

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

ARCS Commercial Mortgage Co., L.P  
26901 Agoura Road, Suite 200  
Calabasas Hills, CA 91301

ARCS Loan # 5-400218

### **ASSUMPTION AND RELEASE AGREEMENT**

This Assumption and Release Agreement ("Agreement") is made effective as of June 28, 2004 by and among DOUBLE LAKE VENTURES, LLC, a Georgia limited liability company ("Transferor"), ROTTERDAM VENTURES, INC., a New York corporation (the "Original Key Principal"), TL BIRMINGHAM, LLC, an Alabama limited liability company ("Transferee"), Charlie O. Sealy, Jr. and Gina S. Miers (collectively, the "New Key Principals"), THE BANK OF NEW YORK TRUST COMPANY, N.A., as Trustee (the "Trustee"), and FANNIE MAE, a corporation organized and existing under the laws of the United States ("Fannie Mae").

### **RECITALS:**

A. Fannie Mae is the holder of that certain Multifamily Note dated as of March 1, 2000 (the "Note"), in the original principal amount of \$7,080,000 made by Transferor to the ARCS Commercial Mortgage Co., L.P. ("Original Lender") and assigned and endorsed by Original Lender to Alabama Housing Finance Authority ("Issuer") which in turn assigned and endorsed the Note to Fannie Mae and The Bank of New York Trust Company of Florida, N.A., as Trustee, as their interests may appear, which Note evidences a loan ("Loan") made by Original Lender to Transferor. To secure the repayment of the Note, Transferor also executed and delivered a Multifamily Mortgage, Assignment of Rents and Security Agreement (the "Security Instrument"), dated as of March 1, 2000, recorded in the Probate Office of Shelby County, Alabama, on March 8, 2000, in Instrument 2000/07424 that grants a lien on the property described in Exhibit A to this Agreement (the "Property"). The Transferor is liable for the payment and performance of all of Transferor's obligations under the Note, the Security Instrument and all other documents executed in connection with the Loan, as listed on Exhibit B to this Agreement (collectively, the "Loan Documents"). Each of the Loan Documents has been duly assigned

or endorsed to Fannie Mae. The current servicer of the Loan is ARCS Commercial Mortgage Co., L.P., a California limited partnership ("Servicer").

B. The Loan has been made in connection with the issuance by the Issuer of its \$6,000,000 Multifamily Housing Refunding Revenue Bonds (Turtle Lake Project) 2000 Series A, and its 1,080,000 Taxable Multi-Family Housing Revenue Bonds (Turtle Lake Project) 2000 Series B (collectively, the "Bonds") which are credit-enhanced by Fannie Mae. Fannie Mae, Original Lender, Transferor, the Issuer and the Trustee have executed a certain Assignment and Intercreditor Agreement dated as of March 1, 2000 (the "Intercreditor Agreement") which details the respective rights and obligations of the parties with respect to the Bonds, the Loan and the credit enhancement for the Bonds.

C. The Original Key Principal is liable for the obligations under the Exceptions to Non-Recourse Guaranty dated as of March 1, 2000 (the "Guaranty").

D. Fannie Mae has been asked to consent to the transfer of the Property to the Transferee and the assumption by the Transferee of the obligations of the Transferor under the Loan Documents.

D. Fannie Mae has been asked to consent to the release of the Original Key Principal from its obligations under the Guaranty and accept the assumption by the New Key Principals of the Original Key Principal's obligations under the Guaranty.

F. Fannie Mae has agreed to consent to the transfer of the Property by Transferor to Transferee subject to the terms and conditions stated below.

In consideration of the foregoing and the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fannie Mae, Trustee, Transferor, Original Key Principal, Transferee and New Key Principals agree as follows:

1. Assumption of Obligations. The Transferee agrees to assume all of the payment and performance obligations of the Transferor arising from and after the date hereof set forth in the Note, the Security Instrument and the other Loan Documents in accordance with their respective terms and conditions, as the same may be modified by this Agreement, including without limitation, payment of all sums due under the Note. The Transferee further agrees to abide by and be bound by all of the terms of the Loan Documents, all as though each of the Loan Documents had been made, executed and delivered by the Transferee; provided, however, the Transferee is assuming only liabilities and obligations arising from and after the date hereof.
2. Transferor's Representations and Warranties. The Transferor represents and warrants to Fannie Mae as of the date of this Agreement that:
  - (a) The Note has an unpaid principal balance of \$6,780,000, and prior to default bears interest at a rate per annum that varies from week to week;



- (b) The Note requires that monthly payments of principal and interest be made on or before the day that is 2 business days prior to the Interest Payment Date (as defined in the Trust Indenture relating to the Bonds) of each month, continuing to and including February 15, 2030, when all sums due under the Loan Documents will be immediately due and payable in full;
- (c) The Security Instrument is a valid first lien on the Property for the full unpaid principal amount of the Loan and all other amounts as stated in the Security Instrument;
- (d) There are no defenses, offsets or counterclaims to the Note, the Security Instrument or the other Loan Documents;
- (e) There are no defaults by the Transferor under the provisions of the Note, the Security Instrument or the other Loan Documents;
- (f) All provisions of the Note, the Security Instrument and other Loan Documents are in full force and effect;
- (g) There are no subordinate liens (other than any described in the Intercreditor Agreement) of any kind covering or relating to the Property, nor are there any mechanics' liens or liens for unpaid taxes or assessments encumbering the Property, nor has notice of a lien or notice of intent to file a lien been received; and

The Transferor understands and intends that Fannie Mae will rely on the representations and warranties contained herein.

3. Transferee's and the New Key Principals' Representations and Warranties. The Transferee and the New Key Principals represent and warrant to Fannie Mae and the Trustee as of the date of this Agreement that neither Transferee nor any New Key Principal has any knowledge that any of the representations made by Transferor and Original Key Principal in Paragraph 2 above are not true and correct.
4. Consent to Transfer. Fannie Mae and the Trustee hereby consent to the transfer of the Property and to the assumption by the Transferee of all of the obligations of the Transferor under the Loan Documents, subject to the terms and conditions set forth in this Agreement. Fannie Mae's and the Trustee's consent to the transfer of the Property to the Transferee is not intended to be and shall not be construed as a consent to any subsequent transfer which requires Fannie Mae's or the Trustee's consent pursuant to the terms of the Security Instrument.
5. Assumption by New Key Principals of Liability for the Exceptions to Non-Recourse. New Key Principals hereby assume all liability under the provisions of the Guaranty arising from and after the date hereof.
6. Bond Counsel Opinion. Transferee shall obtain from Bond Counsel an opinion, upon which



Servicer and Fannie Mae can rely, to the effect that the transfer of ownership of the Project does not affect the tax exemption on the Bonds.

7. Assignment of Management Agreement. Transferee shall execute, for the benefit of Fannie Mae, an Assignment of Management Agreement with respect to the Management Agreement by and between Transferee and Sealy Management Company, Inc.
8. UCC Financing Statements. Transferee acknowledges that existing UCC Financing Statements benefiting Fannie Mae with respect to the Property will be assigned to Transferee as debtor.
9. Release of Transferor and Original Key Principal. In reliance on the Transferor's and the Transferee's representations and warranties in this Agreement, Fannie Mae releases Transferor and the Original Key Principal from all of their respective obligations under the Loan Documents, provided, however, that the Transferor is not released from any liability pursuant to this Agreement or section 18 (Environmental Hazards) of the Security Instrument for any liability that relates to the period prior to the date hereof, regardless of when such environmental hazard is discovered. If any material element of the representations and warranties made by the Transferor contained herein is false as of the date of this Agreement, then the release set forth in this Paragraph 9 will be cancelled as of the date of this Agreement and the Transferor and Original Key Principal will remain obligated under the Loan Documents as though there had been no such release.
10. Priority/Modification. This Agreement embodies and constitutes the entire understanding among the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument. Except as expressly modified hereby, the Note, Security Instrument and other Loan Documents shall remain in full force and effect and this Agreement shall have no effect on the priority or validity of the liens set forth in the Security Instrument or the Loan Documents, which are incorporated herein by reference. Transferor and the Original Key Principal hereby ratify the agreements made by them to Fannie Mae in connection with the Loan and agree that, except to the extent modified hereby, all of such agreements remain in full force and effect.
11. No Impairment of Lien. Nothing set forth herein shall affect the priority or extent of the lien of any of the Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be or, after the date of this Agreement, become liable, primarily or secondarily, under the Loan Documents.
12. Costs. The Transferee agrees to pay all fees and costs (including attorneys' fees) incurred by Fannie Mae and the Servicer in connection with Fannie Mae's consent to and approval of the



transfer of the Property and a transfer fee of \$67,800.00 in consideration of the consent to that transfer.

13. Financial Information. The Transferee and New Key Principals represent and warrant to Fannie Mae that all financial information and information regarding the management capability of Transferee and New Key Principals provided to the Servicer or Fannie Mae was true and correct as of the date provided to the Servicer or Fannie Mae and remains materially true and correct as of the date of this Agreement.

14. Addresses. Transferee's address for notice hereunder and under the Loan Documents is:

c/o Sealy Management Company, Inc.  
1200 Greensboro Avenue  
Tuscaloosa, Alabama 35401  
Attention: Charlie O. Sealy, Jr.

Transferor's address for notice hereunder and under the Loan Documents is:

c/o Westdale Asset Management  
3300 Commerce  
Dallas, TX 75226

15. Complete Release. Transferee, Transferor, the Original Key Principal and the New Key Principals, jointly and severally as between Transferee and the New Key Principals, unconditionally and irrevocably release and forever discharge the Issuer, Trustee, Original Lender, Fannie Mae, and their respective successors, assigns, agents, directors, officers, employees, and attorneys, and each current or substitute trustee under the Security Instrument (collectively, the "Indemnitees") from all Claims, as defined below, and jointly and severally agree to indemnify Indemnitees, and hold them harmless from any and all claims, losses, causes of action, costs and expenses of every kind or character in connection with the Claims or the transfer of the Property. Notwithstanding the foregoing, Transferor and Original Key Principal shall not be responsible for any Claims arising from the action or inaction of Transferee and New Key Principals on or after the date of this Agreement, and Transferee and New Key Principals shall not be responsible for any Claims arising from the action or inaction of Transferor or the Original Key Principal prior to the date of this Agreement. As used in this Agreement, the term "Claims" shall mean any and all possible claims, demands, actions, costs, expenses and liabilities whatsoever, known or unknown, at law or in equity, originating in whole or in part, on or before the date of this Agreement, which the Transferor or Original Key Principals, or any of their respective partners, members, officers, agents or employees, may now or hereafter have against the Indemnitees, if any, and irrespective of whether any such Claims arise out of contract, tort, violation of laws, or regulations, or otherwise in connection with any of the Loan Documents, including, without limitation, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable thereto and any loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting



from the acts, actions or omissions of Indemnites, including any requirement that the Loan Documents be modified as a condition to the transactions contemplated by this Agreement, any charging, collecting or contracting for prepayment premiums, transfer fees, or assumption fees, any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, violation of any federal or state securities or Blue Sky laws or regulations, conflict of interest, NEGLIGENCE, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Note, but in each case only to the extent permitted by applicable law. Transferor and Transferee agree that Fannie Mae and Original Lender have no fiduciary or similar obligations to Transferor or Transferee and that their relationship is strictly that of creditor and debtor. This release is accepted by Fannie Mae and Original Lender pursuant to this Agreement and shall not be construed as an admission of liability on the part of either. Transferor and Transferee and the Original Key Principal and New Key Principals hereby represent and warrant that they are the current legal and beneficial owners of all Claims, if any, released hereby and have not assigned, pledged or contracted to assign or pledge any such Claim to any other person.

16. Miscellaneous.

- (a) This Agreement shall be construed according to and governed by the laws of the jurisdictions in which the Property is located, without regard to its conflicts of law principles.
- (b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, it will be deemed omitted to that extent and all other provisions of this Agreement will remain in full force and effect.
- (c) No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties hereto.
- (d) The captions contained in this Agreement are for convenience of reference only and in no event define, describe or limit the scope or intent of this Agreement or any of the provisions or terms hereof.
- (e) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.
- (f) This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

(g) THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

TRANSFeree:

TL BIRMINGHAM, LLC,  
an Alabama limited liability company

By: Sealy Management Company Inc.,  
an Alabama corporation

Its: Manager

By: 

Steven R. Kennedy

Its: President

NEW KEY PRINCIPALS:

By: 

Charlie O. Sealy, Jr.

By: 

Gina S. Miers




TRANSFEROR:

DOUBLE LAKE VENTURES, LLC,  
a Georgia limited liability company

By: GGL Ventures, LLC, a Georgia limited liability  
company  
Its: Sole Member

By: Westdale Gardens, Ltd., a Texas limited  
partnership  
Its: Manager

By: Bush Gardens, L.L.C., a Nevada  
limited liability company  
Its: General Partner

By:   
Joseph G. Beard  
Its: Manager

ORIGINAL KEY PRINCIPAL:

Rotterdam Ventures, Inc., a  
New York corporation

By: \_\_\_\_\_  
Dennis M. Trimarchi  
Its: Senior Vice President

TRANSFEROR:

DOUBLE LAKE VENTURES, LLC,  
a Georgia limited liability company

By: GGL Ventures, LLC, a Georgia limited liability  
company  
Its: Sole Member

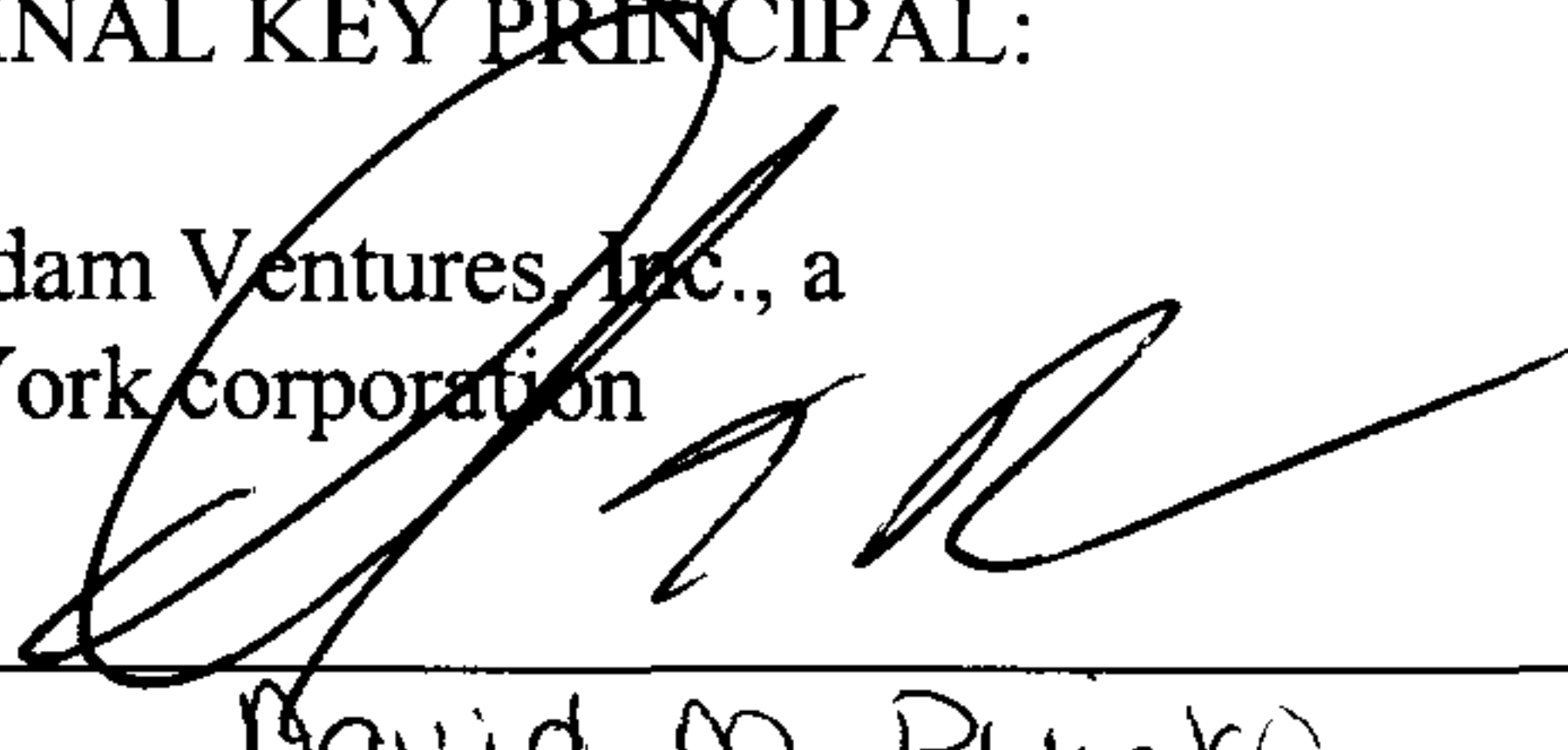
By: Westdale Gardens, Ltd., a Texas limited  
partnership  
Its: Manager

By: Bush Gardens, L.L.C., a Nevada  
limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Joseph G. Beard  
Its: Manager

ORIGINAL KEY PRINCIPAL:

Rotterdam Ventures, Inc., a  
New York corporation

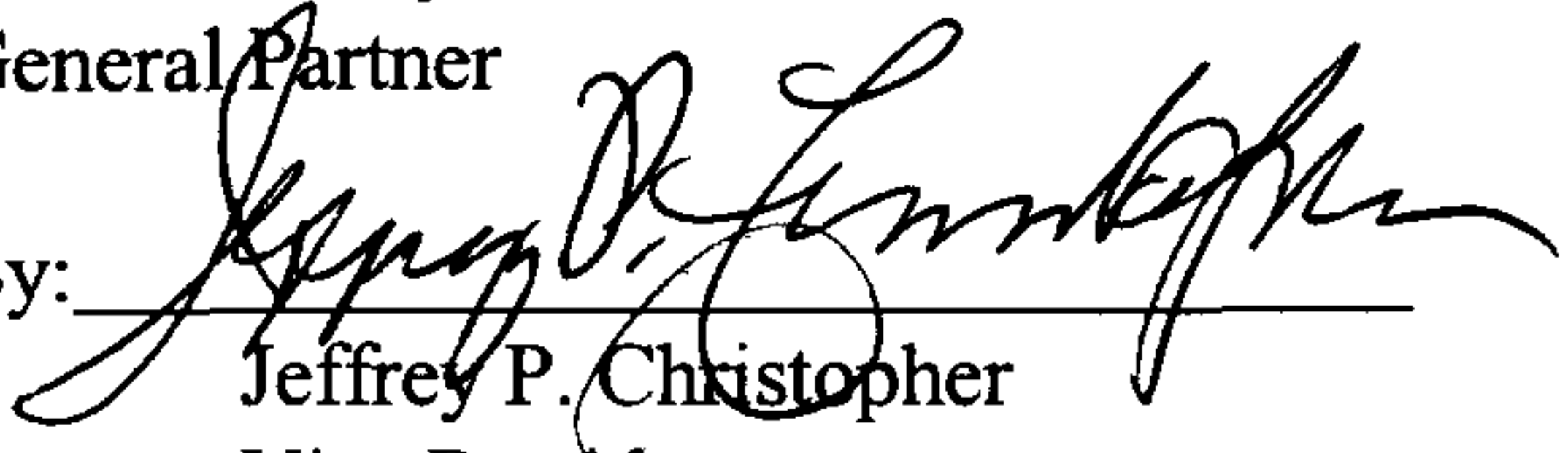
By:   
\_\_\_\_\_  
David M. Buicko  
(name)  
Its: Exec. Vice President  
\_\_\_\_\_  
(title)



FANNIE MAE

By: ARCS Commercial Mortgage Co., L.P.  
Its: Attorney-in-fact

By: APMC Realty, Inc.  
Its: General Partner

By:   
Jeffrey P. Christopher  
Its: Vice President

TRUSTEE:

THE BANK OF NEW YORK TRUST  
COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Its: Vice President and Corporate Trust Officer

FANNIE MAE

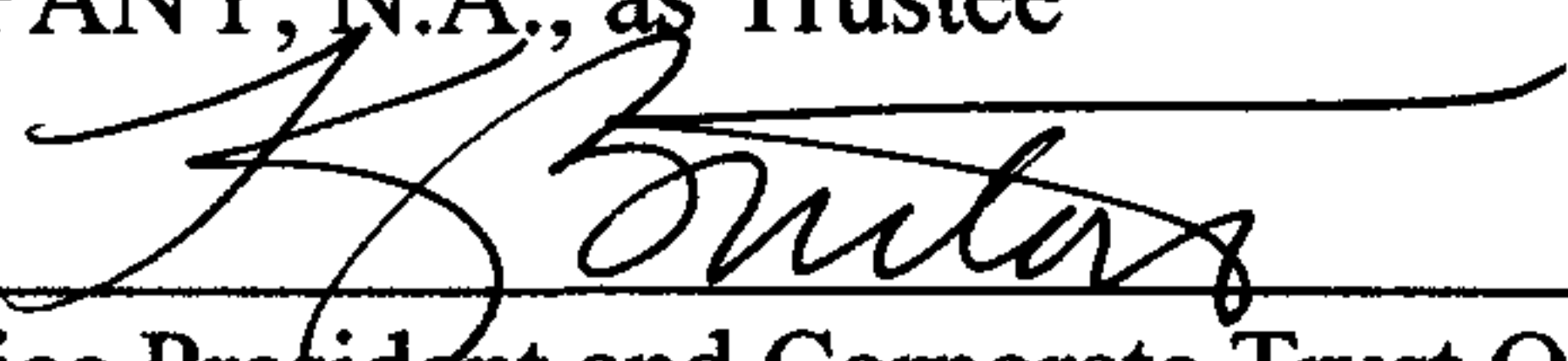
By: ARCS Commercial Mortgage Co., L.P.  
Its: Attorney-in-fact

By: APMC Realty, Inc.  
Its: General Partner

By: \_\_\_\_\_  
Jeffrey P. Christopher  
Its: Vice President

TRUSTEE:

THE BANK OF NEW YORK TRUST  
COMPANY, N.A., as Trustee

By:   
Its: Vice President and Corporate Trust Officer

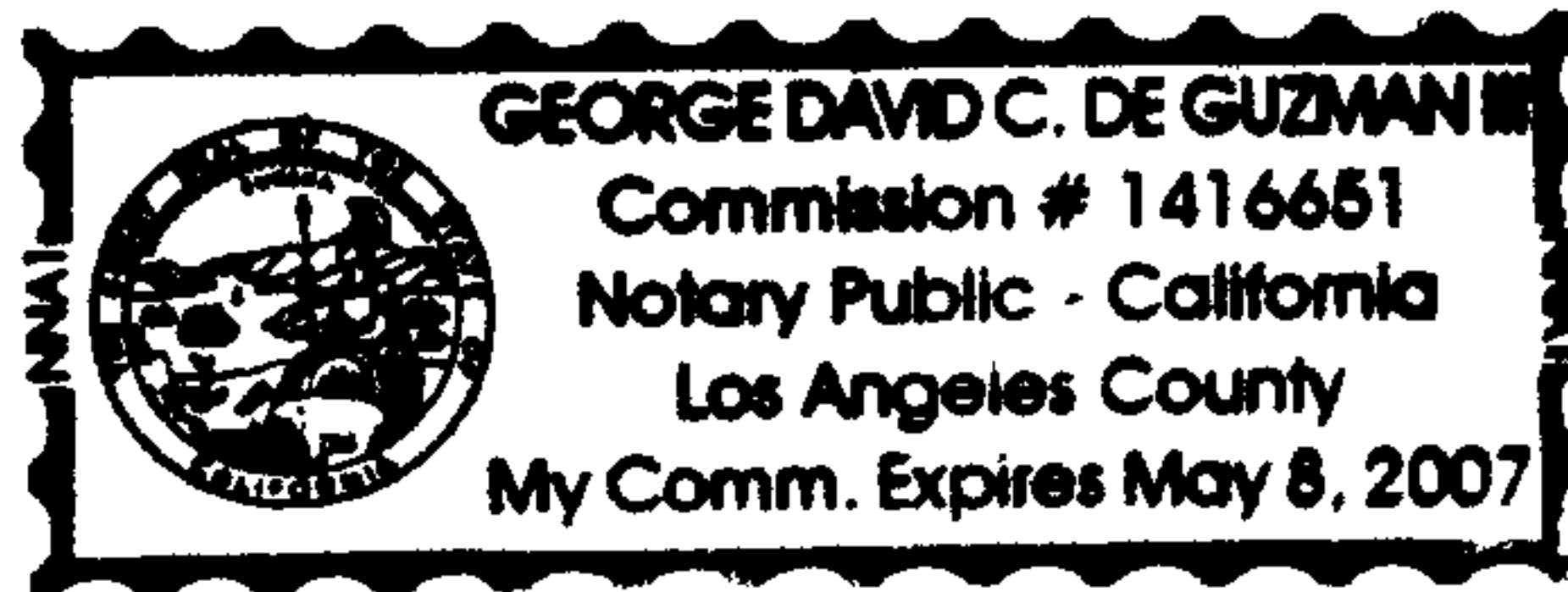


STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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On June 24, 2004, before me, GEORGE DAVID C. DE GUZMAN III, NOTARY PUBLIC, personally appeared Jeffrey P. Christopher personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



George David C. De Guzman III  
Notary Public

[SEAL]

STATE OF ALABAMA     )

COUNTY OF JEFFERSON   )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that K. Burton, whose name as Vice President of THE BANK OF NEW YORK TRUST COMPANY, N.A., a national banking association, 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 such instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said association.

GIVEN under my hand and seal, this 24th day of June, 2004.

Marilyn K. Shrivell  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 9/26/07



STATE OF ALABAMA

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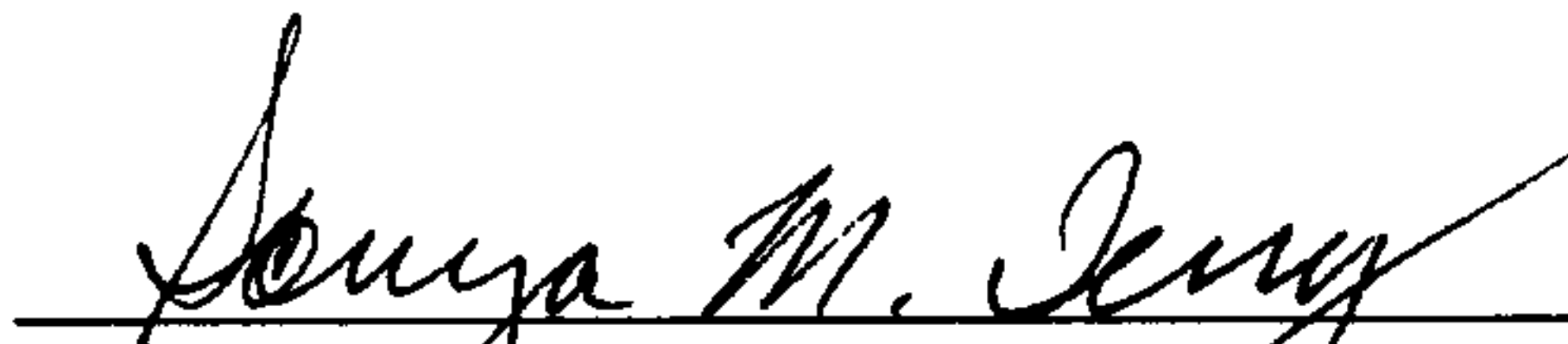
§ ss.

TUSCALOOSA COUNTY

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I, the undersigned authority, a notary public in and for the State of Alabama at Large, hereby certify that Steven R. Kennedy, whose name as President of Sealy Management Company, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand on this the 23<sup>rd</sup> day of June, 2004.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 09/22/07

STATE OF ALABAMA

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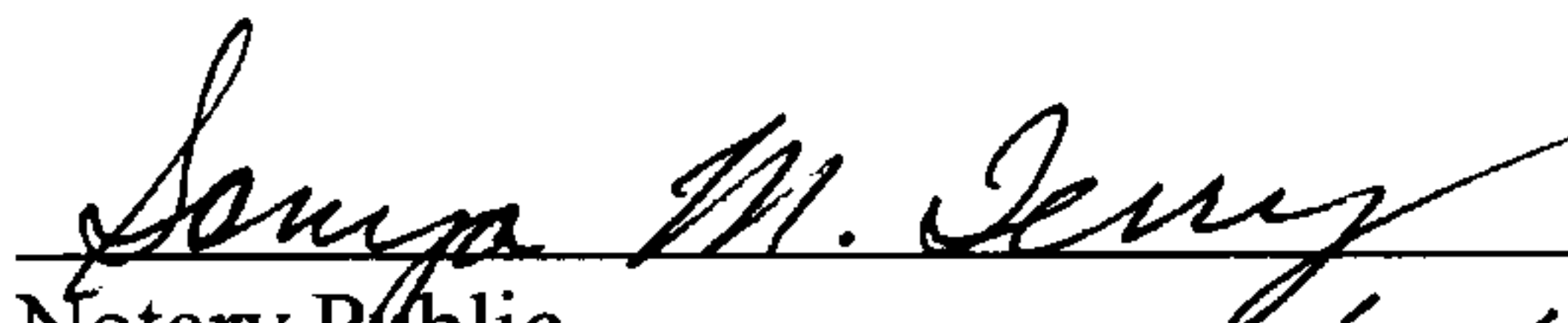
§ ss.

TUSCALOOSA COUNTY

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I, the undersigned authority, a notary public in and for the State of Alabama at Large, hereby certify that Charlie O. Sealy, Jr., whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand on this the 23<sup>rd</sup> day of June, 2004.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 09/22/07

STATE OF ALABAMA

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§ ss.

TUSCALOOSA COUNTY

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I, the undersigned authority, a notary public in and for the State of Alabama at Large, hereby certify that Gina S. Miers, whose name 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, she executed the same voluntarily on the day the same bears date.

Given under my hand on this the 23<sup>rd</sup> day of June, 2004.

*Samya M. Perry*  
Notary Public  
My Commission Expires: 09/22/07



EXHIBIT A  
to  
ASSUMPTION AND RELEASE AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

A tract of land in the Southwest quarter of the Northeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, more particularly described as follows:

Begin at the Northeast corner of said Southwest quarter of Northeast quarter and run West along the north line thereof for 661.23 feet; then turn left 88 degrees 57 minutes 22 seconds and run Southerly for 330.66 feet; thence turn right 89 degrees 02 minutes 14 seconds and run Westerly for 258.06 feet to a point on the Easterly right of way line of U.S. Highway 280; thence turn left 85 degrees 52 minutes 30 seconds and run Southeasterly along said Easterly right of way line for 60.32 feet; thence turn left 84 degrees 07 minutes 30 seconds and run Easterly for 286.78 feet and the beginning of a curve to the right having a radius of 189.87 feet and a central angle of 90 degrees 34 minutes 50 seconds; thence Easterly and Southerly along the arc of said curve for 300.17 feet; thence Southerly tangent to said curve for 148.50 feet; thence turn left 90 degrees and run Easterly 254.15 feet; thence turn right 90 degrees 27 minutes 45 seconds and run Southerly for 218.26 feet; thence turn left 90 degrees and run Easterly for 176.0 feet to a point on the East line of said Southwest quarter of Northeast quarter; thence turn left 90 degrees and run Northerly along said East line for 956 feet to the point of beginning; being situated in Shelby County, Alabama.

**EXHIBIT B**  
**to**  
**ASSUMPTION AND RELEASE AGREEMENT**

1. Multifamily Note dated March 1, 2000, by Transferor for the benefit of Original Lender.
2. Multifamily Mortgage, Assignment of Rents and Security Agreement, dated March 1, 2000, by Transferor for the benefit of Original Lender.
3. Replacement Reserve and Security Agreement dated as of March 1, 2000 by and between Transferor and Servicer.
4. Exceptions to Non-Recourse Guaranty dated March 1, 2000 by Original Key Principal in favor of Fannie Mae.
5. Agreement to Amend or Comply by and between Transferor and Original Lender.
6. Reimbursement Agreement dated as of March 1, 2000, by and between the Transferor and Fannie Mae.
7. UCC Financing Statement dated March 1, 2000 naming Transferor as debtor and Fannie Mae as secured party.
8. Assignment and Intercreditor Agreement dated as of March 1, 2000 among Fannie Mae, Trustee, Alabama Housing Finance Authority and Transferor.
9. Interest Rate Hedge Reserve Agreement dated as of March 1, 2000 between Transferor and Original Lender.
10. Interest Rate Hedge Assignment and Security Agreement dated as of March 1, 2000 between Transferor and Original Lender.
11. Pledge, Security and Custody Agreement dated as of March 1, 2000 among Transferor, Trustee and Fannie Mae.
12. Rate Cap Agreement (Series A Bonds) dated as of March 8, 2000, between Bear Stearns Financial Products, Inc., and Transferor.

13. Rate Cap Agreement (Series B Bonds) dated as of March 8, 2000, between Bear Stearns Financial Products, Inc., and Transferor.



THE STATE OF TEXAS

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COUNTY OF DALLAS

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I, the undersigned authority, a notary public in and for the State of Texas at Large, hereby certify that Joseph G. Beard, whose name as Manager of Bush Gardens, L.L.C., a Nevada limited liability company, in its capacity as General Partner of Westdale Gardens, Ltd., a Texas limited partnership, in its capacity as Manager of GGL Ventures, LLC, a Georgia limited liability company, in its capacity as Manager of Double Lake Ventures, LLC, a Georgia 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 manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand on this the 24<sup>TH</sup> day of June, 2004.

R. HOLSON BEARD

Notary Public, State of Texas

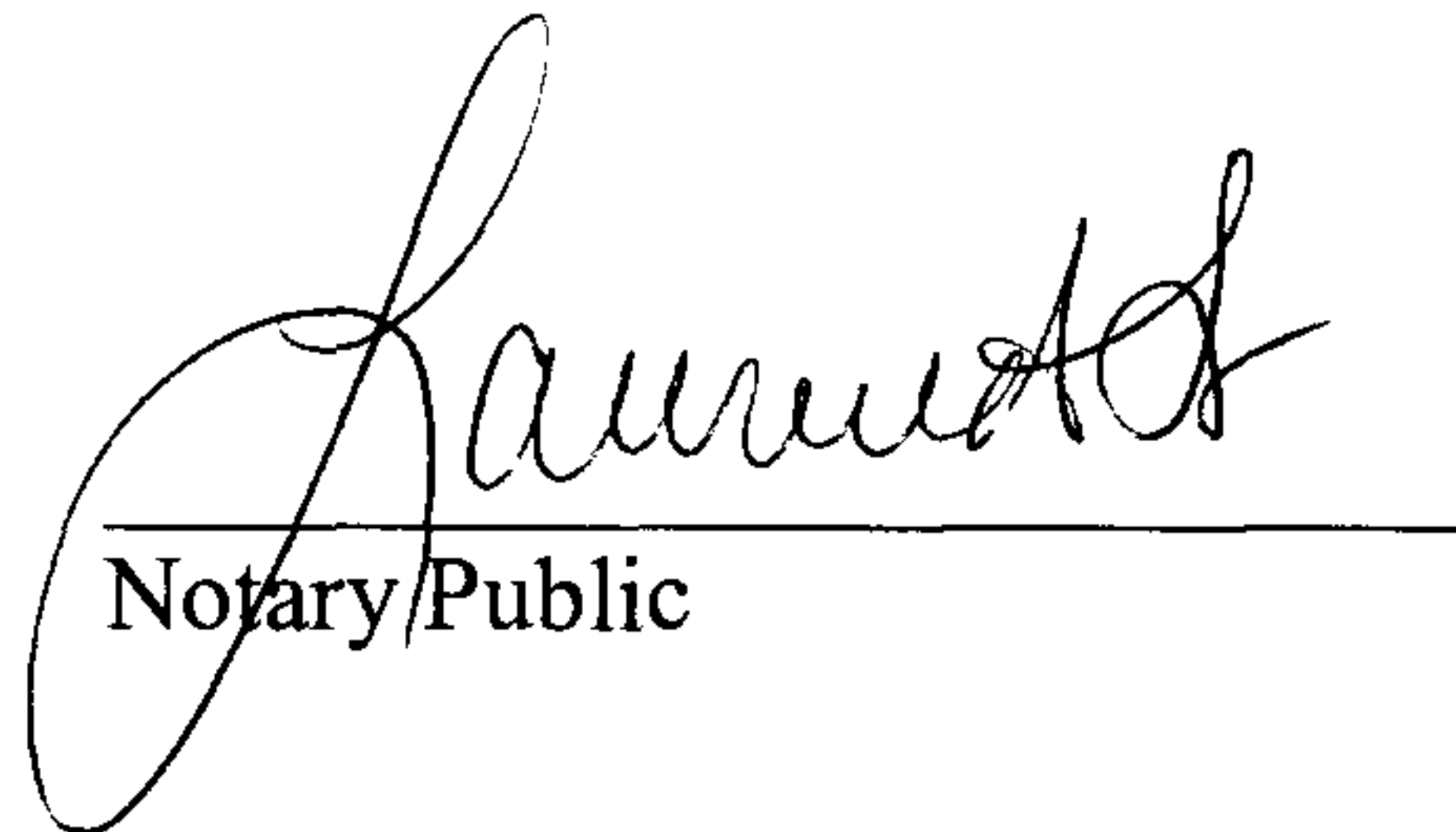
My Commission Expires: 2/17/07

STATE OF NEW YORK )

SS:

COUNTY OF Schenectady )

On the 25 day of June, 2004 before me, the undersigned, a notary public in and for said state, personally appeared David M. Bui personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

LAURENE A. SMITH  
Notary Public, State of New York  
Qualified in Rensselaer County  
Reg. No. 4826017  
Commission Expires June 30, 2006