

EXECUTION COPY

Prepared By and After Recording Return To:

DAVID L. DUBROW, ESQ.  
c/o ARENT FOX PLLC  
1675 BROADWAY  
NEW YORK, NY 10019

**AMENDMENT TO MULTIFAMILY SECOND MORTGAGE,  
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

THIS AMENDMENT TO MULTIFAMILY SECOND MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "Amendment") is made and entered into as of this 20th day of June, 2005, by and between (a) COLONIAL REALTY LIMITED PARTNERSHIP, a Delaware limited partnership organized and existing under the laws of Delaware, whose address is 2101 6<sup>th</sup> Avenue North, Suite 750, Birmingham, Alabama 35202-1687 (together with its permitted successors and assigns, "Borrower"), and (b) FANNIE MAE, a federally-chartered and stockholder-owned corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. §1716, et seq. ("Fannie Mae"), with respect to the following facts and circumstances:

RECITALS

WHEREAS, Borrower and Fannie Mae are parties to that certain Multifamily Second Mortgage, Assignment of Rents and Security Agreement dated as of June 1, 1996 (the "Multifamily Instrument") and recorded on July 1, 1996 as Instrument No. 1996/21129 with the Probate Office of Jefferson County, Alabama; and

WHEREAS, the parties desire to amend the Multifamily Instrument pursuant to that certain Master Reimbursement Agreement dated as of June 1, 1996, as amended by Amendment No.1 to Master Reimbursement Agreement dated of even date herewith (together with all renewals, extensions, amendments and modifications thereto, the "Master Reimbursement Agreement") between the Borrower and Fannie Mae, pursuant to which Fannie Mae has agreed to extend credit enhancement and liquidity support to the Borrower.

AGREEMENTS

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** Except as otherwise provided in this Amendment, capitalized terms used in this Amendment and shall have the respective meanings ascribed to such terms in the Multifamily Instrument.



2. **Amendments.**

(a) Section 5(c) of the Multifamily Instrument is amended by adding the following at the end of such Section:

“This power of attorney is coupled with an interest and therefore is irrevocable.”

(b) Section 5 of the Multifamily Instrument is amended by adding the following provision as Section 5(f):

“(f) If the Property is sold at a foreclosure sale or Lender acquires title to the Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.”

(c) Section 11 of the Multifamily Instrument is amended by adding the following at the end of the second sentence:

“This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 11 shall require Lender to incur any expense or take any action.”

(d) Section 26 of the Multifamily Instrument is deleted in its entirety and replaced with the following:

**“26. LOAN CHARGES.**

If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.”

3. **Amendments to Rider to Second Multifamily Instrument.**

(a) Uniform Covenant 6B as set forth in paragraph E of the Rider to Second Multifamily Instrument is hereby amended by:



(i) adding the following paragraph at the end of the fifth paragraph, which ends with the words “(Governmental Actions).”:

“Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

(1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;

(2) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;

(3) except to the extent previously disclosed by Borrower to Lender in writing, the Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;

(4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all permits, licenses, or other authorizations issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Property (“Environmental Permits”) required for the operation of the Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

(5) no event has occurred with respect to the Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;

(6) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and

(7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water



discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Property or any other property of Borrower that is adjacent to the Property.”

(ii) deleting the words “and (iv)” at the end of clause (iii) of the paragraph that begins “Borrower shall promptly notify the Lender in writing of:” and inserting in lieu thereof the following paragraph:

“(iv) any representation or warranty in this paragraph E becomes untrue after the date of this Agreement and (v)”

(iii) amending the first sentence of the seventh paragraph, which begins “Borrower shall pay promptly the costs of ...”, by adding the word “inspections” after the word “environmental” and adding the words “(“Environmental Inspections”)” after the word “investigations”;

(iv) adding the following at the end of the seventh paragraph, which begins “Borrower shall pay promptly the costs of ...”:

“The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with any Hazardous Materials Law or order of any



Governmental Authority that has or acquires jurisdiction over the Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.”

(v) amending clause (iii) of the paragraph that begins “Borrower shall hold harmless, defend and indemnify Lender ...” by adding the words “actual or alleged” after the word “future.”

(vi) adding the following new paragraphs after the paragraph that begins “Borrower shall hold harmless, defend and indemnify Lender ...”

“Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Borrower's expense.

Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a “Claim”), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.”

(vii) deleting in its entirety the paragraph the begins “The terms “Hazardous Materials,” for purposes of this paragraph E, includes petroleum and petroleum products ...” and replacing it with the following:

“The term “Hazardous Materials,” for purposes of this paragraph E, includes petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated



biphenyls and compounds containing them, lead and lead-based paint, asbestos in any form that is or could become friable, underground or above-ground storage tanks, whether empty or containing any substance; hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise including, but not limited to, any substance that requires special handling, those materials defined as "hazardous substances," "extremely hazardous substances," hazardous chemicals," "hazardous materials," "toxic substances," "solid waste," "toxic chemicals," air pollutants," "toxic pollutants," "hazardous wastes," "extremely hazardous waste," or "restricted hazardous waste" by Hazardous Materials Law or regulated by Hazardous Materials Law in any manner whatsoever.

Borrower shall, at its own cost and expense, do all of the following:

(1) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnites in any legal or administrative proceeding incident to any matters against which Indemnites are entitled to be indemnified under this Section 6B;

(2) reimburse Indemnites for any expenses paid or incurred in connection with any matters against which Indemnites are entitled to be indemnified under this Section 6B; and

(3) reimburse Indemnites for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnites of their rights under this Section 6B, or in monitoring and participating in any legal or administrative proceeding.

In any circumstances in which the indemnity under this Section 6B applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out-of-pocket expenses of such attorneys and consultants.

The provisions of this Section 6B shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each



Indemnitor shall be entitled to indemnification under this Section 6B without regard to whether Lender or that Indemnitor has exercised any rights against the Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitors under this Section 6B shall be joint and several. The obligation of Borrower to indemnify the Indemnitors under this Section 6B shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument."

(viii) inserting the following at the end of the paragraph that begins "The term "Hazardous Materials Laws," for purposes of this Paragraph E, means all federal, state and local laws..."

"Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs."

4. **Governing Law; Jurisdiction, Consent to Service; Waivers of Jury Trial.** This Amendment shall be construed, interpreted and enforced in accordance with, and the rights and remedies of the parties hereto shall be governed pursuant to, the provisions of Sections 10.07 ("Governing Law), 10.08 ("Jurisdiction, Consent to Service") and 10.09 ("Waivers of Jury Trial") of the Master Reimbursement Agreement, which provisions are hereby incorporated into this Amendment by this reference to the fullest extent as if the text of such provisions were set forth in their entirety herein.

5. **Ratification.** Except as herein expressly modified or amended, all terms and conditions of the Multifamily Instrument are hereby ratified and confirmed by Borrower and Fannie Mae and remain in full force and effect.

6. **Multiple Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but which together shall constitute this Amendment.

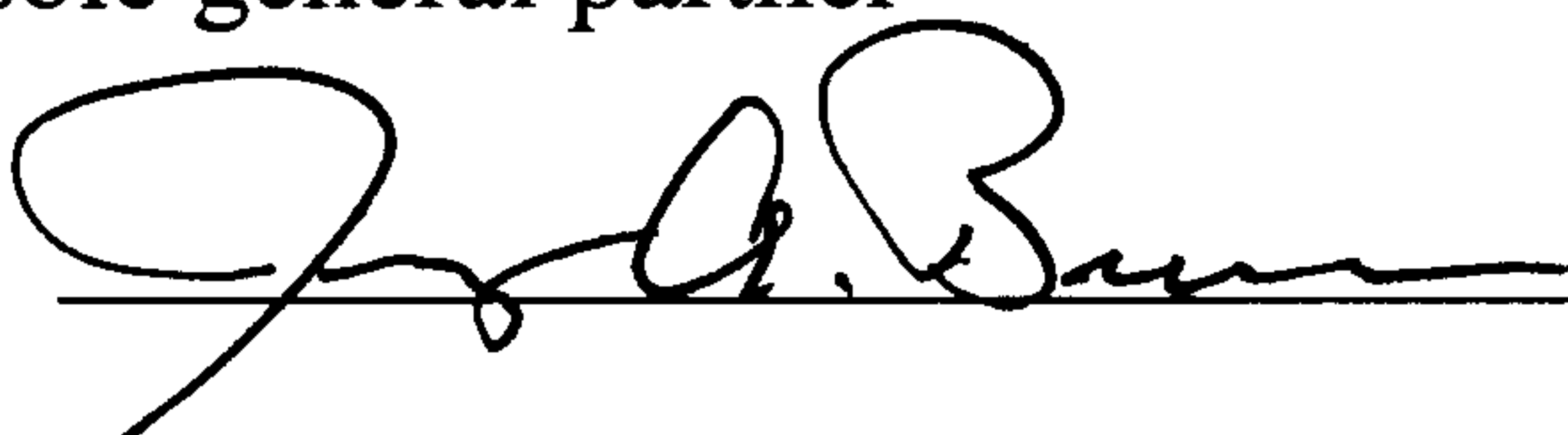
[SIGNATURES AND ACKNOWLEDGMENTS TO FOLLOW].

IN WITNESS WHEREOF, the parties hereto have duly signed, sealed and delivered this Amendment effective as of the date first above written

BORROWER:

COLONIAL REALTY LIMITED  
PARTNERSHIP

By: Colonial Properties Trust,  
its sole general partner

By: 

Name: Jerry A. Brewer

Title: Senior Vice President



STATE OF ALABAMA:

Jefferson County:

On this 14<sup>th</sup> day of June, 2005, Bandi Singleton a Notary Public in and for said county and in said state, hereby certify that Jerry A. Brewer, whose name as Senior Vice President of Colonial Properties Trust, a trust organized under the laws of Alabama, general partner of Colonial Realty Limited Partnership, is signed to the foregoing conveyance, and who is known to me, acknowledged before me that, being informed of the contents of the conveyance, he, as such officer of said general partner and with fully authority, executed the same voluntarily for and as the act of said limited partnership on the day same bears date.

Given under my hand and seal of office.

My commission expires:

3.30.08

Bandi H. My





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Shelby Cnty Judge of Probate, AL  
06/21/2005 08:04:44AM FILED/CERT

FANNIE MAE

By:

Name:

Title:

**GERALD P. LaHAIE**

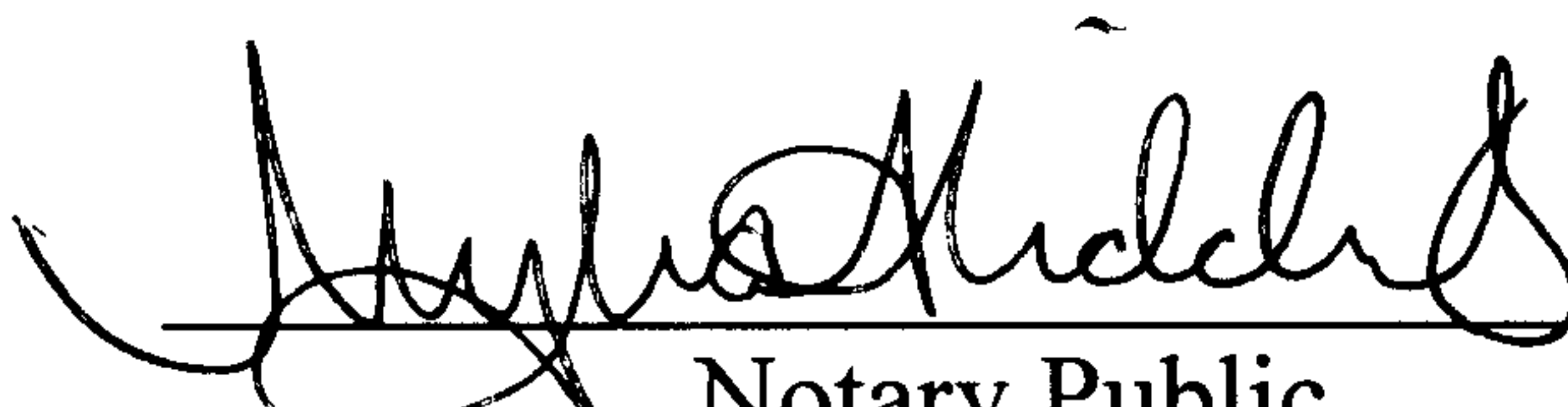
**VICE PRESIDENT**



STATE OF MARYLAND )  
 ) SS.:  
COUNTY OF MONTGOMERY )

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Shelby Cnty Judge of Probate, AL  
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On the 16<sup>th</sup> day of ~~May~~ <sup>June</sup> in the year 2005 before me, the undersigned, a notary public in and for said state, personally appeared Gerald P. Lattar personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Vice President of Fannie Mae, and that, by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

 (Notary Seal)  
Notary Public  
Name: Myra A. Riddick

My commission  
expires: October 30, 2007



## EXHIBIT "A"

20050621000307440 12/13 \$48.00  
Shelby Cnty Judge of Probate, AL  
06/21/2005 08:04:44AM FILED/CERT

## INVERNESS

### PARCEL ONE:

Begin at the Southwest corner of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and run in a Westerly direction along the south line of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of said Section 36 a distance of 13.95 feet to a point on the Southeasterly line of a 60 foot ingress-egress easement; said easement recorded in Real Volume 13, page 426 and Real Volume 28, page 673, in the Probate Office of Shelby County, Alabama; thence a deflection angle right of  $95^{\circ}39'07''$  and run in a Northeasterly direction along said Southeasterly line of 60 foot ingress-egress easement a distance of 44.18 feet to the point of curve of a curve to the right, said curve having a radius of 850.67 feet and a central angle of  $12^{\circ}57'23''$ ; thence continue in a Northeasterly direction along said curve and Southeasterly line of said 60 foot ingress-egress easement an arc distance of 192.36 feet to the point of tangent of said curve; thence continue in a Northeasterly direction along tangent 570.51 feet to the point of curve of a curve to the left, said curve having a radius of 272.04 feet and a central angle of  $36^{\circ}03'00''$ ; thence run in a Northeasterly to Northwesterly direction along the arc of said curve and the most Easterly line of said 60 foot ingress-egress easement an arc distance of 171.17 feet to a point of reverse curve of a curve to the right, said curve having a radius of 202.35 feet and a central angle of  $37^{\circ}27'00''$ ; thence run in a Northwesterly to Northeasterly direction along the arc of said curve and the most Easterly line of said 60 foot ingress-egress easement an arc distance of 132.26 feet to the point of tangent of said curve; thence continue in a Northeasterly direction along said tangent 55.49 feet to a point; thence an interior angle of  $90^{\circ}40'30''$  and run to the right, leaving the Northeasterly line of said 60 foot ingress-egress easement and running in a Southeasterly direction 90.63 feet to a point; thence an interior angle of  $260^{\circ}18'00''$  and run to the left in a Northeasterly direction 204.08 feet to a point; thence an interior angle of  $99^{\circ}12'00''$  and run to the right in a Southeasterly direction 265.33 feet to a point; thence an interior angle of  $197^{\circ}25'00''$  and run to the left in a Southeasterly direction 77.06 feet to a point; thence an interior angle of  $174^{\circ}49'00''$  and run to the right in a Southeasterly direction 65.07 feet to a point; thence an interior angle of  $128^{\circ}57'00''$  and run to the right in a Southeasterly direction 94.44 feet to a point; thence an interior angle of  $136^{\circ}04'00''$  and run to the right in a Southwesterly direction 132.54 feet to a point; thence an interior angle of  $161^{\circ}29'00''$  and run to the right in a Southwesterly direction 230.34 feet to a point; thence an interior angle of  $173^{\circ}05'00''$  and run to the right in a Southwesterly direction 142.56 feet to a point; thence an interior angle of  $265^{\circ}30'00''$  and run to the left in a Southeasterly direction 251.21 feet to a point; thence an interior angle of  $226^{\circ}22'00''$  and run to the right in a Southerly direction 420.00 feet to point; thence an interior angle of  $88^{\circ}53'00''$  and run to the right in a Westerly direction 271.66 feet to a point; thence an interior angle of  $271^{\circ}07'00''$  and run to the left in a Southerly direction 60.01 feet to a point on the South line of said Northwest  $\frac{1}{4}$  of Northeast  $\frac{1}{4}$  of said Section 36; thence an interior angle of  $88^{\circ}53'00''$  and run to the right along said South line of said  $\frac{1}{4}$   $\frac{1}{4}$  Section 548.37 feet to the point of beginning.



PARCEL TWO:

A non-exclusive easement for ingress and egress and the installation of utilities, 60 feet in width being 30 feet on each side of centerline described as follows:

From the SE corner of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, run West along the South Boundary of said  $\frac{1}{4}$   $\frac{1}{4}$  a distance of 44.10 feet to the point of beginning; thence 30 feet each side of a line described as:

From the said  $\frac{1}{4}$   $\frac{1}{4}$  line, turn an angle of the right of  $95^{\circ}39'07''$  and go 47.13 feet; thence right along the arc of a curve with a radius of 850.67 feet, a distance of 199.15 feet; thence along the tangent line to said curve a distance of 570.51 feet; thence along a curve to the left with a radius of 242.04 feet a distance of 152.29 feet; thence along the arc of a curve to the right with a radius of 232.35 feet a distance of 42.38 feet, said point being the end of this easement. Said easement being originally created by instrument recorded in Real Record 13, page 426 in the Probate Office of Shelby County, Alabama.

PARCEL THREE:

From the NW corner of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ , Section 36, Township 18 South, Range 2 West, run South along the West boundary of said  $\frac{1}{4}$   $\frac{1}{4}$  a distance of 370.01 feet; thence left  $88^{\circ}01'30''$  a distance of 212.71 feet to the point of beginning, said point on the centerline of a road, said centerline being a curve to the right with a radius of 232.35 feet; thence turn left  $97^{\circ}53'56''$  to the tangent of said curve and follow the arc of the curve a distance of 109.49 feet to the point of tangency of said curve; thence continue along the projection of said tangent a distance of 56.61 feet. Said easement being originally created by instrument recorded in real record 028, page 673 in the Probate Office of Shelby County, Alabama.