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**LAKE WELLINGTON DEVELOPMENT GROUP, LLC**  
an Alabama limited liability company  
(Mortgagor)

to

**RED MOUNTAIN BANK, N.A.**  
a national banking association  
(Mortgagee)

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MORTGAGE AND  
SECURITY AGREEMENT

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Dated: As of May 30, 2006

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Michael J. Brandt, Esq.  
Wallace, Jordan, Ratliff & Brandt, LLC  
800 Shades Creek Parkway, Suite 400  
Birmingham, Alabama 35209

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THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made as of the 30<sup>th</sup> day of May, 2006, by **LAKE WELLINGTON DEVELOPMENT GROUP, LLC**, an Alabama limited liability company, having an address at C/o Bob Adams Homes, Post Office Box 382484, Birmingham, Alabama 35238-2484 ("Mortgagor"), to **RED MOUNTAIN BANK, N.A.**, a national banking association, having its principal place of business at 5 Inverness Center Parkway, Birmingham, Alabama 35242 ("Mortgagee").

W I T N E S S E T H :

To secure the payment of an indebtedness in the principal sum of ONE MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$1,275,000.00), lawful money of the United States of America, to be paid with interest according to a certain note dated the date hereof made by Mortgagor to Mortgagee (the note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note") (said indebtedness, interest and all other sums due hereunder and under the Note being collectively called the "Debt"), Mortgagor by these presents does mortgage, grant, bargain, sell, convey and warrant unto Mortgagee, and grants unto Mortgagee a security interest in the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter collectively referred to as the "Mortgaged Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the

Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively called the "Personal Property"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Mortgaged Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(d) all leases and other agreements affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore or hereafter entered into (the "Leases") and all rents, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements, whether paid or accruing before or after the filing by or against Mortgagor or any petition for relief under 11 U.S.C. §101 *et. seq.* (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

(g) all of Mortgagor's right, title and interest in and to all plans and specifications, contracts, licenses, approvals, consents, subcontracts, service contracts, management contracts, permits and other agreements of any nature whatsoever now or hereafter obtained or entered into by Mortgagor, or any managing agent of the Premises on behalf of Mortgagor, with respect to the ownership and/or operation of the Premises; and

(h) all of Mortgagor's right, title and interest as developer under any declaration of covenants and restrictions now or hereafter affecting the Mortgaged

Property, including, without limitation, all rights of Mortgagor in and to contracts to purchase lots or other portions of the Mortgaged Property, and all voting rights of the developer.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto Mortgagee, and the successors and assigns of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Mortgagor will pay the Debt at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Mortgage now or hereafter executed by Mortgagor or others and by or in favor of Mortgagee, which wholly or partially secure or guaranty payment of the Note (the "Other Loan Documents"), are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

2. Warranty of Title. Mortgagor warrants that Mortgagor has good title to the Mortgaged Property and has full power, authority and the right to execute, deliver and perform its obligations under this Mortgage and to mortgage, grant, bargain, sell, convey and warrant and grant a security interest in the same, and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Insurance. Mortgagor shall keep or cause to be kept the Mortgaged Property insured against loss or damage by fire, extended coverage perils, vandalism, malicious mischief, and any such other hazards, casualties, or other contingencies as from time to time reasonably may be required by Mortgagee in such manner and in such companies and amounts as Mortgagee reasonably may approve. All such policies shall name Mortgagee as a named insured and provide, if and to the extent permitted by the applicable insurer, that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content reasonably acceptable to Mortgagee, to be attached to each policy) be payable to Mortgagee to the extent of the Debt, and provide that the insurance provided thereby, as to the interest of Mortgagee, shall not be invalidated by any act or neglect of Mortgagor, nor by the commencement of any proceedings by or against Mortgagor in bankruptcy, insolvency, receivership or any other proceeding for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the

property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. All such insurance shall be replacement cost coverage rather than actual cash value coverage. Mortgagor shall cause duplicate originals of any and all such insurance policies to be deposited with Mortgagee. At least fifteen (15) business days prior to the date the premiums ("Insurance Premiums") on each such policy or policies shall become due and payable, Mortgagor shall furnish to Mortgagee evidence of the payment of such premiums. Mortgagor will request of each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to Mortgagee) to give Mortgagee at least thirty (30) business days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. Mortgagor agrees that Mortgagor will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder. Mortgagor shall give prompt notice in writing to Mortgagee of any loss or damage to the Mortgaged Property caused by any casualty. If Mortgagor fails to keep the Mortgaged Property insured as above specified, Mortgagee may at its option and sole discretion, and at Mortgagor's expense, insure the Mortgaged Property for its insurable value against loss by fire, wind and other hazards as specified above for the sole benefit of Mortgagee.

Mortgagee is hereby authorized, but not required, on behalf of Mortgagor, to collect for, adjust or compromise any losses under any such insurance policies and to apply, at its option, the loss proceeds (less expenses of collection) on the Debt, in any order and amount, and whether or not due, or hold such proceeds as a cash collateral reserve against the Debt, or apply such proceeds to the restoration of the Mortgaged Property, or to release the same to Mortgagor, but no such application, holding in reserve or release shall cure or waive any default by Mortgagor. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the Debt, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. If the Mortgaged Property or any part thereof is located within an area that has been, or should such area at any time be, designated or identified as an area having special flood hazards by any governmental authority having jurisdiction, then Mortgagor will obtain such insurance as is required by such governmental authority in amounts required by Mortgagee.

4. Payment of Taxes, etc. Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof and any interest, penalties and charges thereon (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as same become due and payable and before any interest, penalty or charge shall become payable. Mortgagor will deliver to Mortgagee, promptly upon Mortgagee's request, evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee or its

designee receipts for the payment of the Taxes, Other Charges and said utility services prior to the date the same shall become delinquent.

5. Escrow Fund. Mortgagor shall, at the option of Mortgagee, pay to Mortgagee or its designee on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable, during the next ensuing twelve (12) months, and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (said amounts in (a) and (b) above hereinafter called the "Escrow Fund"). The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to paragraphs 3 and 4 hereof, Mortgagee shall return any excess to Mortgagor or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Mortgagor shall promptly pay to Mortgagee, upon demand, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default (hereinafter defined) Mortgagee may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; or (v) all other sums payable pursuant to the Note, this Mortgage and the Other Loan Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Mortgage. Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the Escrow Fund shall be payable to Mortgagor.

6. Condemnation. Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Note. Mortgagee may apply any such award or payment to the reduction or discharge of the Debt whether or not then due and payable. In the event that prior to the extinguishment of the Debt any such award or payment has not been paid and distributed in

accordance with the terms of this Mortgage, and any such award or payment shall be paid after the extinguishment of the Debt, and the foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property shall have resulted in extinguishing the Debt for an amount less than the total of the Debt, then and in that event that portion of the payment in satisfaction of the award or payment which is equal to the difference between the total amount above referred to and the amount theretofore paid to Mortgagee shall belong to and be the property of Mortgagee and shall be paid to Mortgagee, and Mortgagor hereby assigns, transfers and sets over to Mortgagee all of Mortgagor's right, title and interest in and to said sum. The balance, if any, shall be paid to Mortgagor.

7. Leases and Rents. (a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance reasonably satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph 7, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon an Event of Default, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

(b) Mortgagor shall furnish Mortgagee with executed copies of all Leases. No material changes may be made to Leases without the prior written consent of Mortgagee other than those made in the ordinary course of business. In addition, all renewals of Leases and all proposed leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions and shall not contain rental or other concessions other than those made in the ordinary course of business. All proposed leases shall be subject to the prior approval of the Mortgagee except that all proposed leases which (i) are on the same form of lease which has been approved by Mortgagee without material modification adverse to Mortgagee, (ii) are the result of an arms-length transaction, (iii) which provide for rental rates comparable to existing market rates and (iv) do not contain any terms which would materially adversely affect Mortgagee's rights under this Mortgage, the Note or the Other Loan Documents, shall not be subject to the prior approval of Mortgagee. Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) upon the request of Mortgagee, shall promptly send copies to Mortgagee of all notices of default which Mortgagor

shall send or receive thereunder; (iii) other than in the ordinary course of business and consistent with the policies and practices followed by similarly situated lessors of real estate, shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (vi) shall not alter, modify or change the terms of the Leases in any material adverse way without the prior written consent of Mortgagee, or, other than in the ordinary course of business and consistent with the policies and practices followed by similarly situated lessors of real estate, cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Premises or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; and (vii) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require.

8. Maintenance, Management and Use of Mortgaged Property. (a) Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty, or become, worn or dilapidated or which may be affected by any proceeding of the character referred to in paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee.

(b) [Omitted]

(c) The Mortgaged Property shall be used only for a residential subdivision, and for no other use without the prior written consent of Mortgagee.

9. Transfer or Encumbrance of the Mortgaged Property. (a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of Mortgagor and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alien, mortgage, encumber, pledge or otherwise transfer or grant a

security interest in the Mortgaged Property or any part thereof or permit the Mortgaged Property or any part thereof to be sold, conveyed, aliened, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property within the meaning of this paragraph 9 shall be deemed to include: (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, any Guarantor (hereinafter defined) or any general partner or managing member of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (iv) if Mortgagor, any Guarantor or any general partner or managing member of Mortgagor or any Guarantor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or managing partner or the transfer of the partnership interest of any general partner or managing partner; (v) if Mortgagor, any Guarantor or any general partner or managing member of Mortgagor or any Guarantor is a limited liability company, the change, removal or resignation of a member or the transfer of the membership interest of any member or any profits or proceeds relating to such membership interest; (vi) the removal or resignation of the Property Manager for the Mortgaged Property or the transfer of ownership, management or control of such Property Manager to a person or entity not approved by Mortgagee pursuant to paragraph 8 hereto; and (vii) the mortgage, encumbrance or pledge of any interest in Mortgagor.

(c) Mortgagee reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of this Mortgage as so modified by the proposed transferee, payment of a transfer fee, or such other conditions as Mortgagee shall determine in its sole discretion to be in the interest of Mortgagee. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

10. Estoppel Certificates. (a) After request by Mortgagee, Mortgagor, within ten (10) days, shall furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the

Note and this Mortgage are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor will use its best efforts to furnish Mortgagee, within ten (10) days, with estoppel certificates from any lessees under any non-residential Leases as required by their respective Leases.

11. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

12. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

13. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

14. Usury Laws. This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by applicable law to contract or agree to pay. If by the terms of this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

15. Books and Records. Mortgagor shall keep proper and accurate books and records of account in accordance with generally accepted accounting practices consistently applied or on a modified cash basis and furnish to Mortgagee: (a) an annual rent roll signed, certified and dated by Mortgagor detailing the names of all tenants of the Improvements, the portion of the Improvements occupied by each tenant, the rent and any other charges payable under each lease,

and the term of each lease, within ninety (90) days after the close of each fiscal year; (b) an annual operating statement of the Mortgaged Property detailing the total revenues received and total expenses incurred to be prepared and certified by Mortgagor within ninety (90) days after the close of each fiscal year; (c) an annual balance sheet and profit and loss statement of Mortgagor, prepared by or, if required by Mortgagee, audited and certified by a certified public accountant reasonably acceptable to Mortgagee within ninety (90) days after the close of each fiscal year; and (d) such annual balance sheets and profit and loss statements and other financial statements as may, from time to time, be reasonably required by Mortgagee.

16. Performance of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

17. Further Acts, etc. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this paragraph 17.

18. Recording of Mortgage, etc. Mortgagor and any Guarantor upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold

harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

19. Prepayment. If permitted by the Note, the Debt may be prepaid in accordance with the terms thereof.

20. Events of Default. The Debt shall become immediately due and payable at the option of Mortgagee upon any one or more of the following events ("Event of Default"):

(a) if any portion of the Debt is not paid within ten (10) days after the same is due;

(b) if any of the Taxes are not paid when the same are due and payable, unless the payment of such taxes is duly, timely and validly appealed by Mortgagor with bond or other adequate security provided therefor;

(c) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Mortgagee upon request;

(d) if Mortgagor violates or does not comply with any of the provisions of paragraphs 9, 33 or 34;

(e) if any representation or warranty of Mortgagor, or of any person guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage (a "Guarantor"), made herein or in any guaranty, certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(f) if any representation or warranty made by Mortgagor or any Guarantor in any document, instrument or certificate furnished to Mortgagee with regard to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), shall have been false or misleading in any material respect when made;

(g) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due or admit in writing its inability to pay its debts as they become due;

(h) if a receiver, liquidator or trustee of Mortgagor or any Guarantor, including the indemnitor under any environmental indemnity agreement executed in connection herewith, shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or

acquiesced in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or any Guarantor upon the same not being discharged, stayed or dismissed within sixty (60) days;

(i) if Mortgagor fails to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, or if an event occurs which causes the dissolution of Mortgagor;

(j) if Mortgagor shall be in default after expiration of all applicable notice, grace and cure periods, under any other deed of trust, mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

(k) if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(l) if Mortgagor fails to cure promptly any violations of laws or ordinances affecting the Mortgaged Property;

(m) if the Mortgaged Property is materially subject to intentional acts of actual waste or arson; or

(n) if Mortgagor shall continue to be in default under any term, covenant or condition of the Note, this Mortgage or the Other Loan Documents other than those set forth in items (a) through (m) above, for ten (10) days after notice from Mortgagee in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from Mortgagee in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Mortgagor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days.

The cure period on any non-monetary default may be shortened, in Mortgagee's sole but reasonable discretion, upon written notice to Mortgagor, in the event the restriction against Mortgagee pursuing its remedies for default during such cure period will have, in Mortgagee's sole but reasonable discretion, an adverse effect on Mortgagee's interest in the loan secured by this Mortgage or the Mortgaged Property.

21. Default Interest. Upon the occurrence and during the continuance of any Event of Default, Mortgagor will pay interest on the unpaid principal balance of the Note at the rate of five percent (5%) per annum above the Applicable Interest Rate (as defined in the Note), or at the maximum interest rate which Mortgagor may by law pay, whichever is lower, (the "Default Rate"). The Default Rate shall be computed from the occurrence of the Event of Default until such Event of Default is cured. This charge shall be added to the Debt and secured by this Mortgage.

22. Right to Cure Defaults. Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the Other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

23. Late Payment Charge. If any portion of the Debt is not paid within 10 days of the date on which it is due, Mortgagor shall pay to Mortgagee an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law, but in no event more than \$1,000.00, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment, and such amount shall be secured by this Mortgage and the Other Loan Documents.

24. Prepayment After Event of Default. If following the occurrence of any Event of Default, Mortgagor shall tender payment of an amount sufficient to satisfy the Debt in whole or in part at any time prior to a sale of the Mortgaged Property either through foreclosure or the exercise of other remedies available to Mortgagee under this Mortgage, such tender by Mortgagor shall be deemed to be a voluntary prepayment under the Note in the amount tendered. If at the time of such tender prepayment of the principal balance of the Note is not permitted by the Note, Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee a sum equal to interest which would have accrued on the principal balance of the Note at the Applicable Interest Rate from the date of such tender to the earlier of (i) the Maturity Date (as defined in the Note), or (ii) the first day of the period during which prepayment of the principal balance of the Note would have been permitted, together with an amount equal to the Make Whole Amount (as defined in the Note) which would have been payable as of the first day of the period during

which prepayment would have been permitted. If at the time of such tender prepayment of the principal balance of the Note is permitted, Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee the Make Whole Amount which would be due in connection with a voluntary prepayment under the Note.

25. Right of Entry. Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times, following notice to Mortgagor, and at any time following an Event of Default, subject to the rights of the tenants under the Leases.

26. Remedies. (a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) declare the entire unpaid Debt to be immediately due and payable;

(ii) institute proceedings for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;

(iv) take possession of the Mortgaged Property, and at Mortgagee's option, pursuant to the power of sale hereby granted to Mortgagee by Mortgagor, to sell the same at the front door of the Courthouse of the county where said property is located, at auction for cash after giving notice of the time, place and terms of sale by advertisement published once a week for three consecutive weeks in a newspaper published in said county, and to make proper conveyance to the purchaser at such sale in the name of Mortgagor; and the proceeds of said sale to apply, first, to the payment of the costs of said sale, including reasonable attorney's and auctioneer's fees; second, to the payment of the Debt hereby secured, whether due or not, with the unpaid interest thereon to the date of sale, and any amount that may be due Mortgagee by virtue of any of the special items or agreements herein contained; and, third, the balance, if any, to be paid over to Mortgagor. At any sale under the powers herein contained, Mortgagee may bid upon and purchase the Mortgaged Property, or any part thereof, like a stranger hereto, in which event the auctioneer making the sale shall make the deed in the name of Mortgagor;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note;

(vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;

(viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof; or (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees; or

(ix) pursue such other rights or remedies as may be available at law or in equity.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the

payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale made by Mortgagee under or by virtue of this paragraph, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser a good and sufficient instrument conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute shall lawfully do by virtue hereof. Any sale made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the property and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

27. Reasonable Use and Occupancy. In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor or may require Mortgagor to vacate and

surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

28. Security Agreement. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Personal Property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personal Property. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and reasonable attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Personal Property and in enforcing its rights hereunder with respect to the Personal Property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personal Property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Personal Property, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

29. Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any deed of trust, mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt. Mortgagor shall pay all reasonable legal fees in connection with the exercise of Mortgagee's rights under this paragraph.

30. Waiver of Counterclaim. Mortgagor, in conjunction with its representation by competent legal counsel of its choice, hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee, and waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Mortgagor, or in any matters whatsoever arising out of or in any way connected with this Mortgage, the Note, any of the Other Loan Documents or the Debt.

31. Recovery of Sums Required To Be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the

same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

32. Marshaling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein.

33. Hazardous Materials. Mortgagor hereby represents and warrants to Mortgagee that, to the best of Mortgagor's knowledge, after due inquiry, such inquiry consisting solely of review of that certain environmental report dated January 2005, by Goodwyn, Mills and Cawood, Inc. (the "Environmental Report"): (a) the Mortgaged Property is not in violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), and any state super-lien and environmental clean-up statutes (collectively, "Environmental Laws"), (b) the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to hazardous or toxic, dangerous or regulated, substances, wastes, materials, pollutants or contaminants, petroleum, tremolite, antholophylite or actinolite or polychlorinated biphenyls (including, without limitation, any raw materials which include hazardous constituents) and any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Materials"); (c) no Hazardous Materials are, or have been prior to Mortgagor's acquisition of the Mortgaged Property, discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Mortgaged Property otherwise than in compliance with all Environmental Laws; and (d) no underground storage tanks exist on or under any of the Mortgaged Property. As long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor shall keep or cause the Mortgaged Property to be kept free from Hazardous Materials (except for small amounts of otherwise hazardous materials, such as cleaning fluids, which are properly stored, as used in the ordinary course of Mortgagor's business), and in compliance with all Environmental Laws, shall promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Materials on the Mortgaged Property, and/or if Mortgagor shall become aware that the Mortgaged Property is in direct or indirect violation of any Environmental Laws and Mortgagor shall remove such Hazardous Materials and/or cure such violations, as applicable, as required by law, promptly after Mortgagor becomes aware of same at Mortgagor's sole expense. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure. In the event of (i) a change in the use of the Mortgaged Property, (ii) any material revision to any Environmental Law affecting the Mortgaged Property, or (iii) any event giving Mortgagee reasonable grounds to believe further environmental study of the Mortgaged Property is appropriate, Mortgagor shall provide at Mortgagor's sole expense an inspection or audit of the Mortgaged Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous

Materials on the Mortgaged Property. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request Mortgagee may order same, and the cost of such inspection or audit shall be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate. Mortgagee shall have the right at all other times, at Mortgagee's sole expense, to retain a licensed hydrologist or licensed environmental engineer to perform an inspection or audit of the Mortgaged Property. The obligations and liabilities of Mortgagor under this paragraph 33 shall survive any termination, satisfaction or assignments of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including without limitation the entry of a judgment of foreclosure or the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure of this Mortgage.

34. Asbestos. Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, after due inquiry, such inquiry consisting solely of review of that certain Environmental Report: no asbestos or material containing asbestos ("Asbestos") is located on the Mortgaged Property. Mortgagor shall not install in the Mortgaged Property, nor permit to be installed in the Mortgaged Property, any Asbestos. Mortgagor shall remove or, if permitted by applicable federal, state and local laws, ordinance, rules and regulations, encapsulate any Asbestos which is friable or which does not comply with federal, state or local laws, ordinances, rules or regulations promptly upon discovery to the satisfaction of Mortgagee, at Mortgagor's sole expense. Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Mortgaged Property with all applicable Environmental Laws with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. In the event of (i) a change in the use of the Mortgaged Property, (ii) any material revision to any Environmental Law affecting the Mortgaged Property, or (iii) any event giving Mortgagee reasonable grounds to believe further environmental study of the Mortgaged Property is appropriate, Mortgagor shall provide, at Mortgagor's sole expense, an inspection or audit of the Mortgaged Property prepared by an engineering or consulting firm approved by Mortgagee, indicating the presence or absence of the Asbestos on the Mortgaged Property. If Mortgagor fails to provide such inspection or audit within (30) days after such request, Mortgagee may order same, and the cost of such inspection or audit shall be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate. Mortgagee shall have the right at all other times, at Mortgagee's sole expense, to retain an engineering or consulting firm to perform an inspection or audit of the Mortgaged Property. The obligations and liabilities of Mortgagor under this paragraph 34 shall survive any termination, satisfaction or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including without limitation the entry of a judgment of foreclosure or the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

35. Indemnification. Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and

expenses) imposed upon or incurred by or asserted against Mortgagee ("Losses") by reason of: (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (g) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, at, under, from, or affecting the Mortgaged Property (except as otherwise permitted in this Mortgage) or any other property or the presence of Asbestos on the Mortgaged Property; (h) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials or Asbestos; (i) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials or Asbestos; (j) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to such Hazardous Materials or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; (k) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the loan evidenced by the Note and secured by this Mortgage or (l) the matters set forth in sub-paragraph 20(f) hereof. Any amounts payable to Mortgagee by reason of the application of this paragraph shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this paragraph shall survive any termination, satisfaction or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including without limitation, the entry of a judgment of foreclosure or the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

36. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Mortgagor: Lake Wellington Development Group, LLC  
C/o Bob Adams Homes  
Post Office Box 382484  
Birmingham, Alabama 35238-2484  
Attention: Mr. Bobby Adams  
Facsimile: 205-678-4446

If to Mortgagee: Red Mountain Bank, N.A.  
5 Inverness Center Parkway  
Birmingham, Alabama 35242  
Attention: Mr. Art Freeman  
Facsimile: 205-313-8111

With a copy to: Michael J. Brandt, Esq.  
Wallace, Jordan, Ratliff & Brandt, L.L.C.  
800 Shades Creek Parkway, Suite 400  
Birmingham, Alabama 35209  
Facsimile: 205-871-7534

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. "Business Day" shall mean a day upon which commercial banks are not authorized or required by law to close in Alabama.

37. Authority. (a) Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and legal right to execute, deliver and perform its obligations pursuant to this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate, assign and grant a security interest in the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

(b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

38. Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage or any of the other Loan Documents specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage or any other Loan Document does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

39. Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that

arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

40. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or any Guarantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the Other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the Other Loan Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

41. No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

42. Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever; however, nothing in this paragraph shall be deemed to modify the provisions of paragraph 9 of this Mortgage regarding a transfer of the Mortgaged Property.

43. Inapplicable Provisions. If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

44. Headings, etc. The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

45. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

46. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

47. Assignments. Mortgagee shall have the right to assign (in whole or in part), transfer or sell participations in its rights under this Mortgage without limitation. Any Assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

48. Performance at Mortgagor's Expense. Mortgagor acknowledges and confirms that Mortgagee shall impose certain administrative processing and commitment fees in connection with (a) the extension, renewal, modification or amendment of the loan secured by this Mortgage, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Mortgaged Property, or (d) the review of any non-residential Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an "Event"). Mortgagor further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Mortgaged Property or any part thereof required by law, regulation, or any governmental or quasi-governmental authority. Mortgagor hereby acknowledges and agrees to pay, immediately, on demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Mortgagee from time to time, upon the occurrence of any Event or otherwise.

49. Attorney's Fees for Enforcement. (a) Mortgagor shall pay all reasonable legal fees incurred by Mortgagee in connection with (i) the preparation of the Note, this Mortgage and the Other Loan Documents and (ii) the items set forth in paragraph 48 above, and (b) Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and reasonable attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property, or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Mortgaged Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Mortgagee until such expenses are paid by Mortgagor.

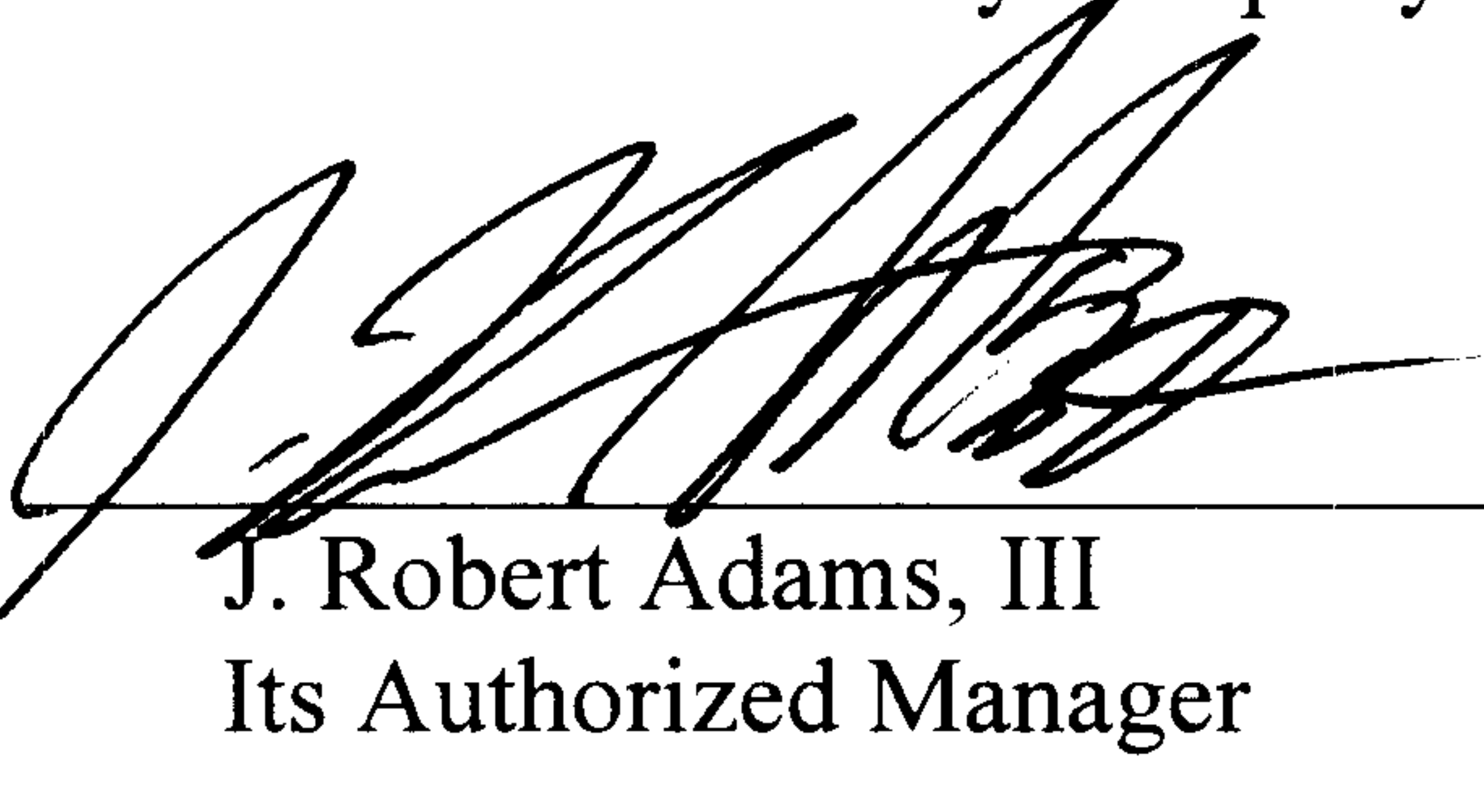
50. Governing Law. This Mortgage shall be deemed to be a contract entered into pursuant to the laws of the State of Alabama and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, this Mortgage has been executed by Mortgagor as of the day and year first above written.

MORTGAGOR:

**LAKE WELLINGTON DEVELOPMENT GROUP, LLC**  
an Alabama limited liability company

By:

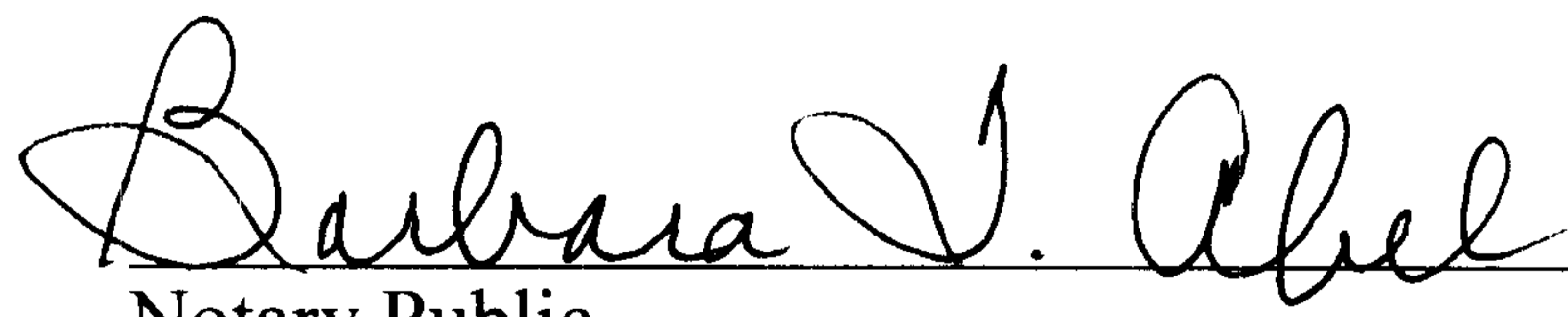
  
J. Robert Adams, III  
Its Authorized Manager

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that J. Robert Adams, III whose name as Authorized Manager of Lake Wellington Development Group, LLC, a limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this the 30<sup>th</sup> day of May, 2006.

  
Notary Public

My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Nov 9, 2007  
BY \_\_\_\_\_

# Exhibit A

## LEGAL DESCRIPTION



20060530000253930 26/26 \$1998.50  
Shelby Cnty Judge of Probate, AL  
05/30/2006 02:21:32PM FILED/CERT

### Parcel I

A parcel of land situated in the Northwest quarter of the Northwest quarter of Section 10, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of said quarter-quarter section; thence run East along the North line of said quarter-quarter section for a distance of 253.51 feet to an iron pin found at the point of beginning; thence continue along last stated course for a distance of 706.20 feet to an iron pin set on the Southwest right-of-way line of Caldwell Mill Road; thence turn an angle to the right of 53 degrees, 07 minutes, 45 seconds and run in a Southeasterly direction along said Southwest right-of-way line for a distance of 102.00 feet to an iron pin set; thence turn an angle to the right of 90 degrees, 00 minutes, 00 seconds and run in a Northwesterly direction along said Southwest right-of-way line for a distance of 10.00 feet to an iron pin set; thence turn an angle to the left of 90 degrees, 00 minutes, 00 seconds and run in a Southeasterly direction along said Southwest right-of-way line for a distance of 350.00 feet to an iron pin set; thence turn an angle to the left of 90 degrees, 00 minutes, 00 seconds and run in a Northeasterly direction along said Southwest right-of-way line for a distance of 10.00 feet to an iron pin set; thence turn an angle to the right of 90 degrees, 00 minutes, 00 seconds and run in a Southeasterly direction along said Southwest right-of-way line for a distance of 35.95 feet to a one-half inch rebar found; thence turn an angle to the right of 94 degrees, 44 minutes, 47 seconds and run in a Southwesterly direction for a distance of 264.89 feet to a point; thence turn an angle to the left of 49 degrees, 51 minutes, 45 seconds and run in a Southwesterly direction for a distance of 150.95 feet to a point; thence turn an angle to the right of 53 degrees, 49 minutes, 57 seconds and run in a Southwesterly direction crossing a lake for a distance of 480.14 feet to an iron pin found with a Survconn cap; thence turn an angle to the right of 141 degrees, 35 minutes, 59 seconds and run in a Northeasterly direction for a distance of 39.85 feet to an iron pin found with a Survconn cap; thence turn an angle to the left of 90 degrees, 10 minutes, 03 seconds and run in a Northwesterly direction for a distance of 371.10 feet to an iron pin found with a Survconn cap; thence turn an angle to the right of 66 degrees, 18 minutes, 30 seconds and run in a Northerly direction for a distance of 724.05 feet to the point of beginning.

### Parcel II

Commence at the Northwest corner of Section 10, Township 19 South, Range 2 West, Shelby County, Alabama and run thence southerly along the West line of said Section 10 a distance of 662.21 feet to a point; thence turn a deflection angle of 66 degrees 30 minutes 00 seconds to the left and run southeasterly a distance of 272.58 feet to a steel rebar corner and the point of beginning of the property being described; thence continue along last described course a distance of 369.50 feet to a point that is 5.0 feet into a small lake; thence turn a deflection angle of 90 degrees 00 minutes 00 seconds to the left and run Northeasterly a distance of 40.00 feet to a point in the same said lake; thence turn a deflection angle of 90 degrees 00 minutes 00 seconds to the left and run Northwesterly a distance of 382.89 feet to a steel rebar corner; thence turn a deflection angle of 113 degrees 30 minutes 00 seconds to the left and run southerly a distance of 43.45 feet to the point of beginning.