


Pursuant to § 40-22-2 of the Code of Alabama, the recording tax of \$30,000 on the maximum principal indebtedness of the Mortgage was paid to the Office of the Judge of Probate of St. Clair County, Alabama, upon the original recordation of the Mortgage.

THIS DOCUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED TO:

Thomas G. Amason III  
Balch & Bingham LLP  
P.O. Box 306  
Birmingham, Alabama 35201  
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Shelby Cnty Judge of Probate, AL  
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**STATE OF ALABAMA**

**COUNTIES OF ST. CLAIR, JEFFERSON, MADISON AND SHELBY**

**ELEVENTH AMENDMENT TO MORTGAGE**

**AND AMENDMENT TO LOAN DOCUMENTS**

This Eleventh Amendment to Mortgage (this “**Amendment**”) is made this 4<sup>th</sup> day of December, 2009, by and between **COMPASS BANK**, an Alabama banking corporation (the “**Lender**”), and **HPH PROPERTIES, LLC**, an Alabama limited liability company (the “**HPH**”), **MMM PROPERTIES, LLC**, an Alabama limited liability company (“**MMM**”) and **BENT RIVER, LLC**, an Alabama limited liability company (“**Bent River**”).

**WHEREAS**, HPH is the Mortgagor and Borrower under a certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated as of June 21, 2007, and recorded in **Mortgage Book 2007, Page 38473** in the Probate Office of **St. Clair County, Alabama** and recorded in the Probate Office of **Jefferson County, Alabama** in **Book LR200802, Page 11489** (Instrument Number 20080207000179770) and recorded in the Probate Office of **Madison County, Alabama** as **Instrument Number** 20080220000106100 and recorded in the Probate Office of Shelby County as Instrument Number 20091210000454450 (the “**Mortgage**”). HPH and Lender are party to that certain Promissory Note dated as of June 21, 2007 in the original principal amount of \$20,000,000.00 (as amended, the “**Note**”) and that certain Master Revolving Line Agreement for Construction Financing dated as of June 21, 2007 (as amended, the “**Loan Agreement**”). In addition to the security provided by the Mortgage, the Note and the obligations of the Loan Documents (as defined in the Mortgage) are secured by the Limited Continuing Guaranties (collectively, the “**Guaranties**”) from R. Clark Parker, Alan C. Howard and B. Curtis Harper, Junior (collectively, the “**Guarantors**”) and the Completion Guaranties (the “**Completion Guaranties**”) of Alan C. Howard, Clark Parker, B. Curtis Harper, Jr. and David Bonamy (the “**Completion Guarantors**”).

**WHEREAS**, Lender, HPH and MMM have agreed to amend the Mortgage, the Note and the Loan Agreement as set forth herein.



**WHEREAS**, Bent River desires to join the Mortgage as a “Borrower” and a “Mortgagor” with HPH and MMM. HPH, MMM and Bent River are hereinafter called the “**Borrower**”, whether one or more.

**WHEREAS**, Lender and Borrower have agreed to further modify the Loan, and to further amend the Loan Documents as set forth herein. Capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement.

**NOW, THEREFORE**, in consideration of the premises, the mutual agreements of the parties as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

**A. Amendment of Mortgage.** The Mortgage is hereby amended as follows.

1. All references to “County of St. Clair” in the Mortgage shall be deleted in their entirety and replaced with “Counties of St. Clair, Jefferson, Madison and Shelby”.
2. All references to the Borrower in the Mortgage shall be interpreted to mean HPH, MMM and Bent River, jointly and severally.
3. The real property described on Exhibit A of this Amendment shall be added to Exhibit A of the Mortgage.
4. The permitted exceptions referenced on Exhibit B of this Amendment shall be added to Exhibit B of the Mortgage.
5. It is intent of the Borrower to hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property described on Exhibit A to the Mortgage as amended hereby and as further amended.
6. Each of MMM, HPH and Bent River agree and understand that all of the indebtedness evidenced by the Note, the Other Indebtedness, and the performance of the terms of the Loan Documents is secured by the Mortgaged Property, as amended hereby.
7. It is expressly understood and agreed that any officer, member or manager of any one or more of HPH, MMM and Bent River is and shall be authorized to request advances for and on behalf of one or more of the Borrower and the Borrower shall be jointly and severally liable for, inter alia, (i) all advances made to or on behalf of any one or more of the Borrower and (ii) all other advances and amounts, interest, charges and expenses due under or in connection with the Mortgage or any of the other Loan Documents.
8. The Mortgage (as amended by this Amendment and as it may be further amended with or without record notice of such amendment) shall continue to secure the indebtedness described in the Mortgage, with the same priority of lien as the Mortgage as originally recorded. The execution and delivery of this Amendment, or of any

subsequent amendment of the Mortgage, shall not impair, reduce or subordinate, in whole or in part, the priority of the Mortgage.

9. Except as modified herein, all other terms and conditions of the Mortgage shall remain in full force and effect.

**B. Amendment of Note.** The Note is hereby amended as follows:

1 All references to the Borrower in the Note shall be interpreted to mean HPH, MMM and Bent River, jointly and severally.

2. It is expressly understood and agreed that any officer, member or manager of any one or more of HPH, MMM and Bent River is and shall be authorized to request advances for and on behalf of one or more of the Borrower and the Borrower shall be jointly and severally liable for, inter alia, (i) all advances made to or on behalf of any one or more of the Borrower and (ii) all other advances and amounts, interest, charges and expenses due under or in connection with the Note or any of the other Loan Documents.

3. Except as modified herein, all other terms and conditions of the Note shall remain in full force and effect.

**C. Amendment of Loan Agreement.** The Loan Agreement is hereby amended as follows:

1. All references to the Borrower in the Loan Agreement shall be interpreted to mean HPH, MMM and Bent River, jointly and severally.

2. Borrower and Lender agree that the covenants stated in Section 2.09 (g) and (h) shall only apply to HPH.

3. It is expressly understood and agreed that any officer, member or manager of any one or more of HPH, MMM and Bent River is and shall be authorized to request advances for and on behalf of one or more of the Borrower and the Borrower shall be jointly and severally liable for, inter alia, (i) all advances made to or on behalf of any one or more of the Borrower and (ii) all other advances and amounts, interest, charges and expenses due under or in connection with the Loan Agreement or any of the other Loan Documents.

4. Except as modified herein, all other terms and conditions of the Loan Agreement shall remain in full force and effect.

**[Signatures appear on following page.]**



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

**LENDER:**

**WITNESS:**

**COMPASS BANK,**  
an Alabama banking corporation

Kathie Gifford

By: [Signature]  
Its: SR Vice President

**BORROWER:**

**WITNESS:**

**HPH PROPERTIES, LLC,**  
an Alabama limited liability company

\_\_\_\_\_

By: [Signature]  
Its: Member

**WITNESS:**

**MMM PROPERTIES, LLC,**  
an Alabama limited liability company

\_\_\_\_\_

By: [Signature]  
Its: Member

**WITNESS:**

**BENT RIVER, LLC,**  
an Alabama limited liability company

\_\_\_\_\_

By: [Signature]  
Its: Member



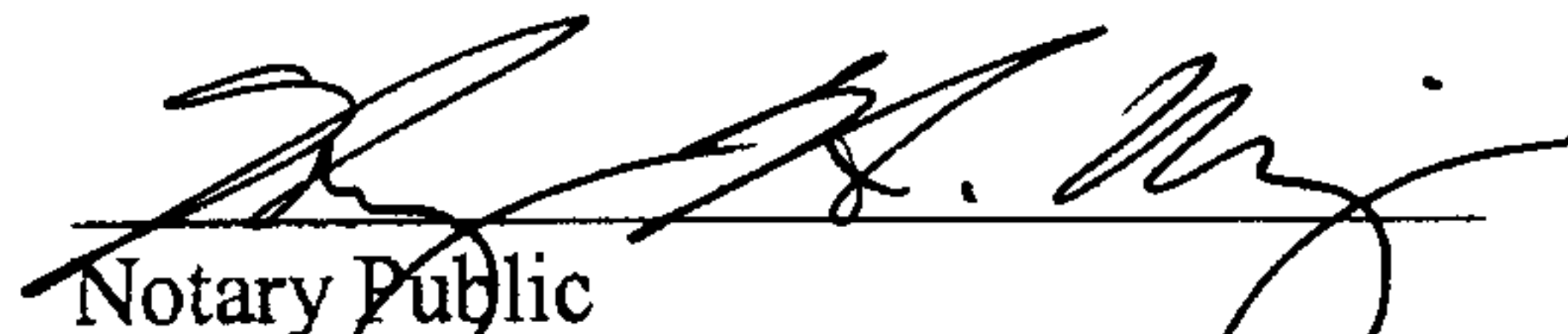
STATE OF ALABAMA

COUNTY OF Tuscaloosa

I, Henry Mize, a notary public in and for said county in said state, hereby certify that David Bonamy, whose name as Member of HPH PROPERTIES, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 4<sup>th</sup> day of December, 2009.

[ Notarial Seal ]

  
Notary Public  
MY COMMISSION EXPIRES JANUARY 18, 2011  
My Commission Expires: \_\_\_\_\_

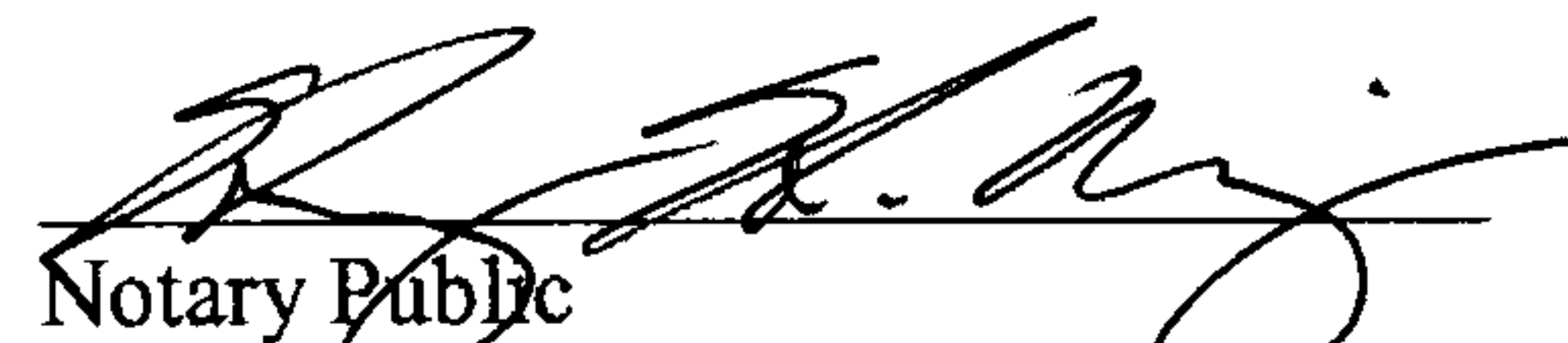
STATE OF ALABAMA

COUNTY OF Tuscaloosa

I, Henry Mize, a notary public in and for said county in said state, hereby certify that David Bonamy whose name as Member of MMM PROPERTIES, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 4<sup>th</sup> day of December, 2009.

[ Notarial Seal ]

  
Notary Public  
MY COMMISSION EXPIRES JANUARY 18, 2011  
My Commission Expires: \_\_\_\_\_



STATE OF ALABAMA

COUNTY OF Tuscaloosa

I, Henry Mize, a notary public in and for said county in said state, hereby certify that David Bonamy, whose name as Member of BENT RIVER, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 4<sup>th</sup> day of December, 2009.

[ Notarial Seal ]

[Signature]  
Notary Public  
MY COMMISSION EXPIRES JANUARY 18, 2011  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA

COUNTY OF JEFFERSON

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

Given under my hand and official seal this 4<sup>th</sup> day of December, 2009.

[ Notarial Seal ]

[Signature]  
Notary Public  
My Commission Expires: \_\_\_\_\_

My Commission Expires  
February 20, 2013

**EXHIBIT A**

**DESCRIPTION OF MORTGAGED PROPERTY**

**IV. Shelby County:**

Lots 68, 91, 133 and 134, according to the Final Plat for Bent River - Phase IV, as recorded in Map Book 41 Page 64 A & B, in the Probate Office of Shelby County, Alabama.



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## **EXHIBIT B**

### **PERMITTED EXCEPTIONS**

Lots 68, 91, 133 and 134, according to the Final Plat for Bent River - Phase IV, as recorded in Map Book 41 Page 64 A & B, in the Probate Office of Shelby County, Alabama are subject to the following "Permitted Exceptions":

**Easement(s) and Building Line(s) as shown on recorded plat, in Map Book 41, page 64 in the Probate Office of Shelby County, Alabama.**

**Sewer and Utility Easement as set forth in Instrument No. 2003-71329 in the Probate Office of Shelby County, Alabama.**

**Rights of utilities in and to that certain parcel of land which is a vacated right of way as set forth in Instrument No. 200503030000145520 and Instrument No. 20050208000062400 in the Probate Office of Shelby County, Alabama.**

**Restrictions as set forth in Book 153, Page 395; Book 160, Page 495; Book 182, Page 1; Book 69, Page 582; Misc. 2, Page 298; Misc Book 16, Page 768; Book 3, Page 717; Book 5, Page 815; Deed Book 277, Page 204 and Misc Book 22, Page 589 in the Probate Office of Shelby County, Alabama.**

**Right of way granted to Alabama Power Company as set forth in Book 114, Page 134; Deed Book 295, Page 425; Instrument No. 200406/4814 (Jefferson County); Deed Book 225, Page 979; Deed Book 129, Page 572; Deed Book 216, Page 103 and Deed Book 219, Page 734 in the Probate Office of Shelby County, Alabama.**

**Right of way granted to South Central Bell Telephone Company as set forth in Deed Book 320, Page 928 in the Probate Office of Shelby County, Alabama.**

**Agreement with Plantation Pipeline as set forth in Deed Book 145, Page 275 in the Probate Office of Shelby County, Alabama.**

**Right of way granted to Shelby County as set forth in Deed Book 177, Page 38 in the Probate Office of Shelby County, Alabama.**

**Subject to covenants, conditions and restrictions (deleting therefrom, and restrictions indicating any preference, limitation, or discrimination based on race, color, religion, sex, handicap, family status or national origin) as set forth in the document recorded in Book LR200812, Page 1625, in the Probate Office of Shelby, Alabama.**

**Right of way granted to Jefferson County as set forth in Instrument No. 200890725000301320 in the Probate Office of Shelby County, Alabama.**



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