

Gayle Berne, Esq.  
King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309

20070420000622820 1/17  
Bk: LR200706 Pg: 22775  
Jefferson County, Alabama  
I certify this instrument filed on:  
04/20/2007 03:44:10 PM MTG  
Judge of Probate- Alan L. King

## FUTURE ADVANCE

### MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

This Mortgage, Security Agreement and Fixture Filing (this "**Mortgage**") is executed as of April 19, 2007, by VISTA APARTMENTS LLC, a Delaware limited liability company ("**Mortgagor**"), whose address for notice hereunder is 12505 Orange Drive, Suite 906, Davie, Florida 33330, for the benefit of GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation ("**Mortgagee**"), whose address for notice is c/o GE Real Estate, Attention: Asset Manager/Vista Apartments LLC, 1201 F Street NW, Suite 600, Washington, DC 20004.

## ARTICLE 1

### DEFINITIONS

Section 1.1 **Definitions**. As used herein, the following terms shall have the following meanings:

**"Indebtedness"**: The sum of all (1) principal, interest and other amounts due under or secured by the Loan Documents, (2) principal, interest and other amounts which may hereafter be loaned by Mortgagee, its successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by promissory notes or other instruments which, by their terms, are secured hereby, and (3) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Mortgagee under documents which recite that they are intended to be secured by this Mortgage.

**"Loan Documents"**: The (1) Loan Agreement of even date between Mortgagor and Mortgagee (the "**Loan Agreement**"), (2) Promissory Note of even date, executed by Mortgagor, payable to the order of Mortgagee, in the stated principal amount of \$58,940,000 (the "**Term Note**"), which matures on April 18, 2012, (3) Construction Loan Note of even date, executed by Mortgagor, payable to the order of Mortgagee, in the stated principal amount of \$3,300,000 (the "**Construction Note**"), which matures on April 18, 2012, (4) this Mortgage, (5) all other documents now or hereafter executed by Mortgagor, or any other person or entity to evidence or secure the payment of the Indebtedness or the performance of the Obligations and (6) all modifications, restatements, extensions, renewals and replacements of the foregoing.

**"Mortgaged Property"**: all estate, right, title, interest, claim and demand whatsoever which Mortgagor now has or hereafter acquires, either in law or in equity, in



possession or expectancy, of, in and to (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "**Land**"), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "**Improvements**"), (3) all materials, supplies, appliances, equipment (as such term is defined in the UCC), apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "**Fixtures**"), (4) all right, title and interest of Mortgagor in and to all goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the UCC, and all other personal property of any kind or character, now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Personalty**"), (5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Mortgagor with respect to the Mortgaged Property, (6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "**Plans**"), (7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "**Leases**"), (8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, lease cancellation payments and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling, terminating the occupancy of or otherwise enjoying the Mortgaged Property (the "**Rents**"), (9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Property Agreements**"), (10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (11) all accessions, replacements and substitutions for any of the foregoing and all proceeds



thereof, (12) all insurance policies (regardless of whether required by Mortgagee), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (14) all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein, whether now or hereafter existing or acquired and wherever located.

**"Obligations":** All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any other person or entity to Mortgagee or others as set forth in the Loan Documents.

**"Permitted Encumbrances":** The outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage, together with the liens and security interests in favor of Mortgagee created by the Loan Documents, none of which, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by this Mortgage, materially and adversely affects the value of the Mortgaged Property, impairs the use or operations of the Mortgaged Property, or impairs Mortgagor's ability to pay its obligations in a timely manner.

**"UCC":** The Uniform Commercial Code of Alabama, as the same may from time to time be enacted and in effect; provided that, to the extent that the UCC is used to define any term herein or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

## ARTICLE 2

### GRANT

Section 2.1 **Grant.** To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, SELLS and CONVEYS to Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.





20070423000186040 4/17 \$60.00  
Shelby Cnty Judge of Probate, AL  
04/23/2007 12:20:43PM FILED/CERT

### ARTICLE 3

#### WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 **Title to Mortgaged Property and Lien of This Instrument; Possession and Control.** Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances, and has rights and the power to transfer each item of the Mortgaged Property. This Mortgage creates valid, enforceable first priority mortgage, liens and security interests against the Mortgaged Property. Where any of the Mortgaged Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's security interest and obtaining an acknowledgment from the third party that it is holding such Mortgaged Property for the benefit of Mortgagee. Mortgagor will cooperate with Mortgagee in obtaining control (for lien perfection purposes under the UCC) with respect to any Mortgaged Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 3.2 **First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Mortgagee).

Section 3.3 **Payment and Performance.** Mortgagor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

Section 3.4 **Replacement of Fixtures and Personalty.** Mortgagor shall not, without the prior written consent of Mortgagee, permit 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 obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Mortgagee. Mortgagor shall not incorporate into the Mortgaged Property any item of personalty, fixtures or other property that is not owned by Mortgagor free and clear of all liens or security interests except the liens and security interests in favor of Mortgagee created by the Loan Documents.

Section 3.5 **Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall



comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.6 **Inspection.** Mortgagor shall permit Mortgagee, and Mortgagee's agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

Section 3.7 **Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (a) the prohibition against (i) the direct or indirect sale, transfer conveyance, mortgage, pledge, or assignment of any interest in the Mortgagor or any part thereof (including any partnership, membership or any other ownership interest in Mortgagor); (ii) further encumbrance, alienation, grant a lien or grant any other interest in the Mortgaged Property or any part thereof (including any partnership, membership or other ownership interest in Mortgagor), whether voluntarily or involuntarily; or (iii) entering into of any easement or other agreement granting rights in or restricting the use or development of the Mortgaged Property, (b) the obligation to pay when due all taxes on the Mortgaged Property or assessed against Mortgagee with respect to the Loan, (c) the right of Mortgagee to inspect the Mortgaged Property, (d) the obligation to keep the Mortgaged Property insured as Mortgagee may require, (e) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty, and (f) except as otherwise permitted under the Loan Agreement, the obligation of Mortgagor to obtain Mortgagee's consent prior to entering into, modifying or taking other actions with respect to Leases. Nothing contained in this Section 3.7 shall be deemed to supersede, enlarge or modify any of the obligations, agreements, covenants or warranties of Mortgagor contained in the Loan Agreement. In the event of any conflict or inconsistency between the terms of the Loan Agreement and the terms hereof, the terms of the Loan Agreement shall govern and control.

Section 3.8 **Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Mortgagor assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement.

(b) **Insurance Proceeds.** Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly.



## ARTICLE 4

### DEFAULT AND FORECLOSURE

Section 4.1 **Remedies.** If an Event of Default (as defined in the Loan Agreement) exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Judicial Proceedings; Right to Receiver.** If an Event of Default exists and continues beyond any applicable notice and cure periods, the Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Mortgaged Property, to sue the Mortgagee for damages on account of said Event of Default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right (upon bill filed or other property legal proceedings being commenced for the foreclosure of this Mortgage, to the extent required by law), to the appointment by any competent court or tribunal, without notice to the Mortgagee or any other party, of a receiver of rents, issues, profits and revenues of the Mortgaged Property, with power to lease and control the Mortgaged Property and with such other powers as may be deemed necessary.

(e) **Power of Sale.** If an Event of Default shall occur and continues beyond any applicable notice and cure periods, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, to sell the Mortgaged Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to the Mortgage, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the land is to be sold, or a substantial and material part thereof, is location, after first giving notice by publication once a week for three successive weeks of the time, place and terms



of such sale, together with a description of the Mortgaged Property to be sold, by publication in some newspaper published in the county or counties in which the land to be sold is located. If there is land to be sold in more than one county, publication shall be made in all counties where the land to be sold is located, but if no newspaper is published in such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designed for the exercise of the power of sale hereunder. The Mortgagee may bid at any sale held under this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligations to see to the proper application of the purchase money. At any sale all or any part of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account and without distinction between the items included therein and without assigning them to any proportion of such proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elect to sell the Mortgaged 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 Mortgaged Property not previously sold shall have been sold or all the Indebtedness shall have been paid in full and this Mortgage shall have been terminated as provided herein.

(f) **Foreclosure Deeds.** To the extent permitted by applicable law, Mortgagor hereby employs and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(g) **Multiple Sales.** If an Event of Default shall occur and continues beyond any applicable notice and cure periods, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by powers of sale as provided for in this Mortgage, but without declaring the whole Indebtedness due. Any such sale may be made subject to the unmatured part of the Indebtedness, but as to such unmatured part of the Indebtedness this Mortgage shall remain in full force and effect as though no sale had been made. Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Indebtedness, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any unmatured part of the Indebtedness without exhausting the power of foreclosure and the power to sell the Mortgaged Property for any other part of the Indebtedness, whether matured at the time or subsequently maturing.

(h) **Prerequisites of Sales.** In case of any sale of the Mortgaged Property as authorized by this Mortgage, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Indebtedness or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

(i) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for



specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Mortgage).

Section 4.2 **Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.3 **Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.4 **Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 4.5 **Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged 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, (b) all notices of any Event of Default or of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.6 **Discontinuance of Proceedings.** If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.



Section 4.7 **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, (2) court costs, (3) attorneys' and accountants' fees and expenses, (4) costs of advertisement, and (5) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold;

(b) to the payment of all amounts (including interest), other than the unpaid principal balance of the Notes and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

Section 4.8 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

Section 4.9 **Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 4.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Loan Agreement), and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.



Section 4.10 **No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

## ARTICLE 5

### **ASSIGNMENT OF RENTS AND LEASES**

Section 5.1 **Assignment.** Mortgagor acknowledges and confirms that it has executed and delivered to Mortgagee an Assignment of Rents and Leases of even date (the "**Assignment of Rents and Leases**"), intending that such instrument create a present, absolute assignment to Mortgagee of the Leases and Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Rents and Leases, Mortgagor hereby assigns to Mortgagee, as further security for the Indebtedness and the Obligations, the Leases and Rents. While any Event of Default exists, Mortgagee shall be entitled to exercise any or all of the remedies provided in the Assignment of Rents and Leases and in Article 4 hereof, including the right to have a receiver appointed. If any conflict or inconsistency exists between the assignment of the Rents and the Leases in this Mortgage and the absolute assignment of the Rents and the Leases in the Assignment of Rents and Leases, the terms of the Assignment of Rents and Leases shall control.

Section 5.2 **No Merger of Estates.** So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

## ARTICLE 6

### **SECURITY AGREEMENT**

Section 6.1 **Security Interest.** This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least five (5) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.



Section 6.2 **Financing Statements.** Mortgagor hereby irrevocably authorizes Mortgagee at any time and from time to time to file in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Mortgagor where permitted by law. Mortgagor agrees to furnish Mortgagee, promptly upon request, with any information required by Mortgagee to complete such financing or continuation statements. If Mortgagee has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Mortgagor ratifies and confirms its authorization of all such filings. Mortgagor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Mortgagee, and agrees that it will not do so without Mortgagee's prior written consent, subject to Mortgagor's rights under Section 9-509(d)(2) of the UCC. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such additional financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder 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 so create, perfect and preserve such security interest.

Section 6.3 **Fixture Filing.** This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

## ARTICLE 7

### **MISCELLANEOUS**

Section 7.1 **Notices.** Any notice required or permitted to be given under this Mortgage shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier or personal delivery as otherwise provided in this Section 7.1). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth on the first page of this Mortgage. Any communication so addressed and mailed shall be deemed to be given on the earliest of (a) when actually delivered, (b) on the first Business Day (as defined in the Loan Agreement) after deposit with an overnight air courier service, or (c) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, Mortgagee or Mortgagor, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified in the Loan Agreement and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 7.1. Any party may



designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

Section 7.2 **Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3 **Attorney-in-Fact.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 7.4 **Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.5 **No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 **Subrogation.** To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.



Section 7.7 **Loan Agreement.** If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

Section 7.8 **Release.** Upon payment in full of the Indebtedness, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage.

Section 7.9 **Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 7.10 **Limitation on Liability.** Mortgagor's liability hereunder is subject to the limitation on liability provisions of Article 13 of the Loan Agreement.

Section 7.11 **Obligations of Mortgagor, Joint and Several.** If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.12 **Governing Law.** This Mortgage shall be governed by the laws of the State of Alabama.

Section 7.13 **Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.14 **Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.15 **Date of Mortgage.** The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.

Section 7.16 **Counterparts.** This Mortgage may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.

**[SIGNATURES COMMENCE ON FOLLOWING PAGE]**



20070423000186040 14/17 \$60.00  
Shelby Cnty Judge of Probate, AL  
04/23/2007 12:20:43PM FILED/CERT

EXECUTED as of the date first above written.

VISTA APARTMENTS LLC, a Delaware  
limited liability company

By:

Name:

Title:

*Shelia H. Neal*  
*President*



20070423000186040 15/17 \$60.00  
Shelby Cnty Judge of Probate, AL  
04/23/2007 12:20:43PM FILED/CERT

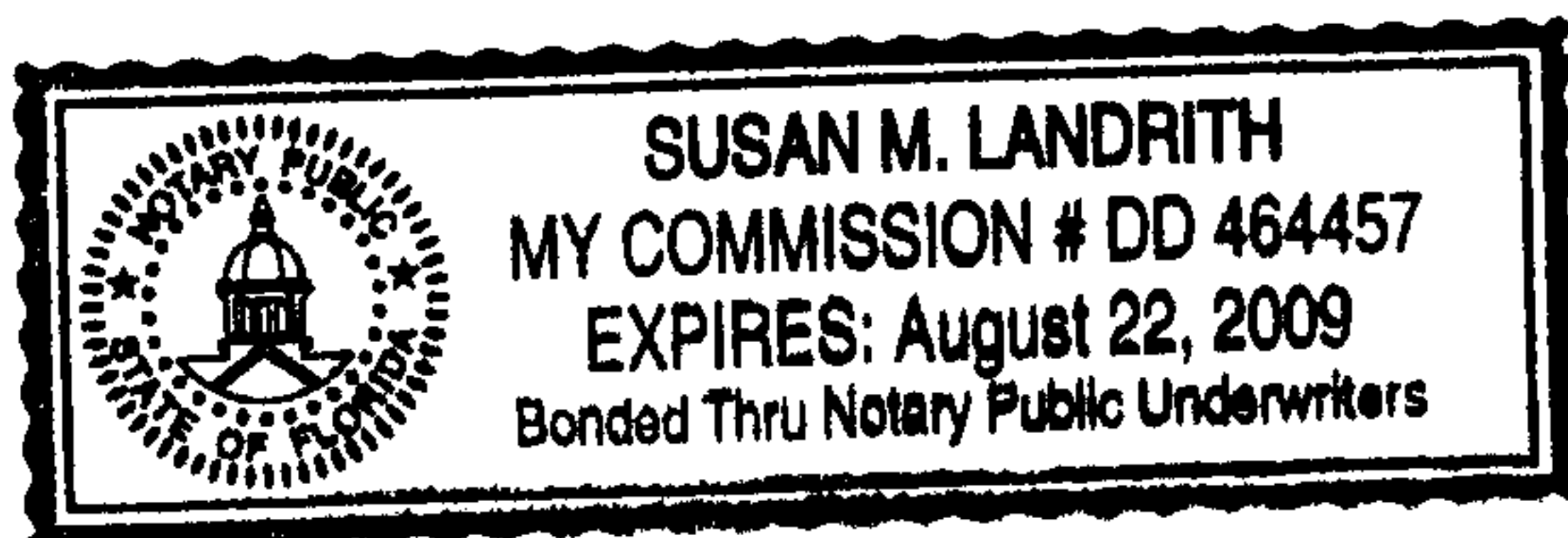
THE STATE OF Florida  
COUNTY OF BROWARD

§  
§  
§

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Sheila Mead, whose name as President of Mortgagor, a Delaware 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 officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this 1<sup>st</sup> day of April, 2007.

  
\_\_\_\_\_  
Notary Public, State of Florida





20070423000186040 16/17 \$60.00  
Shelby Cnty Judge of Probate, AL  
04/23/2007 12:20:43PM FILED/CERT

EXHIBIT A

[Legal Description of the Land]



20070423000186040 17/17 \$60.00  
Shelby Cnty Judge of Probate, AL  
04/23/2007 12:20:43PM FILED/CERT

## EXHIBIT "A"

### PARCEL I:

Lot 4-A, according to a Resurvey of Lot 4, Crowne Resurvey of Galleria Woods, First Addition, as recorded in Map Book 32, page 35, in the Probate Office of Jefferson County, Alabama, Bessemer Division.

Together with all rights acquired in Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Birmingham Real 1437, page 570 and Bessemer Real 348, page 878 in the Probate Office of Jefferson County, Alabama and in Book 19, page 633, in the Probate Office of Shelby County, Alabama.

### PARCEL II:

Lot 3, Crowne Resurvey of Galleria Woods, First Addition as recorded in Map Book 30, page 77, in the Probate Office of Jefferson County, Alabama, Bessemer Division and recorded in Map Book 21, page 91, in the Probate Office of Shelby County, Alabama.

Together with all rights acquired in Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Birmingham Real 1437, page 570 and Bessemer Real 348, page 878 in the Probate Office of Jefferson County, Alabama and in Book 19, page 633 in the Probate Office of Shelby County, Alabama.

### PARCEL III:

Lot 2, Crowne Resurvey of Galleria Woods, recorded in Birmingham Map Book 178, page 65 and Bessemer Map Book 29, page 70 in the Probate Office of Jefferson County, Alabama.

Along with the right to use the sanitary sewer easement recorded in Bessemer Real 1025, page 508 in the Probate Office of Jefferson County, Alabama.

Together with all rights acquired in Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Birmingham Real 1437, page 570 and Bessemer Real 348, page 878 in the Probate Office of Jefferson County, Alabama and in Book 19, page 633 in the Probate Office of Shelby County, Alabama.

recorders note: distribution form complete  
Jefferson County 99%  
Shelby 1%

200704200000622820 17/17  
Bk: LR200706 Pg:22775  
Jefferson County, Alabama  
04/20/2007 03:44:10 PM MTG  
Fee - \$44.50

Mortgage Tax -\$93360.00  
Total of Fees and Taxes-\$93404.50  
CRONANL