


Record and Return To:
John W. Monroe, Jr., Esquire
Emmanuel, Sheppard and Condon
30 S. Spring St.
Pensacola, Florida 32502
A0458-118645 rfk


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Shelby Cnty Judge of Probate, AL
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Prepared by:
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THIS MORTGAGE IS FILED AS, AND SHALL CONSTITUTE, A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9-402(6) OF THE CODE OF ALABAMA AND SHOULD BE CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS.

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FINANCING STATEMENT
(Alabama)

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (hereinafter referred to as the "Mortgage"), is made this 9th day of May, 2008, between, **ADAMS HOMES, LLC**, an Alabama limited liability company, whose post office address is 6574 Spanish Fort Boulevard, Spanish Fort, Alabama 36527 (hereinafter referred to as the "Mortgagor"), and **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking corporation, whose address is 225 Water Street, Third Floor, FL0061, Jacksonville, Florida 32202 (hereinafter referred to as the "Mortgagee") which terms Mortgagor and Mortgagee, whenever hereinafter used be construed to refer to and include the heirs, legal representatives, executors, administrators, successors and assigns of said parties;

WITNESSETH:

WHEREAS, Mortgagee has made a mortgage loan to **ADAMS HOMES OF NORTHWEST FLORIDA, INC.**, a Florida corporation (the "Borrower"), which loan is evidenced by that certain Fourth Renewal Revolving Promissory Note dated December 17, 2007, in the aggregate principal sum of Sixty Million and 00/100 Dollars (\$60,000,000.00) (the "Loan"), which is evidenced by that certain Fourth Renewal Revolving Real Estate Promissory Note dated December 17, 2007 (as the same may be amended, modified or supplemented from time to time hereafter), having a maturity date of UPON DEMAND (the "Note"), executed and delivered by the Borrower to the Mortgagee to acquire the Real Estate (as hereinafter defined); and

WHEREAS, Mortgagor is the owner of fee simple title to those certain tracts of land located in various counties in Alabama as more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "Real Estate"); and

WHEREAS, the term "Loan", as used herein, shall refer to the loan evidenced by the Note. To evidence and secure the Loan, Borrower has executed and delivered to Mortgagee the Note and Mortgagor has executed and delivered to Mortgagee this Mortgage, Assignment of Rents and Leases, Security Agreement and Financing Statement (the "Mortgage"), and other documentation related to the Loan, which documents and any modification, extension and amendments thereof are herein referred to as the "Loan Documents."

WHEREAS, to induce Mortgagee to make the Loan and to secure payment of the Note and the other obligations described below, Mortgagor has agreed to execute and deliver this Mortgage.

GRANTING CLAUSES

NOW, THEREFORE, to secure to Mortgagee (i) the repayment of all sums due under this Mortgage, the Note (and all extensions, renewals, replacements and amendments thereof) and the other Loan Documents (as such term is defined in the Note, the "**Loan Documents**") including, without limitation, that certain Fourth Amended and Restated Master Building Loan Agreement between the Borrower, Mortgagor and the Mortgagee dated December 17, 2007 (the "**Loan Agreement**"); (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) the repayment of all sums due or that may become due under or in connection with any present or future swap agreements (as defined in 11 U.S.C. §101) between Mortgagor and Mortgagee; and (iv) the repayment of all reimbursement obligations due or that may become due under or in connection with any letters of credit issued or to be issued by Mortgagee for the account of Mortgagor, as may be contemplated in the Loan Documents; (subsections (i), (ii), (iii) and (iv) collectively, the "**Liabilities**"), Mortgagor has mortgaged, granted and conveyed and by these presents **DOES HEREBY MORTGAGE, GRANT AND CONVEY TO MORTGAGEE, ITS SUCCESSORS AND ASSIGNS**, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "**Property**");

A. Those certain tracts of land located in various counties Alabama, as more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "**Real Estate**");

B. Any and all buildings and improvements now or hereafter erected on, under or over the Real Estate (the "**Improvements**");

C. Any and all fixtures, machinery, equipment and other articles of real, personal or mixed property, belonging to Mortgagor, at any time now or hereafter installed in, attached to or situated in or upon the Real Estate, or the buildings and improvements now or hereafter erected thereon, or used or intended to be used in connection with the Real Estate, or in the operation of the buildings and improvements, plant, business or dwelling situate thereon, whether or not such real, personal or mixed property is or shall be affixed thereto, and all replacements, substitutions and proceeds of the foregoing (all of the foregoing herein called the "**Service Equipment**"), including without limitation: (i) all appliances, furniture and furnishings; all articles of interior

decoration, floor, wall and window coverings; all office, restaurant, bar, kitchen and laundry fixtures, utensils, appliances and equipment; all supplies, tools and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery and other plantings; (ii) all building service fixtures, machinery and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment; all elevators, escalators, lifts, cranes, hoists and platforms; all pipes, conduits, pumps, boilers, tanks, motors, engines, furnaces and compressors; all dynamos, transformers and generators; (iii) all building materials, building machinery and building equipment delivered on site to the Real Estate during the course of, or in connection with any construction or repair or renovation of the buildings and improvements; (iv) all parts, fittings, accessories, accessions, substitutions and replacements therefor and thereof; and (v) all files, books, ledgers, reports and records relating to any of the foregoing;

D. Any and all leases, subleases, tenancies, licenses, occupancy agreements or agreements to lease all or any portion of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property and all extensions, renewals, amendments, modifications and replacements thereof, and any options, rights of first refusal or guarantees relating thereto (collectively, the **"Leases"**); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards and payments of any kind payable under the Leases or otherwise arising from the Real Estate, Improvements, Service Equipment or all or any other portion of the Property including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents (collectively, the **"Rents"**); all of the following personal property (collectively referred to as the **"Contracts"**): all accounts, general intangibles and contract rights (including any right to payment thereunder, whether or not earned by performance) of any nature relating to the Real Estate, Improvements, Service Equipment or all or any other portion of the Property or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits, building service contracts, maintenance contracts, construction contracts and architect's agreements; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property;

E. Any and all estates, rights, tenements, hereditaments, privileges, easements, reversions, remainders and appurtenances of any kind benefiting or appurtenant to the Real Estate, Improvements or all or any other portion of the Property; all means of access to and from the Real Estate, Improvements or all or any other portion of the Property, whether public or private; all streets, alleys, passages, ways, water courses, water and mineral rights relating to the Real Estate, Improvements or all or any other portion of the Property; all rights of Mortgagor as declarant or unit owner under any declaration of condominium or association applicable to the Real Estate, Improvements or all or any other portion of the Property including, without limitation, all development rights and special declarant rights; and all other claims or demands of Mortgagor, either at law or in equity, in possession or expectancy of, in, or to the Real Estate,

Improvements or all or any other portion of the Property (all of the foregoing described in this subsection E herein called the "**Appurtenances**"); and

F. Any and all "proceeds" of any of the above-described Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, which term "proceeds" shall have the meaning given to it in the Uniform Commercial Code, as amended, (the "**Code**") of the State in which the Property is located (collectively, the "**Proceeds**") and shall additionally include whatever is received upon the use, lease, sale, exchange, transfer, collection or other utilization or any disposition or conversion of any of the Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

TO HAVE AND TO HOLD the above granted and conveyed Property unto and to the proper use and benefit of Mortgagee, its successors and assigns, forever.

PROVIDED ALWAYS, and these presents are upon the express condition, that if (i) all the Liabilities, including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements secured hereunder, are paid in full, (ii) each and every representation, warranty, agreement and covenant of this Mortgage and the other Loan Documents are complied with and abided by, and (iii) and any swap agreements secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null and void and canceled of record.

The terms of the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same effect as if fully set forth herein. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

AND Mortgagor covenants and agrees with and represents to Mortgagee as follows:

1. **REVOLVING CREDIT; FUTURE ADVANCES.**

1.1 **Revolving Credit.** The Note is intended to evidence revolving credit extended by the Mortgagee to the Borrower. The principal balance of the Note may increase and decrease from time to time, and may be reduced to zero, and the proceeds thereof may be advanced, repaid and reborrowed. Nevertheless, this Mortgage is intended to secure all such indebtedness evidenced by the Note.

1.2 **Future Advances.** This Mortgage shall secure any additional loans as well as any and all present or future advances and readvances under the Liabilities made by Mortgagee to or for the benefit of Mortgagor or the Property within twenty (20) years from the date hereof (whether such advances are obligatory or are made at the option of Mortgagee or otherwise), including, without limitation: (i) principal, interest, late charges, fees and other amounts due under the Liabilities or this Mortgage; (ii) all advances by Mortgagee to Mortgagor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (iii) all advances made or costs incurred by Mortgagee for the payment of real estate taxes, assessments or other governmental charges,

maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, and costs incurred by Mortgagee for the enforcement and protection of the Property or the lien of this Mortgage; and (iv) all legal fees, costs and other expenses incurred by Mortgagee by reason of any default or otherwise in connection with the Liabilities. The total amount of the Liabilities that may be so secured may decrease to a zero amount from time to time, or may increase from time to time, but the total unpaid balance secured at any one time shall not exceed \$150,000,000.00. Notwithstanding the foregoing, Mortgagee certifies the current amount secured hereby is \$60,000,000.

2. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

2.1 **Payment and Performance.** Mortgagor shall (a) pay or cause to be paid, to Mortgagee all sums required to be paid by Mortgagor under the Loan Documents, in accordance with their stated terms and conditions; (b) perform and comply with all terms, conditions and covenants set forth in each of the Loan Documents by which Mortgagor is bound; and (c) perform and comply with all of Mortgagor's obligations and duties as landlord under any Leases.

2.2 **Seisin and Warranty.** Mortgagor hereby warrants that (a) Mortgagor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property; (b) Mortgagor has the right, full power and lawful authority to mortgage, grant, convey and assign the same to Mortgagee in the manner and form set forth herein; and (c) this Mortgage is a valid and enforceable first lien on the Property. Mortgagor hereby covenants that Mortgagor shall (a) preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against all lawful claims whatsoever; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Mortgagee to protect fully the lien of this Mortgage.

2.3 **Insurance.**

(a) Mortgagor shall obtain and maintain at all times throughout the term of this Mortgage comprehensive general public liability insurance covering all operations of Mortgagor. In addition, should Improvements consisting of buildings, structures or other vertical improvements be constructed upon the Real Estate during the term of this Mortgage, the Mortgagor shall then obtain and thereafter maintain: (i) "All-Risk" fire and extended coverage hazard insurance (non-reporting Commercial Property Policy with Special Cause of Loss form) covering the Property in an aggregate amount not less than 100% of the agreed upon full insurable replacement value of the Property, including coverage for loss of rents or business interruption; (ii) during the course of any construction, reconstruction, remodeling or repair of any Improvements, builders' all-risk extended coverage insurance (non-reporting Completed Value with Special Cause of Loss form) in amounts based upon the completed replacement value of the Improvements (excluding roads, foundations, parking areas, paths, walkways and like improvements) and endorsed to provide that occupancy by any person shall not void such coverage; (iii) if the Property is required to be insured pursuant to the National Flood Insurance Reform Act of 1994, and the regulations promulgated thereunder, flood insurance in an amount at least equal to the lesser of the agreed upon full insurable replacement value of the Property (less any value attributable to the Real Estate) or the maximum limit of coverage available; (iv) insurance which complies with the workers' compensation and employers' liability laws of all

states in which Mortgagor shall be required to maintain such insurance; and (v) such other insurance as Mortgagee may reasonably require. Notwithstanding the foregoing, as long as the Mortgagor's is in compliance with the financial covenants contained in Section 4.10(c) of the Loan Agreement, Mortgagor may satisfy the requirements of subsections (i) and (ii) above by providing self-insurance.

(b) Each insurance policy required under this Section shall: (i) be written by an insurance company authorized or licensed to do business in the state within which the Property is located having an Alfred M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than IX; (ii) be for terms of a least one year, with premium prepaid; (iii) be subject to the reasonable approval of Mortgagee as to insurance companies, amounts, content, forms of policies and expiration dates; and (iv) name Mortgagee, its successors and assigns: (1) as an additional insured under all liability insurance policies, and (2) as the first mortgagee, under a standard non-contributory mortgagee clause, on all property insurance policies and all loss of rents or loss of business income insurance policies.

(c) Mortgagor further agrees that each insurance policy: (i) shall provide at least thirty (30) days' prior written notice to Mortgagee prior to any policy reduction or cancellation for any reason; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Mortgagee in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of setoff, counterclaim, deduction or subrogation against Mortgagor; and (iv) shall exclude Mortgagee from the operation of any coinsurance clause.

(d) At least thirty (30) days prior to the expiration of any insurance policy, Mortgagor shall furnish evidence satisfactory to Mortgagee that such policy has been renewed or replaced or is no longer required.

(e) Notwithstanding the foregoing, in the event that Mortgagor fails to maintain insurance in accordance with this Section 2.3, and Mortgagee elects to obtain insurance to protect its interests hereunder, Mortgagee may obtain insurance in any amount and of any type Mortgagee deems appropriate to protect Mortgagee's interest only and Mortgagee shall have no duty or obligation to Mortgagor to maintain insurance in any greater amount or of any other type for the benefit of Mortgagor. All insurance premiums incurred or paid by Mortgagee shall be at Mortgagor's sole cost and expense in accordance with Section 1 hereof. Mortgagee's election to obtain insurance shall not be deemed to waive any Event of Default (as hereinafter defined) hereunder.

2.4 Taxes and Other Charges. Mortgagor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Property. Notwithstanding the foregoing, Mortgagor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such taxes, assessments, water and sewer rents, or other governmental charges, provided that: (a) Mortgagor has established on its books or by deposit of cash with Mortgagee, at the option of Mortgagee, a reserve for the payment thereof in such amount as Mortgagee may require; and (b) such contest operates to prevent collection, stay any

proceedings which may be instituted to enforce payment of such item, and prevent a sale of the Property to pay such item. Mortgagor shall promptly provide to Mortgagee, upon request, copies of receipted tax bills, canceled checks or other evidence satisfactory to Mortgagee evidencing that such taxes, assessments, water and sewer rents, and other governmental charges have been timely paid. Mortgagor shall not claim or demand or be entitled to any credit on account of the Liabilities for any part of the taxes paid with respect to the Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Mortgage.

2.5 **Escrows.** If required by Mortgagee, Mortgagor shall pay to Mortgagee at the time of each installment of principal and interest due under the Note, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of taxes and assessments levied or assessed against the Property, and/or (b) the premiums which will next become due on the insurance policies required by this Mortgage, all in amounts as estimated by Mortgagee, less all sums already paid therefor or deposited with Mortgagee for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such taxes and assessments and/or premiums, as applicable, will become due, such sums to be held by Mortgagee to pay the same when due. If such escrow funds are not sufficient to pay such taxes and assessments and/or insurance premiums, as applicable, as the same become due, Mortgagor shall pay to Mortgagee, upon request, such additional amounts as Mortgagee shall estimate to be sufficient to make up any deficiency. No amount paid to Mortgagee hereunder shall be deemed to be trust funds but may be commingled with general funds of Mortgagee and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Mortgagee shall have the right, at its sole discretion, to apply any amounts so held against the Liabilities.

2.6 **Transfer of Title.** Without the prior written consent of Mortgagee in each instance, Mortgagor shall not cause or permit any transfer of the Property or any part thereof (except for the sale of Lots (hereinafter defined) upon payment of the release price required hereunder), whether voluntarily, involuntarily or by operation of law, nor shall Mortgagor enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A “**transfer**” of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein, except as expressly permitted herein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Mortgagor, or member of Mortgagor, is a corporation, partnership, limited liability company or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity; (d) if Mortgagor, or managing member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation’s stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

2.7 **No Encumbrances.** Mortgagor shall not create or permit to exist any mortgage, pledge, lien, security interest (including, without limitation, a purchase money security interest),

encumbrance, attachment, levy, distraint or other judicial process on or against the Property or any part thereof (including, without limitation, fixtures and other personalty), whether superior or inferior to the lien of this Mortgage, without the prior written consent of Mortgagee. If any lien or encumbrance is filed or entered without Mortgagor's consent, Mortgagor shall have it removed of record within fifteen (15) days after it is filed or entered.

2.8 **Removal of Fixtures.** Mortgagor shall not remove or permit to be removed from the Property any fixtures presently or in the future owned by Mortgagor as the term "fixtures" is defined by the law of the state where the Property is located (unless such fixtures have been replaced with similar fixtures of equal or greater utility and value).

2.9 **Maintenance and Repair; Alterations.**

(a) Mortgagor shall (i) abstain from and not permit the commission of waste in or about the Property; (ii) keep the Property, at Mortgagor's own cost and expense, in good and substantial repair, working order and condition; (iii) make or cause to be made, as and when necessary, all repairs and replacements, whether or not insurance proceeds are available therefor; and (iv) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Property. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Mortgage.

(b) Mortgagee, and any persons authorized by Mortgagee, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair. In the event any such inspection reveals, in the sole discretion of Mortgagee, the necessity for any repair, alteration, replacement, clean-up or maintenance, Mortgagor shall, at the discretion of Mortgagee, either: (i) cause such work to be effected immediately; or (ii) promptly establish an interest bearing reserve fund with Mortgagee in an amount determined by Mortgagee for the purpose of effecting such work.

2.10 **Compliance with Applicable Laws.** Mortgagor agrees to observe, conform and comply, and to cause its tenants to observe, conform and comply with all federal, state, county, municipal and other governmental or quasi-governmental laws, rules, regulations, ordinances, codes, requirements, covenants, conditions, orders, licenses, permits, approvals and restrictions, including without limitation, Environmental Laws (as defined below) and the Americans with Disabilities Act of 1990 (collectively, the "**Legal Requirements**"), now or hereafter affecting all or any part of the Property, its occupancy or the business or operations now or hereafter conducted thereon and the personalty contained therein, within such time as required by such Legal Requirements. Mortgagor represents and warrants that it has caused the Property to be designed, and the Property currently is, in compliance with all Legal Requirements applicable to the Property.

2.11 **Damage, Destruction and Condemnation.**

(a) If all or any part of the Property shall be damaged or destroyed, or if title to or the temporary use of the whole or any part of the Property shall be taken or condemned by a competent authority for any public or quasi-public use or purpose, there shall be no abatement or

reduction in the amounts payable by Mortgagor under the Loan Documents and Mortgagor shall continue to be obligated to make such payments.

(b) If all or any part of the Property is partially or totally damaged or destroyed, Mortgagor shall give prompt notice thereof to Mortgagee, and Mortgagee may make proof of loss if not made promptly by Mortgagor. Mortgagor hereby authorizes and directs any affected insurance company to make payment under such insurance, including return of unearned premiums, to Mortgagee instead of to Mortgagor and Mortgagee jointly, and Mortgagor appoints Mortgagee as Mortgagor's attorney-in-fact to endorse any draft thereof, which appointment, being for security, is coupled with an interest and irrevocable. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise, in consultation with Mortgagor, any claims for loss, damage or destruction to the Property. Mortgagor shall pay all costs of collection of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Mortgagee as security for payment of the Liabilities. Mortgagee shall have the option, in its sole discretion, of paying or applying all or any part of the proceeds of insurance or a condemnation award to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Property in accordance with Mortgagee's standard construction loan disbursement conditions and requirements; or (iii) Mortgagor.

(c) Immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of all or any part of the Property, Mortgagor shall give notice to Mortgagee. Mortgagor shall, at its sole cost and expense, diligently prosecute any such proceeding and shall consult with Mortgagee, its attorneys and experts, and shall cooperate with it in the defense of any such proceeding. Mortgagee may participate in any such proceeding and Mortgagor shall from time to time deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor shall not, without Mortgagee's prior written consent, enter into any agreement (i) for the taking or conveyance in lieu thereof of all or any part of the Property, or (ii) to compromise, settle or adjust any such proceeding. All awards and proceeds of condemnation are hereby assigned to Mortgagee, and Mortgagor, upon request by Mortgagee, agrees to make, execute and deliver any additional assignments or documents necessary from time to time to enable Mortgagee to collect the same. Such awards and proceeds shall be paid or applied by Mortgagee, in its sole discretion, to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Property in accordance with Mortgagee's standard construction loan disbursement conditions and requirements; or (iii) Mortgagor.

(d) Nothing herein shall relieve Mortgagor of its duty to repair, restore, rebuild or replace the Property following damage or destruction or partial condemnation if no or inadequate insurance proceeds or condemnation awards are available to defray the cost of repair, restoration, rebuilding or replacement.

2.12 **Required Notices.** Mortgagor shall notify Mortgagee within three (3) days of: (a) receipt of any notice from any governmental or quasi-governmental authority relating to the structure, use or occupancy of the Property or alleging a violation of any Legal Requirement; (b) a substantial change in the occupancy or use of all or any part of the Property; (c) receipt of any notice from the holder of any lien or security interest in all or any part of the Property; (d) commencement of any litigation affecting or potentially affecting the financial ability of

Mortgagor or the value of the Property; (e) a pending or threatened condemnation of all or any part of the Property; (f) a fire or other casualty causing damage to all or any part of the Property; (g) receipt of any notice with regard to any Release of Hazardous Substances (as such terms are defined below) or any other environmental matter affecting the Property or Mortgagor's interest therein; (h) receipt of any request for information, demand letter or notification of potential liability from any entity relating to potential responsibility for investigation or clean-up of Hazardous Substances on the Property or at any other site owned or operated by Mortgagor; (i) receipt of any notice from any tenant of all or any part of the Property alleging a default, failure to perform or any right to terminate its lease or to set-off rents; or (j) receipt of any notice of the imposition of, or of threatened or actual execution on, any lien on or security interest in all or any part of the Property.

2.13 **Books and Records; Inspection.** Mortgagor shall keep and maintain (a) complete and accurate books and records, in accordance with generally accepted accounting principles consistently applied, reflecting all items of income and expense in connection with the operation of the Property, and (b) copies of all written contracts, leases and other agreements affecting the Property. Mortgagee or its designated representatives shall, upon reasonable prior notice to Mortgagor, have (a) the right of entry and free access to the Property during business hours (which may be without notice in any case of emergency) to inspect the Property, and (b) the right to examine and audit all books, contracts and records of Mortgagor relating to the Property.

2.14 **Right to Reappraise.** Mortgagee shall have the right to conduct or have conducted by an independent appraiser acceptable to Mortgagee appraisals of the Property in form and substance satisfactory to Mortgagee at the sole cost and expense of Mortgagor; **provided, however,** that Mortgagor shall not be obligated to bear the expense of such appraisals so long as (a) no Event of Default exists, and (b) such appraisals are not required by applicable law, rule or regulation of any governmental authority having jurisdiction over Mortgagee. The cost of such appraisals, if chargeable to Mortgagor as aforesaid, shall be added to the Liabilities and shall be secured by this Mortgage in accordance with the provisions of Section 1 hereof.

3. **SECURITY AGREEMENT AND FIXTURE FILING.** This Mortgage constitutes a security agreement under the Code and shall be deemed to constitute a fixture financing statement. Mortgagor hereby grants to Mortgagee a security interest in the personal and other property (other than real property) included in the Property, and all replacements of, substitutions for, and additions to, such property, and the proceeds thereof. Mortgagor shall, at Mortgagor's own expense, execute, deliver, file and refile any financing or continuation statements or other security agreements Mortgagee may require from time to time to perfect, confirm or maintain the lien of this Mortgage with respect to such property. A photocopy of an executed financing statement shall be effective as an original. Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee attorney-in-fact for Mortgagor to execute, deliver and file such instruments for or on behalf of Mortgagor at Mortgagor's expense, which appointment, being for security, is coupled with an interest and shall be irrevocable. With respect to goods that become fixtures after the recording of this Mortgage and before the completion of construction of the Improvements, this Mortgage is, and shall be construed to be, a "Construction Mortgage" under the Code, and any mortgage given to refinance this Mortgage shall be, and shall be construed to be, a mortgage given to refinance a construction mortgage. For purposes of perfecting the

security interest in personal property which is intended to become fixtures Mortgagor hereby certifies as follows:

- (i) Mortgagor is a limited liability company organized and existing under the laws of the State of Alabama;
- (ii) Mortgagor's address is as set forth on the first page of this Mortgage; and
- (iii) Mortgagor's organizational number is _____. Mortgagor authorizes Mortgagee to file a financing statement with the appropriate filing offices in the State in which Mortgagor is a registered organization, without Mortgagor's signature, further to perfect the security interests granted herein.

4. **ASSIGNMENT OF LEASES.**

4.1 Mortgagor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Mortgagee all of Mortgagor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Mortgagor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not prior to accrual, the Rents. Mortgagor shall receive and hold such Rents in trust as a fund to be applied, and Mortgagor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property and the payment of interest, principal and other sums becoming due under the Liabilities, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Mortgagor shall automatically, without notice or any other action by Mortgagee, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Mortgagee. Nothing contained in this Section 4.1, and no collection by Mortgagee of Rents, shall be construed as imposing on Mortgagee any of the obligations of the lessor under the Leases.

4.2 Mortgagor shall timely perform all of its obligations under the Leases. Mortgagor represents and warrants that: (a) Mortgagor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; (b) no other assignment of any interest in any of the Leases or Rents has been made; (c) there are no leases or agreements to lease all or any portion of the Property now in effect except the Leases, true and complete copies of which have been furnished to Mortgagee, and no written or oral modifications have been made thereto; (d) there is no existing default by Mortgagor or by any tenant under any of the Leases, nor has any event occurred which due to the passage of time, the giving or failure to give notice, or both, would constitute a default under any of the Leases and, to the best of Mortgagor's knowledge, no tenant has any defenses, set-offs or counterclaims against Mortgagor; (e) the Leases are in full force and effect; and (f) Mortgagor has not accepted Rent under any Lease more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised.

4.3 Mortgagor shall not, without the prior written consent of Mortgagee: (a) enter into any lease of all or any portion of the Property; (b) amend, modify, terminate or accept a

surrender of any Lease; or (c) collect or accept rent from any tenant of the Property for a period of more than one month in advance. Any of the foregoing acts, if done without the prior written consent of Assignee in each instance, shall be null and void.

5. **DECLARATION OF NO OFFSET.** Mortgagor represents to Mortgagee that Mortgagor has no knowledge of any offsets, counterclaims or defenses to the Liabilities either at law or in equity. Mortgagor shall, within three (3) days upon request in person or within seven (7) days upon request by mail, furnish to Mortgagee or Mortgagee's designee a written statement in form satisfactory to Mortgagee stating the amount due under the Liabilities and whether there are offsets or defenses against the same, and if so, the nature and extent thereof.

6. **ENVIRONMENTAL MATTERS.**

6.1 **Definitions.** As used herein, "**Environmental Laws**" shall mean all existing or future federal, state and local statutes, ordinances, regulations, rules, executive orders, standards and requirements, including the requirements imposed by common law, concerning or relating to industrial hygiene and the protection of health and the environment including but not limited to: (a) those relating to the generation, manufacture, storage, transportation, disposal, release, emission or discharge of Hazardous Substances (as hereinafter defined); (b) those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property; and (c) those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property. Any terms mentioned herein which are defined in any Environmental Law shall have the meanings ascribed to such terms in said laws; provided, however, that if any of such laws are amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment.

6.2 **Representations, Warranties and Covenants.** Mortgagor represents, warrants, covenants and agrees as follows:

(a) Neither Mortgagor nor the Property or any occupant thereof is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority pertaining to any Environmental Law. Mortgagor shall not cause or permit the Property to be in violation of, or do anything which would subject the Property to any remedial obligations under, any Environmental Law, and shall promptly notify Mortgagee in writing of any existing, pending or threatened investigation or inquiry by any governmental authority in connection with any Environmental Law. In addition, Mortgagor shall provide Mortgagee with copies of any and all material written communications with any governmental authority in connection with any Environmental Law, concurrently with Mortgagor's giving or receiving of same.

(b) Mortgagor has taken all steps reasonably necessary to determine and has determined that there has been no release, spill, discharge, leak, disposal or emission (individually a "**Release**" and collectively, "**Releases**") of any Hazardous Material, Hazardous Substance or Hazardous Waste, including gasoline, petroleum products, explosives, toxic substances, solid wastes and radioactive materials (collectively, "**Hazardous Substances**") at, upon, under or within the Property. To the best of Mortgagor's knowledge, the use which

Mortgagor or any other occupant of the Property makes or intends to make of the Property will not result in Release of any Hazardous Substances on or to the Property. During the term of this Mortgage, Mortgagor shall take all steps reasonably necessary to determine whether there has been a Release of any Hazardous Substances on or to the Property and if Mortgagor finds a Release has occurred, Mortgagor shall remove or remediate the same promptly upon discovery at its sole cost and expense.

(c) The Property has never been used by the present or previous owners and/or operators nor will be used in the future to refine, produce, store, handle, transfer, process, transport, generate, manufacture, heat, treat, recycle or dispose of Hazardous Substances.

(d) The Property: (i) is being and has been operated in compliance with all Environmental Laws, and all permits required thereunder have been obtained and complied with in all respects; and (ii) does not have any Hazardous Substances present excepting small quantities of petroleum and chemical products, in proper storage containers, that are necessary for the construction or operation of the commercial business of Mortgagor and its tenants, and the usual waste products therefrom ("**Permitted Substances**").

(e) Mortgagor will and will cause its tenants to operate the Property in compliance with all Environmental Laws and, other than Permitted Substances, will not place or permit to be placed any Hazardous Substances on the Property.

(f) No lien has been attached to or threatened to be imposed upon the Property, and there is no basis for the imposition of any such lien based on any governmental action under Environmental Laws. Neither Mortgagor nor any other person has been, is or will be involved in operations at the Property that could lead to the imposition of environmental liability on Mortgagor, or on any subsequent or former owner of the Property, or the creation of an environmental lien on the Property. In the event that any such lien is filed, Mortgagor shall, within (30) days from the date that the Mortgagor is given notice of such lien (or within such shorter period of time as is appropriate in the event that steps have commenced to have the Property sold), either: (i) pay the claim and remove the lien from the Property; or (ii) furnish a cash deposit, bond or other security satisfactory in form and substance to Mortgagee in an amount sufficient to discharge the claim out of which the lien arises.

(g) Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, clean up costs and judgments (including attorneys', consultants' or experts' fees and expenses incurred by the Mortgagee) of every kind and nature suffered by or asserted against Mortgagee arising from or as the result of the claim of any third party (including a governmental entity or agency) of a violation of, or failure of the Property to be in compliance with, any Environmental Law or the breach of any covenant contained in this Section 6. The indemnity provided herein shall not be applicable to any negligent or intentional act of the Mortgagee occurring after the taking of possession of the Real Estate by Mortgagee through foreclosure or deed in lieu of foreclosure.

6.3 **Right to Inspect and Cure.** Mortgagee shall have the right to conduct or have conducted by its agents or contractors such environmental inspections, audits and tests as Mortgagee shall deem necessary or advisable from time to time at the sole cost and expense of

Mortgagor; **provided, however**, that Mortgagor shall not be obligated to bear the expense of such environmental inspections, audits and tests so long as (a) no Event of Default exists, and (b) Mortgagee has no cause to believe in its sole reasonable judgment that there has been a Release or threatened Release of Hazardous Substances at the Property or that Mortgagor or the Property is in violation of any Environmental Law. The cost of such inspections, audits and tests, if chargeable to Mortgagor as aforesaid, shall be added to the Liabilities and shall be secured by this Mortgage. Mortgagor shall, and shall cause each tenant of the Property to, cooperate with such inspection efforts; such cooperation shall include, without limitation, supplying all information requested concerning the operations conducted and Hazardous Substances located at the Property. In the event that Mortgagor fails to comply with any Environmental Law, Mortgagee may, in addition to any of its other remedies under this Mortgage, cause the Property to be in compliance with such laws and the cost of such compliance shall be added to the sums secured by this Mortgage in accordance with the provisions of Section 1 hereof.

7. **EVENTS OF DEFAULT.** Each of the following shall constitute a default (each, an "Event of Default") hereunder:

(a) Non-payment within five (5) days of the date when due of any sum required to be paid to Mortgagee under the Note;

(b) A breach of any covenant contained in Sections 2.3, 2.4, 2.6, 2.7 or 2.12. hereof;

(c) A breach by Mortgagor of any other term, covenant, condition, obligation or agreement under this Mortgage, and the continuance of such breach for a period of ten (10) days after written notice thereof shall have been given to Mortgagor;

(d) An Event of Default under any of the other Loan Documents;

(e) Any representation or warranty made by Mortgagor or by any Guarantor in any Loan Document or to induce Mortgagee to enter into the transactions contemplated hereunder shall prove to be false, incorrect or misleading in any material respect as of the date when made;

(f) The filing by or against Mortgagor or any Guarantor of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Mortgagor or any Guarantor; the appointment of a custodian, receiver, liquidator or trustee for Mortgagor or any Guarantor or for any of the property of Mortgagor or such Guarantor, or any action by Mortgagor or any Guarantor to effect any of the foregoing; or if Mortgagor or any Guarantor becomes insolvent (however defined) or is not paying its debts generally as they become due;

(g) The dissolution, liquidation, merger, consolidation or reorganization of Mortgagor or any Guarantor which is an entity, or the institution of any proceeding to effect any of the foregoing; or the death of an individual Guarantor.

(h) A default under any other obligation by Mortgagor in favor of Mortgagee, including (i) obligations arising under swap agreements (as defined in 11 U.S.C. §101), (ii) obligations under any letter of credit reimbursement agreement between the Mortgagor and

Mortgagee, or (iii) obligations under any other document securing or evidencing any such obligation, whether or not such obligation is secured by the Property;

(i) The filing, entry or issuance of any judgment, execution, garnishment, attachment, distraint or lien against Mortgagor, the Property or any Guarantor or their property in excess of \$50,000.00, subject to the provisions of Section 2.7 hereof, if applicable; or

(j) A default under any other loan from the Mortgage to the Mortgagor, or under any other obligation secured by the Property or any part thereof and such default continues after all applicable notice and cure periods.

8. **REMEDIES.** If an Event of Default shall have occurred, Mortgagee may take any of the following actions:

8.1 **Acceleration.** Mortgagee may declare the entire amount of the Liabilities immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Mortgagee may charge and collect interest from the date of default on the unpaid balance of the Liabilities, at the Default Rate set forth in the Note. In addition, any and all accelerations of any portion of the remaining principal balance of the Liabilities (including, without limitation, foreclosure by Mortgagee under this Mortgage) shall be subject to the Prepayment Consideration (as defined and described in the Note), if any.

8.2 **Possession.** Mortgagee may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Mortgagee, in Mortgagee's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Liabilities. Mortgagee is given full authority to do any act that Mortgagor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Mortgage and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Mortgagor shall pay monthly in advance to Mortgagee or to any receiver appointed to collect said rents the fair and reasonable rental value for Mortgagor's use and occupation of the Property, and upon default in any such payment Mortgagor shall vacate and surrender the possession of the Property to Mortgagee or to such receiver. If Mortgagor does not vacate and surrender the Property then Mortgagor may be evicted by summary proceedings.

8.3 **Foreclosure.** Mortgagee may institute any one or more actions of mortgage foreclosure against all or any part of the Property, or take such other action at law, equity or by contract for the enforcement of this Mortgage and realization on the security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Liabilities. The unpaid balance of any judgment shall bear interest at the greater of (a) the statutory rate provided for judgments, or (b) the Default Rate. Without limiting the foregoing, Mortgagee may foreclose this Mortgage and exercise its rights as

a secured party for all or any portion of the Liabilities that are then due and payable, subject to the continuing lien of this Mortgage for the balance not then due and payable. In case of any sale of the Property by judicial proceedings, the Property may be sold in one parcel or in such parcels, manner or order as Mortgagee in its sole discretion may elect. Mortgagor, for itself and anyone claiming by, through or under it, hereby agrees that Mortgagee shall in no manner, in law or in equity, be limited, except as herein provided, in the exercise of its rights in the Property or in any other security hereunder or otherwise appertaining to the Liabilities or any other obligation secured by this Mortgage, whether by any statute, rule or precedent which may otherwise require said security to be marshaled in any manner and Mortgagor, for itself and others as aforesaid, hereby expressly waives and releases any right to or benefit thereof. The failure to make any tenant a defendant to a foreclosure proceeding shall not be asserted by Mortgagor as a defense in any proceeding instituted by Mortgagee to collect the Liabilities or any deficiency remaining unpaid after the foreclosure sale of the Property.

8.4 **Power of Sale.** Mortgagor hereby vests Mortgagee with full power and authority, upon the happening of an Event of Default, at Mortgagee's option, to declare the entire debt to be immediately due and payable, and at Mortgagee's option, to take possession of the Property if and to the extent allowed by law, and at Mortgagee's option, to sell the 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 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 one 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, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Mortgagee may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the 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 Mortgagee may elect. The proceeds of any foreclosure sale pursuant to this Section shall be applied first, to the payment of the costs of said sale, including reasonable attorney's and auctioneer's fees; second, to the payment of the debt hereby secured, whether due or not, with the unpaid interest thereon to the date of sale, and any amount that may be due Mortgagee by virtue of any of the special liens or agreements herein contained; and, third, the balance, if any, to be paid over to Mortgagor, or as may otherwise be provided by law.

8.5 **Appointment of Receiver.** Mortgagee may petition a court of competent jurisdiction to appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, without regard to the then value of the Property or whether the Property shall be then occupied as a homestead or not, and without regard to whether Mortgagor has committed waste or allowed deterioration of the Property, and Mortgagee or any agent of Mortgagee may be appointed as such receiver. Mortgagor hereby agrees that Mortgagee has a special interest in the Property and absent the appointment of such receiver the Property shall suffer waste and deterioration and Mortgagor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Mortgagee pursuant to Section 8.2 above and such other powers which may be necessary or customary in

such cases for the protection, possession, control, management and operation of the Property during such period.

8.6 **Rights as a Secured Party.** Mortgagee shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Code. Mortgagee may elect to foreclose such of the Property as then comprise fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Code. To the extent permitted by law, Mortgagor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

8.7 **Excess Monies.** Mortgagee may apply on account of the Liabilities any unexpended monies still retained by Mortgagee that were paid by Mortgagor to Mortgagee: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Mortgagor. In addition, should Mortgagee elect to foreclose the Mortgage upon the occurrence of an Event of Default at any time when the Letter of Credit (or any replacement or substitute therefore) is outstanding, or the Mortgagee otherwise remains exposed to liability thereunder, all such excess proceeds may be held by the Mortgagee as substitute collateral for all remaining contingent Liabilities which may thereafter arise by reason thereof.

8.8 **Other Remedies.** Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not any other Liabilities shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of mortgage foreclosure, or any other action, for any default by Mortgagor existing at the time the earlier action was commenced. In addition, Mortgagee shall have the right to set-off all or any part of any amount due by Mortgagor to Mortgagee under any of the Liabilities, against any indebtedness, liabilities or obligations owing by Mortgagee in any capacity to Mortgagor, including any obligation to disburse to Mortgagor any funds or other property on deposit with or otherwise in the possession, control or custody of Mortgagee.

9. **MISCELLANEOUS.**

9.1 **Releases.** The Mortgagor and Mortgagee contemplate that the Mortgagor will develop a portion of the Property into a residential subdivision as more particularly described in the Loan Agreement, consisting of single family lots (the "Lots"). The Mortgagee will release Lots from the lien of the Mortgage upon satisfaction of the following conditions:

- (a) No Event of Default shall have occurred and be continuing hereunder;
- (b) The Lots must be located in a platted subdivision;
- (c) Mortgagor shall satisfy any additional conditions to release contained in the Loan Agreement, including the payment of the release price for each Lot as provided therein.

All releases shall be without expense to the Mortgagee.

9.2 **Notices.** All notices and communications under this Mortgage shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in this Mortgage. Notice shall be deemed to have been given and received: (a) if by hand delivery, upon delivery; (b) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (c) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

9.3 **Remedies Cumulative.** The rights and remedies of Mortgagee as provided in this Mortgage or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Mortgagee at law or in equity. The failure, at any one or more times, of Mortgagee to assert the right to declare the Liabilities due, grant any extension of time for payment of the Liabilities, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Mortgage or the rights of Mortgagee.

9.4 **No Implied Waiver.** Mortgagee shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Mortgagee, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

9.5 **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Mortgage shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

9.6 **Binding Effect.** The covenants, conditions, waivers, releases and agreements contained in this Mortgage shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Mortgage cannot be assigned by Mortgagor without the prior written consent of Mortgagee, and any such assignment or attempted assignment by Mortgagor shall be void and of no effect with respect to Mortgagee.

9.7 **Modifications.** This Mortgage may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.8 **Commercial Loan.** Mortgagor represents and warrants that the loans or other financial accommodations included as Liabilities secured by this Mortgage were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

9.9 **Economic Benefit.** Mortgagor represents and warrants that the proceeds of the Loan confer a direct economic benefit to the Mortgagor as more particularly set forth in paragraph 3.1 of the Loan Agreement.

9.10 **Governing Law.** This Mortgage shall be governed by and construed in accordance with the substantive laws of the State of Alabama without reference to conflict of laws principles.

9.11 **Joint and Several Liability.** If Mortgagor consists of more than one person or entity, the word "Mortgagor" shall mean each of them and their liability shall be joint and several.

9.12 **Non-Merger.** In the event Mortgagee shall acquire title to the Property by conveyance from Mortgagor or as a result of foreclosure, this Mortgage shall not merge in the fee estate of the Property but shall remain and continue as an existing and enforceable lien for the Liabilities secured hereby until the same shall be released of record by Mortgagee in writing.

9.13 **Counterparts.** This Mortgage is executed in multiple counterparts to facilitate the recording thereof in Madison, Mobile and Shelby Counties, Alabama. Each counterpart shall constitute an original and all of the counterparts collectively shall constitute a single instrument.

9.14 **Limitation of Remedies.** Mortgagee and Mortgagor agree that they shall not have a remedy for punitive or exemplary damages against the other in any dispute, claim or controversy arising out of, connected with or related to the loan Documents between or among the parties thereto (a "Dispute"), and hereby waive any right or claim to punitive or exemplary damages that they have now or which may arise in the future in connection with any Dispute whether the Dispute is resolved by arbitration or judicially.

9.15 **Waiver of Jury Trial.** The Mortgagor and Mortgagee (by Mortgagee's acceptance of this Mortgage) each hereby knowingly, voluntarily and intentionally, after opportunity for consultation with independent counsel, waives its right to trial by jury in any action or proceeding to enforce or defend any rights or obligations (i) under this Mortgage, or (ii) arising from the financial relationship between the parties existing in conjunction with this Mortgage or any other Loan Document or agreement delivered in connection herewith, or (iii) arising from any course of dealing, course of conduct, statement (verbal or written) or action of the parties in connection with such financial relationship.

IN WITNESS WHEREOF, the Mortgagor and Mortgagee have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in the presence of:

“MORTGAGOR”

ADAMS HOMES L.L.C.,
an Alabama limited liability company

By: Adams Homes of Northwest Florida, Inc.,
a Florida corporation, its Managing Member

Print Name: _____

[Signature]
Print Name: **REBECCA F. KATES**

By: *[Signature]*
Name: Wayne L. Adams
Title: President

STATE OF FLORIDA
COUNTY OF USC AM BIA

I, **REBECCA F. KATES**, a Notary Public in and for said County in said State, hereby certify that Wayne L. Adams whose name as President of Adams Homes of Northwest Florida, Inc., a Florida corporation, is signed to the foregoing conveyance in its capacity as Managing Member of Adams Homes, LLC, an Alabama corporation, 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 will full authority, executed the same voluntarily for and as the act of said corporation.

[Signature]
Notary Public, State of Florida
Name: _____
My Commission Expires: _____
My Commission Number is: _____

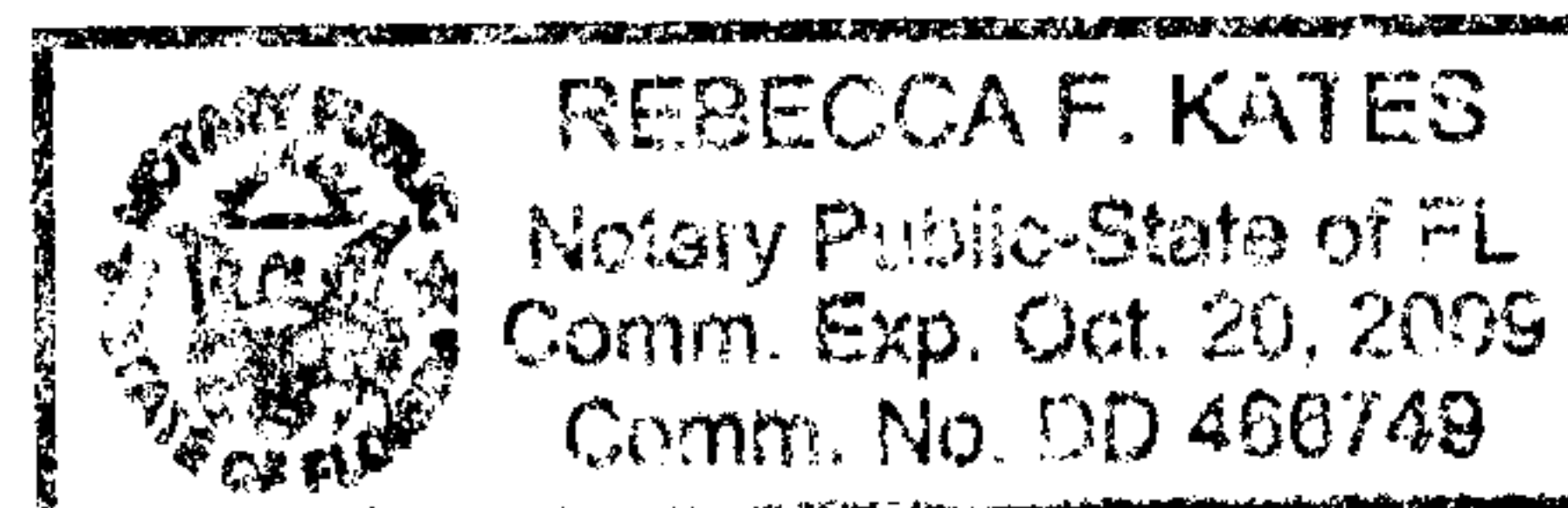


Exhibit "A"

20080717000288700 21/25 \$84.00
Shelby Cnty Judge of Probate, AL
07/17/2008 12:32:49PM FILED/CERT

Lot 111P, Bay Branch Villas Phase 6B, according to the plat thereof, as recorded in Slide Book 2216-F, in the Office of the Judge of Probate of Baldwin County, Alabama.

Lots 1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, Chesapeake Subdivision, according to the plat thereof, recorded in Map Book 37, Page 123, as recorded in the Office of the Judge of Probate of Shelby County, Alabama.

Lots 1 through 13, inclusive Golden Meadows Subdivision, according to the plat thereof, recorded in Map Book 38, Page 80, as recorded in the Office of the Judge of Probate of Shelby County, Alabama.


Lots 1, 6, 8, 10, 15, 26, 27, 29, 33, 38, 39, 40 and 42, Oakhurst Place, according to the plat thereof, recorded in Map Book 46, Page 62, as recorded in the Office of the Judge of Probate of Madison County, Alabama.

Lots 1, 2, 3, 4, 5, 6, 44, 45, 46, 47, 48, 49 and 50, inclusive, according to the plat of Ashtynn Manor Phase 2, a re-subdivision of Commons Area B, C & D, of Ashtynn Manor, a re-subdivision of a part of Lot 5, Commerce 2000 Subdivision, Plat Book 26, Page 60, and a re-subdivision of a part of Lot 4 and Lot 6 of Commerce 2000 Subdivision, recorded in Document No. 20061026000731250, in the Office of the Judge of Probate of Madison County, Alabama.

Lots 28, 29, 30, 32, 33, 35, 36, 37, 39, 40, 42, 44 and 47, Winchester Subdivision Unit One, according to the plat thereof, recorded in Map Book 114, Page 44, as recorded in the Office of the Judge of Probate of Mobile County, Alabama.

Lot 9, according to the plat of Springview Subdivision, as recorded in Plat Book 2006, Page 38, in the Office of the Judge of Probate of St. Clair County, Alabama.

BEFORE THE ALABAMA DEPARTMENT OF REVENUE


20080717000288700 22/25 \$84.00
Shelby Cnty Judge of Probate, AL
07/17/2008 12:32:49PM FILED/CERT

In re: **WACHOVIA BANK NATIONAL
ASSOCIATION**
as Lender/Petitioner,

A Proceeding Authorized
By § 40-22-2(2) and (8)
CODE OF ALABAMA (1975)

MORTGAGE PRIVILEGE TAX ORDER

Comes Petitioner, **Wachovia Bank National Association**, and asks the Alabama Department of Revenue to fix and determine the amount of recording tax due, pursuant to *Alabama Code* (1975) §40-22-2(2), upon the recordation of a mortgage to be filed in the principal amount of Sixty Million and No/100 (\$60,000,000.00) Dollars from Adams Homes, LLC to Petitioner. The said Mortgage encompasses property located within and outside the State of Alabama and encompasses property in more than one county in Alabama.

Upon consideration of the Petition and evidence offered in its support, the Alabama Department of Revenue finds as follows:

1. That the maximum indebtedness owed pursuant to the Mortgage, and secured by the Said Mortgage is Sixty Million and NO/100 (\$60,000,000.00) Dollars.
2. That the Petitioner desires to pay recording tax on the maximum indebtedness, allocable to the secured assets which are located in the State of Alabama.
3. That the total value of all property covered by the Said Mortgage, both within and outside the State of Alabama, is Twelve Million Seven Hundred Forty-five Thousand Two Hundred Seventy-Nine and 99/100 (\$12,745,279.99) Dollars.
4. That the total value of all property located within the State of Alabama, and covered by the Said Mortgage is Two Million Four Hundred Forty-Six Thousand Four Hundred Eleven and 92/100 (\$2,446,411.92) Dollars. The ratio of the value of Alabama property to the value of all property is 19.19%.
5. That, based upon the ratio of property values as referred to in Paragraph 4, the amount of indebtedness which is allocable to Alabama, and upon which recording tax is due, is Eleven Million Five Hundred Fourteen Thousand Eight Hundred and NO/100 (\$11,514,000.00) Dollars.

6. That the amount of recording tax to be paid at the rate of \$.15 for each \$100.00 of indebtedness or fraction thereof, which is attributable to the property located within the State of Alabama is \$17,271.00.

7. That the Said Mortgage is to be recorded in Madison, Mobile, Shelby, Baldwin and St. Clair Counties.

8. That the mortgage secures future advances. Because mortgage recording tax will be paid upon the maximum principal indebtedness in accordance with *Alabama Code* (1975) §40-22-2(1)(b), no bond or reporting shall be required pursuant to *Alabama Code* (1975) §40-22-2(2).


9. That the relative property values of the properties lying within the State of Alabama are as follows:

<u>COUNTY</u>	<u>VALUE</u>	<u>PERCENTAGE</u>	
Madison	\$ 947,606.92	38.73	6,688.80
Mobile	\$ 384,800.00	15.73	2,716.80
Shelby	\$ 939,200.00	38.39	6,630.45
Baldwin	\$ 144,508.00	5.91	1,020.75
St. Clair	\$ 30,297.00	1.24	214.20
	\$2,446,411.92	100.00%	17,271.00

IT IS ORDERED, THEREFORE, that the probate judge in the county wherein the said Mortgage is first recorded, shall collect recording tax in the amount of Seventeen Thousand Two Hundred Seventy-One and 00/100 (\$17,271.00) Dollars and pursuant to *Alabama Code* §40-22-2(7), (1975), after deducting the 5% commission due to the Probate Court, shall make distribution of such tax to the State of Alabama and to the counties named herein, in the percentages as set out in Paragraph 9. The probate judge of the county wherein the said Mortgage is first recorded also is entitled to collect any applicable recording fees. Upon payment of the recording tax and upon the initial filing of the said Mortgage, duplicate mortgages shall be acceptable for recordation in the other counties, pursuant to *Alabama Code* §40-22-2(2)(a), (1975), without the payment of any further recording tax.

The probate judges of the other counties are, however, entitled to collect applicable recording fees, pursuant to *Alabama Code* §40-22-2(5), (1975).

DONE this 27th day of JUNE, 2008.


20080717000288700 24/25 \$84.00
Shelby Cnty Judge of Probate, AL
07/17/2008 12:32:49PM FILED/CERT

ALABAMA DEPARTMENT OF REVENUE

By: Cynthia Underwood
Assistant Commissioner of Revenue

ATTEST:

[Signature]
As Secretary

[Signature]
Legal Division

20080630000421730 24/24 \$77.25
Madison Cnty Judge of Probate, AL
06/30/2008 11:47:48AM FILED/CERT

Madison County, AL 06/30/2008
State of Alabama
Real Estate Excise Tax
Mortgage Tax: \$6688.00



20080717000288700 25/25 \$84.00
Shelby Cnty Judge of Probate, AL
07/17/2008 12:32:49PM FILED/CERT

STATE OF ALABAMA

COUNTY OF MADISON

I, TOMMY RAGLAND, JUDGE OF PROBATE IN AND FOR THE COUNTY AND
STATE AFORESAID, HEREBY CERTIFY THAT THE WITHIN *Mortgage,*
Assignment of Leases and Rents Security
Agreement and Financing Statement
FROM

Adams Jones, LLC

TO *Wachovia Bank, National Association*

WAS RECORDED IN THIS OFFICE ON *June 30*, 2008
IN DOCUMENT # *20080630000421730*, AND *Mortgage*
TAX IN THE AMOUNT OF \$ *17,271.00* WAS COLLECTED ON THIS DATE.

Tommy Ragland

TOMMY RAGLAND
JUDGE OF PROBATE

