


**THIS INSTRUMENT WAS PREPARED BY AND  
UPON RECORDING SHOULD BE RETURNED TO:**

  
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Shelby Cnty Judge of Probate, AL  
01/07/2008 11:02:21AM FILED/CERT

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Burr & Forman LLP  
420 20th Street N., Suite 3100  
Birmingham, Alabama 35203

STATE OF ALABAMA       )  
COUNTY OF SHELBY     )

**MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT** (this "Mortgage"), dated the 27th day of December, 2007, between **PARK HOMES, LLC**, an Alabama limited liability company (hereinafter called the "Borrower"), Mortgagor, whose address is 2700 Highway 280, Suite 425, Birmingham, AL 35223, and **JOINT VENTURE II OF ARLINGTON PROPERTIES, INC. and THORNTON, INC.**, a joint venture of two Alabama corporations (hereinafter called the "Lender"), whose address is 2117 2nd Avenue North, Suite 300, Birmingham, Alabama 35203.

**WITNESSETH:**

**WHEREAS**, Borrower is liable to the Lender in the principal sum of Six Million Five Hundred Seventy-seven Thousand Three Hundred Ninety-four and no/100 (\$6,577,394.00), for money loaned pursuant to that certain Promissory Note payable by the Borrower to Lender in said principal amount (the "Note").

**WHEREAS**, Lender has required the execution of this Mortgage as security for the Obligations (as hereafter defined).

**NOW, THEREFORE**, the undersigned, Borrower, in consideration of the loan, and to secure the prompt payment of same, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements hereinafter set forth, have bargained and sold and do hereby grant, bargain, sell, alien, mortgage and convey unto the Lender, its successors and assigns, the following (which together with any additional such property hereafter acquired by Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter collectively referred to as the "Mortgaged Property") to-wit:

- (a) All estate, right, title, and interest of Borrower in and to those tract(s) or parcel(s) of land particularly described in Exhibit A attached hereto and made a part hereof (the "Real Estate");



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

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by Borrower for the purpose of being used in connection with the improvements located or to be located on the real estate described herein, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said real estate or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements; and

(d) All fixtures, attachments, appliances, equipment and tangible personal property owned by the Borrower and now or at any time hereafter located on or at the real estate more particularly described on the Real Estate and used or useful in connection with the operation of the condominium operated thereon including, but not limited to: all goods, machinery, tools, insurance proceeds, equipment (and including but not limited to fire sprinklers and alarm systems and equipment for air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, window or structural cleaning rigs, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage and all other equipment of every kind), office and all other indoor or outdoor furniture, wall safes, furnishings, appliances, inventory, rugs, carpets and other floor covering, draperies and drapery rods and brackets, awnings, window shades, and other lighting fixtures and office maintenance and other supplies, and all other articles belonging to the Borrower or leased to the Borrower that are now or hereafter located in the buildings or on the grounds of the Real Estate, and any additions, substitutions or accessions thereto. Provided, however, that with respect to those items which are leased and not owned by Borrower, this security interest covers the leasehold interest only of Borrower, together with any options to purchase any of said items and any additional or greater rights with respect to such items which Borrower may hereafter acquire.

**TOGETHER** with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditament, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and



all the estate, right, title, interest, property, possession, claim, and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, including but not limited to:

(a) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets; and

(c) All Borrower's right in and to all permits, service and maintenance agreements, or any other contracts or agreements relating to the operation of the condominium on the Real Estate.

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

**PROVIDED, HOWEVER,** that these presents are upon the condition that if Borrower shall pay or cause to be paid to Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall keep, perform, and observe all and singular the covenants and promises of Borrower under this Mortgage (all of the foregoing obligations of the Borrower and as set forth above being collectively referred to herein as the "Obligations"), all without fraud or delay, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, and shall be discharged of record at the cost of Borrower, which cost Borrower agrees to pay, but shall otherwise remain in full force and effect.

**AND** this Mortgage is made subject to the following covenants, agreements, representations and warranties:

## **ARTICLE I**

1.01. **Performance of Note and Mortgage.** This Mortgage shall secure payment of the Note and the payment and performance of all of Borrower's obligations under this Mortgage. Borrower will perform, observe and comply with all provisions hereof and of the Note secured hereby and duly and punctually will pay to Lender the sum of money expressed in the Note with interest thereon and all other sums herein required to be paid by Borrower, all without any deductions or credit for taxes or other similar charges paid by Borrower.



1.02. **Warranty of Title.** Borrower is lawfully seized of a defeasible fee simple estate in the Real Estate and has good and absolute title to all other Mortgaged Property, including, without limitation, all improvements hereafter to be built, and has good right, full power, and lawful authority to sell, convey, and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth in Section 1.17 hereof and in Exhibit B hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03. **Taxes, Utilities and Liens.**

(a) Borrower will pay, before the same become delinquent, all taxes, liens, assessments and charges of every character already levied or assessed or that may hereafter be levied or assessed upon or against the Mortgaged Property and Borrower will pay all utility charges, whether public or private; and upon demand therefor, Borrower will furnish Lender receipted bills evidencing such payment.

(b) Borrower will keep the Mortgaged Property free from all liens and encumbrances and will pay or cause to be paid prior to delinquency all persons or entities supplying work or materials for the construction of improvements and will discharge or remove by bonding any mechanic's or other lien filed against the Mortgaged Property or the Borrower within ten (10) days after receipt of notice thereof.

(c) Borrower shall have the right, after prior notice to Lender, to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Lender, the amount, validity or application of any taxes, liens and other charges of the nature referred to in Paragraphs 1.03(a) and (b) hereof, provided Borrower first furnishes Lender security, satisfactory to Lender, against the maximum amount, as reasonably estimated by Lender, of Borrower's potential ultimate liability, loss or injury by reason of such contest or delay should Borrower be unsuccessful, and, second, prosecutes the contest with due diligence, and, third, in the case any utility charges, such service is not interrupted and fourth, in the case of any lien or encumbrance, any enforcement against the Mortgaged Property is effectively stayed.

1.04 **Insurance.**

(a) Borrower shall, at its own cost and expense, obtain and maintain public liability insurance at all times prior to the termination of this Mortgage for injury or death to any person whomsoever and for damage to any property whatsoever. The public liability insurance required to be maintained pursuant to this subparagraph (b) shall be in such amounts of coverage, subject to such terms and conditions and with such insurance companies of recognized financial responsibility licensed to do business in the State of Alabama as shall be reasonably satisfactory to Lender. Upon demand therefor, Borrower shall deliver to Lender a certificate from the insurance company with which such public liability insurance is maintained to the effect that a policy for such insurance, as approved by Lender, is in full force and effect, Lender shall be named as an additional insured on such policy.



(b) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Paragraph 1.04, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts of evidencing the payment for all such insurance policies and renewals or replacements.

1.05. **Condemnation**. If all or any portion of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, Lender shall be entitled to receive all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, who after deducting therefrom all its expenses, including reasonable attorneys' fees, shall, apply the same at Lender's sole option, either to the full or partial payment of the indebtedness secured hereby in such order as Lender shall elect, whether then matured or to mature in the future, or to the repair and restoration of the Mortgaged Property, and any balance shall be paid to Borrower, all without affecting the lien of this Mortgage. Borrower agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may require. In the event of any such taking of all of the Mortgaged Property then in such event, Lender may, at its option, declare the indebtedness secured hereby immediately due and payable.

1.06. **Reserved**.

1.07. **Care of Premises**.

(a) Borrower will keep the Mortgaged Property and improvements hereafter erected on or installed at the Mortgaged Property in good order, condition and repair, and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property.

(b) Borrower will not commit or suffer any waste and will not remove or demolish any building, fixture, or other part of the Mortgaged Property without the written consent of Lender.

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

(d) Lender or its representative is hereby authorized to enter upon and inspect the Mortgaged Property at any time.

(e) Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.



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

1.10. **Expenses.** Borrower will pay or reimburse Lender for all reasonable attorneys' fees, costs, and expenses incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which Lender is made a party, or appears as party plaintiff or defendant, affecting Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by Lender shall bear interest at a per annum rate equal to two percent (2%) in excess of the rate of interest specified in the Note, shall be payable upon demand, and shall be secured by the lien of this Mortgage.

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

1.12. **Books and Records.** Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. At the request of Lender, Borrower will furnish to Lender unaudited financial statement in reasonable detail and form reasonably satisfactory to Lender and certified by Borrower (or an officer thereof).



1.13. **Estoppel Affidavits.** Borrower will, within ten (10) days after receipt of written request from Lender, furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, whether or not any offsets or defenses exist against such principal and interest and such other matters as Lender may reasonably request.

1.14. **Compliance with Applicable Environmental Law.** The term "Applicable Environmental Law" shall mean any applicable laws, rules or regulations pertaining to health or the environment, or petroleum products, or radon radiation, or oil or hazardous substances, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), as codified at 42 U.S.C. § 9601 *et seq.*, as amended, the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") and the Federal Emergency Planning and Community Right-To-Know Act of 1986. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste," "disposal," "dispose," and "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein prospectively from and after the date of such amendments); notwithstanding the foregoing, provided, to the extent that the laws of the State of Florida establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, as CERCLA may be amended from time to time, or a meaning for "solid waste," "disposal," and "disposed" which is broader than specified in RCRA, as RCRA may be amended from time to time, such broader meanings under said state law shall apply in all matters relating to the laws of such State. Borrower represents and warrants to Lender that, to the best of its knowledge and belief, the Mortgaged Property and Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property; that Borrower has not obtained and, to the best of its knowledge and belief, is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law (other than such permits as have been obtained or will, prior to the commencement of construction, be obtained); that Borrower has taken all steps necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of or otherwise released on the Mortgaged Property; and that the use which Borrower has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property. Borrower and Guarantor have executed a separate Indemnity Agreement in favor of the Lender, the terms and conditions of which are incorporated hereby by this reference.

1.15 **Representations and Warranties.** Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan secured hereby to Borrower, that:

(a) Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Alabama. The Note, this Mortgage and all other instruments, documents and transactions in connection with the loan secured hereby have been



duly authorized, executed and delivered by the Borrower pursuant to all requisite corporate action.

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

1.16 **Limit of Validity.** To the extent the fulfillment of any provision of this Mortgage at the time such provision is to be performed, shall involve transcending the limit of validity presently prescribed by any applicable usury or similar law, the obligation to be fulfilled under such provision shall ipso facto be reduced to the limit of such validity.

1.17. **Wraparound Mortgage.** It is understood and agreed that the Mortgaged Property is subject to a prior mortgage and security interest given by Mortgagee to Compass Bank to secure the obligations of Mortgagee under an Acquisition and Development Loan Agreement dated November 1, 2005, which mortgage is more particularly described as the Future Advance Mortgage Assignment of Rents and Leases and Security Agreement and an Assignment of Rents and Leases, each dated November 1, 2005 recorded as Instruments #20051222000659960 and #20051222000660000, respectively, in the Probate Office of Shelby County, Alabama (the "Prior Mortgage"). With respect to the Prior Mortgage, Borrower and Lender agree as follows:

(a) The Lender warrants and represents that there exists no default or any event which, with the passage of time or giving of notice or both, would constitute a default under the Prior Mortgage.

(b) The Borrower will pay directly to the Lender, its successors and assigns, the installments of principal and interest required by the Note and will not make any payment whatsoever directly to the holder of the Prior Mortgage or request any release, partial release, amendment or other modification of the Prior Mortgage without the prior written consent of the Lender, its successors and assigns. Notwithstanding the foregoing, it is understood and agreed that Borrower and Lender have entered, or may enter, into a Consent and Recognition Agreement with Compass Bank which provides for, among other things, payments by Borrower directly to Compass Bank as the holder of the Prior Mortgage for application the indebtedness secured by the Prior Mortgage and for the release of property from the Prior Mortgage.

(c) The Borrower will render such performance to the Lender as may be required of the Lender by the terms of the Prior Mortgage notwithstanding any contrary term herein contained.



(d) If an event of default shall have occurred hereunder or under the Prior Mortgage, the Lender may, but need not, make any payment or perform any act required under the Prior Mortgage, in any form and manner deemed expedient by the Lender, and may, but need not, make full or partial payments of principal on interest on the Prior Mortgage and purchase, discharge, compromise or settle the Prior Mortgage and the Lender will be subrogated to the rights of the holder of the Prior Mortgage against the Borrower and the property which is subject to the Prior Mortgage.

(e) In consideration of the execution and delivery of the Note, the Lender agrees with the Borrower to pay the installments of principal and interest as the same become due under the Prior Mortgage, but only from, and to the extent of, the payments of principal and interest received by the Lender under the Note hereby secured. The foregoing obligation will in no event include with respect to the Prior Mortgage any penalty or premium, or any amounts required to be paid in addition to principal or interest or any installments of principal or interest which become due by acceleration; except any such penalty, premium or amounts required to be paid as a direct result of the Borrower's failure to perform its obligations hereunder. If for any reason, other than the Lender's failure to make payments of installments of principal or interest on the note secured by the Prior Mortgage, the indebtedness secured by the Prior Mortgage is accelerated or the Mortgaged Property or any part thereof is sold, or attempted to be sold, pursuant to such Prior Mortgage, whether by power of sale, judicial action or otherwise, or any other remedial action or proceeding is taken or instituted in respect of the Mortgaged Property or any part thereof under the Prior Mortgage, the Borrower will indemnify and hold the Lender harmless from any loss, cost or expense incurred by the Lender, including attorney's fees, in contesting any such action taken or instituted or in attempting to reinstate such Prior Mortgage, or incurred by the Lender on account of the acceleration of the Prior Mortgage, the sale of the Mortgaged Property pursuant thereto or the Lender's purchase or payment of the Prior Mortgage.

(f) The references contained in this Mortgage to the obligations of the Borrower or Lender (now existing or hereafter arising) to pay any sum or sums owing on the Prior Mortgage will not constitute an assumption of personal liability for any such payment or the agreement by the Borrower or Lender as between the Borrower or Lender and any holder of the Prior Mortgage to make payment of any such sums. The sole purpose for such provisions in this Mortgage and the sole benefits and burdens derived hereunder will be as between the Borrower and Lender only, and will not in any way modify the obligations of the Borrower or Lender under any written or oral agreement with the holder of the Prior Mortgage.

## ARTICLE II

### EVENTS OF DEFAULT AND REMEDIES

2.01. **Event of Default.** The term "**Event of Default**," wherever used in this Mortgage, shall mean the occurrence or existence of any one or more of the following events or circumstances:

(a) Failure by the Borrower to pay as and when due and payable any installment of principal, interest or escrow deposit, or other charge payable under the Note or this Mortgage ; or



(b) Failure by the Borrower to duly observe any other covenant, condition or agreement of this Mortgage or of the Note, and the continuance of such failure for thirty (30) days or more; or

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

(d) The entry by a court of competent jurisdiction or any order, judgment, or decree approving a petition filed against the Borrower or any guarantor of any of the indebtedness secured hereby or of any of Borrower's obligations hereunder seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrower or any such guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, without the consent or acquiescence of the Borrower and/or any such guarantor which appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); or

(e) The filing or enforcement of any other mortgage, lien or encumbrance of the Mortgaged Property or any party thereof, or of any interest or estate therein; or

(f) If any portion of the Mortgaged Property is a leasehold estate, the occurrence of a default under such lease or other instrument creating the estate.

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

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

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession, and if and to the



extent permitted by law, Lender may enter and take possession, of all the Mortgaged Property, and may exclude Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, and purchase or otherwise acquire replacement fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in the interest of preserving the Mortgaged Property; and Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this Mortgage as Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agent of Lender; shall apply the remainder of the moneys so received by Lender to the payment of accrued interest, and to the payment of overdue installments of principal, all in such order and priority as Lender may determine.

(c) Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Mortgaged Property to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

#### 2.04. **Receiver.**

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

(b) Borrower will pay to Lender upon demand all expenses, including receiver's fees, attorney's fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section 2.04; and all such expenses shall be secured by this Mortgage.

2.05. **Lender's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell the Mortgaged Property, and (c) to



pursue any other remedy available to them, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

2.06. **Power of Sale.** If an Event of Default shall have occurred, Lender may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefore. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The provisions of paragraph 3.04 of this Mortgage shall apply with respect to Lender's enforcement of rights or interest in personal property which constitutes Mortgaged Property hereunder.

2.07. **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.06 shall be applied as follows:

- (a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;
- (b) Second, to the repayment of any money, with interest thereon at two percent (2%) in excess of the rate accruing under the Note, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;
- (c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale;
- (d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

2.08. **Waiver of Exemption.** Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage.

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



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

2.11. **Delay or Omission No Waiver.** No delay or omission of Lender to exercise any right, power, or remedy accruing upon any default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power, and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

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

If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage, or otherwise of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, at its option, without notice to any person or corporation hereby are authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as they might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.13. **Discontinuance of Proceedings - Position of Parties, Restored.** In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of Lender shall continue as if no such proceeding has been taken.



2.14. **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.15. **No Conditions Precedent to Exercise of Remedies.** Neither Borrower nor any other person now or hereafter obligated for payment of all or any part of the indebtedness hereby secured shall be relieved of such obligation by reason of the failure of to comply with any request of Borrower or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness.

2.16 **Release of Collateral, Effect on Subordinate Liens.** Lender may release, regardless of consideration, any part of the security held for the indebtedness or obligations of Borrower under the Note and/or this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien.

2.17. **Other Collateral.** For payment of the indebtedness secured hereby, Lender may resort to any other security therefor, if any, held by Lender, in such order and manner as Lender may elect without affecting their remedies under this Mortgage, to the maximum extent permitted by the laws of the State of Florida.

### ARTICLE III MISCELLANEOUS

3.01. **Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

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

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

3.04. **Lien on Personal Property.** This Mortgagor hereby grants a security interest in, the personal property of Borrower located and to be located on the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as




Lender shall require from time to time with respect to such personal property. This Mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code. If an Event of Default occurs, Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

3.05. **Notices.** All notices and other communications provided for hereunder shall be in writing and shall be deemed received upon delivery in person or, if mailed, upon deposit in U.S. certified mail, return receipt requested, postage prepaid, and, if sent by overnight courier, on the next business day following delivery to said courier, and in any case addressed as follows:

If to Borrower:

Park Homes LLC  
2700 Highway 280, Suite 425  
Birmingham, AL 35223

  
20080107000006990 15/19 \$9931.10  
Shelby Cnty Judge of Probate, AL  
01/07/2008 11:02:21AM FILED/CERT

If to Lender:

Arlington Properties, Inc.  
2117 2nd Avenue North  
Suite 300  
Birmingham, AL 35203

Thornton, Inc.  
3570 Grandview Parkway  
Suite 100  
Birmingham, AL 35243

3.06. **Partial Release of Lots.** Notwithstanding any provision hereof to the contrary, Lender agrees to execute partial releases of any Lot (as hereinafter defined) sold to purchasers of such Lots on the condition that Borrower has paid to Lender (or the holder of the Prior Mortgage with the consent of Lender) a release price equal to \$75,000. As used herein, the term "Lot" shall mean one of the lots included in the Plat of Chelsea Park 9th Sector recorded in Map Book 37, page 47 in the Probate Office of Shelby County, Alabama.

*[Signatures on following pages.]*



IN WITNESS WHEREOF, Borrower and Lender have executed this Mortgage, through its duly-authorized officer, on the day and year first above written.

**BORROWER:**

Park Homes, LLC

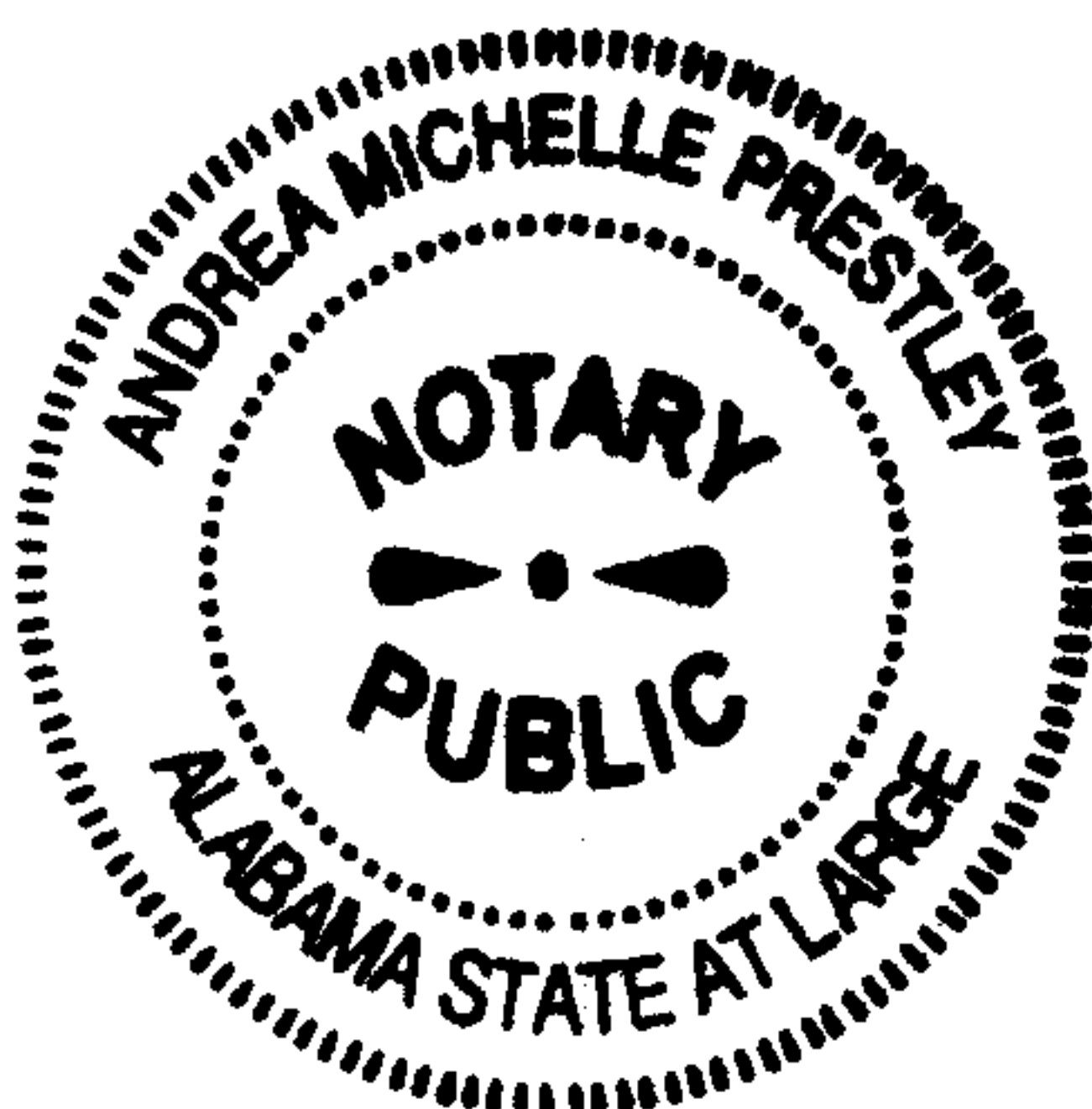
By: *Douglas D. Eddleman*  
Douglas D. Eddleman, Manager

By: *Billy D. Eddleman*  
Billy D. Eddleman, Manager

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Douglas D. Eddleman and Billy D. Eddleman, whose names as managers of Eddleman Homes, LLC, an Alabama manager managed limited liability company, are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they, in their capacities as such managers, and with full authority, executed the same voluntarily for and as an act of said limited liability company on the day the same bears date.

Given under my and official seal this 27<sup>th</sup> of December, 2007.



*Andrea Michelle Prestley*  
NOTARY PUBLIC  
My Commission Expires: 5/19/09

**LENDER:**

Joint Venture II of Arlington Properties, Inc. and Thornton, Inc.

By: *[Signature]* Arlington Properties, Inc, Partner

By: *[Signature]*  
Its *VP*



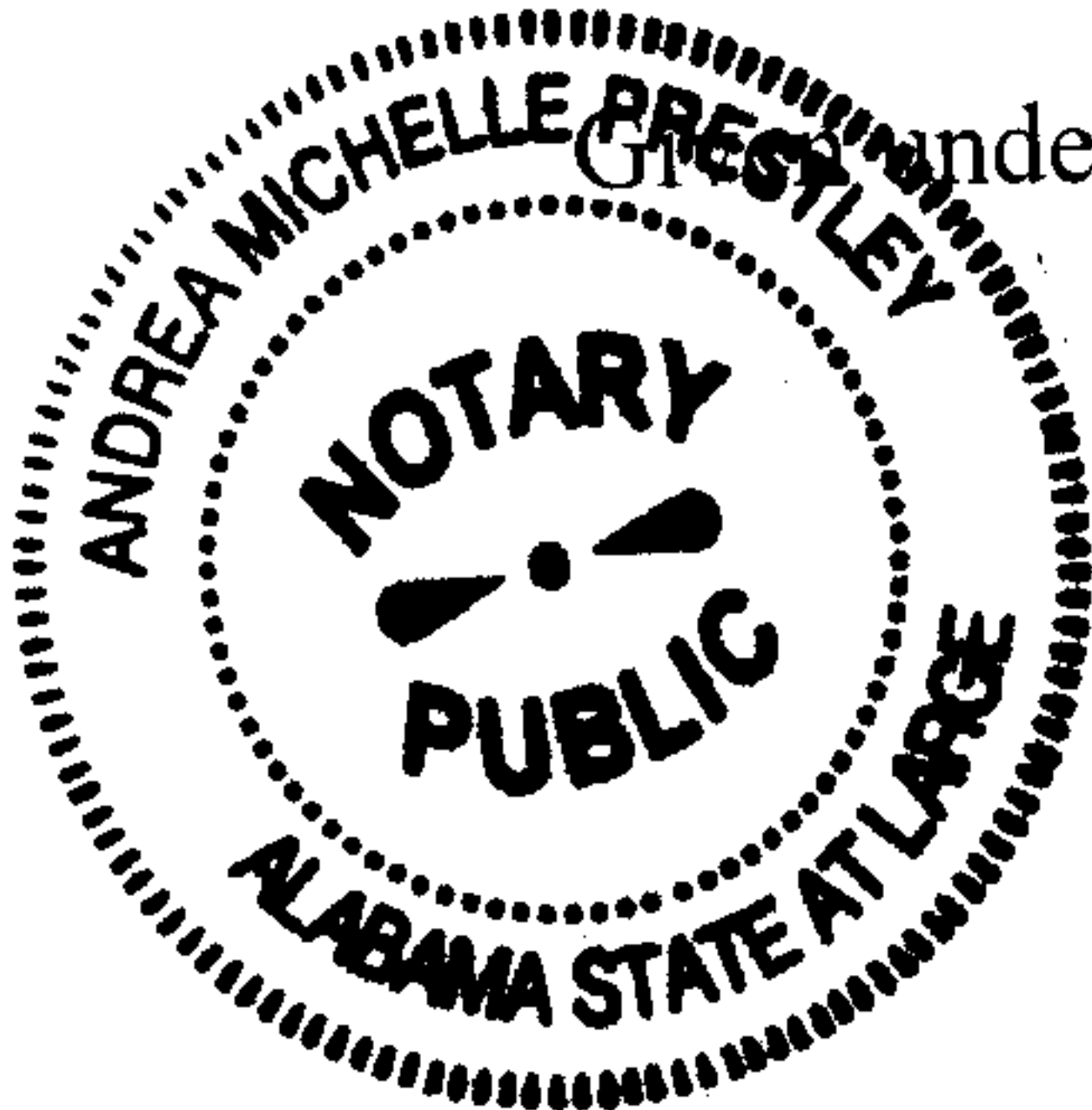
By: Thornton, Inc., Partner

By: W. L. Thornton

Its ORRIS

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William Dobbins, whose name as Vice President of Arlington Properties, Inc., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as an act of said corporation, as a partner of Joint Venture II of Arlington Properties, Inc. and Thornton, Inc., on the day the same bears date.



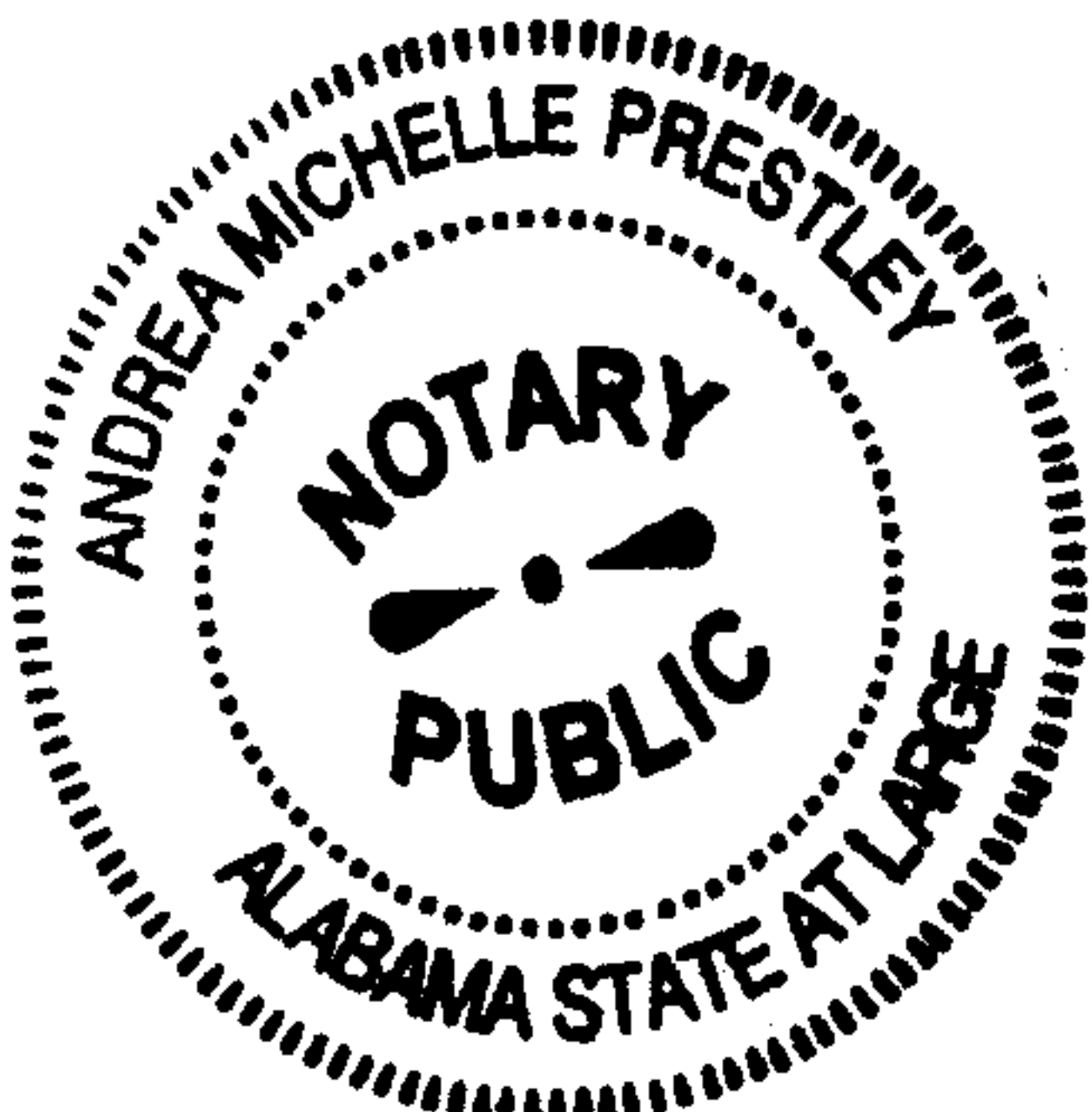
Given under my and official seal this 27th of December, 2007.

Andrea Michelle Prestley  
NOTARY PUBLIC  
My Commission Expires: 5/19/09

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William L. Thornton III, whose name as President of Thornton, Inc., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as an act of corporation, as a partner of Joint Venture II of Arlington Properties, Inc. and Thornton, Inc., on the day the same bears date.

Given under my and official seal this 27th of December, 2007.



Andrea Michelle Prestley  
NOTARY PUBLIC  
My Commission Expires: 5/19/09





20080107000006990 18/19 \$9931.10  
Shelby Cnty Judge of Probate, AL  
01/07/2008 11:02:21AM FILED/CERT

## **EXHIBIT A**

### **Legal Description of Property**

Lots 9-1 through 9-3, Lots 9-11 through 9-17, Lots 9-19 through 9-22, Lots 9-24 through 9-41, Lots 9-44 through 9-88, Lots 9-90 through 9-113 according to the Map and Survey of Chelsea Park - 9th Sector as recorded in Map Book 37, Page 47 in the Office of the Judge of Probate of Shelby County, Alabama



**EXHIBIT B**

**Permitted Encumbrances**

1. Ad valorem taxes for the current year, 2008, which are not yet due and payable.
2. Municipal improvements, assessment and fire district dues against subject property, if any.
3. Title to oil, gas and minerals within and underlying the premises, together with all oil and mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Deed Book 244, Page 587; Instrument No. 1997-9552 and Instrument No. 2001-27341, in the Probate Office of Shelby County, Alabama (the "Probate Office").
4. Covenants releasing predecessor in title from any liability arising from sinkholes, limestone formations, soil conditions or any other known or unknown surface or subsurface conditions that may now or hereafter exist or occur or cause damage to subject property, as shown by instruments in said Probate Office.
5. Underground communications line easement to Level 3 Communications as recorded in Instrument No. 2000-0007 and Instrument No. 2000-0671 in said Probate Office.
6. Right of way easement as recorded in Deed Book 283, Page 716 and Deed Book 253, Page 324 in said Probate Office.
7. Easement agreement as recorded in Instrument No. 20040816000457750 in said Probate Office.
8. Declaration of Restrictive Covenants as recorded in Instrument No. 20030815000539670 in said Probate Office.
9. Certificate of Incorporation of Chelsea Park Cooperative District One, Two and Three as recorded in Instrument No. 20050714000353260 in said Probate Office.
10. Notice of Final Assessment of Real Property regarding Chelsea Park Improvement District Two as recorded in Instrument No. 20050209000065530 in said Probate Office.
11. Declaration of Easements and Master Protective Covenants for Chelsea Park recorded as Instrument No. 20041014566950 in said Probate Office.
12. Declaration of Covenants Conditions and Restrictions recorded as Instrument No. 20051222000659740 and Instrument No. 20060920000468120 in said Probate Office.
13. Mortgage and Assignment of Rents and Leases given to Compass Bank recorded as Instruments No. 2005122200659960 and 20051222000660000 in said Probate Office.
14. Rights of Way to Alabama Power Company recorded as Instruments No. 20060630000314940, No. 20050203000056210 and No. 20060828000422650 in said Probate Office.