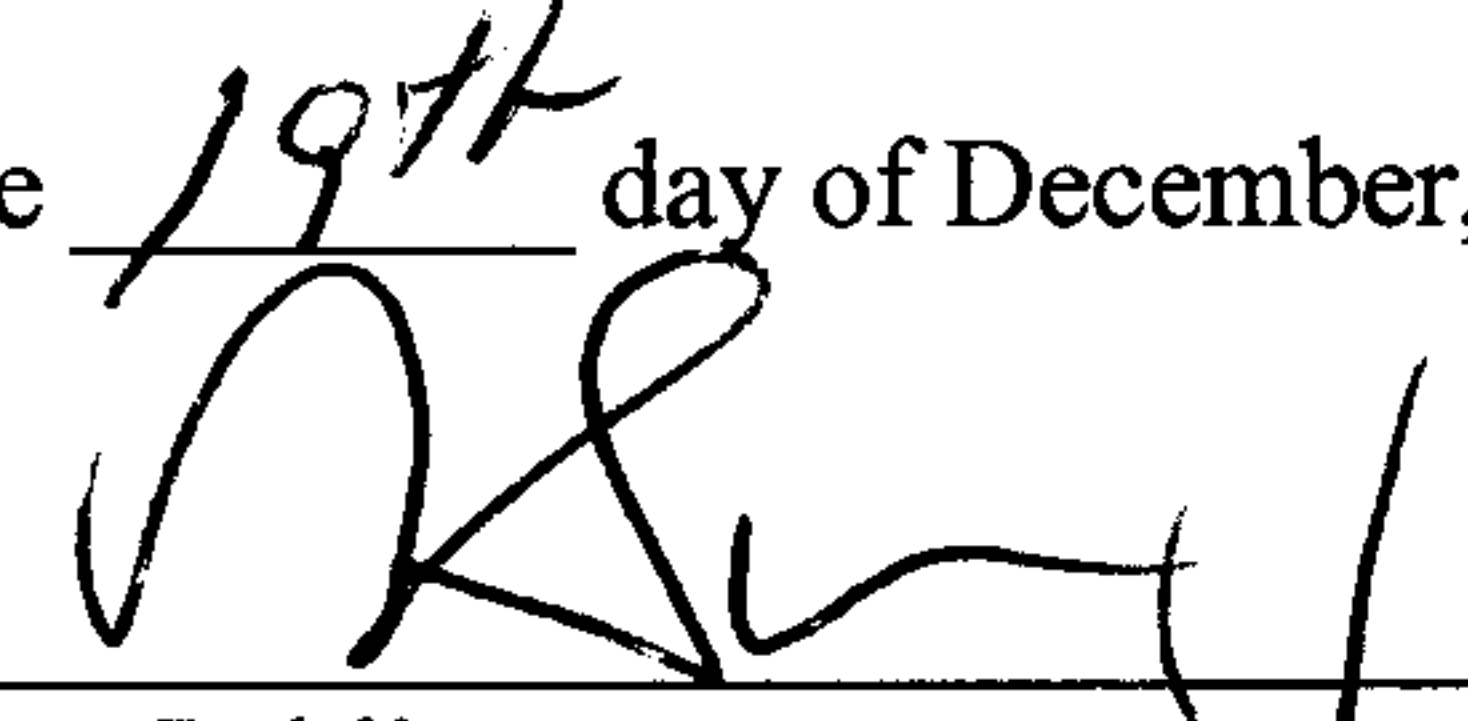

By: Jerry B. Hankins
Its: Member


By: E. Payson Daugherty
Its: Member

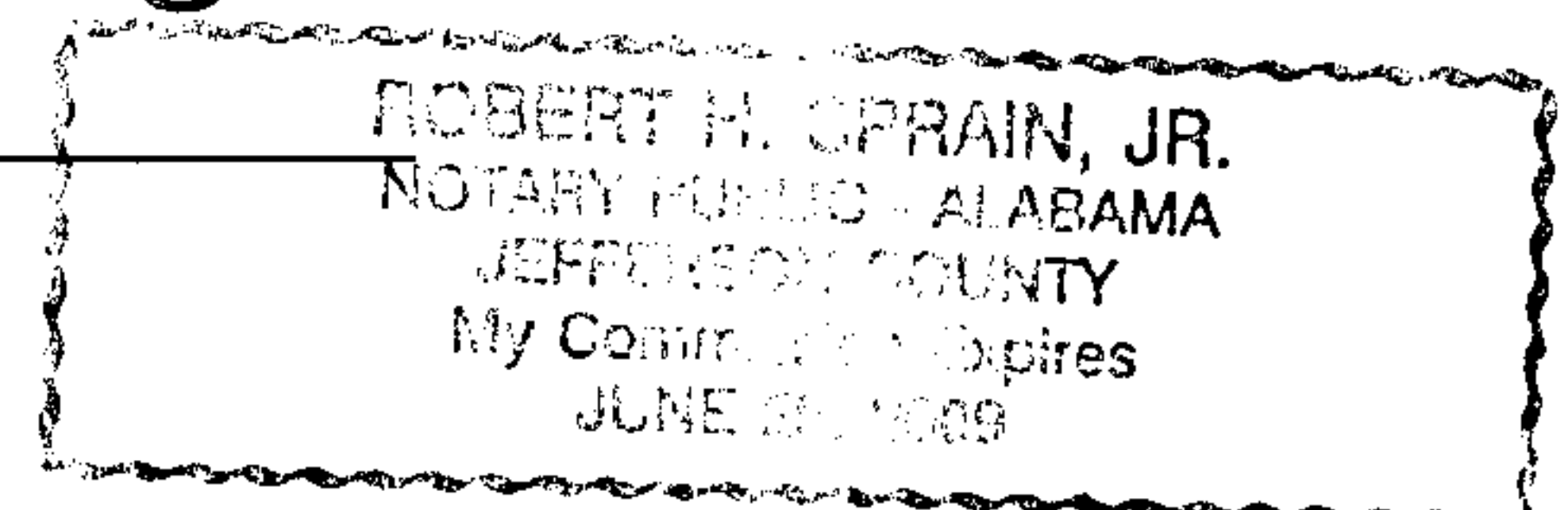
State of Alabama)
County of Jefferson)

I, Robert H. Sprain Jr., a Notary Public in and for said County, in said State, hereby certify that Jerry Hankins whose name as member of Narrows Properties LLC, an Alabama limited liability company, is signed to the foregoing mortgage, and who is known to me acknowledged before me on this day that, being informed of the contents of the mortgage, he, as such member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this the 19th day of December, 2008.


Notary Public
Commission Expires: _____

State of Alabama)
County of Jefferson)



I, Robert H. Sprain Jr., a Notary Public in and for said County, in said State, hereby certify that E. Payson Daugherty whose name as member of Narrows Properties LLC, is signed to the foregoing mortgage, and who is known to me acknowledged before me on this day that, being informed of the contents of the mortgage, he, as such member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this the 19th day of December, 2008.


Notary Public
Commission Expires: _____

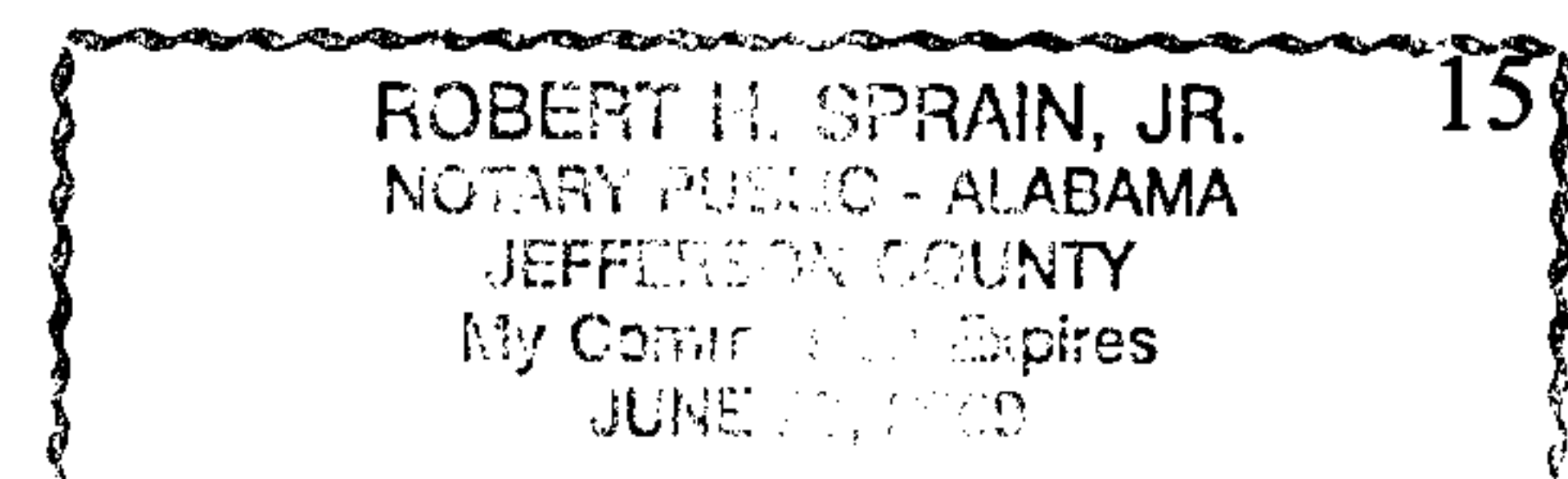



Exhibit A


20081223000473540 16/16 \$2540.00
Shelby Cnty Judge of Probate, AL
12/23/2008 08:15:07AM FILED/CERT

Legal Description

Lot 2D, according to the Amended Plat, Resurvey of Lot 2, The Narrows Commercial Subdivision, Sector 2, as recorded in Map Book 28, page 145 in the Probate Office of Shelby County, Alabama.

Together with rights obtained, which constitutes an interest in real estates under the Reciprocal Easement Agreement by Equine Partners, LLC dated February 23, 2001 and recorded in Instrument 2001-06368.

Together with non-exclusive easement to use the Common Areas as more particularly described in The Narrows Commercial Declaration of Covenants, Conditions and Restrictions recorded as Instrument 2000-17137 and First Amendment thereto recorded as Instrument 2000-41911 in the Probate Office of Shelby County, Alabama.