

SECOND AMENDMENT TO MORTGAGE

This Second Amendment made this 22nd day of October, 2004, between **COMPASS BANK**, an Alabama banking corporation (the "Lender"), and **ARBOR HILLS, LLC**, an Alabama limited liability company (the "**Borrower**").

WHEREAS, in connection with a loan from Lender to Borrower in the principal amount of \$4,837,750.00 (the "Holding Loan"), Borrower executed and delivered to Lender, among other documents (collectively, the "Holding Loan Documents"), the following documents dated June 28, 2002: (i) Promissory Note in the amount of \$4,837,750.00 (the "Holding Loan Note"), (ii) Construction Loan Agreement (the "2002 Loan Agreement"); and (iii) Future Advance Mortgage, Assignment of Rents and Leases, and Security Agreement (Alabama), recorded at Instrument No. 20020701000308190, in the Probate Office of Shelby County, Alabama (the "Holding Loan Mortgage"); and

WHEREAS, as provided in the 2002 Loan Agreement, Lender has made a second loan to Borrower in the amount of \$3,277,200.00 ("the Phase I Development Loan"), as evidenced by a Promissory Note in such amount, and secured by a Future Advance Mortgage, Assignment of Rents and Leases, and Security Agreement (Alabama), both dated October 31, 2002 and recorded at Instrument No. 20021106000550590, in the Probate Office of Shelby County, Alabama (the "Phase I Development Loan Mortgage"); and

WHEREAS, as provided in the Construction Loan Agreement between Borrower and Lender dated October 31, 2003, Lender made a third loan to Borrower in the amount of \$2,067,200.00 ("the Phase II Development Loan"), as evidenced by a Promissory Note in such amount, and secured by a Future Advance Mortgage, Assignment of Rents and Leases, and Security Agreement (Alabama), both dated December 19, 2003 and recorded at Instrument No. 20040102000001480 in the Probate Office of Shelby County, Alabama (the "Phase II Development Loan Mortgage"); and

WHEREAS, as provided in the Construction Loan Agreement between Borrower and Lender dated October 22nd, 2004, Lender is making an additional loan to Borrower in the amount of \$2,736,900.00 ("the Phase III Development Loan"), as evidenced by a Promissory Note in such amount, and secured by a Future Advance Mortgage, Assignment of Rents and Leases, and Security Agreement (Alabama), both dated as of the date hereof and recorded or to be recorded in the Probate Office of Shelby County, Alabama (the "Phase III Development Loan Mortgage"); and

WHEREAS, Lender and Borrower desire that the Phase I Development Loan Mortgage also secure the Phase II Development Loan and the Phase III Development Loan.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lender agree that the Phase I Development Loan Mortgage is amended as follows:

1. The following paragraph hereby replaces the paragraph of the Phase I Development Loan Mortgage which begins "This Mortgage is also given

as Additional Security" which appears at the bottom of page 1 immediately before the paragraph which begins "NOW, THEREFORE,":

"This Mortgage is also given as Additional Security for that certain loan from Lender to Borrower in the principal amount of \$4,837,750.00, as evidenced by Promissory Note in such amount dated June 28, 2002, and secured by Mortgage of such date recorded at Instrument No. 20020701000308190, in the Probate Office of Shelby County, Alabama, that certain loan from Lender to Borrower in the principal amount of \$2,067,200.00, as evidenced by Promissory Note in such amount dated December 19, 2003, and secured by Mortgage of such date recorded at Instrument No. 20040102000001480, in the Probate Office of Shelby County, Alabama and that certain loan from Lender to Borrower in the principal amount of \$2,736,900.00, as evidenced by Promissory Note in such amount dated October 26th 2004, and secured by Mortgage of such date recorded at Instrument No. 20041026100589830, in the Probate Office of Shelby County, Alabama. Such loan shall be deemed to be included within the term "Other Indebtedness" as used herein, and such Promissory Note and Mortgage shall be deemed to be included within the term "Other Indebtedness Instruments."

2. Except as modified herein, all other terms and conditions of the Phase I Loan, the Phase I Development Loan Mortgage and the other Phase I Loan Documents shall remain in full force and effect.

IN WITNESS WHEREOF, Borrower and Lender have caused this First Amendment to be executed as of the day and year first set forth above.

LENDER:

WITNESS:

COMPASS BANK

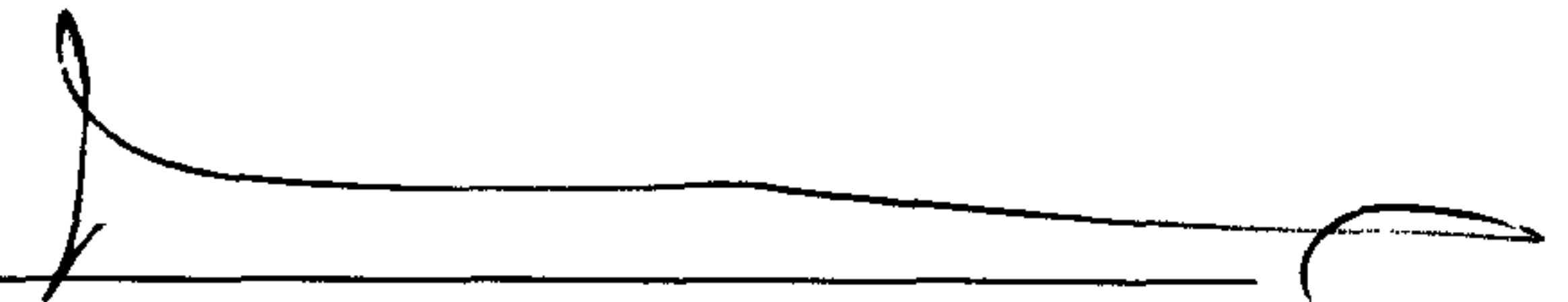
By: John M. McInnis
Its: Senior Vice President

WITNESS:



BORROWER:

ARBOR HILLS, LLC,
an Alabama limited liability company

By: 
_____ Its Manager

STATE OF ALABAMA

COUNTY OF Shelby

I, Kathy H. Talley, a notary public in and for said county in said state, hereby certify that Alan C. Howard, whose name as Manager of **ARBOR HILLS, 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 such instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 11th day of October, 2004.

Kathy H. Talley
Notary Public

[Notarial Seal]

My Commission Expires: 5-8-07

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Felicia L. Redd, a notary public in and for said county in said state, hereby certify that John M. McQueen, whose name as Senior Vice Pres. of **COMPASS BANK**, an Alabama banking 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 such 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 and official seal this 14th day of October, 2004.

Felicia L. Redd.
Notary Public

[Notarial Seal]

My Commission Expires: 2/17/07