

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), made as of March 1, 2005, between **SAVANNAH POINT, LLC**, an Alabama limited liability company (hereinafter called the "Borrower"), Mortgagor, whose address is 2236 Cahaba Valley Drive, Suite 100, Birmingham, Alabama 35242, Attention: Alan C. Howard, and **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association (hereinafter called the "Lender"), Mortgagee, whose address is P.O. Box 2554 (35290), 112 North 20th Street, Birmingham, Alabama 35203, Attention: Residential Real Estate.

WITNESSETH:

WHEREAS, pursuant to an Acquisition and Development Loan Agreement of even date herewith, as the same may hereafter be amended (as so amended, the "Loan Agreement"), Lender has made or has agreed to make a loan to Borrower in the principal sum of **Eight Million Dollars (\$8,000,000.00)**, to be evidenced by a certain Note of even date herewith, payable to Lender with interest thereon (said Note, as the same may hereafter be renewed, extended or modified, being herein called the "Note").

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, including future advances up to such principal sum, with the interest thereon, and any extensions or renewals of same, and further to secure all other indebtedness, fees, premiums (if any), charges, and expenses from time to time owing to Lender pursuant to the Note, this Mortgage or the Loan Agreement and further to secure the performance of the covenants, conditions, and agreements as set forth in the Loan Agreement and as hereinafter set forth, have bargained and sold and do hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All the tract(s) or parcel(s) of land particularly described in Exhibit A attached hereto and made a part hereof.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in Exhibit A, and all fixtures, machinery, equipment, furniture, furnishings, inventory and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in, on, or used or intended to be used in connection with or with the operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by the Borrower for the purpose of being used or useful in connection with the improvements located or to be located on the property described in Exhibit A, whether such materials, equipment, fixtures, fittings, and

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personal property are actually located on or adjacent to said property or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements.

(d) All licenses, permits (including building permits), water and sewer allocations or entitlements, general intangibles, accounts, trade names, trademarks, contract rights and other intangible property, now owned or hereafter acquired, relating to the foregoing real property or the business now or hereafter conducted thereat, it being agreed that the same may not be transferred to other real estate without the Lender's prior written consent.

(e) Proceeds and products of all of the foregoing real and personal property.

To the fullest extent permitted by applicable law, all of the foregoing shall be deemed a part of the real property and may be foreclosed upon and sold upon an Event of Default in accordance with the laws relating to mortgages of real estate.

TOGETHER with 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, interests, 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 the Borrower, 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 the Borrower of, in and to the same, including but not limited to:

(a) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as no Event of Default exists, the right to receive and retain the rents, issues, and profits thereof; and

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest and other indebtedness (including future advances) payable in respect to the Note, the Loan Agreement and this Mortgage, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall keep, perform, and observe all and singular the covenants and promises in the Note, in the Loan Agreement and in this Mortgage expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

AND the Borrower covenants and agrees with the Lender as follows:

ARTICLE I

1.1 **Performance of Note, Mortgage and Loan Agreement.** The Borrower will perform, observe and comply with all provisions hereof, of the Note secured hereby and of the Loan Agreement, and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage or the Loan Agreement, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.2 **Warranty of Title.** The Borrower is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except for the matters described in Exhibit B hereto (the "Permitted Encumbrances"), the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.3 **Monthly Tax Deposits.** If required by the Lender, following Lender's request, the Borrower will pay to the Lender on the first day of each month together with and in addition to the regular installment of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges when due. Upon an Event of Default, the Lender may apply any

funds held by Lender under this Section to the reduction of the sums secured hereby in such order and manner as the Lender shall determine.

1.4 **Other Taxes, Utilities and Liens.**

(a) The Borrower will pay promptly, when and as due, and will exhibit promptly to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.3 hereof), this Mortgage or the Note, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

(b) The Borrower will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) The Borrower shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property, unless arrangements satisfactory to Lender are made with respect thereto.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.5 **Insurance.** The Borrower will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this Mortgage, insurance policies, in such amounts as the Lender shall require, insuring the Mortgaged Property against losses typically insured under policies of fire and extended coverage insurance, and against such other insurable hazards, casualties and contingencies as the Lender may reasonably require, provided that unless and until improvements are constructed as part of the development of the Mortgaged Property, no insurance for loss or damage to any such improvements is required. The form of such policies and the companies issuing them shall be reasonably acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof reasonably satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any fire and extended coverage insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such fire and extended coverage policy or policies. Each insurance company providing fire and extended coverage insurance is hereby authorized and directed to make payment for all such losses directly to the Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any reasonable expenses incurred by it in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the indebtedness secured hereby selected by Lender, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to repair such buildings or to build new buildings in its place or for any other purpose or object satisfactory to the Lender without affecting the lien of the Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If required by the Lender, following Lender's request, the Borrower will pay to the Lender on the first day of each month, together with and in addition to the regular installment of principal and interest and monthly tax deposit (as required by Section 1.3 hereof) until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for fire and extended coverage insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums when due. Upon the occurrence of an Event of Default the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Borrower's credit.

Borrower shall also maintain in effect liability insurance in such amounts and with such companies as shall be reasonably acceptable to Lender and shall cause Lender to be named as an additional insured thereunder.

1.6 **Condemnation.** If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all its reasonable expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, whether then matured

or to mature in the future, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.7 Care of the Property.

(a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof. Nothing herein shall prevent Borrower from removal of improvements existing on the date of this Mortgage in order to prepare the Mortgaged Property for development of the Mortgaged Property as a residential subdivision.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof One Thousand Dollars (\$1,000.00) for any single transaction, or a total of Five Thousand Dollars (\$5,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Borrower will give immediate written notice of the same to the Lender.

(d) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Borrower will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof, including, without limitation, the Americans with Disabilities Act and regulations thereunder, the Fair Housing Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters, and with all present and future restrictive covenants affecting the Mortgaged Property.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower will restore promptly the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrower will restore promptly, repair or alter the remaining property in a manner satisfactory to the Lender.

1.8 **Further Assurances; After Acquired Property.** At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates, financing statements and other documents as may, in the reasonable opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this Mortgage, and the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, financing statements and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.9 **Leases Affecting Mortgaged Property.** The Borrower will not enter into or permit to exist any lease affecting the Mortgaged Property, or any part thereof, without Lender's prior written consent. Upon such consent being granted, Borrower will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases now or hereafter created with respect to all or any part of the Mortgaged Property; and all leases now or hereafter entered into must be approved by Lender in advance of Borrower becoming obligated upon any such leases. Borrower will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by the Lender, the Borrower will execute one or more separate assignments to the Lender of any and all such leases, whether now existing or hereafter created, and all rents, royalties, issues, and profits of the Mortgaged Property from time to time accruing. Borrower will not cancel, surrender, or modify any lease so assigned without the written consent of the Lender.

1.10 **Appraisals.** At the Lender's request, Borrower will permit the Lender, or its agents, employees or independent contractors, to enter upon and appraise the Mortgaged Property at any time and from time to time, and Borrower will cooperate with and provide any information requested in connection with such appraisals.

1.11 **Expenses.** The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Note, this Mortgage, Borrower, or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at the Default Rate (as defined in the Note), shall be payable upon demand, and shall be secured by the lien of this Mortgage.

1.12 **Performance by Lender of Defaults by Borrower.** If the Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this Mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at a rate equal to the Default Rate. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

1.13 **Books and Records.** The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. The Borrower will furnish to the Lender within ninety (90) days after the end of the Borrower's fiscal year (or calendar year with respect to any Borrower that is a natural person), a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by the Borrower (or an officer, manager or general partner thereof), or if required by the Lender, a certified public accountant reasonably satisfactory to the Lender, and a rent schedule for the Mortgaged Property, certified by the Borrower (or an officer, manager or general partner thereof), showing the name of each tenant, and, for each tenant, the space occupied, the lease expiration date and the rent paid.

1.14 **[Intentionally omitted].**

1.15 **Other Credit Agreements.** Borrower will maintain compliance with and timely pay, perform and observe all obligations under all other loan agreements, credit agreements, promissory notes, mortgages, deeds of trust, security agreements and other documents, instruments or agreements with its creditors (including Lender) evidencing or securing debt (collectively, the "Other Credit Agreements"), and agrees to promptly inform Lender of any breach or default under any Other Credit Agreements.

1.16 **Environmental Matters.** Borrower represents and warrants to Lender that neither the Mortgaged Property nor Borrower is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any remedial obligations under any applicable laws, rules or regulations pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), and Borrower further represents and warrants that, except as specifically set forth in the Phase I environmental site assessment report dated March 4, 2003, prepared by Gallet & Associates, Inc. provided by Borrower to Lender (the "ESA"), there are no facts, conditions or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions and

circumstances, if any, were fully disclosed to the applicable governmental authority. Borrower represents and warrants that it has not obtained and, except as specifically set forth in the ESA, is not required to obtain any permits, licenses, or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment in connection with the Mortgaged Property or improvements constructed or to be constructed by reason of any environmental laws, rules or regulations. Borrower represents and warrants that except as specifically set forth in the ESA no oil, toxic or hazardous substances or solid wastes have been disposed of or released on the Mortgaged Property, and Borrower agrees that it will not in its use of the Mortgaged Property dispose of or release oil, toxic or hazardous substances or solid wastes on the Mortgaged Property (the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal," "dispose" or "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein). Notwithstanding anything to the contrary herein, Borrower shall indemnify and hold Lender harmless from and against any fines, charges, expenses, fees, attorney fees and costs incurred by Lender in the event the Borrower or the Mortgaged Property (whether or not due to any fault of Borrower) is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto, and this indemnity shall survive any foreclosure or deed in lieu of foreclosure or payment of the indebtedness secured hereby.

1.17 **Other Representations, Warranties and Covenants.** Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan to Borrower, and agrees with Lender, as follows:

(a) Borrower is a duly organized and existing limited liability company having full power and authority to consummate the transactions contemplated by this Mortgage, and the execution, delivery and performance of this Mortgage, the Note and the documents executed in connection herewith have been duly authorized by all necessary member action. Borrower shall maintain its existence and good standing as a limited liability company and will not permit any change in its ownership or management without Lender's prior written consent. Borrower owns no other material assets other than the Mortgaged Property and does not engage in any business other than ownership and development of the Mortgaged Property, and will not acquire any other assets or engage in any other business without Lender's prior written consent. Borrower has not made and will not make loans to any other person or entity and has not and will not guarantee loans or debts of any other person or entity.

(b) There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower or which might impair the value of any collateral taken or to be taken by Lender in connection with this loan transaction. Borrower is not in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on such Borrower's business or assets, and Borrower is not in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Borrower is subject. Neither the execution and performance of this Mortgage, the Note, or any other document executed in connection herewith by Borrower will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower.

(c) All financial statements of Borrower heretofore given and hereafter to be given to Lender (i) are and will be true and complete in all respects as of its respective dates, (ii) are and will be prepared in accordance with generally accepted accounting principles consistently applied, and (iii) fairly represent the financial conditions of the business or persons to which they pertain, and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof.

(d) All utility and sanitary sewage services necessary for the development of the Mortgaged Property as a residential subdivision are available to the boundary of the Mortgaged Property (provided that Borrower anticipates that two lift stations will likely be required to bring sanitary sewage to the boundary from parts of the Mortgaged Property) and access to the Mortgaged Property is available to its boundary pursuant to permanent public roads that have been paved and are maintained by the applicable city or county government.

(e) There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to acquire any power of condemnation or eminent domain with respect to the Mortgaged Property, or any interest therein, or to enjoin or similarly prevent the use of any of the Mortgaged Property as presently used.

(f) All documents furnished to Lender by or on behalf of Borrower as part of or in support of the loan application or pursuant to the commitment letter issued by Lender are in all material respects true, correct, complete and accurately represent the matters to which they pertain.

(g) Except as may be specifically set forth in the ESA, the Mortgaged Property complies with all applicable covenants and restrictions of record and all laws, ordinances, rules and regulations, including, without limitation, those relating to zoning, building codes, set back requirements and environmental matters.

1.18 **Estoppel Affidavits.** The Borrower within ten (10) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest.

ARTICLE II

2.1 **Event of Default.** The term "Event of Default," wherever used in the Mortgage, shall mean any one or more of the following events:

(a) Failure by the Borrower to pay as and when due and payable under the Note, this Mortgage or the Loan Agreement any principal, interest or other sums due, which failure continues for more than five (5) days following written notice from Lender to Borrower of such failure; or

(b) Failure by the Borrower duly to observe any other covenant, condition, or agreement of the Note, this Mortgage, the Loan Agreement or any other document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby, which failure continues

for thirty (30) days or more after written notice to Borrower in the manner set forth herein, or the occurrence of an Event of Default under any such document or instrument; or

(c) Except as otherwise expressly permitted herein, the sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein; or

(d) The creation or suffering to exist by the Borrower of any lien or encumbrance on the Mortgaged Property, other than the lien of this Mortgage, the lien for ad valorem taxes not then delinquent, and Permitted Encumbrances, if any, unless the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

(e) The sale or other transfer by any member (or any shareholder, member or venturer of such entity which is itself a member in Borrower) of any interest in Borrower (or any such entity), unless the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

(f) Any representation or warranty provided herein, in the Loan Agreement, in any document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby or in any document, instrument, financial statement or other material given or provided by or on behalf of Borrower in connection with the loan secured hereby, is false or materially misleading at the time given or provided or thereafter becomes untrue in any material respect; or

(g) The filing by the Borrower or any guarantor of any indebtedness secured hereby (a "Guarantor") of a voluntary petition in bankruptcy or the Borrower's or any Guarantor's adjudication as a bankrupt or insolvent, or the filing by the Borrower or any Guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Borrower's or any Guarantor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Borrower or such Guarantor or of all or any substantial part of its or his property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing by the Borrower or any Guarantor of its or his inability to pay its or his debts generally as they become due; or

(h) The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against the Borrower or any Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrower or any Guarantor or of all or any substantial part of its or his property or of any or all of the rents, revenues, issues, earnings, profits or income thereof which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(i) Any default in any Other Credit Agreements which is not cured after the giving of any required notice and expiration of any applicable cure period pursuant to such Other Credit Agreements for which the default occurred.

Notwithstanding anything herein, any requirement of notice specified above shall be deemed deleted if Lender is prevented from giving notice by bankruptcy or other applicable law, and the cure period shall be measured from the date of the event or failure rather than from the date of notice. Nothing herein shall require notice except where expressly set forth.

2.2 **Acceleration of Maturity.** If an Event of Default shall exist, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.3 **Right of Lender to Enter and Take Possession.**

(a) If an Event of Default shall exist, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and if and to the extent permitted by law, the Lender may enter and take possession, of all the Mortgaged Property, and may exclude the Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage, and control the Mortgaged 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 Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in Borrower's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender 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, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this Mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.3 and 1.5 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

(c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower, its

successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.4 **Receiver.**

(a) If an Event of Default shall exist, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Borrower will pay to the Lender upon demand all expenses, including receiver's fees, attorney's fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section; and all such expenses shall be secured by this Mortgage.

2.5 **Lender's Power of Enforcement.** If an Event of Default shall exist, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

2.6 **Power of Sale.** If an Event of Default shall exist, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said 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, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor, and apply all or any designated part of the indebtedness secured hereby as a credit against the purchase price. At the foreclosure sale the Mortgaged 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 Lender may elect.

2.7 **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.6 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon at a rate equal to the Default Rate, which Lender may have paid, or become liable to pay, or which it may

then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby, including interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the persons or entities entitled to such balance under applicable law after deducting any expense of ascertaining who is so entitled to such balance.

2.8 **Lender's Option on Foreclosure.** At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose its rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.9 **Waiver of Exemption.** Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

2.10 **Suits to Protect the Mortgaged Property.** The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents, and profits arising therefrom, 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 would impair the security hereunder or be prejudicial to the interest of the Lender.

2.11 **Borrower to Pay the Note on Any Event of Default; Application of Moneys by Lender.** If an Event of Default occurs, then, upon demand of the Lender, the Borrower will pay to the Lender the whole amount due and payable under the Note; and in case the Borrower shall fail to pay the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses, and disbursements of the Lender's agents and attorneys.

2.12 **Delay or Omission No Waiver.** No delay or omission of the Lender or of any holder of the Note to exercise any right, power, or remedy accruing upon any default or Event of Default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default or Event of Default, or acquiescence therein; and every right, power,

and remedy given by this Mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

2.13 **No Waiver of One Default to Affect Another, etc.** No waiver of any default or Event of Default hereunder shall extend to or shall affect any subsequent or any other then existing default or Event of Default or shall impair any rights, powers, or remedies consequent thereon.

If the Lender (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 herein, in the Note or in the Loan Agreement; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage, the Loan Agreement or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or Guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, 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 Mortgaged Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged 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.

2.14 **Discontinuance of Proceedings - Position of Parties, Restored.** In case the Lender 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 the Lender, then and in every such case the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of the Lender shall continue as if no such proceeding has been taken.

2.15 **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any 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 now or hereafter existing at law or in equity or by statute.

ARTICLE III

3.1 **Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and

assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of its respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

3.2 **Headings, etc.** The headings of the articles, sections, paragraphs, and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.3 **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms, or provisions contained in this Mortgage or in the Note shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein and in the Note shall in no way be affected, prejudiced, or disturbed thereby.

3.4 **Lien on Personal Property.** This Mortgage creates a lien on and grants a security interest in the personal property of the Borrower described herein which constitutes part of the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens upon and security interests in personal property. Borrower authorizes Lender to file and refile such financing statements, continuation statements or other documents in order to perfect or continue Lender's perfection with respect to such personal property as is described within the definition of "Mortgaged Property" as Lender may from time to time deem appropriate. This Mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code with Borrower as the "debtor" and Lender as the "secured party," and their respective addresses are set forth in the heading to this instrument. If an Event of Default occurs, the Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code or other law applicable to liens upon and security interests in personal property.

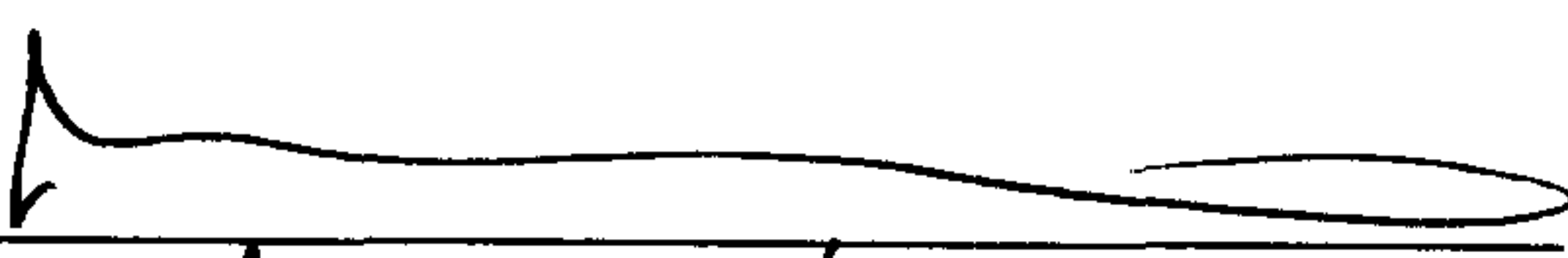
3.5 **Notices.** Any and all notices, elections or demands permitted or required to be made under this Mortgage, the Note, or any other agreement executed in connection with or relating to the Note or this Mortgage, or by applicable law, shall be given and be deemed effective (a) on the date delivered in person, (b) three (3) days following the date deposited with the U.S. Mail, certified or registered, postage prepaid, return receipt requested, or (c) one (1) business day following the date sent by Federal Express or overnight U.S. Mail or other national overnight carrier, and addressed in each such case to the parties at their respective addresses set forth in the heading of this instrument or such other single address as either party may designate in a written notice given as herein provided (except that a change of address notice shall not be effective until actual receipt).

* * *

IN WITNESS WHEREOF, the Borrower has executed this Mortgage, or has caused this Mortgage to be executed, on the day and year first above written.

BORROWER:

SAVANNAH POINT, LLC,
an Alabama limited liability company

BY: 

Print Name: Alan C Howard

Its Manager

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Alan C. Howard, whose name as manager of Savannah Point, LLC, 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 and official seal, this 1st day of March, 2005.

[Notary Seal)


NOTARY PUBLIC

My Commission Expires:

8/8/08

This instrument prepared by:

Dwight L. Mixson, Jr.
Burr & Forman LLP
3100 SouthTrust Tower
420 North 20th Street
Birmingham, Alabama 35203
Telephone: (205) 251-3000

Exhibit A

Legal Description

PARCEL ONE

A parcel of land containing 243.97 acres, more or less, being located in the South half of Section 31, Township 21 South, Range 2 West and the East half of the West half of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, also being portions of those properties described in Book 345, Page 695; Instrument No. 1993-08838 and Book 345, Page 704; being more particularly described as follows with a bearing basis being the Right of Way for Shelby County Highway 22:

Commence and begin at a 3/4 inch rebar found at the Northeast Corner of the Northwest Quarter of the Southeast Quarter of Section 31, Township 21 South, Range 2 West, Shelby County, Alabama; thence run South 2°59'41" East 1364.37 feet to a 1/2 inch rebar found; thence South 3°29'39" East 1329.29 feet to a 1/2 inch rebar set (all set with a "CAE 00010" imprinted on a yellow cap); thence South 89°11'38" West 1346.74 feet to a "K B Weygand" iron pin found; thence South 04°16'44" East 664.29 feet to a capped rebar found; thence North 89°04'15" East 72.79 feet to a 1/2 inch rebar set; thence South 3°09'12" East 663.08 feet along an agreed upon fence line per Case No. CV 96-577 to a 1/2 inch rebar set; thence South 88°31'47" West 14.23 feet; thence South 05°35'11" East 566.02 feet to a point established by W. M. Varnon in February of 2005; thence South 84°24'51" West 386.53 feet to a point established by W. M. Varnon in February of 2005; thence South 36°57'15" West 325.72 feet to a point established by W. M. Varnon in February of 2005; thence South 05°03'24" East 490.00 feet to a point established by W. M. Varnon in February of 2005; thence South 72°15'31" West 146.04 feet to a 1 inch crimp iron found; thence South 30°07'08" West 188.92 feet to a 1/2 inch crimp iron found; thence South 44°12'35" West 244.64 feet along the North line of Instrument 1994-15035 to a 1/4 inch rebar found; thence South 39°48'44" East 344.29 feet to a 1/4 inch rebar found on the North right of-way line of Shelby County Highway 22; thence South 50°10'00" West 163.67 feet along the North right of way line of Shelby County Highway 22 to an iron pin capped "JAR"; thence North 39°16'12" West 300.00 feet along the East line of Instrument No. 1999-46404 to an iron pin capped "JAR"; thence South 50°07'18" West 119.86 feet to an iron pin capped "JAR"; thence North 39°14'30" West 27.66 feet to a 1/4 inch rebar found at the Northeast Corner of Book 329, Page 485; thence South 50°45'16" West 232.27 feet to a pipe found on the East line of Instrument No. 1995-09796; thence North 2°59'06" West 701.20 feet to an iron pin capped "JAR" being the Northwest Corner of the Northeast Quarter of the Southwest Quarter of Section 6, Township 22 South, Range 2 West; thence North 89°39'37" East 45.47 feet to a 1/2" crimp iron found at an agreed upon property line shown on the Albright Baker Survey as recorded in Map Book 6, Page 104 in the Office of the Judge of Probate of Shelby County, Alabama; thence North 3°45'09" West 1591.42 feet along said agreed upon property line to a 1/2 inch crimp iron found at the Northeast corner of the Albright Baker Survey, also being at the Southeast Corner of the Albright Estate Distribution recorded in Instrument No. 1992-16870; thence North 3°49'08" West 2172.44 feet along said East line of the Albright Estate to a 1 inch pipe found; thence North 3°34'33" West 1610.59 feet to an iron pin capped "K B Weygand" at the Southwest Corner of Savannah Pointe Sector VI as recorded in Map Book 30, Page 41 in the Office of the Judge of Probate of Shelby County, Alabama; thence North 88°57'40" East 1316.08 feet to an iron pin capped "K B Weygand"; thence North 88°58'06" East 1218.74 feet along the South line of Savannah Pointe Sector III, Phase I as recorded in Map Book 25, Page 113 in the Office of the Judge of Probate of Shelby County, Alabama to a point on a curve to the right, concave Southerly with a radius of 280.00 feet, a central angle of 26°27'13", a chord bearing of North 75°27'20" East and a chord of 128.15 feet; thence run Northeasterly, then Easterly 129.28 feet along the arc of said curve to a 1/2 inch rebar found; thence South 3°56'14" East 30.00 feet to the Point of Beginning.

Exhibit B

Permitted Encumbrances

1. Ad valorem taxes for the year 2005 and subsequent years, not yet due and payable.
2. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto as recorded in Volume 60, Page 109 and Volume 254, Page 298.
3. Possible easement for power line shown on survey provided to Lender.