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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)
JEFFERSON COUNTY)

LEASEHOLD MORTGAGE

THIS **LEASEHOLD MORTGAGE** (this "Mortgage") is made and entered into this 13th day of February, 2008 by and between AQUATIC GARDENS, INC., an Alabama corporation and CHARLES W. THOMAS, an individual resident of the State of Alabama (collectively, the "Mortgagor") and ALIANT BANK, an Alabama corporation (the "Lender").

Recitals

A. The Lender has agreed to make a loan to Aquatic Gardens, Inc. (the "Borrower") in the maximum principal amount of Two Hundred Forty-Two Thousand and No/100 Dollars (\$242,000.00) (the "Loan"), which Loan shall be evidenced by a certain Mortgage Note of even date herewith executed by the Borrower in favor of the Lender (the "Note").

B. The Mortgagor is the owner of a leasehold estate and other rights as lessee under a lease agreement dated as of April 1, 1999, by and between Hanna Family Partnership, Ltd and Steve A. Hanna (collectively "Lessor"), as lessor, and Mortgagor, and Charles W. Thomas, collectively as lessee, a memorandum of which will be recorded in the Office of the Judge of Probate of Shelby County, Alabama (the "Lease").

C. Charles W. Thomas is a guarantor of the Lease and will benefit from Lender making the Loan to Borrower.

D. The Mortgagor, in order to secure the Loan, and in order to induce the Lender to extend such credit to the Borrower on the strength of the security provided by this Mortgage, has agreed to execute and deliver this Mortgage and convey the property described herein to the Lender as hereinafter set forth.

Agreement

NOW, THEREFORE, in consideration of the premises, and to secure the payment of (a) the Loan and all indebtedness of the Mortgagor under the Note, or any extension or renewal thereof; (b) all interest and finance charges payable from time to time on the Loan and/or indebtedness, or any part thereof; (c) all other charges, costs and expenses now or hereafter owing by the Mortgagor to the Lender pursuant to the Note, or any extension or renewal thereof; (d) all other indebtedness, obligations and liabilities now or hereafter owing by the Mortgagor to the Lender under the Note, or any extension or renewal thereof; and (e) all advances by the Lender under the terms of this Mortgage (the aggregate amount of all such items described in (a) through (e) above being hereinafter collectively called "Debt") and the compliance with all the stipulations herein contained, the Mortgagor does hereby grant, bargain, sell, assign and convey

unto the Lender, and hereby grants to the Lender a security interest in, all of the Mortgagor's right, title and interest in, to and under the Lease and the Mortgagor's leasehold estate and interest under the Lease (the "Leasehold Interest") in and to the land located in Shelby County, Alabama more particularly described in Exhibit A, and all reversions and remainders in and to said land and the tenements, hereditaments, easements, rights-of-way, rights (including mineral, water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in any way appertaining thereto, including any right, title, interest of the Mortgagor in, to or under the Lease in any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any other property, and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land; and all claims or demands of the Mortgagor at law or in equity, in possession or expectancy of, in or to the same (all of the foregoing hereinafter collectively called the "Real Estate"); all other rights, titles and interests under the Lease in and to the Real Estate, or any part thereof, including any reversions and remainders in and to the Mortgagor's interest in the Real Estate; and all right, title and interest of the Mortgagor in and to all modifications, extensions, renewals, supplements and restatements of the Lease; all credits and deposits made thereunder; all options and rights to renew or extend the same, including the options contained in the Lease; all options and rights to purchase or of first refusal with respect to the Real Estate, or any part thereof, including the options and rights contained in the Lease; and all other titles, estates, options, privileges, interests and rights that the Mortgagor may now have or hereafter acquire in and to the Real Estate and the Lease, including the right of the Mortgagor to possession under Section 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code") in the event of the rejection of the Lease by the Lessor or its trustee pursuant to said section, the right to exercise options or give consents with respect to the Lease, or to modify, extend or terminate the Lease, the right to surrender the Lease, reject the Lease or elect to treat the Lease as rejected or remain in possession under Section 365 of the Bankruptcy Code, and the right to receive all deposits and other amounts payable to Mortgagor under the Lease.

To have and to hold the Leasehold Interest unto the Lender, its successors and assigns forever. The Mortgagor covenants with the Lender that the Mortgagor is lawfully seized of good title to the Leasehold Interest and has a good right to mortgage, assign and grant a security interest in the Leasehold Interest as aforesaid; that the Leasehold Interest is free of all encumbrances, except the lien of current ad valorem taxes payable by Mortgagor under the Lease, if any, and any other encumbrances expressly set forth above; and the Mortgagor will warrant and forever defend the title to the Leasehold Interest unto the Lender, against the lawful claims of all persons, except as otherwise provided herein.

The Mortgagor represents and warrants to the Lender that the Lease is a valid and subsisting lease of the Real Estate for the term therein set forth, and the Lease is in full force and effect and unmodified except as hereinabove expressly stated; all rents (including minimum rents, additional rents, percentage rents, common area maintenance charges and other charges) reserved in the Lease have been paid to the extent payable prior to the date hereof; and there is no existing default under the provisions of the Lease or in the observance of any of the terms,

covenants, conditions or warranties thereof on the part of the Mortgagor to be observed and performed.

The Mortgagor covenants and agrees that Mortgagor shall at all times observe and perform all of its obligations, covenants and conditions under the Lease and shall conform to and comply with all of the terms and conditions of the Lease; not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, would impair or tend to impair the security of this Mortgage or would be grounds for declaring a forfeiture or termination of the Lease; at least six months prior to the last day upon which the Mortgagor, as lessee, may validly exercise any option to renew or extend the term of the Lease, exercise such option in such manner as will cause the term of the Lease to be effectively renewed or extended for the period provided by such option, and give immediate written notice thereof to the Lender; it being expressly agreed that, if the Mortgagor fails to do, the Lender shall have the irrevocable right to exercise any such option either in its own name and behalf or in the name and behalf of a designee or nominee of the Lender or in the name and behalf of the Mortgagor, as the Lender shall in its sole discretion determine; provided, however, that if Mortgagor shall prepay in full all of its obligations under the Note at least six months prior to the last day upon which the Mortgagor, as such lessee, may validly exercise any option to renew or extend the term of the Lease, the Mortgagor will not be obliged to exercise any such option of renewal or extension, nor will the Lender have any right to exercise any such option.

The Mortgagor further covenants and agrees that Mortgagor shall not modify, extend or in any way alter the terms of the Lease or cancel or surrender the Lease, or waive, excuse, condone or in any way release or discharge the lessor(s) thereunder of or from the obligations, covenants, conditions and agreements by said lessor(s) to be done and performed; and the Mortgagor does hereby expressly release, relinquish and surrender unto Lender all its right, power and authority to cancel, surrender, terminate, release, amend, modify or alter in any way the terms and provisions of the Lease, and any attempt on the part of the Mortgagor to exercise any such right without the express prior written consent of the Lender shall constitute an Event of Default hereunder (as defined below).

The Mortgagor further covenants and agrees that Mortgagor shall give immediate notice to the Lender of any default under the Lease; furnish to the Lender promptly any information requested by the Lender concerning the performance by the Mortgagor of the covenants of the Lease; permit the Lender or its representatives at all reasonable times to make investigation or examination concerning the performance by the Mortgagor of the covenants of the Lease or of this Mortgage; and promptly deposit with the Lender an original executed copy of the Lease and each amendment thereto and any documentary evidence requested by the Lender showing compliance by the Mortgagor with the provisions of the Lease and an exact copy of any notice or other instrument or document received or given by it relating to or affecting the Lease or the estate of the lessor(s) or lessee in or under the Lease or in the Real Estate.

The Mortgagor further covenants and agrees that Mortgagor hereby unconditionally assigns, transfers and sets over to the Lender all of the Mortgagor's claims and rights to the

payment of damages arising from any rejection by the Lessor of the Lease under the Bankruptcy Code. The Lender shall have the right to proceed in its own name or in the name of the Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Lease, including the right to file and prosecute, to the exclusion of the Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents in any case involving the Lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing, and shall continue in effect until all of the obligations under the Note have been paid in full and this Mortgage has been terminated as provided herein. Any amount received by the Lender as damages arising out of the rejection of the Lease as aforesaid shall be applied first to all costs and expenses of the Lender (including attorney's fees and disbursements) incurred in connection with the exercise of any of its rights, powers or remedies under this paragraph.

The Mortgagor further covenants and agrees that Mortgagor shall not, without the Lender's prior written consent, elect to treat the Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without the Lender's prior written consent shall be void.

The Mortgagor further covenants and agrees that if, pursuant to Section 365(h)(1) of the Bankruptcy Code, the Mortgagor seeks to offset against the rent reserved in the Lease the amount of any damages caused by the non-performance by the Lessor of any of the Lessor's obligations under the Lease after the rejection by the Lessor of the Lease under the Bankruptcy Code, the Mortgagor shall, prior to effecting such offset, notify the Lender of its intention to do so, setting forth the amounts proposed to be offset and the basis therefor. The Lender shall have the right, within 10 days after receipt of such notice from the Mortgagor, to object to all or any part of such offset, and in the event of such objection, the Mortgagor shall not effect any offset of the amounts so objected to by the Lender for a period of 30 days after the Lender has delivered its objection notice to the Mortgagor, during which time the Lender shall have the right to bring its objections to the attention of any court supervising the bankruptcy of the Lessor of the Lease and both the Lender and the Mortgagor agree to abide by the decision of any such court. If the Lender has failed to object as aforesaid within 10 days after notice from the Mortgagor or the court fails to render its decision within the above-mentioned 30-day period, the Mortgagor may proceed to effect such offset in the amount set forth in the Mortgagor's notice. Neither the Lender's failure to object as aforesaid nor any objection or other communication between the Lender and the Mortgagor relating to such offset shall constitute an approval of any such offset by the Lender.

The Mortgagor further covenants and agrees that if any action, proceeding, motion or notice shall be commenced or filed in respect of the Mortgagor or the Property in connection with any case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to the Mortgagor), the Lender shall have the option, to the exclusion of the Mortgagor, exercisable upon notice from the Lender to the Mortgagor, to conduct and control any such litigation with counsel of the Lender's choice. The Lender may proceed in its own name or in the name of the Mortgagor in connection with any such litigation, and the Mortgagor



agrees to execute any and all powers, authorizations, consents and other documents required by the Lender in connection therewith. The Mortgagor shall pay to the Lender all costs and expenses (including reasonable attorneys' fees and disbursements) paid or incurred by the Lender in connection with the prosecution or conduct of any such proceedings within five days after notice from the Lender setting forth such costs and expenses in reasonable detail. Any such costs or expenses not paid by the Mortgagor as aforesaid shall be secured by the Lien of this Agreement and shall be added to the principal amount of the obligations under the Note secured hereby. The Mortgagor shall not commence any action, suit or proceeding, or file any application or make any motion, in respect of the Lease in any such case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to the Mortgagor) without the prior written consent of the Lender.

The Mortgagor further covenants and agrees that Mortgagor shall promptly, after obtaining knowledge thereof, notify the Lender orally of the filing by or against the Lessor of any petition under the Bankruptcy Code. The Mortgagor shall thereafter forthwith give written notice of such filing to the Lender, setting forth any information available to the Mortgagor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. The Mortgagor shall promptly deliver to the Lender following receipt any and all notices, summonses, pleadings, applications and other documents received by the Mortgagor in connection with any such petition and any proceedings relating thereto.

The Mortgagor further covenants and agrees that if there shall be filed by or against the Mortgagor a petition under the Bankruptcy Code, and the Mortgagor, as the tenant under the Lease, shall determine to reject the Lease pursuant to Section 365(a) of the Bankruptcy Code, then the Mortgagor shall give the Lender not less than 10 days' prior notice of the date on which the Mortgagor intends to apply to the Bankruptcy Court for authority to reject the Lease. The Lender shall have the right, but not the obligation, to serve upon the Mortgagor within such 10-day period a notice stating that the Lender demands that the Mortgagor assume and assign the Lease to the Lender pursuant to Section 365 of the Bankruptcy Code and the Lender covenants to cure or provide adequate assurance of future performance of the Mortgagor's obligations under the Lease. If the Lender serves upon the Mortgagor the notice described in the preceding sentence, the Mortgagor shall not seek to reject the Lease and shall seek court approval to comply with the demand provided for in subparagraph (1) of this paragraph within 30 days after the notice is given, subject to the performance by the Lender of the covenant provided for in subparagraph (2) of this paragraph. The Mortgagor hereby unconditionally assigns, transfers and sets over to the Lender all of the Mortgagor's rights to reject the Lease in any proceeding instituted by or against the Mortgagor under the Bankruptcy Code.

The Mortgagor further covenants and agrees that effective upon the entry of an order for relief in respect of the Mortgagor under the Bankruptcy Code, the Mortgagor hereby assigns and transfers to the Lender a non-exclusive right to apply to the Bankruptcy Court under Section 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Lease may be rejected or assumed.

The Mortgagor hereby authorizes the holder of a prior mortgage encumbering the Leasehold Interest, if any, to disclose to the Lender the following information: (1) the amount of indebtedness secured by such mortgage; (2) the amount of such indebtedness that is unpaid; (3) whether any amount owed on such indebtedness is or has been in arrears; (4) whether there is or has been any default with respect to such mortgage or the indebtedness secured thereby.

If this Mortgage is subordinate to a prior mortgage, the Mortgagor expressly agrees that if default should be made in the payment of principal, interest or any other sum payable under the terms and provisions of such prior mortgage, or if any other event of default (or event which upon the giving of notice or lapse of time, or both, would constitute an event of default) should occur thereunder, the Lender may, but shall not be obligated to, cure such default, without notice to anyone, by paying whatever amounts may be due, or taking whatever other actions may be required, under the terms of such prior mortgage so as to put the same in good standing.

For the purpose of further securing the payment of the Debt, the Mortgagor agrees to: (1) pay all taxes, assessments, and other liens taking priority over this Mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, the Lender, at its option, may pay the same; (2) cause the Real Estate to remain continuously insured, in such manner and with such companies as may be satisfactory to the Lender, against loss by fire, vandalism, malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable to the Lender, as its interest may appear; such insurance to be in an amount at least equal to the full insurable value of the improvements located on the Real Estate unless the Lender agrees in writing that such insurance may be in a lesser amount. Subject to the rights of the holder of the prior mortgage, if any, set forth above, the original insurance policy and all replacements therefor, shall be delivered to and held by the Lender until the Debt is paid in full. The insurance policy must provide that it may not be cancelled without the insurer giving at least fifteen days' prior written notice of such cancellation to the Lender. Subject to the rights of the holder of the prior mortgage, if any, set forth above, the Mortgagor hereby assigns and pledges to the Lender as further security for the payment of the Debt each and every policy of hazard insurance now or hereafter in effect which insures said improvements, or any part thereof, together with all the right, title and interest of the Mortgagor in and to each and every such policy, including but not limited to all of the Mortgagor's right, title and interest in and to any premiums paid on such hazard insurance, including all rights to return of premiums. If Mortgagor fails to maintain insurance on the Real Estate as specified above, then at the election of the Lender and without notice to any person, the Lender may declare the entire Debt due and payable and this Mortgage subject to foreclosure, and this Mortgage may be foreclosed as hereinafter provided; and, regardless of whether the Lender declares the entire Debt due and payable and this Mortgage subject to foreclosure, the Lender may, but shall not be obligated to, insure the Real Estate for its full insurable value (or for such less amount as the Lender may wish) against such risks of loss, for its own benefit, the proceeds from such insurance (less the costs of collecting same), if collected, to be credited against the Debt, or, at the election of the Lender, such proceeds may be used in repairing or reconstructing the improvements located on the Real Estate.

All amounts spent by the Lender for insurance or for the payment of Liens or for the payment of any amounts under any prior mortgages shall become a debt due by the Mortgagor and at once payable, without demand upon or notice to the Mortgagor, and shall be included in the Debt secured by the lien of this Mortgage, and shall bear interest from date of payment by the Lender until paid at the rate of interest payable from time to time under the Note, or such lesser rate as shall be the maximum permitted by law; and if any such amount is not paid in full immediately by the Mortgagor upon demand by the Lender, then at the option of the Lender, this Mortgage shall be in default and subject to immediate foreclosure in all respects as provided by law and by the provisions hereof.

The Mortgagor agrees to take good care of the Real Estate and all improvements located thereon and not to commit or permit any waste thereon, and at all times to maintain such improvements in as good condition as they now are, reasonable wear and tear excepted.

The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The Mortgagor represents and warrants to the Lender that: (a) during the period of the Mortgagor's leasing of the Real Estate, Mortgagor has not used, generated, manufactured, stored, treated, disposed, released or threatened to release any hazardous waste or substance by any person on, under, or about the Real Estate; (b) Mortgagor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by the Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by the Lessor or any prior owners or occupants of the Real Estate or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) except as previously disclosed to and acknowledged by the Lender in writing, (i) the Mortgagor shall not use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Real Estate and (ii) any such activity conducted by Mortgagor shall be in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Any inspections or tests made by the Lender shall be for the Lender's purposes only and shall not be construed to create any responsibility of liability on the part of the Lender to the Mortgagor or to any other person. The representations and warranties contained herein are based on the Mortgagor's due diligence in investigating the Real Estate for hazardous waste. The Mortgagor hereby (a) releases and waives any future claims against the Lender for indemnity or contribution in the event the Mortgagor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless the Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which the Lender may directly or indirectly sustain or suffer resulting from a breach of this section of this Mortgage or as a consequence of any use, generation, manufacture, storage,

disposal, release or threatened release occurring prior to the creation of the Leasehold Interest in the Real Estate; provided that such claims, losses, liabilities, damages, penalties and expenses were the result of the actions of the Mortgagor. The provisions of this section of this Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by the Lender's acquisition of any portion of the Leasehold Interest, whether by foreclosure or otherwise.

Notwithstanding any other provision of this Mortgage or the Note, the Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the assignment, without the Lender's prior written consent, of all or any part of the Leasehold Interest. An "assignment" means the conveyance of the Leasehold Interest or any portion thereof; whether legal or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by any other method of conveyance of the Leasehold Interest. However, this option shall not be exercised by the Lender if such exercise is prohibited by federal law or by Alabama law.

The Lender may make or cause to be made reasonable entries upon and inspections of the Real Estate, provided that the Lender shall give the Mortgagor notice prior to any such inspection specifying reasonable cause therefor related to the Lender's interest in the Real Estate.

Except for any notice required under applicable law to be given in another manner, any notice under this Mortgage (a) may be given to the Mortgagor by delivering such notice to the Mortgagor (or any one of them if more than one) or by mailing such notice by first class mail addressed to the Mortgagor at the most recent address on the Lender's records or at such other address as the Mortgagor shall designate by notice to the Lender as provided herein and (b) shall be given to the Lender by first class mail to the Lender's address stated herein or to such other address as the Lender may designate by notice to the Mortgagor as provided herein. Any notice under this Mortgage shall be deemed to have been given to the Mortgagor or the Lender when given in the manner designated herein.

The Mortgagor agrees that no delay or failure of the Lender to exercise any option to declare the Debt due and payable shall be deemed a waiver of the Lender's right to exercise such option, either as to any past or present default, and it is agreed that no terms or conditions contained in this Mortgage may be waived, altered or changed except by a written instrument signed by the Mortgagor and signed on behalf of the Lender by one of its partners.

As additional consideration to induce the Lender to make the Loan, the Mortgagor hereby agrees that in the event a bankruptcy proceeding, either voluntary or involuntary, is commenced by or against the Mortgagor, the Mortgagor will not oppose or object to the Lender's motion for relief from the automatic stay provided under 11 U.S.C. § 362.

Upon condition, however, that if: (a) the Debt is paid in full (which Debt includes (i) the Loan and all indebtedness of the Mortgagor under the Note, or any extension or renewal thereof; (ii) all interest and finance charges payable from time to time on the Loan and/or indebtedness, or any part thereof; (iii) all other charges, costs and expenses now or hereafter owing by the Mortgagor to the Lender under the Note, or any extension or renewal thereof; (iv) all other indebtedness, obligations and liabilities now or hereafter owing by the Mortgagor to the Lender under the Note, or any extension or renewal thereof; and (v) all advances by the Lender under the terms of this Mortgage); (b) the Lender is reimbursed for any amounts the Lender has paid in payment of Liens or insurance premiums or any prior mortgages, and interest thereon; (c) the Mortgagor fulfills all of the Mortgagor's obligations under this Mortgage; (d) the Note is paid in full and the Lender has no obligation to extend any further credit to the Mortgagor thereunder; and (e) the Lender has executed an appropriate written instrument in satisfaction of this Mortgage; this conveyance shall be null and void.

If, however, (1) the Mortgagor fails to make any payment on the Debt when due and said failure shall continue unremedied for a period of seven (7) business days following delivery of written notice of such failure to make payment by the Lender to the Mortgagor and the Mortgagor; (2) any warranty or representation made in this Mortgage or the Note is breached or proves false in any material respect; (3) default is made in the due performance of any covenant or agreement of the Mortgagor under this Mortgage or of the Mortgagor under the Note; (4) default is made in the payment to the Lender of any sum paid by the Lender under the authority of any provision of this Mortgage; (5) the Debt, or any part thereof, or any other indebtedness, obligation or liability of the Mortgagor to the Lender remains unpaid at maturity; (6) the interest of the Lender in the Leasehold Interest becomes endangered by reason of the enforcement of any prior Lien or encumbrance thereon; (7) any statement of lien is filed against the Real Estate (the priority of which lien primes the lien of this Mortgage), or any part thereof, under the statutes of Alabama relating to the liens of mechanics and materialmen (without regard to the existence or non-existence of the debt or the lien on which such statement is based); (8) any law is passed imposing or authorizing the imposition of any specific tax upon this Mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal or interest of the Debt, or by virtue of which any tax, lien or assessment upon the Real Estate shall be chargeable against the owner of this Mortgage; (9) the Mortgagor or any guarantor of the Debt (a) shall apply for or consent to the appointment of a receiver, trustee or liquidator thereof or of the Real Estate or of all or a substantial part of such Mortgagor's or guarantor's assets, (b) be adjudicated a bankrupt or insolvent or file a voluntary petition in bankruptcy, (c) fail, or admit in writing such Mortgagor's or guarantor's inability generally to pay such Mortgagor's or guarantor's debts as they come due, (d) make a general assignment for the benefit of creditors, (e) file a petition or an answer seeking reorganization or an arrangement with creditors on taking advantage of any insolvency law, or (f) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against any Mortgagor or guarantor in any bankruptcy, reorganization or insolvency proceedings; (10) an order for relief or other judgment or decree shall be entered by an court of competent jurisdiction, approving a petition seeking liquidation or reorganization of the Mortgagor or any guarantor, or appointing a receiver, trustee or liquidator of any Mortgagor or guarantor or of the Real Estate or of all or a substantial part of the assets of

any Mortgagor or guarantor; (11) the Mortgagor shall fail to pay or perform any of the Mortgagor's obligations under the Lease, or any default or event of default shall occur under the Lease (after giving effect to any applicable notice, grace or cure periods specified therein); or (12) any other default occurs under the Note; then an event of default shall have occurred hereunder (referred to herein as an "Event of Default").

Upon the occurrence of any default or event of default under the Lease (or any event which, upon the giving of notice or the lapse of time, or both, would constitute such a default or event of default), the Lender shall have the right, but shall be under no obligation, to pay any amount, to perform any other act or to take such action as may be appropriate to cure or prevent such default or event of default under the Lease, to the end that the Mortgagor's rights in, to and under the Lease shall be kept unimpaired and free from default. Subject to the rights of any tenants, the Lender and any person designated by the Lender shall have, and is hereby granted, the right to enter upon the Real Estate at any time and from time to time for the purpose of paying any such amount, performing any such act or taking any such action, and all moneys expended by the Lender in connection therewith (including reasonable attorneys' fees and disbursements), together with interest thereon at the default rate, as defined in the Note, shall be payable by the Mortgagor to the Lender forthwith upon demand by the Lender, and shall constitute part of the obligations under the Note. In the event of any failure by the Mortgagor to pay, observe or perform any covenant on the part of the Mortgagor to be paid, observed and performed under the Lease, the payment or performance by the Lender in behalf of the Mortgagor of said covenant shall not remove or waive, as between the Mortgagor and the Lender, the corresponding default under the terms hereof, and any such failure aforesaid shall be subject to all of the rights and remedies of the Lender hereunder when any Event of Default exists.

Upon the occurrence of any other Event of Default hereunder (other than a default under the Lease, which is provided for hereinabove), then, the Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law: (1) The Lender may declare the unpaid balance of the Debt immediately due and payable. (2) The Lender shall have the right to have a receiver appointed to succeed to the Leasehold Interest, with the power to protect and preserve the Leasehold Interest, to operate the Leasehold Interest preceding foreclosure or sale, and to collect the Rents from the Leasehold Interest and apply the proceeds, over and above the cost of the receivership, against the Debt; the receiver may serve without bond if permitted by law and the Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Leasehold Interest exceeds the indebtedness by a substantial amount. (3) The Lender may obtain a judicial decree foreclosing the Leasehold Interest. (4) The Lender may take possession of the Real Estate and, with or without taking such possession, after giving notice of the time, place and terms of sale, together with a description of the Leasehold Interest to be sold, by publication once a week for three (3) successive weeks in some newspaper published in the county or counties in which the Real Estate is located, to assign the Leasehold Interest (or such part or parts thereof as the Lender may from time to time elect to assign) at the front or main door of the courthouse of the county in which the Real Estate, or a substantial and material part thereof, is located, at public outcry, to

the highest bidder for cash. If there is Real Estate in more than one county, publication shall be made in all counties where the Real Estate is located, and if no newspaper is published in any county in which any Real Estate is located, the notice shall be published in a newspaper published in an adjoining county for three (3) successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of assignment under this Mortgage. The Lender may bid under the terms of this Mortgage and may assign the Leasehold Interest to itself if it is the highest bidder therefore. The proceeds of any such assignment shall be applied as follows: *first*, to the expense of advertising, selling and conveying the Leasehold Interest and foreclosing this Mortgage, including reasonable attorneys' fees; *second*, to the payment in full of the balance of the Debt in whatever order and amounts the Lender may elect, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; *third*, to the payment of any amounts that have been spent, or that it may then be necessary to spend, in paying insurance premiums, Liens, any prior mortgages or other encumbrances related to the Leasehold Interest, with interest thereon; and, *fourth*, the balance, if any, to be paid to the party or parties appearing of record to be the owner of the Leasehold Interest at the time of the assignment, after deducting the costs of ascertaining who is such owner. The Mortgagor hereby waives any and all rights to have the property marshalled. In exercising its rights and remedies, the Lender shall be free to sell all or any part of the Leasehold Interest together or separately, in one sale or by separate sales. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. In the event of an assignment arising from a foreclosure as described hereunder, the Lender, or the owner of the Debt and mortgage, or auctioneer, shall execute to the assignee, for and in the name of the Mortgagor, an assignment of the Lease. The Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity. The Lender shall be entitled to bid at any public sale on all or any portion of the Leasehold Interest or other property pledged hereunder.

Whether or not any court action is involved, all expenses incurred by the Lender that, in the Lender's opinion, are necessary at any time for the protection of the Lender's interest, required under applicable laws or regulations or necessary in the enforcement of its rights and remedies hereunder, shall become a part of the debt secured hereby, payable on demand and shall bear interest from the date of expenditure until repaid at the rate set forth in the Note. Expenses covered by this paragraph include, without limitation, the Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), foreclosure sales, appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisals, environmental site assessment reports and title insurance, all to the extent permitted by applicable law. The Mortgagor also will pay any court costs, in addition to all other sums provided by law.

Plural or singular words used herein to designate the Mortgagor(s) or the undersigned shall be construed to refer to the maker or makers of the Note and this Mortgage, respectively, whether one or more. Unless the Lender shall otherwise expressly consent in writing, fee title to

the Real Estate and the Mortgagor's leasehold estate under the Lease shall not merge but shall always remain separate and distinct, notwithstanding that both of said estates may at any time be held by the Mortgagor or by any third party by purchase or otherwise. All obligations of the Mortgagor under this Mortgage shall be joint and several, and all references to the Mortgagor shall mean each and every the Mortgagor. This means that each of the persons signing below is responsible for all obligations in this Mortgage. If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable. Subject to the limitations stated in this Mortgage on transfer of the Mortgagor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Leasehold Interest becomes vested in a person other than the Mortgagor, the Lender, without notice to the Mortgagor, may deal with the Mortgagor's successors with reference to this Mortgage and the Debt by way of forbearance or extension without releasing the Mortgagor from the obligations of this Mortgage or liability under the Debt. Time is of the essence in the performance of this Mortgage. **THE MORTGAGOR HEREBY RELEASES AND WAIVES ALL RIGHTS AND BENEFITS OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ALABAMA AS TO ALL DEBT SECURED BY THIS MORTGAGE.** No delay or omission on the part of the Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by the Lender, nor any course of dealing between the Lender and the Mortgagor, shall constitute a waiver of any of the Lender's rights or any of the Mortgagor's obligations as to any future transactions. Whenever consent by the Lender is required in this Mortgage, the granting of such consent by the Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the undersigned has executed this Mortgage on the date of the acknowledgment of the Mortgagor's signature below.

AQUATIC GARDENS, INC.

By: *Charles W. Thomas*

Name: Charles W. Thomas

Its: President

Charles W. Thomas
Charles W. Thomas

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Charles W. Thomas, whose name as the duly authorized representative of Aquatic Gardens, Inc., a _____ corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that being informed of the contents of said instrument, he/she, as such representative, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 12th day of February, 2008.

Lisa R. Irvine
Notary Public



[AFFIX SEAL]

My Commission Expires:



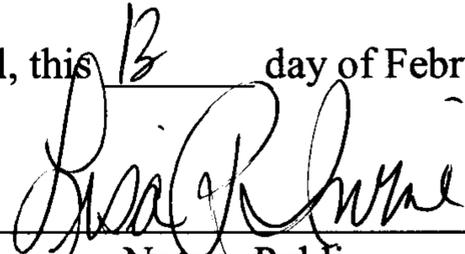
20080627000263480 14/15 \$416.00
Shelby Cnty Judge of Probate, AL
06/27/2008 02:13:37PM FILED/CERT

STATE OF ALABAMA)

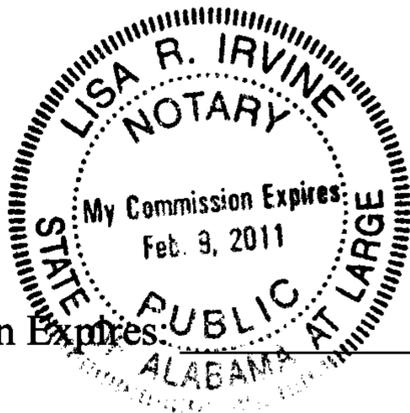
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Charles W. Thomas, whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 13 day of February, 2008.



Notary Public



[AFFIX SEAL]

My Commission Expires _____

This instrument prepared by:
Thomas C. Clark, III, Esq.
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000



20080627000263480 15/15 \$416.00
Shelby Cnty Judge of Probate, AL
06/27/2008 02:13:37PM FILED/CERT

EXHIBIT A

(Description of Real Property)

The South 100 feet of the following described parcel, facing Highway 280, extending of uniform width along the South boundary to the East line, being 100 feet by = 423 situated in the SW 1/4 of the NE 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, said parcel being more particularly described as follows:

Commence at the SE corner of the SW 1/4 of the NE 1/4 of Section 5, Township 19 South, Range 1 West, and run in a Westerly direction along the South line of said SW 1/4 of the NE 1/4 for a distance of 570.73 feet to a point; thence 90 degrees 02 minutes 14 seconds to the right in a Northerly direction a distance of 225.98 feet to a point; thence 90 degrees 00 minutes to the left in a Westerly direction a distance of 60.15 feet to a point; thence 83 degrees 32 minutes 25 seconds to the right in a Northerly direction a distance of 205.67 feet to the point of beginning; thence 83 degrees 14 minutes 45 seconds to the left in a Westerly direction a distance of 199.06 feet to a point on the Easterly right of way line of Highway 280; thence 83 degrees 34 minutes 53 seconds to the right in a Northerly direction and along the Easterly right of way line of Highway 280 a distance of 501.97 feet to a point; thence 95 degrees 53 minutes to the right in an Easterly direction a distance of 287.29 feet and a central angle of 90 degrees 34 minutes 50 seconds; thence along the arc of said curve to the right and in a Southeasterly direction a distance of 300.16 feet to the point of tangent (P.T.) of said curve; thence in the tangent of said curve in a Southerly direction a distance of 311.50 feet to a point; thence 89 degrees 57 minutes 17 seconds to the right in a Westerly direction a distance of 223.49 feet to the point of beginning.

According to the survey of Joseph D. Schoel, RLS. #4405, dated November 4, 1987.

Together with as permanent easement for ingress and egress.

EXHIBIT A