

THIS INSTRUMENT PREPARED BY:

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STATE OF ALABAMA
COUNTY OF SHELBY

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made and entered into as of the 14th day of October, 2004, from **CHELSEA PARK HOMES, INC.**, an Alabama corporation (the "Grantor"), whose mailing address is 421 Office Park Drive, Birmingham, Alabama 35223, to **SOUTHTRUST BANK**, an Alabama banking corporation, its successors and assigns, as their interests may appear, as grantee, whose mailing address is P.O. Box 2554 (35290), 8th Floor SouthTrust Tower, 420 North 20th Street, Birmingham, Alabama 35203 Attention: Residential Lending (the "Bank").

WITNESSETH:

WHEREAS, **THORNTON CONSTRUCTION COMPANY, INC.**, an Alabama corporation ("Borrower") is indebted to Bank in the maximum outstanding principal sum of Ten Million and No/100 Dollars (\$10,000,000.00) together with interest thereon, as evidenced by that certain Promissory Note dated February 24, 2004, executed by Borrower and delivered to Bank, as the same may be extended, renewed, modified or amended (as so extended, renewed, modified or amended, the "Note") and which by reference is made a part hereof to the same extent as though set out in full herein, and Grantor has guaranteed the obligations of Borrower pursuant to the Note in accordance with a Guaranty Agreement executed in favor of Bank as amended by Amendment to Revolving Line of Credit Agreement, Guaranty Agreement and Indemnity Agreement of even date herewith (the "Amendment") and as the same may hereafter be amended (as so amended, the "Guaranty"); and

A portion of the proceeds of this loan have been applied on the purchase price of the property described herein, conveyed to mortgagors simultaneously herewith.

WHEREAS, proceeds of the Note shall be made available to Borrower on a revolving basis and shall be borrowed, repaid and reborrowed by the Borrower for the benefit of Borrower and Grantor pursuant to, and in accordance with that certain unrecorded Revolving Line of Credit Agreement dated February 24, 2004, as amended by the Amendment by and among the Borrower, Grantor, The Narrows II, Inc. and certain individual guarantors (the individual guarantors together with Grantor and The Narrows II, Inc. are sometimes referred to herein individually as a "Guarantor" or collectively as the "Guarantors"), and the Bank, as the same may be amended (as so amended, the "Loan Agreement") and have been or will be used in part to acquire one or more Lots (as hereinafter defined) that are or will be owned by Grantor and/or have been or will be used to construct improvements on such Lots to the benefit of Borrower and Grantor;

NOW, THEREFORE, (a) in order to secure the performance and observance by Borrower of all covenants and conditions contained in the Note and by Borrower and Grantor of all covenants and conditions contained in the Loan Agreement, in this Mortgage, and in all other instruments securing the Note; and (b) in order to also secure (i) all future advances and readvances that may subsequently be made to Borrower by the Bank pursuant to the Loan Agreement, evidenced by the Note, or any other promissory notes, and all renewals and extensions thereof; provided, however, that nothing contained herein shall create an obligation on the part of Bank to make future advances or readvances to Borrower; provided, however, the maximum principal indebtedness secured by this Mortgage will not exceed \$10,000,000.00, plus (ii) interest on such advances, and all other obligations, fees, charges and expenses from time to time owing to Bank, including court costs, and reasonable attorneys' fees, pursuant to the Loan Agreement, the Note, this Mortgage and other Loan Documents; and (c) in order to also charge the properties, interests and rights hereinafter described with such payment, performance and observance; and (d) for and in consideration of the sum of One and No/100ths (\$1.00) Dollars paid by Bank to Grantor this date, and for other valuable consideration, the receipt of which is acknowledged, Grantor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm unto Bank, its successors and assigns forever, all right, title and interest of Grantor in and to the following property (collectively, the "Property"):

A. The Lots. Each lot or lots and other real property interests located in Shelby County, Alabama, more particularly described on Exhibit A attached hereto and incorporated herein by reference, and including such lot or lots as may hereafter be mortgaged to the Bank by means of amendments, modifications or addenda to this Mortgage, or otherwise (the "Lots" or a "Lot"); and

B. The Improvements. All single-family residences, and other related on-site improvements, to be constructed on the Lots (the "Improvements") and all materials intended for construction, reconstruction, alteration and repair of such Improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Property hereby mortgaged immediately upon the delivery thereof to the Lots, and all fixtures and articles of personal property now or hereafter owned by the Grantor and attached to, or contained in and used in connection with, the aforesaid Lots and Improvements or any part thereof or derived from or acquired by any proceeds of the Lots or Improvements or any part thereof, including, but not limited to, all goods, furniture, appliances, furnishings, apparatus, machinery, equipment,

motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, telephone systems, televisions and television systems, computer systems and fixtures and appurtenances thereto and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are, or shall be, attached to the Lots or Improvements in any manner (the "Tangible Personalty"); and

C. Easements or Other Interests. All easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Grantor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Grantor of, in and to the same, including, but not limited to, 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 (together the "Easements and Other Interest"); and

D. Proceeds. All proceeds of any sales, exchanges, collections or other dispositions of the property described in paragraphs (a), (b), (c) and (d) hereof, or any part thereof, including cash proceeds, noncash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing ("Proceeds").

Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Lots are located. Information concerning the security interest created by this instrument may be obtained from the Bank, as Secured Party, or the Grantor, as Debtor, at the addresses shown herein. The Grantor/Debtor has no organizational I.D. # required to be entered on the UCC-1 financing statement.

TO HAVE AND HOLD the same, together with all privileges, hereditaments, easements and appurtenances thereunto belonging, to the Bank and the Bank's successors and assigns to secure the indebtedness herein recited, and should the indebtedness secured hereby be paid according to the tenor and effect thereof when the same shall be due and payable and should the Grantor timely and fully discharge its obligations hereunder, then the Property hereby granted, mortgaged and assigned shall cease and be void, but shall otherwise remain in full force and effect. It is understood, however, that Grantor may execute other Mortgages to Bank pursuant to and in connection with the Loan Agreement securing other principal, interest and expenses and other obligations pursuant to the Loan Agreement, and, subject to the Loan Agreement, Bank may apply payments received pursuant to the Note and Loan Agreement in such order and manner as Bank may determine, and without limiting the foregoing may apply payments

received to other indebtedness not secured by this Mortgage prior to applying payments to indebtedness secured hereby.

As additional security for said indebtedness, the Grantor hereby conditionally assigns to the Bank all the security deposits, rents, issues, profits, revenues, accounts, accounts receivable, contracts of sale, other contract rights, rights to payments for goods sold or leased or services rendered, checks, notes, drafts, acceptances, instruments, deposit accounts, electronic chattel paper, chattel paper, documents, securities, rentals receivables, installment payment obligations, book debts, actions, choses in action, judgments, awards, money, payment intangibles, general intangibles, other forms of obligations and receivables, all monies due or to become due, and all returned or repossessed goods now or hereafter pertaining to or resulting from the Property or any part thereof or constituting or derived from, or acquired by any proceeds of, the Property or any part thereof (the "Rents and Profits"), reserving only the right to the Grantor to collect the same as long as there shall exist no Event of Default (as defined in Article III).

As additional collateral and further security for the indebtedness, the Grantor does hereby assign and grant to the Bank a security interest in all of the right, title and the interest of the Grantor in and to any and all leases (including equipment leases), rental agreements, management contracts, franchise agreements, construction contracts, architect's contracts, technical services agreements, letter-of-credit rights, letter-of-credit money, licenses and permits now or hereafter affecting the Property (the "Intangible Personalty") or any part thereof, and the Grantor agrees to execute and deliver to the Bank such additional instruments, in form and substance satisfactory to the Bank, as may hereafter be requested by the Bank to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by the Bank to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Bank any obligation with respect thereto.

Together with all proceeds, including cash proceeds, noncash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of the Rents and Profits and the Intangible Personalty or any part thereof, and all replacements, modifications, renewals and substitutions thereof or therefor.

All the Tangible Personalty which comprises a part of the Property shall, as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the Tangible Personalty and the Intangible Personalty, this Mortgage shall be considered to be a security agreement that creates a security interest in such items for the benefit of the Bank. In that regard, the Grantor, as Debtor, grants to the Bank all of the rights and remedies of a Secured Party under the Alabama Uniform Commercial Code.

In addition to constituting a mortgage on the real estate described on Exhibit A hereof and a Security Agreement in the personal property of the Grantor described above, this document shall constitute a financing statement filed as a fixture filing with regard to goods which shall become fixtures in and about the single family houses or units to be constructed on the Lots described on **EXHIBIT A**.

The Grantor and the Bank covenant, represent and agree as follows:

ARTICLE I

THE LOAN

1.1 Loan. The indebtedness secured by this Mortgage is the result of a revolving loan of money in the maximum outstanding principal amount of Ten Million and No/100 Dollars (\$10,000,000.00) together with interest thereon (hereafter referred to as the "Loan") disbursed or to be disbursed by the Bank to the Borrower pursuant to the Loan Agreement.

1.2 Use of Loan Funds; Construction Mortgage. The Loan is made for the purposes of financing the acquisition of Lots and the construction of single family houses on the Lots. This Mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of improvements on the Lots. The proceeds of the Loan secured hereby are to be disbursed by Bank to Borrower in accordance with the provisions contained in the Loan Agreement. All advances and indebtedness arising and accruing under the Loan Agreement from time to time shall be secured hereby.

1.3 Note. The Loan is evidenced by the Note as referenced above executed by the Borrower dated February 24, 2004, and payable to the order of the Bank.

1.4 Payment of Note. Payment by the Borrower of principal and interest on the Loan will be in accordance with the Note.

1.5 Incorporation of Loan Agreement. All of the terms, conditions, provisions and definitions of the Loan Agreement are hereby incorporated herein by reference.

ARTICLE II

GRANTOR'S COVENANTS, REPRESENTATIONS AND AGREEMENTS

2.1 Title to Property. The Grantor represents and warrants that it (or one of them) is seized of the Property (and any fixtures) in fee (and has title to any appurtenant easements) and has the right to convey, mortgage and encumber the same; that title to each of the Lots is free and clear of all encumbrances except for the matters shown as exceptions in the title insurance commitment delivered to and accepted by the Bank herewith (the "Permitted Encumbrances") and that it will warrant and defend the title to the Lots against the claims of all persons or parties except for the Permitted Encumbrances. As to the balance of the Property, the Rents and Profits and the Intangible Personalty, the Grantor represents and warrants that it (or one of them) has good and absolute title to such Property, that it has the right to convey, mortgage and encumber such Property and that it will warrant and defend such Property against the claims of all persons or parties.

2.2 Performance of Loan Documents. Grantor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and the Loan Agreement, and will promptly pay to Bank the principal with interest thereon and all other sums required to be paid by Borrower under the Note, or of Grantor under this Mortgage, the Loan Agreement and every other instrument securing the Note (collectively, with the foregoing, the "Loan Documents") when payment shall become due.

2.3 Taxes and Fees.

(a) The Grantor will pay as they become due all taxes, general and special assessments, insurance premiums, permit fees, inspection fees, license fees, all water and sewer charges, franchise fees, equipment rents and all encumbrances of every kind against it or the Property, and any charge which, if unpaid would become a lien or charge against the Property before they become delinquent and before any interest attaches or penalty is incurred and the Grantor, upon request of the Bank, will submit to the Bank receipts evidencing said payments.

(b) Grantor shall not permit or suffer more than thirty (30) days any mechanics', laborers', materialmen's, statutory or other lien upon any of the Property.

(c) Bank may, if it deems in its reasonable judgment that its security for the Note is impaired, require Grantor to deposit with Bank on the first day of each month, in addition to making any required payments of principal and/or interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Bank to be sufficient to enable Bank to pay, at least thirty (30) days before they become due, all taxes, assessments and other similar charges against the Property or any part thereof. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Bank, and no interest shall be payable in respect thereof. Upon demand by Bank, Grantor shall deliver to Bank such additional monies as are required to make up any deficiencies in the amounts necessary to enable Bank to pay such taxes, assessments and similar charges. Upon an Event of Default pursuant to the Note, this Mortgage, the Loan Agreement or any other Loan Documents to be kept, performed or observed by Grantor, Bank may apply to the reduction of the sums secured hereby, in such manner as Bank shall determine, any amount under this paragraph 2.3(c) of Article II remaining to Grantor's credit.

(d) Grantor shall not claim, demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other sums secured hereby, for so much of the taxes, assessments or similar impositions assessed against the Property or any part thereof as are applicable to the indebtedness secured hereby or to Bank's interest in the Property. No deduction shall be claimed from the taxable value of the Property or any part thereof by reason of the Note, this Mortgage, the Loan Agreement or any other Loan Documents.

2.4 Reimbursement. The Grantor agrees that if it shall fail to pay when due any tax, assessment or charge levied or assessed against the Property or any utility charge, whether public or private, or any insurance premium or if it shall fail to procure the insurance coverage and the delivery of the insurance certificates required hereunder, or if it shall fail to pay any other charge or fee described herein, then the Bank, at its option, may pay or procure the same. The Grantor will reimburse the Bank upon demand for any sums of money paid by the Bank pursuant to this Section, together with interest on each such payment at the rate set forth in the Note and all sums and interest thereon shall be secured hereby.

2.5 Additional Documents. The Grantor agrees to execute and deliver to the Bank, concurrently with the execution of this Mortgage and upon the request of the Bank from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby. The Grantor hereby irrevocably (as long as the Loan remains unpaid) makes, constitutes and appoints the Bank as the true and lawful attorney of

the Grantor to sign the name of the Grantor (after the Grantor has failed or refused to timely execute such documents upon request of the Bank) on any financing statement, continuation of financing statement or similar document required to perfect or continue such security interest.

2.6 Transfer of Property. Grantor shall not sell, convey, transfer, lease or further encumber any interest in or any part of the Property, the Rents and Profits and the Intangible Personalty, without the prior written consent of Bank, unless the Grantor shall pay to the Bank the release price for such Property as set forth in the Loan Agreement. If any person should obtain any interest in all or any part of the Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Grantor. Grantor shall not, without the prior written consent of Bank, further assign the rents from the Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof. Notwithstanding any other provision of this section, the Grantor may sell individual Lots of the Property in accordance with the release provisions set forth in the Loan Agreement.

2.7 Fees and Expenses. The Grantor will pay or reimburse the Bank for all reasonable attorneys' fees, costs and expenses incurred by the Bank in any action, legal proceeding or dispute of any kind which affects the Loan, the interest created herein, the Property, the Rents and Profits or the Intangible Personalty including but not limited to, any foreclosure of this Mortgage, enforcement of payment of the Note, any condemnation action involving the Property or any action to protect the security hereof. Any such amounts paid by the Bank shall be due and payable upon demand and shall be secured hereby.

2.8 Performance under Agreements. The Grantor shall keep and perform all covenants to be performed by it under any agreements affecting the Property or any part thereof and shall at all times do all things necessary and appropriate to compel performance by each other party thereto of all obligations, covenants and agreements of such other party, and shall not, without the written consent of the Bank, cancel, surrender or modify or permit the cancellation of any construction contract or other contract, license or permit now or hereafter affecting the Property, or accept or permit to be made any prepayment of any installment of rent or fees thereunder.

2.9 Maintenance of Property. The Grantor will abstain from and will not permit the commission of waste in or about the Property and will maintain the Property in good condition and repair, reasonable wear and tear excepted. Grantor shall not remove, demolish, materially alter or materially change the use of any building, structure or other improvement presently or hereafter on the Property without the prior written consent of the Bank.

2.10 Identity of Grantor. The Grantor hereby acknowledges to the Bank that (i) the identity of the Grantor and the expertise available to the Grantor were and continue to be material circumstances upon which the Bank has relied in connection with, and which constitute valuable consideration to the Bank for, the extending to the Grantor of the indebtedness evidenced by the Note and (ii) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Note granted to the Bank by this Mortgage. The

Grantor therefore covenants and agrees with the Bank that the Grantor shall not sell, transfer, convey, mortgage, encumber, lease (except tenant leases in the ordinary course of business) or otherwise dispose of the Property, the Rents and Profits or the Intangible Personalty or any part thereof or any interest therein or engage in subordinate financing with respect thereto during the term of this Mortgage without the prior written consent of the Bank, except as may be expressly permitted in Article III hereof. In addition, during the term of this Mortgage, except as provided in Article III hereof, there shall not be any change in the ownership, membership or control of the Grantor unless the Bank in its sole discretion has given its approval.

2.11 Compliance with Law. The Grantor will do, or cause to be done, all such things as may be required by law in order fully to protect the security and all rights of the Bank under this Mortgage. The Grantor shall not cause or permit the lien of this Mortgage to be impaired in any way.

2.12 Inspection. The Grantor will permit the Bank, or its agents, at all reasonable times to enter and pass through or over the Property for the purpose of inspecting same.

2.13 Amount of Loan. The Grantor, upon ten (10) days' prior written notice, shall furnish to the Bank a written statement, duly acknowledged, setting forth or confirming the outstanding principal of, and interest on, the Loan and whether or not any offsets or defenses exist against such principal and interest.

2.14 Releases and Waivers. The Grantor agrees that no release by the Bank of any of the Grantor's successors in title from liability on the Loan, no release by the Bank of any portion of the Property, the Rents and Profits nor the Intangible Personalty, no subordination of lien, no forbearance on the part of the Bank to collect on the Loan, or any part thereof, no waiver of any right granted or remedy available to the Bank and no action taken or not taken by the Bank shall in any way diminish the Grantor's obligation to the Bank or have the effect of releasing the Grantor, or any successor to the Grantor, from full responsibility to the Bank for the complete discharge of each and every of the Grantor's obligations hereunder or under the Note, the Loan Agreement or any other Loan Document.

2.15 After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Property or any part thereof.

2.16 Insurance.

(a) Liability: The Grantor covenants to maintain or cause to be maintained, by the Grantor and the General Contractor (as defined in the Loan Agreement), general accident and public liability insurance against all claims for bodily injury, death or property damage occurring upon, in or about any part of the Property. The policies must be from companies and in amounts satisfactory to the Bank.

(b) Delivery of Policies and Renewals: The Grantor agrees to deliver to the Bank, as additional security hereto, the original policies of such insurance as is required by the Bank pursuant to the Loan Agreement and subsection (a) hereof and of any additional insurance which shall be taken out upon the Property while any part of the Loan shall remain unpaid.

Renewals of such policies shall be so delivered at least ten (10) days before any such insurance shall expire. In the event the Grantor fails to maintain insurance as required hereunder the Bank has the right to procure such insurance whether or not the Grantor's failure to maintain such insurance constitutes an Event of Default (as defined in Article III) or an event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default. Any amounts paid by the Bank for insurance shall be due and payable to the Bank upon demand and shall be secured by this Mortgage.

(c) Proof of Loss: Claims Settlement: In the event of loss, the Grantor shall give prompt notice thereof to the insurance carrier and the Bank, and the Bank may make proof of loss if not made promptly by Grantor. The Bank is hereby authorized, in its sole discretion, to adjust, compromise and collect the proceeds of any insurance claims.

(d) Use of Proceeds: The Grantor hereby assigns the proceeds of any such insurance policies to the Bank and hereby directs and authorizes each insurance company to make payment for such loss directly to the Bank. The proceeds of any insurance or any part thereof are to be applied by the Bank to restoration or repair of the property damaged provided the following conditions are met:

(i) there exists no Event of Default (as defined in Article III) or any event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default;

(ii) the Grantor presents sufficient evidence to the Bank that there are sufficient funds from the insurance proceeds and from equity funds, if needed, to completely restore or repair the damaged property as well as to maintain relevant debt service coverages and other operating expenses;

(iii) all parties having existing or expected possessory interests in the Property agree in a manner satisfactory to the Bank that they will continue or extend their interest and arrangements for the contract terms then in effect following the restoration or repair;

(iv) all parties having commitments to provide financing with respect to the Property, to purchase Grantor's interest in full or in part in the Property or to purchase the Loan agree in a manner satisfactory to the Bank that their commitments will continue in full force and effect and, if necessary, the expiration of such commitments will be extended by the time necessary to complete the restoration or repair;

(v) the Grantor presents sufficient evidence to the Bank that the damaged property will be restored prior to the maturity date of the Loan;

(vi) the Bank will not incur any liability to any other person as a result of such use or release of insurance proceeds; and

(vii) the insurance proceeds shall be held by the Bank and disbursed substantially in accordance with the disbursement procedures under the Loan Agreement as if such proceeds were Loan proceeds as repair or restoration progresses.

If the conditions of this Section 2.16(d) are not satisfied within ninety (90) days of loss, then the Bank may, at its option, apply any insurance proceeds to the outstanding balance of the Loan.

2.17 Eminent Domain.

(a) Participation in Proceedings: Grantor shall promptly notify the Bank of any actual or threatened initiation of any eminent domain proceeding as to any part of the Property and shall deliver to the Bank copies of any and all papers served or received in connection with such proceedings, and the Bank shall have the right, at its option, to participate in such proceedings at the expense of Grantor (including, without limitation, the Bank's attorneys' fees) and Grantor will execute such documents and take such other steps as required to permit such participation.

(b) Right to Settle Claims: The Bank is hereby authorized to adjust, compromise and collect any eminent domain award or settle a claim for damages and to apply the same to the outstanding balance of the Loan, subject to the provisions of subsection (c).

(c) Use of Proceeds: The Grantor assigns to the Bank any proceeds or awards which may become due by reason of any condemnation or other taking for public use of the whole or any part of the Property or any rights appurtenant thereto. The proceeds of any such condemnation award or proceeds or any part thereof may be applied by the Bank to the outstanding balance of the Loan; provided that, subject to the provisions of Section 2.17(d), such proceeds may be applied to restoration of the property taken if the following conditions are met:

(i) there exists no Event of Default (as defined in Article III) or any event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default;

(ii) all parties having existing or expected possessory interests in the Property agree in a manner satisfactory to the Bank that they will continue their interests and arrangements for the contract terms then in effect following the restoration or repair;

(iii) all parties having commitments to provide financing with respect to the Property, to purchase Grantor's interest in full or in part in the Property or to purchase the Loan agree in a manner satisfactory to the Bank that their commitments will continue in full force and effect and, if necessary, the expiration of such commitments will be extended by the time necessary to complete the restoration or repair;

(iv) the Grantor presents sufficient evidence to the Bank that the Property will be restored to an architectural whole prior to the maturity date of the Loan;

(v) the Bank will not incur any liability to any other person as a result of such use or release of insurance proceeds; and

(vi) the condemnation award or proceeds shall be held by the Bank and disbursed substantially in accordance with the disbursement procedures under the Loan Agreement as if such proceeds were Loan proceeds as restoration progresses.

(d) Further Assignments; Acceleration: The Grantor agrees to execute such further assignments and agreements as may be reasonably required by the Bank to assure the effectiveness of this Section. In the event any governmental agency or authority shall require or commence any proceedings for the demolition of any buildings or structures comprising a part of the Property, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Property, the Bank may, at its option, declare the Loan to be immediately due and payable in full and apply any condemnation awards or proceeds to the outstanding balance of the Loan.

2.18 Operating and Financial Statements. Grantor shall furnish to Bank the operating and financial statements required by the Loan Agreement.

ARTICLE III **EVENTS OF DEFAULT**

3.1 Event of Default. An "Event of Default" shall be the occurrence or existence of any "Event of Default" pursuant to (and as defined in) the Loan Agreement or any other Loan Document (after the giving of any required notice and expiration of any applicable grace or cure period).

3.2 Cross-Collateralize; Cross-Default. The Loan shall be cross-defaulted and cross-collateralized with all loans now and hereafter made or which may be made by the Bank to Borrower or any Guarantors of this Loan, and all such parties agree to execute such documents as may be necessary to effectuate same.

ARTICLE IV **FORECLOSURE**

4.1 Acceleration of Loan; Foreclosure. Upon the occurrence of an Event of Default the entire balance of the Loan, including all accrued interest, shall, at the option of the Bank, become immediately due and payable. Upon failure to pay the Loan in full at any stated or accelerated maturity, the Bank may foreclose the lien of this Mortgage and take such other actions as provided by law or in the Loan Documents or by judicial proceedings.

4.2 Bank's Power of Enforcement. If an Event of Default shall have occurred, Bank may, either with or without entry or taking possession as hereinafter provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Property, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Bank shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Bank may determine.

4.3 Bank's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, Grantor, upon demand of Bank, shall forthwith surrender to Bank the actual possession, and if and to the extent permitted by law, Bank itself, or by such officers or agents as it may appoint, may enter and take

possession of all the Property, and may exclude Grantor and its agents and employees wholly therefrom, and may have joint access with Grantor to the books, papers and accounts of Grantor.

(b) If Grantor shall for any reason fail to surrender or deliver the Property or any part thereof after Bank's demand, Bank may obtain a judgment or decree conferring on Bank the right to immediate possession or requiring Grantor to deliver immediate possession of all or part of the Property to Bank along with all books, papers and accounts of Grantor, the entry of which judgment or decree is hereby specifically consented to by the Grantor.

(c) Grantor shall pay to Bank, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Bank, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(d) Upon every such entering upon or taking of possession, Bank may hold, store, use, operate, manage and control the Property and conduct the business thereof, and, from time to time:

(i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep the Property insured;

(iii) manage and operate the Property and exercise all the rights and powers of Grantor in its name or otherwise, with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted Bank:

all as Bank in its reasonable judgment from time to time may determine; and Bank may collect and receive all the income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Bank in such priority as Bank may determine to (1) the reasonable compensation, expenses and disbursements of the agents and attorneys; (2) the cost of insurance, taxes, assessments and other proper charges upon the Property or any part thereof; (3) the deposits for taxes and assessments and insurance premiums due; and (4) the payment of accrued interest on the Note.

Bank shall surrender possession of the Property to Grantor only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of the terms of this Mortgage, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.4 Leases. Bank, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by

Grantor to be, a defense to any proceedings institute by Bank to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

4.5 Enforcement; Power of Sale.

(a) If an Event of Default shall exist, Bank may sell the Property at public outcry to the highest bidder for cash in front of the Court House door in the county where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Bank or any person conducting the sale for Bank is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Bank may bid at said sale and purchase said Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Bank may elect.

(b) With respect to any personal property or fixtures included in or located on the Property, Bank may, at its option, sell or otherwise dispose of the same by public or private proceedings, separate from the sale of the real property, in accordance with the provisions of the Uniform Commercial Code of the State of Alabama, and Bank may with respect to such personal property and fixtures exercise any other rights or remedies of a secured party under the Alabama Uniform Commercial Code.

4.6 Purchase by Bank. Upon any such foreclosure sale, Bank may bid for and purchase the Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.7 Application of Indebtedness Toward Purchase Price. Upon any such foreclosure sale, Bank may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Bank under the Note, this Mortgage or any other instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

4.8 Waiver of Appraisement, Valuation, Stay, Extension, and Redemption Laws. Grantor agrees, to the full extent permitted by law, that, in case of an Event of Default on its part hereunder, neither Grantor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Property or the final and absolute putting into possession thereof, immediately after such sale of the purchasers thereat, and Grantor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that Bank or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety.

4.9 Receiver. If an Event of Default shall have occurred, Bank, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property to collect all rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the state where the Property is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Property, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Bank shall be liable to account only for such rents, issues and profits actually received by Bank, whether received pursuant to this Section or Section 4.3. Notwithstanding the appointment of any receiver or other custodian, Bank shall be entitled as secured party hereunder to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Bank.

4.10 Suits to Protect the Property. Bank shall have the power and authority to institute and maintain any suits and proceedings as Bank may deem advisable (a) to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Property, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Bank's interest.

4.11 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Grantor, any person, partnership, limited liability company or corporation guaranteeing or endorsing any of Grantor's obligations, its creditors or its property, Bank, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Borrower under the Note, or by Grantor under this Mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Grantor (or either of them) after such date.

4.12 Grantor to Pay the Note on Any Default in Payment; Application of Monies By Bank.

(a) If default shall be made in the payment of any amount due under the Note, this Mortgage, the Loan Agreement or any other Loan Document, then, upon Bank's demand, Grantor will pay to Bank the whole amount due and payable under the Note and all other sums secured hereby; and if Grantor shall fail to pay the same forthwith upon such demand, Bank shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of

Bank's agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Bank shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Bank to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Bank shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid and to recover judgment for, any portion thereof remaining unpaid, with interest.

(c) Grantor hereby agrees, to the extent permitted by law, that no recovery of any such judgment by Bank and no attachment or levy of any execution upon any of the Property or any other property shall in any way affect the lien of this Mortgage upon the Property or any part thereof or any lien, rights, powers or remedies of Bank hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Any monies collected or received by Bank under this Section 4.12 shall be applied as follows:

(i) First, to the payment of reasonable compensation, expenses and disbursements of the agents and attorneys; and,

(ii) Second, to payment of amounts due and unpaid under the Note, this Mortgage, the Loan Agreement and all other Loan Documents, whether or not due and each in such order as Bank may determine in its discretion, subject to the limitations herein on the principal amount secured hereby.

4.13 Delay or Omission No Waiver. No delay or omission of Bank or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Bank may be exercised from time to time and as often as may be deemed expedient by Bank.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Bank (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage, the Loan Agreement or any other Loan Document; (d) releases any part of the Property from the lien of this Mortgage or any other Loan Document; (e) consents to the filing of any map, plat or replat of any Lot; (f) consents to the granting of any easement on any Lot; or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of Grantor, or any subsequent purchaser of the Property or any part thereof or any maker, cosigner, endorser, surety

or guarantor. No such act or omission shall preclude Bank from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Bank, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Bank, without notice to any person, firm, corporation or other entity, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings; Position of Parties Restored. If Bank shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Bank, then and in every such case Grantor and Bank shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Bank shall continue as if no such proceeding had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Bank by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

ARTICLE V

GENERAL CONDITIONS

5.1 Terms. The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, personal representatives, successors and assigns. The term "Bank" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

5.2 Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) when personally delivered (to the person or department specified), (b) three (3) days following the date sent by registered or certified mail, postage prepaid, return receipt requested, or (c) one (1) Business Day following the date sent by FedEx or other national overnight courier, all fees prepaid, and addressed to any party hereto at its address stated in the preamble on the first page of this Mortgage or at such other address which it shall have notified the party giving such notice in writing. Actual receipt shall not be necessary for effective receipt.

5.3 Greater Estate. In the event that Grantor is the owner of a leasehold estate with respect to any portion of the Property and, prior to the satisfaction of the indebtedness and the cancellation of this Mortgage of record, Grantor obtains a fee estate in such portion of the

Property, then, such fee estate shall automatically, and without further action of any kind on the part of Grantor, be and become subject to the security lien of this Mortgage.

5.4 Imposition of Tax. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Bank, the Grantor will promptly pay any such tax on or before the due date thereof; and if the Grantor fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits Grantor from making such payment or would penalize Bank if Grantor makes such payment, then the entire balance of the Loan shall become due and payable upon demand at the option of the Bank.

5.5 Invalidation of Provisions. Invalidation of any one or more of the provisions of this Mortgage shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

5.6 Headings. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or described the scope of this Mortgage nor the intent of any provision hereof.

5.7 Changes, etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Grantor and Bank relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

5.8 Governing Law. This Mortgage is made by Grantor and accepted by Bank in the State of Alabama, with reference to the laws of such State, and shall be construed, interpreted, enforced and governed by and in accordance with such laws (excluding the principles thereof governing conflicts of law).

5.9 Default Rate. The Default Rate shall be as provided in the Note.

5.10 Conflict. In the event of any conflict between the terms and provisions hereof and the terms and conditions of the Loan Agreement, the provisions of the Loan Agreement shall control.

5.11 Death. Upon the death or legal incompetency of any individual Grantor, any individual general partner or member thereof or any individual Guarantor of the Loan, Grantor shall provide a substitute guarantor or substitute collateral acceptable to the Bank. Pending receipt of substitute collateral or the providing of a substituted guarantor, the claim shall be preserved against the estate of the Guarantor in a manner satisfactory to the Bank.

5.12 Joint and Several. If Grantor consists of more than one entity or individual, the liability of each is joint and several, and a breach of any representation, warranty or covenant by one shall be a breach by all.

ARTICLE VI
LENDING PROVISIONS

6.1 Breach of Loan Agreement and Other Documents. Notwithstanding anything to the contrary contained in this Mortgage or in the Note, or in any other Loan Document, upon an Event of Default, unless cured in accordance with the terms of the Loan Agreement hereinafter referred to, Bank may, at its option, declare the entire indebtedness secured hereby, and all interest thereon and all advances made by Bank hereunder, immediately due and payable and/or exercise all additional rights accruing to it under this Mortgage in the event of a breach by Grantor of any covenants contained in this Mortgage, the Note, the Loan Agreement, or in any Loan Documents.

6.2 Partial Foreclosure. In the event the Mortgaged Property is comprised of more than one Lot, Grantor hereby waives any right to require Bank to foreclose or exercise any of its other remedies against all of the Property as a whole or to require Bank to foreclose or exercise such remedies against one portion of the Property prior to the foreclosure or exercise of said remedies against other portions of the Property.

6.3 Releases. Partial releases may be made as provided in the Loan Agreement.

* * *

IN WITNESS WHEREOF, Grantor has caused this Mortgage to be duly executed and delivered as of the day and year first above written.

GRANTOR:

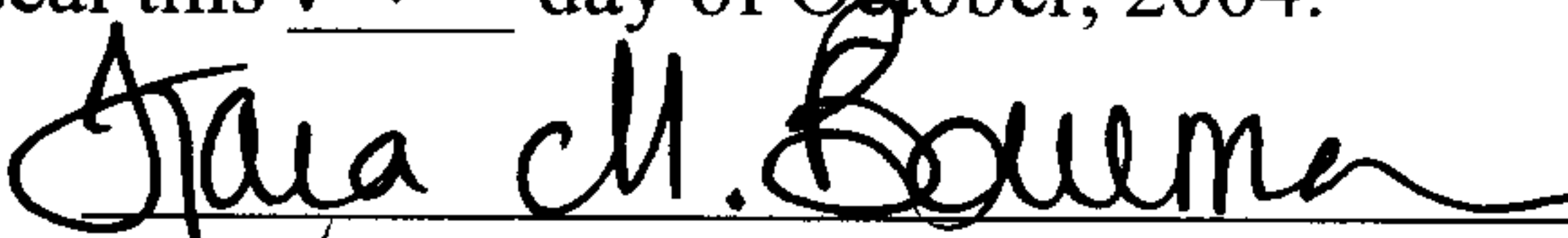
CHELSEA PARK HOMES, INC.,
an Alabama corporation

BY: 
Its President

**STATE OF ALABAMA)
COUNTY OF JEFFERSON)**

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that James M. Thornton whose name as President of Chelsea Park Homes, 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, s/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.


Notary Public

[NOTARY SEAL]

My commission expires:

**NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 21, 2008
BONDED THRU NOTARY PUBLIC UNDER \$10,000**

BANK CERTIFICATION

SouthTrust Bank as mortgagee certifies that the current principal advances secured by this Mortgage are \$ 2,819,720.00 and mortgage recording taxes are paid based on such amount.

SOUTHTRUST BANK

BY:

Its

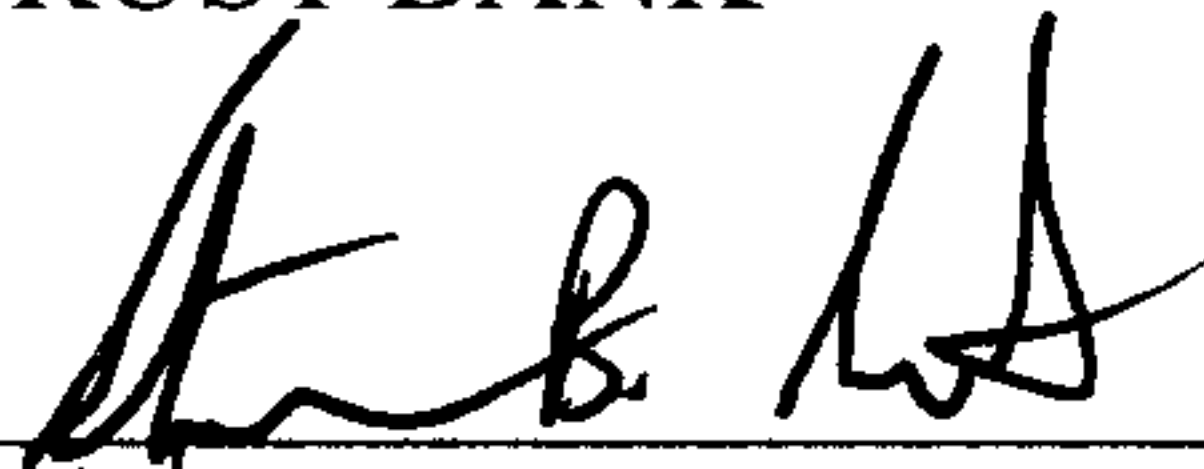

Asst. Vice President

EXHIBIT A

CHELSEA PARK 2nd SECTOR

Lots 2-1, 2-2, 2-11, 2-19, 2-20, 2-21, 2-22, 2-28, 2-29, 2-30, 2-31, 2-32, 2-33, 2-34, 2-35, 2-36, 2-37, 2-38, 2-39, 2-40, 2-41, 2-42, 2-43, 2-44 and 2-45, according to the Plat of Chelsea Park 2nd Sector as recorded in Map Book 34, Page 22 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

CHELSEA PARK 3rd SECTOR

Lots 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-9, 3-10, 3-11, 3-12, 3-13, 3-28, 3-29, 3-49, 3-50, 3-51, 3-52, 3-53, 3-62, 3-63, 3-64, 3-65, and 3-66 according to the Plat of Chelsea Park 3rd Sector as recorded in Map Book 34, Page 23 A & B in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.