

This instrument prepared by:

Matthew W. Grill
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Birmingham, AL 35203
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Shelby Cnty Judge of Probate, AL
02/18/2010 12:00:03 PM FILED/CERT

STATE OF ALABAMA)

COUNTY OF SHELBY)

DECLARATION OF RECIPROCAL DRAINAGE EASEMENTS

THIS **DECLARATION OF RECIPROCAL DRAINAGE EASEMENTS** (this "Declaration") is made as of the 10th day of February, 2010, by **CAHABA BEACH INVESTMENTS, LLC**, an Alabama limited liability company ("CBI"), and consented to by the **EDENTON OFFICE CONDOMINIUM OWNERS' ASSOCIATION, INC.**, an Alabama non-profit corporation (the "Office Association").

WITNESSETH

WHEREAS, CBI is the owner in fee simple of certain real property located in the County of Shelby, State of Alabama, which is more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Office Property"), on which CBI has constructed and developed certain buildings, roadways, parking lots and related improvements for sale and use as an office condominium (the "Office Condominium"); and

WHEREAS, in connection with the Office Condominium, CBI recorded that certain Declaration of Edenton Office Condominium recorded in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office"), on April 10, 2007, as Instrument Number 20070410000163990 (as amended from time to time, the "Office Declaration"); and

WHEREAS, the Office Condominium project is operated and maintained by the Office Association; and

WHEREAS, in accordance with the provisions of the Office Declaration and Section 35-8A-210 of the Alabama Uniform Condominium Act of 1991, *Code of Alabama* (1975), CBI has exercised its development rights to withdraw that certain real property located in the County of Shelby, State of Alabama, which is more particularly described on **Exhibit B** attached hereto and made a part hereof (the "Residential Property," collectively with the Office Property, the "Parcels," and each individually, a "Parcel"), by recording that certain Second Amendment to

Shelby County, AL 02/18/2010

State of Alabama

Deed Tax : \$.50

Declaration of Edenton Office Condominium in the Probate Office on January 15, 2010, as Instrument Number 20100115000015260 (the "Second Amendment"); and

WHEREAS, the Residential Property does not have existing access to a dedicated public road; and

WHEREAS, CBI intends to construct and develop on the Residential Property certain buildings, roadways and related improvements for sale and use as a residential condominium development to be known as "The Lofts at Edenton, A Condominium," which will be operated and maintained by The Lofts at Edenton Residential Condominium Owners' Association, Inc., an Alabama non-profit corporation (the "Residential Association," together with the Office Association, the "Associations"); and

WHEREAS, CBI has determined that it is necessary and appropriate to create, grant and reserve certain easements and rights with respect to drainage over and across the Parcels.

NOW, THEREFORE, in consideration of the premises and mutual benefit to be derived by CBI, its successors and assigns, transferees, invitees and third parties, and their respective successors and assigns, CBI hereby declares that the Parcels, and the various parcels now and hereafter constituting parts thereof, shall be benefited and burdened by the following easements and rights:

1. **Reciprocal Drainage Easements**. CBI hereby creates, declares and imposes on the Office Property for the benefit of the Residential Property, and on the Residential Property for the benefit of the Office Property (collectively, the "Easement Areas"), non-exclusive easements for the use, construction, installation, operation, maintenance, repair, replacement and removal of existing and future drainage lines, pipes, conduits and retention ponds serving the Parcels for the purpose of draining surface and subsurface water (the "Drainage Easements"); provided, however, that the location of any future or additional lines, pipes, conduits and retention ponds shall be in a location acceptable to the then-current Owner of the burdened Parcel in its reasonable judgment.

2. **Maintenance of Easement Areas**. Except to the extent that such areas might be operated and maintained by public authorities or utilities, each Owner will maintain, at its own expense, the Drainage Easements located on its Parcel.

3. **Relocation of Easements**. Each Owner shall have the right, at such Owner's sole cost and expense, to relocate any Drainage Easement located on such Owner's Parcel, provided that (a) such Owner must obtain the prior written approval of the other Owner whose Parcel is served by such Drainage Easement, which approval shall not be unreasonably withheld; (b) there must not be any material interference with or diminishment of drainage service to the other Parcel served by such facilities; and (c) the relocation of any Drainage Easement does not cause the other Owner whose Parcel is served by such Drainage Easement to incur any material costs or expenses, including increases in rates, service charges or other fees.

4. **Right to Dedicate or Convey**. Each Owner shall have the right to, without first obtaining the consent of the other Owner, cause certain portions of the Parcels and any Easement Areas located thereon to be dedicated or conveyed to the public or an appropriate governmental

entity and accepted for perpetual maintenance by the appropriate governmental entity provided that the portion of the Parcel or Easement Area so dedicated or conveyed shall remain available for use by the public and/or the Owners.

5. **Nature of Declaration.** This Declaration shall run with and be binding upon the Parcels and inure to the benefit of the Owners of the respective Parcels, and their respective successors in interest or title, assigns, tenants, and legal representatives.

6. **Legal Effect.** Each of the easements and rights created by this Declaration are appurtenant to the Parcels to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. Each covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of each other Parcel; (b) constitutes a covenant running with the land; (c) binds every Owner now having or hereafter acquiring an interest in any part of any Parcel; and (d) will inure to the benefit of each Owner and each Owner's successors, assigns and mortgagees. Each Owner agrees that on conveyance of any part of a Parcel (including a condominium unit located thereon), the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Declaration.

7. **No Dedication.** Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Parcel to the general public or for any public purpose whatsoever, it being the intention of CBI that this Declaration will be strictly limited to the private use of the Owners. This Declaration is intended to benefit the Owners and their respective successors, assigns and mortgagees and is not intended to constitute any person which is not an Owner a third party beneficiary hereunder or give any such person any rights whatsoever.

8. **Amendment.** This Declaration may be amended at anytime by the mutual agreement of all of (a) the Owners of the Parcels; and (b) any holder of a mortgage of any part of the Parcels.

9. **Severability.** If any provision of this Declaration shall become invalid, illegal or otherwise unenforceable for any reason, the remaining provisions of this Declaration shall continue to be in full force and effect and shall not be affected thereby.

10. **Priority of Declaration; Subordination by Mortgagees.** The covenants, conditions, restrictions, and easements contained in this Declaration shall be prior and superior to any mortgage lien or liens encumbering a property covered hereby or any portion thereof now or in the future. The declarations, easements, covenants, restrictions, and rights created hereby are subject and subordinate to all other declarations, easements, covenants, and restrictions of record as of the date hereof.

11. **Governing Law.** This Declaration and all the provisions hereof shall be governed by and construed in accordance with the laws of the State of Alabama.

[signature page to follow]

IN WITNESS WHEREOF, Cahaba Beach Investments, LLC has executed this Declaration of Reciprocal Drainage Easements as of the date first set forth above.

CAHABA BEACH INVESTMENTS, LLC

By: [Signature]
Name: Jonathan Belcher
Its: President

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, a Notary Public in and for said County in said State, hereby certify that Jonathan Belcher, whose name as President of **CAHABA BEACH INVESTMENTS, LLC**, an Alabama limited liability company, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, Jonathan Belcher, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Give under my hand and official seal of office this 10th day of February, 2010.

[NOTARY SEAL]

[Signature]
Notary Public
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 5, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS
My commission expires _____



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Shelby Cnty Judge of Probate, AL
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**JOINDER OF MORTGAGEE
(Office Property)**

The undersigned joins in this Declaration for the purpose of evidencing its acknowledgment and consent thereto (including the provisions of **Section 10**), as the mortgagee of record with respect to the real property described on **Exhibit A** attached hereto.

COMPASS BANK

By: [Signature]
Name: BEN C. HENDERSON
Its: SR Vice Pres. & Co.

STATE OF Alabama
COUNTY OF Jefferson

I, a Notary Public in and for said County in said State, hereby certify that BEN C. HENDERSON, whose name as SR. V. P. of COMPASS BANK, an Alabama banking corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 11th day of February, 2010.

B. Ann Moore
Notary Public

[NOTARY SEAL]

My commission expires 11-6-10



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**JOINDER OF MORTGAGEE
(Residential Property)**

The undersigned joins in this Declaration for the purpose of evidencing its acknowledgment and consent thereto (including the provisions of Section 10), as the mortgagee of record with respect to the real property described on Exhibit B attached hereto.

COMPASS BANK

By: [Signature]
Name: Brian C. Henderson
Its: 212 VINE AVENUE

STATE OF Alabama
COUNTY OF Jefferson

I, a Notary Public in and for said County in said State, hereby certify that Brian C. Henderson, whose name as SR. V. P. of COMPASS BANK, an Alabama banking corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 11th day of February, 2010.

B. Ann Moore
Notary Public

[NOTARY SEAL]

My commission expires 11-6-10

**CONSENT OF OFFICE ASSOCIATION
(Office Property)**

The undersigned joins in this Declaration for the purpose of evidencing its acknowledgment and consent thereto.

**EDENTON OFFICE CONDOMINIUM
OWNERS' ASSOCIATION, INC.**

By: [Signature]
Name: Jonathan Belcher
Its: VICE PRESIDENT

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, a Notary Public in and for said County in said State, hereby certify that JONATHAN BELCHER, whose name as VICE PRESIDENT of **EDENTON OFFICE CONDOMINIUM OWNERS' ASSOCIATION, INC.**, an Alabama non-profit corporation, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, JONATHAN BELCHER, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Give under my hand and official seal of office this 10th day of FEBRUARY, 2010.

[NOTARY SEAL]

[Signature]
Notary Public
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 5, 2010
BONDED BY NOTARY PUBLIC UNDERWRITERS
My commission expires _____

Exhibit "A"

(Office Property)



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A parcel of land located in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:

BEGIN at a 3" capped pipe locally accepted as the N.W. corner of said Section 31; thence S 88°43'24" E along said North line of Section 31 a distance of 664.76 feet; thence leaving said Section line S 02°32'28" E, a distance of 164.89 feet; thence S 88°31'18" E a distance of 55.23 feet; thence S 01°11'25" W a distance of 84.00 feet; thence S 88°44'55" E a distance of 249.38 feet to a point on the Westerly right-of-way of Cahaba Beach Road; thence S 15°40'56" W along said right-of-way a distance of 169.35 feet; thence leaving said right-of-way N 88°49'35" W a distance of 268.20 feet; thence N 43°54'32" W a distance of 37.89 feet; thence N 01°15'05" E a distance of 77.65 feet; thence N 88°44'55" W a distance of 153.49 feet; thence S 01°15'05" W a distance of 203.22 feet; thence N 88°44'55" W a distance of 163.00 feet; thence N 01°15'05" E a distance of 206.80 feet to the beginning of a curve to the right, said curve having a radius of 405.00 feet, a central angle of 17°05'57", a chord length of 120.42 feet and a chord bearing of N 72°34'32" W; thence run along the arc of said curve a distance of 120.87 feet; thence S 33°15'08" W a distance of 58.56 feet; thence N 89°56'52" W a distance of 173.02 feet to a point on the West line of said Section 31; thence N 00° 03'08" E along the West line of said Section 31 a distance of 160.19 feet; thence N 00°00'00" E and along the West line of said Section 31 a distance of 165.05 feet to the POINT OF BEGINNING.

Said parcel containing 6.75 Acres, more or less.

Exhibit B
Legal Description of Residential Property

(Residential Property)

STATE OF ALABAMA
SHELBY COUNTY

A parcel of land located in the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:

Commence at a 3" capped pipe locally accepted as the N.W. corner of said Section 31; thence S 00°00'00" W and along the West line of said Section 31 a distance of 165.05 feet; thence S 00° 03'08" W along the West line of said Section 31 a distance of 160.19 feet to the POINT OF BEGINNING; thence continuing along the last described course for a distance of 354.32 feet; thence leaving said Section line S 89°13'30" E a distance of 133.56 feet; thence S 00°05'41" E a distance of 328.01 feet; thence S 89°14'40" E a distance of 396.07 feet; thence N 14°35'30" E a distance of 189.66 feet; thence N 14°16'46" E a distance of 164.58 feet; thence N 14°28'55" E a distance of 164.45 feet; thence N 01°05'27" E a distance of 84.40 feet; thence N 43°54'32" W a distance of 37.89 feet; thence N 01°15'05" E a distance of 77.65 feet; thence N 88°44'55" W a distance of 153.49 feet; thence S 01°15'05" W a distance of 203.22 feet; thence N 88°44'55" W a distance of 163.00 feet; thence N 01°15'05" E a distance of 206.80 feet to the beginning of a curve to the right, said curve having a radius of 405.00 feet, a central angle of 17°05'57", a chord length of 120.42 feet and a chord bearing of N 72°34'32" W; thence run along the arc of said curve a distance of 120.87 feet; thence S 33°15'08" W a distance of 58.56 feet; thence N 89°56'52" W a distance of 173.02 feet to the POINT OF BEGINNING.

Said parcel containing 7.97 Acres, more or less.