



20080111000015980 1/9 \$37.00
Shelby Cnty Judge of Probate, AL
01/11/2008 11:18:28AM FILED/CERT

STATE OF ALABAMA

COUNTY OF SHELBY

Fifth AMENDMENT TO MORTGAGE, ACCOMMODATION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT

This fifth amendment made effective as of the 11 day of December, 2007, between **COMPASS BANK**, an Alabama banking corporation (the "**Lender**"), **EDDLEMAN HOMES, LLC**, an Alabama limited liability company (the "**Borrower**"), **HIGHLAND LAKES HOMES**, an Alabama limited liability company, and **Sterling Place, LLC**, an Alabama limited liability company (hereinafter individually and collectively called "**Accommodation Mortgagor**").

WHEREAS, in connection with a line of credit for construction of residential homes (the "**Loan**") from Lender to Borrower in the original principal amount of \$15,000,000.00, the Borrower and the Accommodation Mortgagor executed and delivered to Lender, or otherwise authorized the filing of other documents (collectively, the "**Loan Documents**"), the following documents date as of February 12, 2007, to evidence and secure the Loan: (i) Master revolving Credit Promissory Note in the amount of \$15,000,000.00 (Executed only by the borrower - the "**Note**"); (ii) Master Guidance Line Agreement for Construction Financing (the "**Loan Agreement**"); (iii) future Advance Mortgage, Accommodation Mortgage, Assignment of Rents and Leases and Security Agreement, recorded at Instrument No. 20070223000084980 1/30 in the Probate Office of Shelby County, Alabama (the "**Mortgage**"); and

WHEREAS, Borrower, Accommodation Mortgagor and Lender have agreed to amend the Mortgage as set forth herein.

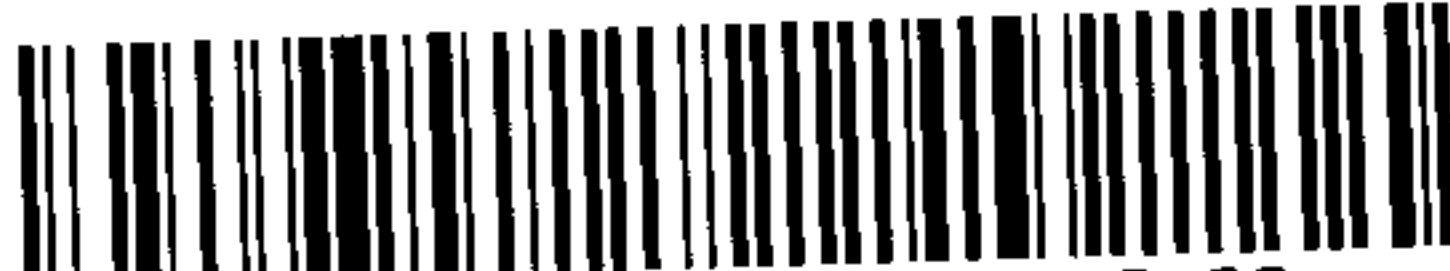
NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower, Accommodation Mortgagor and Lender agree that the Mortgage is amended as follows:

1. **Exhibit A** to the Mortgage is amended to add the parcels of real property described on **Exhibit A-1** hereto (the "**Additional Land**"), which Additional Land shall in all respects be considered as part of the Mortgaged Property under the Mortgage to the same extent as if originally included under the real property described in said **Exhibit A**. For good and valuable consideration, Borrower and Accommodation Mortgagor, to the extent of their respective interests, do hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the Additional Land, to secure the same indebtedness (however described) as set forth in the Mortgage and under the same terms, condition, warranties and representations as set forth in the Mortgage, all of which are hereby adopted by reference.
2. Borrower and each Accommodations Mortgagor hereby warrant that, subject to those matters set forth on **Exhibit B-1** hereto, and with respect to the individual lots identified on **Exhibit C-1** as being owned by such Borrower and Accommodation Mortgagor, it is lawfully seized of an indefeasible estate in fee simple in the individual lots identified on **Exhibit C-1** as being owned

by such Borrower or Accommodation Mortgagor, and has good and absolute title to all existing personal property hereby granted as security with respect to such lots, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservation, security interests, 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 and Accommodation Mortgagor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claim of all persons whomsoever.

3. All references in the other Loan Documents to the Mortgage shall mean the Mortgage, as amended hereby.
4. Except as modified herein, all other terms and conditions of the Loan Document shall remain in full force and effect.
5. This document may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute one (1) document and agreement, but in making proof of this document, it shall not be necessary or produce for account for more than one such counterpart, and counterpart pages may be combined into one single document.

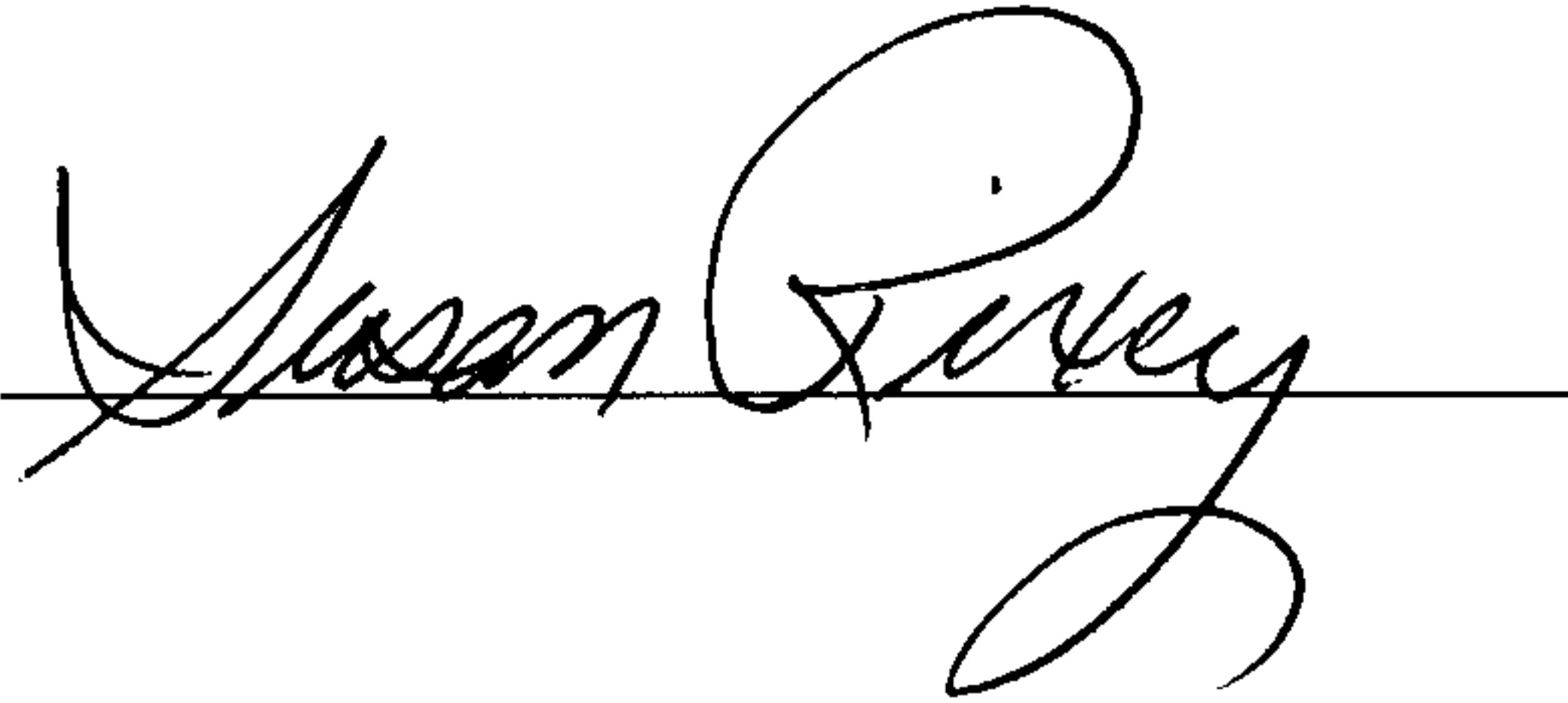
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IN WITNESS WHEREOF, Lender, Borrower, and Accommodation Mortgagor have caused this Second Amendment to be executed effective as of the day and year first set forth above.

LENDER:

WITNESS:



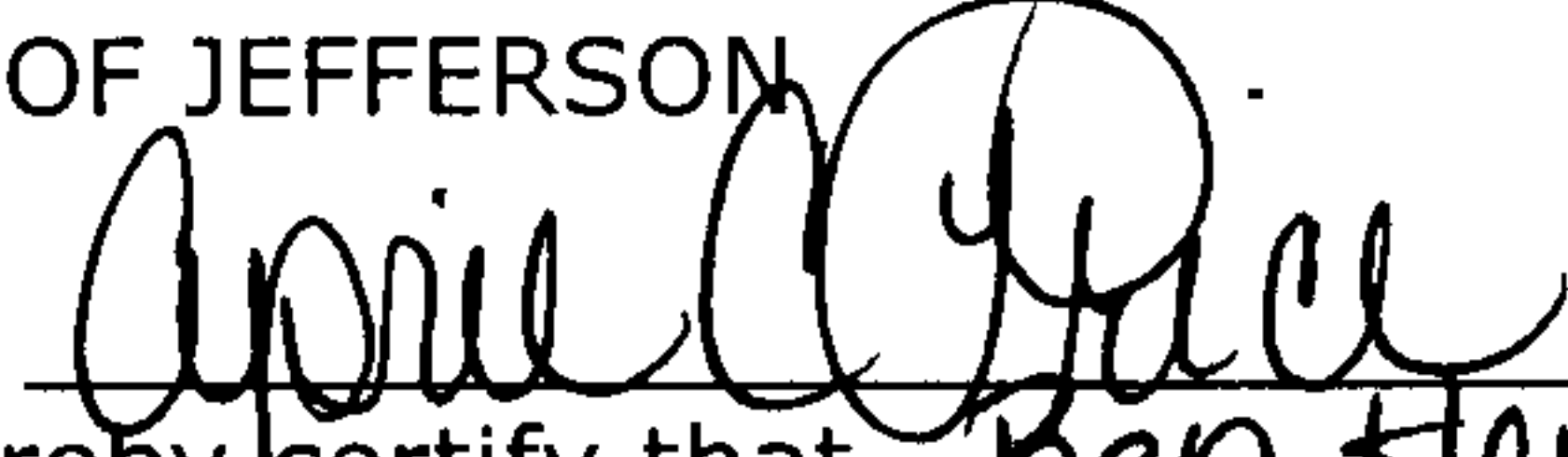
COMPASS BANK:

An Alabama banking corporation

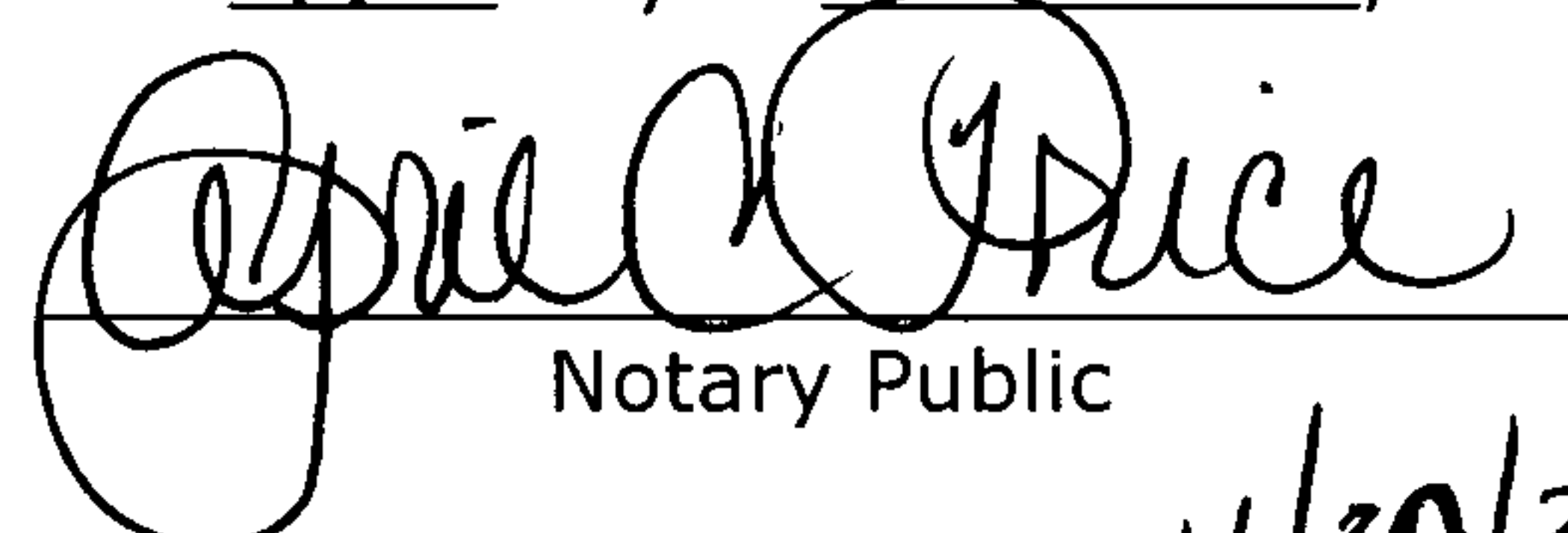
By: 
Its: SALVAGE MONITOR

STATE OF ALABAMA

COUNTY OF JEFFERSON

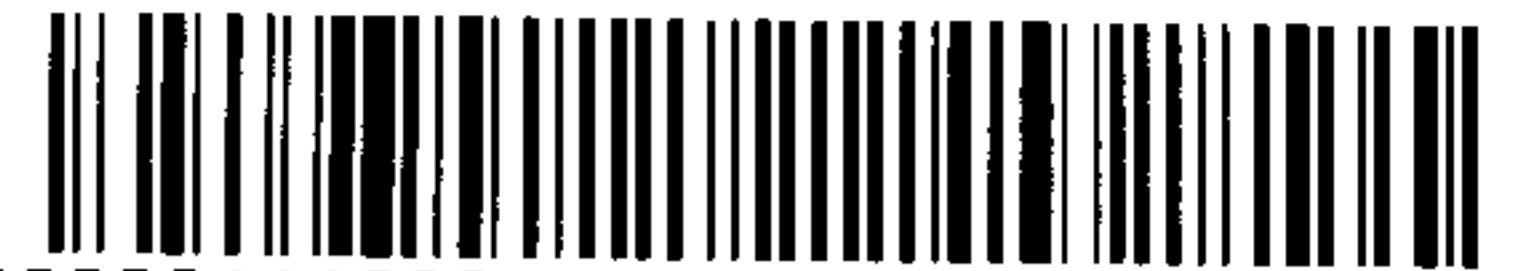
I, , a notary public in and for said county in said state, hereby certify that Ben Hendrix, whose name as Sr. Vice President of **COMPASS BANK**, an Alabama banking corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 11th day of December, 2007.


Notary Public

[Notary Seal]

My Commission Expires: 11/20/2011



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BORROWER:

WITNESS:

EDDLEMAN HOMES, LLC,

An Alabama limited liability company

By

Douglas D. Eddleman
 Managing Partner

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, *Amy Darlene Clemmons* a notary public in and for said county in said state, hereby certify that *DOUGLAS D. EDDLEMAN*, whose name as *MANAGING PARTNER* of **EDDLEMAN HOMES, LLC**, an Alabama 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 such instrument, he, in such capacity 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 *11* day of *December*, 2007.

Amy Darlene Clemmons
 Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
 MY COMMISSION EXPIRES: Nov 11, 2012
 BONDED THRU NOTARY PUBLIC UNDERWRITERS

[Notary Seal]

My Commission Expires:

ACCOMMODATION MORTGAGOR:

WITNESS:

HIGHLAND LAKES HOMES, LLC,
An Alabama limited liability company

By: _____

Douglas D. Eddleman, its Manager

By: _____

Billy D. Eddleman, its Manager

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Amy Darlene Clemmons, a notary public in and for said county in said state, hereby certify that DOUGLAS D. EDDLEMAN, whose name as MANAGER of **HIGHLAND LAKES HOMES, LLC**, an Alabama 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 such instrument, he, as such manager 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 11 day of November, 2007.

Amy Darlene Clemmons
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 11, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

[Notary Seal]

My Commission Expires: _____

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Amy Darlene Clemmons, a notary public in and for said county in said state, hereby certify that BILLY D. EDDLEMAN, whose name as MANAGER of **HIGHLAND LAKES HOMES, LLC**, an Alabama 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 such instrument, he, as such manager 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 11 day of November, 2007.

Amy Darlene Clemmons
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 11, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

[Notary Seal]

My Commission Expires: _____

ACCOMMODATION MORTGAGOR:

WITNESS:

Sterling Place, LLC,

An Alabama limited liability company

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

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

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, *Amy Darlene Clemmons*, a notary public in and for said county in said state, hereby certify that *Douglas D. Eddleman*, whose name as *MANAGER* of **Sterling Place, LLC**, an Alabama 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 such instrument, he, as such manager 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 *11* day of *December*, 2007.

Amy Darlene Clemmons
Notary Public

[Notary Seal]

My Commission Expires: *Nov 11, 2008*
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, *Amy Darlene Clemmons*, a notary public in and for said county in said state, hereby certify that *Billy D. Eddleman*, whose name as *MANAGER* of **Sterling Place, LLC**, an Alabama 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 such instrument, he, as such manager 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 *11* day of *December*, 2007.

Amy Darlene Clemmons
Notary Public

[Notary Seal]

My Commission Expires: *Nov 11, 2008*
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
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Exhibit "A"

Lots 1-24 and 1-25, according to the Map of Sterling Place, Phase One, as recorded in Map Book 2007 at Page 52, as corrected in Map Book 2007 at Page 59, in the Probate Office of St. Clair County, Alabama; being situated in St. Clair County, Alabama.

EXHIBIT "A"

Lots 2925, 2942, 2950 and 2966, according to the Survey of Highland Lakes, 29th Sector, an Eddleman Community, as recorded in Map Book 36, Page 33 A - D, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Together with nonexclusive easement to use the private roadways, Common Area all as more particularly described in the Declaration of Easements and Master Protective Covenants for Highland Lakes, a Residential Subdivision, recorded as Instrument #1994-07111 and amended in Instrument No. 1996-17543, and further amended in Instrument #1999-31095, in the Probate Office of Shelby County, Alabama, and the Declaration of Covenants, Conditions and Restrictions for Highland Lakes, a Residential Subdivision, 29th Sector, recorded as Instrument No. 20051229000667930, in the Probate Office of Shelby County, Alabama (which, together with all amendments thereto, is hereinafter collectively referred to as, the "Declaration").

ALSO:

Lot 31-29, according to the Survey of Highland Lakes, 31st Sector, Phase I, an Eddleman Community, as recorded in Map Book 34, Page 149, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Together with nonexclusive easement to use the private roadways, common areas, all as more particularly described in the Declaration of Easement and Master Protective Covenants for Highland Lakes, a Residential Subdivision, recorded as Instrument No. 1994-07111 and amended in Instrument No. 1996-17543 and Instrument No. 1999-31095 in the Probate Office of Shelby County, Alabama, and the Declaration of Covenants, Conditions and Restrictions for Highland Lakes, a Residential Subdivision, 31st Sector, Phase I, recorded in Instrument No. 20051215000649670, in the Probate Office of Shelby County, Alabama (which, together with all amendments thereto, is hereinafter collectively referred to as, the "Declaration").


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EXHIBIT C-1

Fee Simple interest in the Additional Land Described in this Fifth Amendment to Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement is owned, as of the date hereof, as follows:

PARCELS V AND VI – all described real property – Highland Lakes Homes, LLC

PARCEL IX – all described real property – Sterling Place, LLC