



**MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FINANCING STATEMENT**

THIS DOCUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO ALA. CODE § 7-9A-502(C) (1975), AND SHOULD BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF MORTGAGOR, AS DEBTOR, AND MORTGAGEE, AS SECURED PARTY.

STATE OF NEVADA
COUNTY OF CLARK

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KNOW ALL MEN BY THESE PRESENTS:

This MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS, AND FINANCING STATEMENT is dated as of July 5, 2006, by **BLACKHAWK ESTATES OF ALABASTER, LLC**, a Nevada limited liability company, whose address is 1429 Meadow Bluff Lane, Draper, Utah 84020, in favor of **EAGLE MORTGAGE COMPANY, INC.**, a Nevada corporation, with offices at 3910 Pecos-McLeod, Suite A-100, Las Vegas, Nevada 89121, as follows:

A. DEFINITIONS. The following terms shall have the defined meaning ascribed to such terms, as set forth below:

1. "Code" shall mean the Alabama Code, as now written or as hereafter amended or succeeded.

2. "Event of Default" shall mean the occurrence at any time and from time to time of any Event of Default as defined in the Note.

3. "Fixtures" shall mean all materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed in or used (temporarily or permanently) in connection with any of the Improvements (as defined below) or the Land (as defined below), and all renewals, replacements, and substitutions thereof and additions thereto, including, without limitation, any and all partitions, ducts, shafts, pipes, radiators, conduits, wiring, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, stokers, pumps, dynamos, transformers, generators, fans, blowers, vents, switchboards, elevators, mail conveyors, escalators, compressors, furnaces, cleaning, call and sprinkler systems, fire extinguishing apparatus, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling systems, water, gas and electric equipment, disposals, dishwashers, washers, dryers, refrigerators and ranges, cafeteria equipment, and recreational equipment and facilities of all kinds, all of which property and things are hereby declared to be permanent accessions to the Land.

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4. "Governmental Authority" shall mean any and all governmental or quasi-governmental entities of any nature whatsoever, whether federal, state, county, district, city or otherwise, and whether now or hereafter in existence.

5. "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder, (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder, (c) asbestos, (d) polychlorinated biphenyls, (e) any substance the presence of which on the Property (as defined below) is prohibited by any Governmental Requirements (as defined below), (f) any petroleum-based products which are deemed hazardous by any Governmental Requirements, (g) underground storage tanks which are deemed hazardous by any Governmental Requirements, and (h) any other substance which by any Governmental Requirements requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal. For purposes herein "Governmental Requirements" shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Mortgagor or the Property.

6. "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Improvements, facilities, soil, groundwater, air or other elements on or of the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Property.

7. "Impositions" shall mean all rates and charges (including deposits), insurance, taxes (both realty and personalty), water, gas, sewer, electricity, telephone and other utilities, any easement, license or agreement maintained for the benefit of the Property, and all other charges, and any interest, costs or penalties with respect thereto, of any nature whatsoever which may now or hereafter be assessed, levied or imposed upon the Property or the Rents (as defined below) or the ownership, use, occupancy or enjoyment thereof.

8. "Improvements" shall mean any and all buildings, parking areas and other improvements, and any and all additions, alterations, or appurtenances thereto, now or at any time hereafter placed or constructed upon the Land or any part thereof.

9. "Land" shall mean the real estate (or interest therein) described in **Exhibit "A"**, attached hereto and incorporated herein by this reference, all Improvements and Fixtures, and all rights, titles and interests appurtenant thereto.

10. "Leases" shall mean all leases (including, oil, gas and other mineral leases), subleases, licenses, concessions, contracts or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, any portion of the Property, or which relate to the use or construction of the Improvements.

11. "Legal Requirements" shall mean any and all of the following that may now or hereafter be applicable to Mortgagor or the Property: judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority; Mortgagor's Bylaws and Articles of Incorporation, Agreement of Partnership, Limited Partnership, or Joint Venture, Trust Declarations or other agreements pertaining to any other form of Mortgagor's business entity; Leases; restrictions of record; and other written or oral agreements or promises of any nature.

12. "Loan Documents" shall mean the Note, this Mortgage and all promissory notes, security agreements, deeds of trust, assignments, guaranties, and other instruments, documents, and agreements executed and delivered pursuant to or in connection with the Note, or this Mortgage, as such instruments, documents, and agreements may be amended, modified, renewed, extended, or supplemented from time to time.

13. "Mortgage" shall mean this Mortgage, Deed of Trust, Security Agreement, Assignment of Rents and Financing Statement.

14. "Mortgagee" shall mean Eagle Mortgage Company, Inc., a Nevada corporation, as well as any subsequent holder or holders of the Note (as defined below).

15. "Mortgagor" shall mean the party or parties, whether one or more, who execute this Mortgage and who are identified first in the initial paragraph of this Mortgage, as well as the successors, assigns, heirs and legal representatives of such party or parties.

16. "Note" shall mean collectively (a) that certain promissory note, dated July 5, 2006 in the original principal amount of **\$11,000,000**, executed by Mortgagor and payable to the order of Mortgagee, and (b) all extensions, renewals and modifications thereof and all other notes given in substitution therefore.

17. "Obligations" shall mean:

- (a) the obligations and indebtedness of Mortgagor to Mortgagee evidenced by the Note;
- (b) all future advances by Mortgagee to Mortgagor and Borrowers, or any of them;
- (c) all costs and expenses, including, without limitation, all reasonable attorneys' fees and legal expenses, incurred by Mortgagee to preserve and maintain the lien created hereby, collect the obligations herein described, and enforce this Mortgage;
- (d) all other obligations, indebtedness, and liabilities of Mortgagor to Mortgagee, now existing or hereafter arising, regardless of whether such obligations, indebtedness and liabilities are similar, dissimilar, related, unrelated, direct, indirect, fixed, contingent, primary, secondary, joint, several, or joint and several; and
- (e) all extensions, renewals, and modifications of any of the foregoing.

18. "Obligated Party" shall mean any guarantor, surety, endorser, partner of Mortgagor or other person that guarantees or secures payment or performance of any portion of the Obligations or otherwise directly or indirectly is obligated, primarily or secondarily, for the payment or performance of any portion of the Obligations.

19. "Personalty" shall mean all of the right, title and interest of Mortgagor in and to all personal property (other than the Fixtures) of any kind as defined in Code, including, without limitation, all furniture, furnishings, equipment, machinery, goods, general intangibles, money, accounts, contract rights, and inventory, now or hereafter located upon within or about the Land and the Improvements, together with all accessories, replacements and substitutions therefore and the proceeds thereof.

20. "Property" shall mean the Land, Improvements, Fixtures, Personalty, and Rents, together with all or any part of, and any interest in, the following: rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages, and appurtenances in any way pertaining thereto, and rights, titles, and interests of Mortgagor in and to any streets, ways, alleys, strips of land adjoining the Land or any part thereof; additions, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein and other property, real and personal, now or hereafter installed or used on the Land or the improvements thereon; all utility lines installed in or upon or serving the Land; all utility commitments and reservations and reservations of Land surface water rights, and underground water rights, in, on, under or appurtenant to the Land, wastewater capacity and other such rights relating to utilities; and other security and collateral of any nature whatsoever, now or hereafter given for the payment, performance and discharge of the Obligations (including the

account described in Section L.1 (e), and all the estate, right, title and interest of every nature whatsoever of the Mortgagor in and to all of the foregoing and every part and parcel thereof. The Property includes those rights described in Agreement entered into by both parties on this date entitled Assignment of Utility Development Agreements and Proceeds.

21. "Rents" shall mean all consideration, whether income, money or otherwise, paid or payable for the use or occupancy of the Property, including without limitation, the proceeds of all hydrocarbons or other minerals produced from the Property and all delay rentals and bonuses from any oil, gas or other mineral lease, or contract rights with respect to the Property, including, without limitation, any right to reimbursement for utilities or other improvements installed by its Mortgagor.

B. GRANT. To secure the full and timely payment and performance of the Obligations, and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration in hand paid by Mortgagee to Mortgagor, the receipt and legal sufficiency of which are hereby acknowledged, Mortgagor has GRANTED, BARGAINED, ASSIGNED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, ASSIGN, SELL and CONVEY, unto Mortgagee the Property in trust hereunder, for the use and benefit of Mortgagee, TO HAVE AND TO HOLD the Property unto Mortgagee and its assigns forever and Mortgagor does hereby bind Mortgagor, its successors and assigns to warrant and forever defend the Property unto Mortgagee, its successors and assigns, forever, against the claim or claims of all persons whomever, claiming or to claim the same or any part thereof.

C. WARRANTIES, REPRESENTATIONS, COVENANTS AND OTHER AGREEMENTS. Mortgagor unconditionally warrants, represents, covenants and agrees that:

1. The Loan Documents to which Mortgagor is a party are legal, valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms, and the execution and delivery of, and performance under, the Loan Documents: are within Mortgagor's powers and have been duly authorized by all requisite action (corporate, partnership, trust or otherwise); have received all requisite approval by applicable Governmental Authorities; and will not violate, conflict with, breach or constitute a default under, any Legal Requirement or result in the imposition of any lien, charge or encumbrance of any nature upon any of Mortgagor's assets, except as contemplated in the Loan Documents.

2. Mortgagor has good and indefeasible title to the Land, Improvements, Fixtures and Personalty, free and clear of any liens, encumbrances, security interests or adverse claims. This Mortgage shall constitute a valid, subsisting, first lien on the Land, Improvements and Fixtures and a valid, subsisting, perfected and prior security interest in and to the Personalty and Leases, all in accordance with the terms hereof.

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3. The Property forms no part of any property owned, used or claimed by Mortgagor as a residence or business homestead, is not exempt from forced sale under the laws of the State of Alabama, and Mortgagor hereby disclaims and renounces all and every claim to the Property as a homestead.

4. Mortgagor is now solvent, and no bankruptcy or insolvency proceedings are pending or contemplated by or against any of them, and all reports, statements, cost estimates and other data, furnished by or on behalf of it are true and correct.

5. Mortgagor shall promptly and fully comply with all present and future Legal Requirements, and all Improvements included or to be included in the Property comply or will comply with all Legal Requirements.

6. Mortgagor shall duly and punctually: pay and perform the Obligations, as and when called for in the Loan Documents; and cause each of the Impositions to be paid and discharged not later than the due dates thereof and furnish Mortgagee with evidence of such payment.

7. Mortgagor shall cause the Property to be maintained and operated in first-class order and condition, and shall make all interior and exterior repairs, replacements, additions, improvements and alterations thereof and thereto, both structural and non-structural, which are reasonably appropriate to keep same in such first-class order and condition.

8. Mortgagor shall keep the Property insured against fire, tornado, flood (if the Property is located in an identified "flood hazard area", in which flood insurance has been made available, pursuant to the National Flood Insurance Act of 1968), hail, explosion and such other risks, and in such amounts and with such companies, all as may be acceptable to Mortgagee, with loss made payable to Mortgagee by mortgage clauses of standard form. Such policies of insurance shall be delivered to Mortgagee promptly as issued, containing written undertakings from such insurance companies to provide Mortgagee with at least ten (10) days written notice prior to cancellation of any such policy. All renewal and substitute policies of insurance shall be delivered at the office of Mortgagee, with evidence of premiums paid, at least fifteen (15) days before termination of any existing policies. In case of loss, Mortgagee, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the same against the Obligations or to apply such proceeds to the repair or restoration of the Improvements. If any loss shall occur at any time when Mortgagor shall be in default as to the performance of this covenant, Mortgagee shall nonetheless be entitled to the benefit of all insurance held by or for Mortgagor, to the same extent as if it had been made payable to Mortgagee.

9. Upon request from time to time and at any time, Mortgagor shall deposit with Mortgagee each month in advance a monetary sum estimated by Mortgagee to equal on a monthly basis all or such portion of the Impositions as Mortgagee may require. At least thirty (30) days prior to the date on which any tax or insurance premium must be paid to prevent delinquency thereof, Mortgagor shall, on the request of Mortgagee, deliver to Mortgagee a statement or statements showing the amount of tax or premium required to be paid and the concern or authority to which same is payable and shall, at the same time, deposit with Mortgagee such amount as will, when added to the amount of such deposits previously made and then remaining available for the purpose, be sufficient to pay such insurance or tax obligations. Mortgagee shall have the right (but not the obligation) to apply any or all of the foregoing deposits in payment of such insurance, tax and other Impositions.

10. Mortgagor shall duly and punctually perform and comply with all representations, warranties, covenants and agreements binding upon it under the Leases, not voluntarily terminate or waive its rights under any of the Leases, use all reasonable efforts to maintain each of the Leases in force and effect during the full term thereof, and appear in and defend any action or proceeding in any manner connected with any of the Leases.

11. Mortgagor shall permit Mortgagee, and its agents, attorneys, representatives and employees, to enter upon and inspect the Property at all reasonable times and intervals.

12. Mortgagor shall indemnify, defend and hold Mortgagee harmless from any action, proceeding or claim affecting the Property or the Loan Documents or the lien or security interests created thereby INCLUDING ALL LIABILITY, LOSS, COST, DAMAGE, AND EXPENSE ARISING FROM OR RELATING TO MORTGAGEE'S NEGLIGENCE, MISCONDUCT AND/OR STRICT LIABILITY. Further, Mortgagor shall notify Mortgagee, in writing, promptly of the commencement of any legal proceedings affecting the Property, or any part thereof, and shall take such action as necessary to preserve Mortgagee's rights affected thereby; and Mortgagee may, at its election, take such action in behalf of and in the name of Mortgagor, and at Mortgagor's expense.

13. Mortgagor shall promptly pay all debts and liabilities of any character, including, without limitation, all debts and liabilities for labor, material and equipment incurred in the construction, operation or development of the Property, and shall complete in a good and workmanlike manner any Improvements that may be constructed or repaired thereon.

14. Upon request from time to time and at any time, Mortgagor shall promptly correct any defect, error or omission, which may be discovered in the contents of this Mortgage or the Loan Documents, and shall execute and deliver any and all additional instruments as may be requested by Mortgagee to correct such defect, error or

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omission or to identify any additional properties which are or become subject to this Mortgage.

15. Mortgagor shall give immediate written notice to Mortgagee of any condemnation proceeding or casualty loss affecting the Property and in each such instance, afford Mortgagee an opportunity to participate in any such proceeding or in the settlement of any awards thereunder.

16. Mortgagor shall not use or occupy, or permit any use or occupancy of, the Property in any manner which violates any Legal Requirements, may be dangerous, constitutes a public or private nuisance, or makes void or voidable any of the Leases or any insurance on the Property.

17. Mortgagor shall not permit any waste or deterioration of any part of the Property, any alterations or additions to the Property of a material nature, or any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of at least equal suitability and value, and owned by Mortgagor free and clear of any other lien or security interest.

18. Mortgagor shall not, without the prior written consent of Mortgagee (which consent may be withheld for any or no reason) create, place or permit to be created or placed, or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the liens and security interests of the Loan Documents, with respect to the Property, or sell, lease, exchange, assign, convey, transfer possession of or otherwise dispose of all or any portion of the Property, or any interest therein, but if ownership of the Property or any part thereof or interest therein becomes vested in any person or entity other than Mortgagor, Mortgagee or any other holder of the Obligations may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and the Obligations in the same manner as with Mortgagor without in any way discharging Mortgagor or any Obligated Party from the Obligations. Without limiting the right of Mortgagee to withhold its consent or to make other requirements prior to granting its consent, Mortgagee may require evidence satisfactory to Mortgagee that transferee is creditworthy and has such management ability as Mortgagee shall deem in its sole discretion to be necessary and may require transferee to execute such written modification and assumption agreements with regard to the Loan Documents as Mortgagee shall deem necessary or desirable, including, without limitation, provisions increasing the interest rate on the Note. No transfer of the Property, no forbearance by Mortgagee and no extension of the time for the payment or performance of the Obligations granted by Mortgagee shall release, discharge or affect in any way Mortgagor's or any Obligated Party's liability hereunder.



19. No Hazardous Materials are now located on the Property and neither Mortgagor nor, to Mortgagor's knowledge, any other person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, under or at the Property or any part thereof. No part of the Property is being used, and to Mortgagor's knowledge has ever been used for the disposal, storage, treatment processing, manufacturing or other handling of Hazardous Materials, nor is any part of the Property affected by any Hazardous Materials Contamination. To Mortgagor's knowledge, no property adjoining the Property is or has ever been used for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials, nor is any other property adjoining the Property affected by Hazardous Materials Contamination. To Mortgagor's knowledge, no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Property. The Property is not currently on, and to Mortgagor's knowledge, has never been on, any federal or state "Superfund" or "Superlien" list. Notwithstanding that the foregoing warranties and representations are "to Mortgagor's knowledge", the existence of any of the foregoing at any time during the term of the Obligations shall, at Mortgagee's option, constitute an Event of Default hereunder and under any other of the Loan Documents.

20. Mortgagor shall (a) give notice to Mortgagee immediately upon Mortgagor's acquiring knowledge of the presence of any Hazardous Materials on the Property or of any Hazardous Materials Contamination with a full description thereof and (b) promptly comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Mortgagee with satisfactory evidence of such compliance.

21. Mortgagor shall, at no cost to Mortgagee, provide Mortgagee with all existing and future architectural and engineering drawings, surveys, soil tests reports, engineer reports, traffic studies and any other studies, environmental review materials, permits, licenses, contracts, contractor and subcontractor agreements, etc. pertaining to the development of the Land securing payment of the Obligations, to the extent such items now or hereafter are reasonably available to or obtainable by Mortgagor.

22. Mortgagor covenants and agrees that prior to recording a map or plat subdividing the Land into single-family residential lots in accordance with the Code any such map or plat shall be submitted to Mortgagee for its approval prior to the recordation thereof; further, Mortgagor covenants and agrees to comply with all reasonable requirements of Mortgagee which may be imposed by it as a condition for such approval; and thereafter, Mortgagor covenants and agrees, at no cost to Mortgagee, to commence promptly the development of the Land as a single-family residential subdivision and to complete such development, including, without limitation, the construction and installation of curbs, streets, gutters and utilities. Such map or plat

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shall not be required to be approved by Mortgagee unless and until Mortgagor has obtained all governmental approvals thereof as required by law.

23. To further secure said indebtedness, Mortgagor hereby assign to Mortgagee (to the extent assignable) all utilities (i.e. water, storm, sewer and sanitary sewer) now or hereafter available to the Property. Mortgagor hereby agrees to maintain the utilities to the Property, to the extent they are (or become available) so long as this Mortgage is in full force and effect. Mortgagor shall not permit the termination, transfer and/or sale of such utilities without the express written consent of Mortgagee. Mortgagor hereby grants to Mortgagee a security interest in and to the utilities available to the premises, subject to the provisions of the Alabama Uniform Commercial Code, and to the full extent permitted thereby, including the proceeds and products thereof. If any default occurs under the terms of the Note or this instrument, Mortgagee is and shall be entitled to all of the rights, powers and remedies afforded to Secured Party by the Alabama Uniform Commercial Code with reference to such utilities and the availability thereof in which Mortgagee has been granted a security interest herein, or the Mortgagee may proceed as to both the real and personal property covered hereby in accordance with the rights, powers and remedies granted under this instrument in respect of the real property covered hereby. Mortgagor agrees to execute financing statements covering such utilities upon request by Mortgagee. Upon request by Mortgagee, Mortgagor agrees to furnish to Mortgagee proof of the availability of such utilities to the premises, to the extent then available. Should Mortgagee, in its opinion, deem it necessary to incur expenses and costs in order to obtain such utilities, Mortgagee is authorized, but not obligated, to do so and such expenses and costs shall be a part of the Obligations which shall be due and payable by Mortgagor to Mortgagee upon demand.

24. Mortgagor warrants and covenants to and with Mortgagee that the rights to surface and underground water as such are situated on or under the Property are unimpaired by conveyance, lien, sale, lease, option, lease option or other agreement of any kind and that the lien of this Mortgage shall extend to and cover all rights in and to surface and underground water.

25. Annually throughout the term of the Note, Mortgagor, at Mortgagee's request and at Mortgagor's expense, agrees to furnish to Mortgagee an updated appraisal on the value of the Property. Said appraisal shall be in a form acceptable to Mortgagee and shall be performed by an appraiser satisfactory to Mortgagee. Furthermore, Mortgagor agrees that in the event an independent appraisal is required by any governmental agency, Mortgagor will pay the cost of such appraisal and will pay such sums and perform such acts as may be required by such agency to make the loan a conforming loan under existing governmental regulations governing the Mortgagee.

26. In consideration for Mortgagee accepting and agreeing to this Mortgage, the Mortgagor, upon demand by Mortgagee, shall deliver to Mortgagee current Financial





Statements. The term "Financial Statements" shall mean such balance sheets, profit and loss statements, reconciliations of capital and surplus, changes in financial conditions, schedule of sources and applications of funds, operating statements with respect to the Mortgagor, its General Partners and the Guarantors of the Obligations and the Property and any other financial information which Mortgagee may require.

27. On or before January 31 of each calendar year, Mortgagor agrees to furnish to Mortgagee copies of paid tax receipts from all taxing authorities, which levy real estate taxes against the premises for taxes with respect to the preceding calendar year. Notwithstanding the foregoing, in the event Mortgagor is unable to procure such tax receipts by January 31 of each year, Mortgagor may, in the alternative, furnish Mortgagee other evidence reasonably satisfactory to Mortgagee evidencing the payment of such taxes prior to their delinquency.

28. This instrument shall be deemed to be and may be enforced from time to time as a Mortgage, Chattel Mortgage, Assignment, Contract, Security Agreement, Financing Statement, or Lien on Machinery Situated on Realty, and from time to time as any one or more thereof, and shall constitute a "fixture filing" for purposes of Article 9A of the Alabama Uniform Commercial Code.

D. DEFAULT AND FORECLOSURE. To the fullest extent permitted in equity or at law, by statute or otherwise:

1. If an Event of Default shall occur, Mortgagee may, at Mortgagee's sole election, exercise any or all of the following:

(a) Without demand, presentment for payment, notice of nonpayment, grace, protest, notice of protest, notice of intent to accelerate the Note, notice of acceleration of the Note, or any other notice, all of which are hereby expressly waived by Mortgagor, may declare all unpaid amounts under the Note and any other unpaid portion of the Obligations immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which is hereby expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Enter upon the Property and take exclusive possession thereof and of all books, records and accounts relating thereto, and, if necessary to obtain such possession, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. The rights of Mortgagee under this paragraph may be enforced through an action for forcible entry and detainer or any other means authorized by law. Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from and against any and all liability, loss, cost, damage or expense which Mortgagee may incur under or by reason of

this paragraph or for any action taken by Mortgagee hereunder, INCLUDING ALL LIABILITY, LOSS, COST, DAMAGE, AND EXPENSE ARISING FROM OR RELATING TO MORTGAGEE'S NEGLIGENCE, MISCONDUCT AND/OR STRICT LIABILITY.

(c) Hold, lease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Mortgagee may deem prudent under the circumstances (making such repairs, alterations, additions and improvements thereto and taking such other action from time to time as Mortgagee shall deem necessary or desirable), and apply all Rents collected in connection therewith in accordance with the provisions of Paragraph 7 of this Section D.

(d) Exercise its right to foreclose on the Mortgage and the Property, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one days notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Debt secured hereby shall have been paid in full.

(d) Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein, or any legal proceedings hereunder, make application to a court of competent jurisdiction as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Property for the repayment of the Obligations, for appointment of a receiver of the Property and Mortgagor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases.



(e) Exercise any and all other rights, remedies and recourses granted under the Loan Documents or as may be now or hereafter existing in equity or at law, by virtue of statute or otherwise.

2. Should the Property be sold in one or more parcels as permitted by Paragraph 1(d) of this Section D, the right of sale arising out of any Event of Default shall not be exhausted by any one or more such sales, but other and successive sales may be made until all of the Property has been sold or until the Obligations have been fully satisfied.

3. All rights, remedies and recourses of Mortgagee granted in the Loan Documents or otherwise available at law or equity shall be cumulative and concurrent, may be pursued separately, successively or concurrently against Mortgagor or any Obligated Party, or against the Property, or against any one or more of them, at the sole discretion of Mortgagee, may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and shall be non-exclusive.

4. Mortgagee may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests evidenced by the Loan Documents or affecting the obligations of Mortgagor or any Obligated Party to pay or perform, as their interests may appear, the Obligations. For payment of the Obligations, Mortgagee may resort to any of the security therefor in such order and manner as Mortgagee may elect. No security heretofore, herewith or subsequently taken by Mortgagee shall in any manner impair or affect the security given by the Loan Documents, and all security shall be taken, considered and held as cumulative.

5. Mortgagor hereby irrevocably and unconditionally waives and releases all benefits that might accrue to Mortgagor by virtue of any present or future law exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, all notices of any Event of Default or of Mortgagee's exercise of any right, remedy or recourse provided for under the Loan Documents, and any right to a marshalling of assets or a sale in inverse order of alienation.

6. In case Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Mortgagee shall have the unqualified right so to do and, in such event, Mortgagor and Mortgagee shall be



restored to their former positions with respect to the Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if same had never been invoked.

7. Any proceeds of any sale of, and any Rents, except as otherwise provided in Paragraph 2 of Section G, or other amounts generated by the holding, leasing, operation or other use of, the Property shall be applied in the following orders of priority: first, to the payment of all costs and expenses of taking possession of the Property and of holding, leasing, operating, using, repairing, improving and selling the same, including, without limitation, fees of the attorneys retained by Mortgagee; fees of any receiver or accountants; recording and filing fees; court costs; costs of advertisement, and the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Mortgage (except those to which the Property has been sold subject to and without in any way implying Mortgagee's consent to the creation thereof); second, to the payment of all accrued and unpaid interest due on the Note; third, to the payment of the unpaid principal balance of the Note; fourth, to the payment of all amounts, other than unpaid principal and accrued interest on the Note, which may be due to Mortgagee under the Loan Documents, together with interest thereon as provided therein; fifth, to the payment of the unpaid Obligations; sixth, to Mortgagor.

8. In the event Mortgagee shall elect to invoke any of the rights or remedies provided for herein, but shall thereafter determine to withdraw or discontinue same for any reason, it shall have the unqualified right to do so, whereupon all parties shall be automatically restored and returned to their respective positions regarding the indebtedness and this Mortgage as shall have existed prior to the invocation of Mortgagee's rights hereunder, and the rights, powers and remedies of Mortgagee hereunder shall be and remain in full force and effect.

9. Fair Market Value for Calculating Deficiencies. Notwithstanding the provisions of Title 35, Chapter 10 of the Code or any other provision of the Code (as the same may be amended from time to time), and to the extent permitted by law, Mortgagor agrees that Mortgagee shall be entitled to seek a deficiency judgment from Mortgagor and any other party obligated on the Note or guaranty of the Note equal to the difference between the amount owing on the Note and the amount for which the Property was sold pursuant to a judicial or nonjudicial foreclosure sale. Mortgagor expressly recognizes that this Paragraph constitutes a waiver of the above-cited provisions of the Code which would otherwise permit Mortgagor and other persons against whom recovery of deficiencies is sought, or guarantors independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the



Property as of the date of foreclosure and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Mortgagor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Grantors, other borrowers on the Note, guarantors, and others against whom recovery of a deficiency is sought.

Alternatively, in the event this waiver is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings governed by Title 35, Chapter 10 Code (as amended from time to time):

(a) The Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure;

(b) The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Property for cash promptly (but no later than twelve months) following the foreclosure sale;

(c) All reasonable closing costs customarily borne by the seller in a commercial real estate transaction should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, attorney's fees, and marketing costs;

(d) The gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in subparagraph (c) above), and other maintenance expenses; and

(e) Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

10. In addition to the remedies set forth in this Section D, upon the occurrence of an Event of Default the Mortgagee shall, in addition, have available



to them the remedies set forth in Sections F and G herein, as well as all other remedies available to them at law or in equity.

E. CONDEMNATION AND OTHER AWARDS. All judgments, decrees or awards now or hereafter made for injury or damage to the Property, or awards, settlements or other compensation now or hereafter made by any Governmental Authority, including those for any variation of, or change of grade in, any streets affecting the Land or the Improvements, are hereby assigned in their entirety to Mortgagee, who may apply the same to the Obligations in such manner as Mortgagee may elect and Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree.

F. SECURITY AGREEMENT. Mortgagor hereby grants to Mortgagee a security interest in and to certain property as follows:

1. This Mortgage shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute a first and prior security interest under the Code, with respect to the Personalty, Fixtures and Leases. To this end, Mortgagor has granted, bargained, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, convey, assign, transfer and set over, unto Mortgagee, for the benefit of Mortgagee as a secured party, a first and prior security interest and all of Mortgagor's right, title and interest in, to and under the Personalty, Fixtures and Leases, in trust, to secure the full and timely payment and performance of the Obligations.

2. Mortgagor agrees to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, consider necessary to create, perfect, and preserve the security interest herein granted, and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to create, perfect and preserve such security interest.

3. Mortgagee shall have all the rights, remedies and recourses with respect to the Personalty, Fixtures and Leases afforded a "Secured Party" by the Code, in addition to, and not in limitation of, the other rights, remedies and recourses afforded Mortgagee by the Loan Documents.

4. The security interest herein granted shall not be deemed or construed to constitute Mortgagee as a party in possession of the Property, to obligate Mortgagee to lease the Property, or to take any action, incur any expenses or perform any obligation whatsoever under any of the Leases or otherwise.



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5. Upon the occurrence of an Event of Default and at any time thereafter:

(a) Mortgagee shall have, with regard to the Personalty, Fixtures and Leases the remedies provided in this Mortgage and in the Code (no such remedy granted by the Code being excepted, modified or waived herein). Mortgagee may use his or its discretion in exercising the rights and electing the remedies; provided, however, all acts shall be in compliance with the standards of the Code, where applicable and required. For purposes of the notice requirements of the Code and this Section F, it is agreed that notice sent or given not less than five (5) calendar days prior to the taking of the action to which the notice relates, is reasonable notice.

(b) Mortgagee shall be entitled, acting in his or its sole discretion, to apply the proceeds of any disposition of the Personalty, Fixtures and Leases in the order set forth in the Code, or, if allowed by the Code, in the order set forth in Paragraph 7 of Section D hereof.

(c) Notwithstanding anything herein to the contrary, Mortgagee may at its or his option, dispose of the Fixtures, Personalty and other items of personal property covered by this Mortgage in accordance with Mortgagee's rights and remedies in respect of the Land pursuant to the provisions of this Mortgage, in lieu of proceeding under the Code.

6. Mortgagee may require Mortgagor to assemble the Personalty, Fixtures and Leases and make them available to Mortgagee at a place to be designated by Mortgagee that is reasonably convenient to both parties. All expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the Personalty, Fixtures and Leases and the like which are incurred or paid by Mortgagee as authorized or permitted hereunder, including also all attorneys' fees, legal expenses and costs, shall be added to the Obligations and Mortgagor shall be liable therefor.

7. As to the Personalty, Fixtures and Leases, this Mortgage shall be effective as a financing statement when filed for record in the Mortgage Records of any county in which any portion of the Land is located. The record owner of the Land is Mortgagor, whose mailing address for purposes of such financing statement is set forth in the opening recital hereinabove. Information concerning the security interest created by this instrument may be obtained from Mortgagee at its address similarly set forth in such opening recital.

G. ASSIGNMENT OF RENTS. Mortgagor does hereby absolutely and unconditionally assign, transfer and convey to Mortgagee all Rents (including all income) under the following provisions:

1. Mortgagor reserves the right, unless and until an Event of Default occurs, to collect the Rents as a trustee for the benefit of Mortgagee, and Mortgagor shall apply the Rents so collected in the order set forth in Paragraph 7 of Section D hereof.

2. Mortgagee may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Property or any part thereof, and in its own name, sue for or otherwise collect such Rents. Mortgagor hereby agrees with Mortgagee that the other parties under the Leases may, upon notice from Mortgagee of the occurrence of an Event of Default, thereafter pay directly to Mortgagee the Rents due and to become due under the Leases and attend to all other obligations thereunder direct to Mortgagee, without any obligation on their part to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Mortgagee shall be applied as provided for in Paragraph 7 of Section D above; provided, however, that if the costs, expenses and attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Obligations, shall bear interest as provided in Paragraph 5 of Section M below and shall be immediately due and payable. The entering upon and taking possession of the Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such default is fully cured. Failure or discontinuance of Mortgagee at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Mortgagee of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power or authority herein granted to Mortgagee shall be or be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under nor the subordination of the lien or charge of this Mortgage, to any such tenancy, lease, or option.

3. Mortgagor shall not (a) execute an assignment of any of its right, title or interest in the Rents, or (b) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any Lease affecting the Property or any part thereof, now or hereafter existing, having an unexpired term of one year or more except that any Lease may be cancelled, provided that promptly after the cancellation or surrender thereof a new Lease is entered into with a new lessee acceptable to Mortgagee in its sole judgment, on substantially the same terms as the terminated or cancelled Lease, or (c) modify any Lease affecting the Property or any part thereof so as to shorten the

unexpired term thereof or so as to decrease the amount of the Rents, or (d) accept prepayments of any Rents in excess of one month, except prepayments in the nature of security for the performance of the lessee under any Lease, or (e) in any other manner impair the value of the Property or the security of this Mortgage. Mortgagor shall not execute any Lease of all or any substantial portion of the Property except for actual occupancy by the lessee thereunder, and shall at all times promptly and faithfully perform, or cause to be performed, each covenant, condition and agreement contained in each Lease affecting the Property now or hereafter existing on the part of lessor thereunder to be kept and performed. Mortgagor shall furnish to Mortgagee, within ten (10) days after a request by Mortgagee to do so, a written statement containing the names of all lessees of the Property, the terms of their respective Leases, the spaces occupied and the rentals payable thereunder.

H. SITE ASSESSMENTS. If Mortgagee shall ever have reason to believe that there are Hazardous Materials or Hazardous Contamination affecting any of the Property, Mortgagee (by its officers, employees and agents) at any time and from time to time either prior to or after the occurrence of an Event of Default may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments (the "Site Assessments") on the Property for the purpose of determining whether there exists on the Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Property arising under any state, federal or local law, rule or regulation relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Mortgagor, which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Mortgagor shall supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and shall make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Mortgagee shall make the results of the Site Assessments fully available to Mortgagor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of the Site Assessments and the description of tasks of the Site Reviewers. The cost of performing the Site Assessments shall be paid by Mortgagor upon demand of Mortgagee and any such obligations shall be Obligations secured by this Mortgage and shall be payable by Mortgagor upon demand.

I. INDEMNIFICATION. Regardless of whether any Site Assessments are conducted hereunder, Mortgagor shall defend, indemnify and hold harmless Mortgagee from any and all liabilities (INCLUDING ALL LIABILITY, LOSS, COST, DAMAGE, AND

EXPENSE ARISING FROM OR RELATING TO MORTGAGEE'S NEGLIGENCE, MISCONDUCT AND/OR STRICT LIABILITY), actions, demands, penalties, losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees, expenses and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release of this Mortgage) be paid, incurred or suffered by or asserted against Mortgagee by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Property or the applicability of any Governmental Requirements relating to Hazardous Materials (including, without limitation, CERCLA or any so-called federal, state or local "Superfund" or "Superlien" laws, statute, law, ordinance, code, rule, regulation, order or decree), regardless of whether or not caused by or within the control of Mortgagor, Mortgagee. The representations, covenants, warranties and indemnification contained in this Section J shall fully survive the release of this Mortgage.

J. MORTGAGEE'S RIGHT TO REMOVE HAZARDOUS MATERIALS. Mortgagee shall have the right but not the obligation, without in any way limiting Mortgagee's other rights and remedies under this Mortgage, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Property or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Property or other action or which, in Mortgagee's reasonable opinion, could jeopardize Mortgagee's security under this Mortgage; provided, however, Mortgagee shall have no right to proceed with any of the rights granted to it in this paragraph until Mortgagee has provided Mortgagor with written notice of Mortgagee's intent to take any of the actions described in this paragraph and Mortgagor fails to commence within twenty (20) days following Mortgagor's receipt of such notice and diligently proceeds thereafter to complete all action necessary to clean-up, remove or resolve any of the foregoing. All reasonable costs and expenses paid or incurred by Mortgagee in the exercise of any such rights shall be Obligations secured by this Mortgage and shall be payable by Mortgagor upon demand.

K. PARTIAL RELEASE OF LIENS. Notwithstanding anything to the contrary contained herein, Mortgagor shall have the right to obtain partial releases of all liens securing the payment of the Note in accordance with the following terms and conditions:

1. General:



(a) The partial release of liens privilege herein contained is conditioned upon there being no uncured default by Mortgagor, its successors or assigns, with respect to the timely payment of principal or interest installments upon the Note or under the covenants contained in this Mortgage.

(b) The partial release of liens privilege herein contained shall be applicable not only to the lien created under and by virtue of this Mortgage, but also to the Vendor's Lien retained in the Deed. The partial release of lien shall be executed by the Mortgagee and delivered to the Mortgagor, and shall refer specifically to both the Vendor's Lien and to this Mortgage lien. The execution of the partial release shall not in any way impair the liens upon the portion of the Property then remaining unreleased.

(c) The partial release instrument shall be in form and substance reasonably acceptable to Mortgagee, or subsequent holders or owners of the Note, shall be prepared at the sole cost and expense of party requesting same, and shall be filed for record in the Office of the Judge of Probate of Shelby County, Alabama, promptly after the execution and delivery thereof, at the expense of party requesting same. Each request for a partial release shall be accompanied by a survey and metes and bounds description of each tract requested to be released.

(d) No partial release shall be given if the effect thereof would be to deny access to utilities or to existing roads from any of the land comprising the Property subject to the lien of this Mortgage.

2. Partial Release Privileges:

Subject to the terms, provisions and conditions set out hereinabove under the caption "General", and after five (5) days request therefore in writing and the delivery to Mortgagee of a survey and field notes of the tract requested to be partially released, together with the instrument granting said partial release, Mortgagor shall be entitled to, and Mortgagee shall deliver to Mortgagor the fully executed and acknowledged partial release instrument granting a partial release of liens in accordance with the following:

(a) With regard to any individual improved single-family residential lot, the Mortgagee, or any subsequent owner or holder of the Note, shall execute a partial release on such individual improved single-family residential lot(s) sought to be released from liens, upon payment, or tender for application upon the Note of the sum of \$33,750.00 per lot, plus an amount equal to the accrued unpaid interest upon the Note as of the date of payment upon the applicable amount specified herein.

(b) With regard to any individual unimproved single-family residential lot, the Mortgagee, or any subsequent owner or holder of the Note, shall execute



a partial release on such individual unimproved single-family residential lots sought to be released from liens, upon payment, or tender for application upon the Note of the sum of \$4,000,000.00, plus an amount equal to the accrued unpaid interest upon the Note as of the date of payment upon the applicable amount specified herein.

L. RETENTION OF RIGHTS BY INITIAL MORTGAGEE. Upon any assignment by Eagle Mortgage Company, Inc. (the initial Mortgagee) of its rights as Mortgagee hereunder, Eagle Mortgage Company, Inc. shall retain the right in its sole discretion to execute and deliver documents necessary to (a) the right to give written approval for any further encumbrance of the property; (b) the right to execute and deliver documents necessary to effectuate a Partial or Full Reconveyance when principal payments are paid to or for the Benefit of Beneficiaries or the note is paid in full; (c) the right to sign Tentative and/or Final Subdivision Maps; (d) the right to sign documentation necessary in connection with the creation of a municipal utility district encompassing the property (e) the right to sign documentation annexing real property into or excluding real property from the appropriate municipal utility district(s); (f) the right to sign easements, consents and/or other forms of conveyances, including consents to conveyances of utility facilities to a municipal utility district; (g) the right to sign consents to assignments of the proceeds of bond issues and/or bond anticipation notes of a municipal utility district; (h) the right to sign acknowledgements of receipt of the proceeds of bonds and/or bond anticipation notes issued by a municipal utility district; (i) the right to sign releases of assignments of proceeds of bonds and/or bond anticipation notes issued by a municipal utility district; and (j) the right to execute and deliver documents necessary to effectuate foreclosure proceedings which would cause the Mortgagee or its agent, to issue a Deed in favor of the beneficiaries as each of their interests appear.

M. MISCELLANEOUS. The following provisions shall also apply to and govern this Mortgage and the interpretation hereof:

1. Each and all of the representations, warranties, covenants and other obligations made or undertaken by Mortgagor hereunder shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein, and shall continue in full force and effect until the Obligations shall have been paid in full.

2. Mortgagor, upon the request of Mortgagee, shall execute, acknowledge, deliver and record or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of the Loan Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the then Property.



Mortgagor shall pay all such recording, filing, re-recording and re-filing taxes, fees and other charges, including those for security interest searches.

3. All notices or other communications required or permitted to be given pursuant to this Mortgage (except for notices of a foreclosure sale which shall be given in the manner set forth in Paragraph 1(d) of Section D hereof) shall be given as provided in the Note.

4. Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor of any and all of such terms, provisions and conditions.

5. If Mortgagor shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then at any time thereafter, and without notice to or demand upon Mortgagor and without waiving or releasing any other right, remedy or recourse Mortgagee may have because of same, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Land and Improvements for such purpose and to take all such action thereon and with respect to the Property as it may deem necessary or appropriate. Mortgagor shall indemnify Mortgagee for all losses, expenses, damage, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Mortgagee pursuant to this Paragraph 5 of Section M or by reason of any other provision in the Loan Documents. All sums paid by Mortgagee pursuant to this Paragraph 5 of this Section M and all other sums expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate (as defined in the Note) shall constitute additional Obligations secured by this Mortgage.

6. All of the covenants and other obligations made or undertaken by Mortgagor pursuant to this Mortgage are intended by the parties to be, and shall be construed as, covenants running with the Property.

7. All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

8. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If

any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law. It is hereby expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply with the usury, and all other laws relating to the Loan Documents. If, at any time, the applicable Legal Requirements render usurious any amount called for in any Loan Document, then it is Mortgagor's and Mortgagee's express intent that such document be immediately deemed reformed and the amounts collectible reduced or spread, without the necessity of the execution of any new document, so as to comply with the then applicable law but so as to permit the recovery of the fullest amount otherwise called for in such Loan Documents.

9. This Mortgage may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

10. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of such funds so used, the Obligations and this Mortgage shall be subrogated to all of the rights, claims, liens, titles and interests heretofore existing against the Property to secure the indebtedness so extinguished, extended or renewed and the former rights, claims, liens, titles and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Obligations and the satisfaction of the Obligations.

11. GOVERNING LAW. IN SO FAR AS PERMITTED BY OTHERWISE APPLICABLE LAW, THIS MORTGAGE SHALL BE AND THE OTHER LOAN DOCUMENTS PROVIDE THAT THEY ARE TO BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF NEVADA WITHOUT REGARD TO CONFLICT OF LAW RULES AND PRINCIPLES; PROVIDED, HOWEVER, THAT THE LAWS OF THE STATE OF ALABAMA SHALL APPLY TO THE EXTENT, AND ONLY TO THE EXTENT, NECESSARY TO PERMIT MORTGAGOR TO CREATE THE LIEN OF THIS MORTGAGE AND TO PERMIT MORTGAGEE TO PERFECT THE LIEN OF THIS MORTGAGE AND TO ENFORCE OR REALIZE UPON THEIR RIGHTS AND REMEDIES HEREUNDER WITH RESPECT TO THE PROPERTY.





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12. Whenever the context hereof requires, references herein to the singular number shall include the plural, and likewise the plural shall include the singular; words denoting gender shall be construed to include the masculine, feminine and neuter, where appropriate; and specific enumeration shall not exclude the general, but shall be considered as cumulative.

13. If Mortgagor consists of more than one party, the obligations of each party constituting Mortgagor to pay and perform the Obligations shall be joint and several.

14. The indebtedness herein described and hereby secured is additionally secured by a vendor's lien retained in favor of Mortgagee herein in Deed(s) of even date herewith to Mortgagor herein, which vendor's lien and this Mortgage secure the payment of said indebtedness, and it is agreed that this Mortgage is cumulative of and without prejudice to said lien and title and that a foreclosure hereunder will operate to foreclose said vendor's lien, said Deed being referred to for all purposes.

The signing of any related documents submitted to Mortgagee for the purpose of obtaining a mortgage loan does not constitute a commitment from Mortgagee to grant the loan.

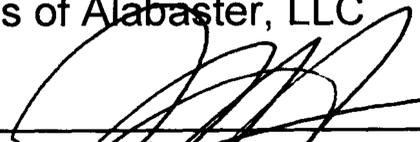
The signing of the loan documents by Blackhawk Estates of Alabaster, LLC, shall not be construed as a commitment from Mortgagee; all loan fundings are subject to the availability of private investor funds.

This MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS, AND FINANCING STATEMENT, in the amount of \$11,000,000.00, is hereby executed and effective as of, although not necessarily on, the day and year first above written.

MORTGAGOR:

BLACKHAWK ESTATES OF ALABASTER, LLC,
a Nevada limited liability company

By: Development First, LLC, a Utah limited liability
company, as Chief Executive Manager of Blackhawk
Estates of Alabaster, LLC

By: 

Jason D. Husebye
Its Manager



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STATE OF NEVADA)

CLARK COUNTY)

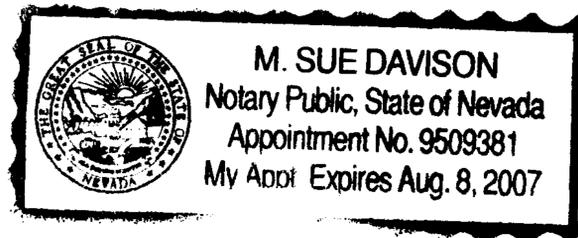
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jason D. Husebye, whose name as Manager of Development First, LLC, an Utah limited liability company, whose name as Chief Executive Manager of Blackhawk Estates of Alabaster, LLC, a Nevada limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, as the Chief Executive Manager of such limited liability company.

Given under my hand and official seal this the 5TH day of July, 2006.

M. Sue Davison
Notary Public

AFFIX SEAL

My commission expires: 08/08/07



Initial JD

Exhibit "A"

Legal Description


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EXHIBIT A

Parcel 1

Beginning at the northeast corner of Section 25, Township 21 South, Range 3 West, Shelby County, Alabama, thence S 01° 17' 35" E along the east line of Section 25 for a distance of 2693.45 feet to an iron rod; thence N 86° 44' 16" W for a distance of 1330.10 feet to an axle; thence N 00° 59' 44" W for a distance of 2685.71 feet to a railroad rail; thence S 87° 01' 38" for a distance of 1315.60 feet to a railroad rail and the point of BEGINNING, containing 81.35 acres, more or less.

East

Parcel 2

BEGINNING at a 2" iron pipe at the SW Corner of Section 30, Township 21 South, Range 2 West, thence N 01° 26' 39" W and along the west line of Section 30 a distance of 2662.65 feet to an iron pipe; thence N 01° 17' 35" W and along the west line of Section 30 a distance of 2693.45 feet to a railroad rail; thence S 88° 47' 05" E and along the north line of Section 30 a distance of 2651.12 feet to a railroad rail; thence S 88° 49' 08" E and along the north line of Section 30 a distance of 168.58 feet to a rebar; thence S 23° 36' 05" E a distance of 177.10 feet to a capped iron; thence S 72° 44' 28" W a distance of 1451.47 feet to a capped iron; thence N 80° 28' 09" W a distance of 954.51 feet to a capped iron; thence S 31° 00' 16" W a distance of 493.88 feet to a capped iron; thence S 12° 48' 21" E a distance of 3121.24 feet to a capped iron; thence S 32° 49' 48" E a distance of 684.03 feet to a capped iron; thence S 88° 59' 41" E for a distance of 819.80 feet to a capped iron; thence N 52° 08' 09" E a distance of 743.40 feet to a grader blade; thence S 01° 8' 51" E a distance of 666.99 feet to a 1/2" iron pipe; thence N 88° 59' 41" W a distance of 1339.11 feet to a grader blade; thence S 01° 29' 34" E a distance of 655.00 feet to a rebar; thence N 88° 22' 54" W a distance of 1291.41 feet to a 1/2" iron pipe; thence S 00° 10' 25" E a distance of 427.40 feet to a 1/2" iron pipe; thence N 81° 14' 04" W and along the northerly right-of-way of Shelby County Road 12 a distance of 51.31 feet to a 1/2" iron pipe; thence N 00° 05' 25" W a distance of 421.07 feet; to the point and place of BEGINNING, containing 126.25 acres, more or less.

Parcel 3

Lot 1-A and 2-A, according to the Map of Spain Estates, in Section 25, Township 21 South, Range 3 West, as recorded in Map Book 5, Page 32 in the Probate Office of Shelby County, Alabama.