

STATE OF ALABAMA     )  
                                  )  
SHELBY COUNTY         )

## **MORTGAGE**

**THIS MORTGAGE** (this "Agreement") dated December 1, 2010 is by **PINE MOUNTAIN PRESERVE, LLLP**, a Delaware limited liability limited partnership (the "Mortgagor"), for the benefit of **REGIONS BANK**, an Alabama banking corporation (the "Mortgagee"), as mortgagee.

### **Recitals**

WHEREAS, capitalized terms used in these Recitals have the meanings defined for them herein or in Section 1.2; and

WHEREAS, The Pine Mountain Preserve Improvement District No. Three, an Alabama public corporation (the "Issuer"), has issued its \$1,172,629.08 aggregate principal amount of Special Assessment Revenue Bonds, Series 2010 (the "Bonds") pursuant to a Trust Indenture dated December 1, 2010 (the "Indenture") between the Issuer and the Mortgagee, as trustee. The Bonds will be issued to refinance certain outstanding indebtedness (the "Existing Indebtedness") incurred to finance the acquisition and construction of the Project (as defined in the Indenture).

WHEREAS, the Mortgagor is the owner of certain real property adjacent to or upon which the Project is or shall be constructed and has previously guaranteed the debt service on the Existing Indebtedness. The Mortgagor will materially benefit from the issuance of the Bonds.

WHEREAS, as security for the payment of the Bonds, the Motgagor and Pine Mountain Preserve, Inc., a Delaware corporation (the "Developer"), will each enter into a Guaranty Agreement (a "Bond Guaranty") in favor of the Mortgagee, whereby the Motgagor and the Developer will each jointly and severally guarantee the payment of the principal of, premium (if any) and interest on the Bonds when due.

WHEREAS, as additional security for the payment of the Bonds, the Motgagor will execute this Agreement, whereunder the Mortgagee will be granted a mortgage on, and security interest in, the property described herein.

This is a FUTURE ADVANCE MORTGAGE. The Obligations secured by this Agreement include all indebtedness, obligations and liabilities of the Issuer to the Mortgagee under the Indenture, whether such indebtedness, obligations and liabilities are now due or shall later become due or are now existing or hereafter incurred.

**Agreement**

**NOW, THEREFORE**, in consideration of the foregoing recitals, and to induce the Mortgagee to enter into the Indenture, and to secure the full and complete performance of all obligations of the Issuer under the Indenture, and also to secure the full and complete performance of all obligations of the Mortgagor contained in this Agreement, the Mortgagor agrees with the Mortgagee as follows:

**ARTICLE 1**

**RULES OF CONSTRUCTION AND DEFINITIONS**

**SECTION 1.1 Rules of Construction.** For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires: Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.

(a) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and do not limit or describe the scope or intent of, or in any way affect, this Agreement.

(b) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

(c) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(d) All Recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated in this Agreement by reference.

(e) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.

(f) All references in this Agreement to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

**SECTION 1.2 Definitions.** As used in this Agreement, capitalized terms that are not otherwise defined herein have the meanings defined for them in the Indenture, and the following terms are defined as follows:

(a) **Agreement** means this Mortgage dated December 1, 2010 by the Mortgagor in favor of the Mortgagee.

(b) **Bankruptcy Code** is defined in Section 2.1(c).

(c) **Bonds** means the \$1,172,629.08 aggregate principal amount Special Assessment Revenue Bonds, Series 2010 issued by the Issuer pursuant to the Indenture.



(d) **Bond Documents** means the Bonds, the Indenture, the Bond Guaranty, and this Mortgage.

(e) **Bond Guaranty** means collectively each Guaranty Agreement dated December 1, 2010, executed by each of the Guarantors in favor of the Mortgagee with respect to the Bonds.

(f) **Business Day** means any day, excluding Saturday and Sunday, on which the Mortgagee's main office in Birmingham, Alabama, is open to the public for carrying on substantially all of its banking business.

(g) **Debtor** means the Mortgagor and any other maker, endorser, surety, guarantor or other person now or hereafter liable for the payment or performance, in whole or in part, of any of the Obligations.

(h) **Event of Default** is defined in Section 5.1. An Event of Default "exists" if the same has occurred and is continuing.

(i) **Developer** means Pine Mountain Preserve, Inc., a Delaware corporation.

(j) **Governmental Authority** means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

(k) **Governmental Requirements** means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.

(l) **Guarantors** mean the Mortgagor and the Developer and the respective successors and assigns thereof.

(m) **Hazardous Substance Law** means any Governmental Requirement relating to environmental conditions, industrial hygiene, pollution, or the protection of human health or the environment, including the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 6901 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 741 *et seq.*, the Clean Water Act, 33 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j (all as heretofore or hereafter amended from time to time), all applicable statutes of the State in which the Real Property is located, including any so-called "Superfund" or "Superlien" law, and all Governmental Requirements now or hereafter promulgated under any of the foregoing, including any Governmental Requirement relating to emissions, discharges, releases or threatened releases of Hazardous Substances into the workplace or the environment.

(n) **Hazardous Substances** means all pollutants, effluents, contaminants, emissions, toxic or hazardous wastes and other substances, the removal of which is required or the manufacture, use, maintenance, handling, discharge or release of which is regulated, restricted, prohibited or penalized by any Governmental Requirement, or even if not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto, including (1) asbestos or asbestos-containing materials, (2) urea formaldehyde foam insulation, (3) polychlorinated biphenyls (PCBs), (4) flammable explosives, (5) radon gas, (6) laboratory wastes, (7) experimental products, including genetically engineered microbes



and other recombinant DNA products, (8) petroleum, crude oil, natural gas, natural gas liquid, liquefied natural gas, other petroleum products and synthetic gas usable as fuel, (9) radioactive materials and (10) any substance or mixture listed, defined or otherwise determined by any Governmental Authority to be hazardous, toxic or dangerous, or otherwise regulated, affected, controlled or giving rise to liability under any Governmental Requirement.

(o) **Impositions** means all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the operations thereon, the use or occupancy thereof, the Liens or other interests created by this Agreement, the filing or recording of this Agreement or the Obligations.

(p) **Improvements** is defined in Section 2.1(b).

(q) **Indenture** means that certain Trust Indenture dated December 1, 2010 between the Issuer and the Mortgagee, as trustee.

(r) **Issuer** means The Pine Mountain Preserve Improvement District No. Three, an Alabama public corporation, together with its successors and assigns.

(s) **Land** is defined in Section 2.1(a).

(t) **Lien** means any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement.

(u) **Mortgagee** means Regions Bank, an Alabama banking corporation, and its successors and assigns, as trustee under the Indenture.

(v) **Mortgagor** means Pine Mountain Preserve, LLLP, a Delaware limited liability limited partnership, and its successors and assigns.

(w) **Obligations** means (1) the payment of the principal of, premium (if any) and interest on the Bonds when due, (2) the payment of all amounts now or hereafter becoming due and payable under the Indenture, including all payments and all other fees, charges and costs (including attorney's fees and disbursements) payable thereunder; (3) the observance and performance by the Issuer of all of the provisions of the Indenture; (4) the payment of all sums advanced or paid by the Mortgagee in exercising any of its rights, powers or remedies under the Indenture, and all interest (including post-bankruptcy petition interest, as aforesaid) on such sums provided for herein or therein; and (5) all renewals, extensions, modifications and amendments of any of the foregoing, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

(x) **Permitted Encumbrances** means any Liens and other matters affecting title to the Property that are described in Exhibit B.

(y) **Person** (whether or not capitalized) includes natural persons, sole proprietorships, corporations, trusts, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, limited liability companies and Governmental Authorities.

(z) **Personal Property** is defined in 2.1(c)

(aa) **Property** is defined in Section 2.1.



(bb) **Real Property** is defined in Section 2.1(b).

(cc) **UCC Property** means the Personal Property and all other personal property and fixtures included in the Property.

## ARTICLE 2

### **GRANTING CLAUSES**

**SECTION 2.1 Granting Clauses.** As security for the Obligations, the Mortgagor hereby grants, bargains, sells, assigns and conveys unto the Mortgagee, and hereby grants to the Mortgagee a security interest in, all of the Mortgagor's right, title and interest in, to and under the following property and interests in property (collectively, the "**Property**"):

(a) **Land.** The land located in Shelby County, Alabama more particularly described in **Exhibit A**, and all reversions and remainders in and to said land and all tenements, hereditaments, easements, rights-of-way, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any right, title and interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any other property, and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land; and all claims or demands of the Mortgagor, at law or in equity, in possession or expectancy of, in or to any of the same (all of the foregoing hereinafter collectively called the "**Land**").

(b) **Improvements.** All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building materials, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by the Mortgagor (all of the foregoing hereinafter collectively called the "**Improvements**," and together with the Land called the "**Real Property**").

(c) **Personal Property.** All goods, equipment, inventory, supplies and other items or types of tangible personal property (including additions and accessions thereto and replacements and substitutions therefor) now owned or hereafter created or acquired by the Mortgagor and attached to the Real Property (other than fixtures); or placed on the Real Property and used or useful in connection with, or in any way pertaining or relating to, the Real Property or the use and occupancy thereof, though not attached to the Real Property, wherever the same may be located (all of the foregoing hereinafter collectively called the "**Personal Property**").

(d) **Rents and Leases.** All leases, subleases, lettings and licenses, and other use and occupancy agreements, now or hereafter pertaining to any of the Real Property or Personal Property, and all rents, profits, issues and revenues of the Real Property and Personal Property now or hereafter accruing, whether accruing before or after the filing of any petition by or against the Mortgagor under the federal Bankruptcy Code; provided, however, that if no Event of Default exists, the Mortgagor shall have a license (but limited as set forth in Section 5.3(f)) to collect and receive all of such rents, profits, issues and revenues.



(e) **Insurance Policies.** All policies of hazard insurance now or hereafter in effect that insure the Real Property, the Personal Property or any other property conveyed or encumbered hereby, together with all right, title and interest of the Mortgagor in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums.

(f) **Litigation Awards.** All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to the Mortgagor or any subsequent owner of any of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Real Property, the Personal Property, or any other such property.

(g) **General Intangibles and Agreements.** (1) All general intangibles relating to the development or use of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, or the management and operation of any business of the Mortgagor thereon, including all patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets; (2) the good will of any business conducted or operated on the Real Property, all governmental licenses and permits relating to the construction, renovation or operation thereof, all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant thereof; and (3) all contracts and agreements (including construction, renovation, maintenance, engineering, architectural, leasing, management, operating and concession agreements) affecting the Real Property, the Personal Property or any other property conveyed or encumbered by this Agreement, or used or useful in connection therewith, whether now or hereafter entered into.

(h) **Supplemental Documents.** All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for any agreement or instrument included in the foregoing.

(i) **Proceeds.** All proceeds of any of the foregoing.

**SUBJECT, HOWEVER,** to Permitted Encumbrances.

**TO HAVE AND TO HOLD** the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto the Mortgagee, its successors and assigns forever.

### **ARTICLE 3**

#### **REPRESENTATIONS AND WARRANTIES**

The Motgagor represents and warrants to the Mortgagee that:

**SECTION 3.1 Valid Title, Debt, etc.** (a) The Motgagor is lawfully seized in fee simple of the Real Property and is the lawful owner of, and has good title to, the remainder of the Property, and the Motgagor has good right to mortgage, assign and grant a first priority security interest in the Property as aforesaid; (b) the Property is free of all Liens other than Permitted Encumbrances; (c) the Mortgagor has full power to encumber, assign and convey the Property as provided herein; (d) this Agreement is and will remain a valid and enforceable first priority mortgage lien on, and security interest in, the Property, subject only to Permitted Encumbrances; (e) no approval of any governmental regulator is or shall be necessary for the Mortgagee to exercise its remedies hereunder; and (f) the Mortgagor shall forever



warrant and defend the title to the Property unto the Mortgagee against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

**SECTION 3.2 Hazardous Substances.** (a) To the best knowledge of the Mortgagor, there are not now, nor have there ever been, any Hazardous Substances installed, used, generated, manufactured, treated, handled, refined, produced, processed, transported, stored or disposed of, or otherwise present in, on or under the Property, and there are no Hazardous Substances present on real property adjoining or in the vicinity of the Property that could migrate, to, through or under the Property; (b) to the best knowledge of the Mortgagor, no activity has been nor is now being undertaken with respect to the Property that would cause a violation of, or support a claim under any Hazardous Substance Law; (c) to the best knowledge of the Mortgagor, no Hazardous Substance has been nor is now present in, on or under the Property, and no activity has been nor is now being undertaken with respect to the Property, that would cause (1) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of any Hazardous Substance Law, (2) a release or threatened release of Hazardous Substances from the Property within the meaning of any Hazardous Substance Law, (3) the discharge of Hazardous Substance into any watercourse, body or surface or subsurface water or wetland, or into the atmosphere, that would be prohibited by or require a permit under any Hazardous Substance Law, or (4) the Property otherwise to be subject to special remediation, regulation, restriction or treatment under any Hazardous Substance Law; (d) to the best knowledge of the Mortgagor, no underground storage tanks or underground deposits of Hazardous Substances have ever been located in, on or under the Property and subsequently removed or filled; (e) to the best knowledge of the Mortgagor, no investigation, inquiry, hearing, action, administrative order, litigation or settlement with respect to any Hazardous Substance or Hazardous Substance Law is threatened or in existence with respect to the Property; (f) no notice has been served on the Mortgagor from any person claiming any violation of any Hazardous Substance Law with respect to the Property, or asserting any claim under any Hazardous Substance Law with respect to the Property, or requiring compliance with any Hazardous Substance Law with respect to the Property, or demanding payment or contribution for environmental damage or injury to any person, property or natural resources as the result of the presence of any Hazardous Substance in, on, under or from the Property or any violation of any Hazardous Substance Law with respect to the Property; and (g) the intended use of the Property will not result in any environmental activity that would cause a violation of, or that would support a claim under any Hazardous Substance Law.

## ARTICLE 4

### COVENANTS AND AGREEMENTS OF MORTGAGOR

**SECTION 4.1 Payment of Impositions.** The Motgagor shall pay or cause to be paid all Impositions and at the Mortgagee's request shall furnish evidence of the payment thereof at least 10 business days before the Impositions are due. The Motgagor may, at the Motgagor's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of the contested items shall be effectively stayed. If, subsequent to the date hereof, any Governmental Requirement should become effective that in any manner changes or modifies the Governmental Requirements in effect on the date hereof governing the taxation of mortgages, deeds of trust, deeds to secure debt, assignments of rents and leases or security agreements, or the debts or other obligations secured thereby, or the manner of collecting such taxes, so as to adversely affect the Mortgagee or the Motgagor, in the opinion of the Mortgagee, the Motgagor shall pay any such tax on or before the due date thereof and shall reimburse the Mortgagee for any out-of-pocket loss or expense suffered by the Mortgagee as a result of such Governmental Requirement. If the Motgagor fails



to make such prompt payment or reimbursement, or if, in the opinion of the Mortgagee, any such Governmental Requirement prohibits the Motgagor from making such payment or reimbursement or would penalize the Mortgagee if the Motgagor makes such payment or reimbursement or if, in the opinion of the Mortgagee, the making of such payment or reimbursement might result in the imposition of interest beyond the maximum amount permitted by applicable Governmental Requirement, then the entire balance of the Obligations and all interest accrued thereon shall, at the option of the Mortgagee, become immediately due and payable.

#### **SECTION 4.2      Insurance.**

(a)      The Mortgagor shall obtain and maintain insurance against liability for bodily injury and property damage and against loss or damage by fire and other hazards and casualties arising or occurring with respect to the Property, with such limits and coverage as the Mortgagee may from time to time require, and in any event including:

(1)      workmen's compensation insurance covering all persons involved in the construction of any Improvements or the installation of any Personal Property and all employees of the Mortgagor to the extent required by law;

(2)      insurance against loss or damage to the Real Property and Personal Property by fire, lightning, water, wind and other catastrophes, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State of Alabama, to the extent of the full insurable value of such property, but in any event not less than the Obligations;

(3)      if any part of the Real Property or Personal Property is located in a flood hazard area designated as such under the national flood insurance program, flood insurance to the extent of the maximum limit of coverage made available with respect to such property under such program; and

(4)      insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Real Property and Personal Property, or in any way related to the use, occupancy or operation of the Real Property and Personal Property, with minimum limits of \$1,000,000.

(b)      All such policies of casualty insurance shall be in such companies as shall be satisfactory to the Mortgagee and shall name the Mortgagee as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to the Mortgagee, to be attached to each policy) be payable to the Mortgagee, and provide that the insurance provided thereby, as to the interest of the Mortgagee, shall not be invalidated by any act or neglect of the Mortgagor, nor by the commencing of any proceedings by or against the Mortgagor in bankruptcy, insolvency, receivership or any other proceedings for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy.

(c)      The Mortgagor shall furnish to the Mortgagee insurance certificates, in form and substance satisfactory to the Mortgagee, evidencing compliance by it with the terms of this Section and, upon the request of the Mortgagee at any time, The Mortgagor shall furnish the Mortgagee with photostatic copies of the policies required by the terms of this Section. The Mortgagor will cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed



to the Mortgagee) to give the Mortgagee at least 10 days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder.

(d) The Mortgagor agrees that it will not take any action or fail to take any action which action or inaction would result in the invalidation of any insurance policy required hereunder. At least 10 days prior to the date the premiums on each such policy or policies shall become due and payable, The Mortgagor shall furnish to the Mortgagee evidence of the payment of such premiums.

(e) In case of a sale pursuant to the foreclosure provisions of this Agreement, or any conveyance of all or any part of the Property in extinguishment of the Obligations, complete title to all insurance policies held by the Mortgagee and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Property

#### **SECTION 4.3      Damage and Destruction.**

(a) **Mortgagor's Responsibilities.** In the event of any damage to or loss or destruction of the Property, the Mortgagor shall (1) promptly notify the Mortgagee of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property, and (2) unless otherwise instructed by the Mortgagee, promptly, regardless whether any insurance proceeds are sufficient for the purpose or (unless such insurance proceeds are otherwise applied by the Mortgagee as provided herein), commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction and in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by the Mortgagee.

#### **(b)      Mortgagee's Rights; Application of Proceeds.**

(1) If any portion of the Property is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance described in Section 4.1, then (i) the Mortgagee may, but shall not be obligated to, make proof of loss, and may settle, adjust or compromise any claims thereunder, (ii) each insurance Motgagor concerned is hereby authorized and directed to make payment therefor directly to the Mortgagee, and (iii) the Mortgagee shall apply the insurance proceeds, first, to reimburse the Mortgagee for all reasonable costs and expenses, including all attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and second, as follows:

(A) if no Event of Default shall have occurred and shall be continuing, to the repair, restoration or replacement, in whole or in part, of the Property, as provided in Section 4.3(c), and any balance of such proceeds remaining thereafter shall be paid to or at the direction of the Motgagor; or

(B) if an Event of Default shall have occurred and shall be continuing, at the Mortgagee's option: (i) in payment of all or any part of the Obligations in the order and manner determined by the Mortgagee in its sole discretion (provided that the remainder of the Obligations shall continue in full force and effect and the Mortgagors who are obligated therefor shall not be excused from the payment thereof), or (ii) to the cure of any then-existing Event of Default, and any balance of such proceeds remaining thereafter shall be paid to or at the direction of the Motgagor.

(2) The Mortgagor expressly assumes all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any casualty whatsoever, whether or not insurable or insured against.



(3) The Mortgagee shall not be liable for any failure to collect, or exercise any due diligence in the collection of, any insurance proceeds.

(c) **Availability of Proceeds for Restoration.** If the amount of any such insurance proceeds for damage, destruction or loss does not exceed \$1,000,000 and no Event of Default then exists, or if the Mortgagee in its sole discretion elects to permit any such proceeds in excess of \$1,000,000 to be used by the Motgagor for the restoration of the Improvements, then the Mortgagee shall pay such amount to the Motgagor for the repair of the damaged Improvements or for the erection of new Improvements in their place, to the extent necessary to restore the Property as nearly as possible to the condition, character and value thereof existing immediately prior to such damage or destruction, but only upon satisfaction of each of the following conditions:

(1) The Motgagor shall furnish evidence satisfactory to the Mortgagee that (A) the restoration can be completed within a reasonable period of time; and (B) the amount of business interruption insurance to be paid during the restoration period shall equal or exceed the loss in rental income from the Property during the period required for restoration;

(2) If the estimated costs of restoration (as reasonably estimated by an architect approved by the Mortgagee) shall exceed the insurance proceeds available, the Motgagor shall either deposit with the Mortgagee the amount of such deficit or furnish a satisfactory bond of completion or other evidence satisfactory to the Mortgagee of the Motgagor's ability to meet such excess costs;

(3) The Mortgagee shall be furnished, for its approval (in its sole discretion) (a) with an estimate for its approval of the cost of restoration of the Improvements, accompanied by the certification of the architect or engineer as to such costs and appropriate final plans and specifications for such restoration; and (b) with evidence that all Improvements to be so restored and their contemplated use will, when completed, substantially comply with all zoning, environmental, building laws, ordinances and regulations and other Governmental Requirements and with the requirements of the Bond Documents;

(4) Disbursement of the proceeds during the course of reconstruction shall be upon the certification of the architect or engineer as to the cost of materials furnished and work done and evidence that such work and materials are free and clear of Liens; no payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed or materials furnished and incorporated into the structure from time to time, and at all times the undisbursed balance of said proceeds, together with all amounts deposited, bonded or otherwise funded pursuant to this section, shall at least be sufficient to pay for the cost of completion of the work, free and clear of Liens;

(5) Final payment shall be made upon receipt by the Mortgagee of a certification by the architect or engineer as to the completion substantially in accordance with the approved plans and specifications, the issuance of a permanent certificate of occupancy (or local equivalent) and the expiration of the period provided under the laws of Alabama for the filing of mechanic's and materialmen's liens or receipt by the Mortgagee of proof, to the reasonable satisfaction of the Mortgagee, of final payment in full of all mechanics, materialmen or any other persons who have provided services in connection with the restoration; and

(6) Disbursement shall otherwise be made substantially in accordance with the Mortgagee's usual procedures for commercial construction loans.



If any of the foregoing conditions is not satisfied, then all insurance proceeds may be retained and applied by the Mortgagee toward payment of all or part of the Obligations in such order as the Mortgagee may determine in its sole discretion. If all or a portion of the insurance proceeds are paid to the Mortgagor, the Mortgagee shall not be obligated to see to the proper application of any amount paid to the Motgagor.

#### **SECTION 4.4     Condemnation.**

(a) **Mortgagor's Responsibilities; Proceedings.** The Mortgagor, immediately upon obtaining knowledge thereof, shall notify the Mortgagee of any pending or threatened proceedings for the condemnation of any of the Property or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to any of the Property. The Mortgagee may participate in any such proceedings, and the Mortgagor from time to time shall execute and deliver to the Mortgagee all instruments requested by the Mortgagee to permit such participation. The Mortgagor shall, at the Mortgagor's expense, diligently prosecute any such proceedings, deliver to the Mortgagee copies of all papers served in connection therewith and consult and cooperate with the Mortgagee, its attorneys and agents, in carrying on and defending any such proceedings. No settlement of any such proceedings shall be made by the Mortgagor without the Mortgagee's consent, not to be unreasonably withheld.

(b) **Mortgagee's Rights to Proceeds.** All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to the Mortgagee. The Mortgagor authorizes the Mortgagee to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Mortgagee shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) **Application of Proceeds.** The Mortgagee shall have the right to apply any proceeds, judgments, decrees or awards referred to in Section 4.4(b), first, to reimburse the Mortgagee for all reasonable costs and expenses, including attorneys' fees and disbursements, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof in the same manner as provided in Section 4.3(b) with respect to insurance proceeds. Notwithstanding the provisions of the first sentence of this Section 4.4(c), if (1) the amount of such proceeds does not exceed \$1,000,000, (2) the remaining Property may be restored to an economically viable property having a value of not less than 95% of its value prior to such taking and (3) the income, revenues and profits from the Property are not materially decreased by reason of such condemnation, then any such condemnation proceeds or award received by the Mortgagee shall be paid over wholly or in part to the Motgagor for the restoration of the Improvements located on the Property in the manner provided in 4.3(c), provided that the conditions set forth in 4.3(c) are satisfied.

**SECTION 4.5     Zoning; Title Matters.** The Mortgagor shall not: (a) initiate or support any zoning reclassification of the Property or seek any variance under existing zoning laws or use or permit the use of the Property in a manner that would result in such use becoming a non-conforming use under, or otherwise violate, applicable zoning laws; (b) modify, amend or supplement any Permitted Encumbrances in any manner that would materially increase the obligations or decrease the rights of the Mortgagor or adversely affect the rights of the Mortgagee under the Bond Documents; (c) subject the Property to any restrictive covenants or encumbrances (other than the Permitted Encumbrances), execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality; or (d) permit the Property to be used by the public or any person in any manner that might make possible a claim of adverse possession or of any implied dedication easement or easement by prescription.



**SECTION 4.6 Hazardous Substance Compliance.** The Mortgagor shall: (a) not permit any Hazardous Substances to be installed, used, generated, manufactured, treated, handled, refined, produced, processed, transported, stored or disposed of, or otherwise present in, on or under the Property that would cause a violation of, or that would support a claim under any Hazardous Substance Law; (b) not permit any activity to be undertaken with respect to the Property that would cause a violation of, or support a claim under any Hazardous Substance Law; (c) not permit any Hazardous Substance to be present in, on or under the Property, and nor any activity to be undertaken with respect to the Property, that would cause (1) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of any Hazardous Substance Law, (2) a release or threatened release of Hazardous Substance from the Property within the meaning of any Hazardous Substance Law, (3) the discharge of Hazardous Substance into any watercourse, body or surface or subsurface water or wetland, or into the atmosphere, that would be prohibited by or require a permit under any Hazardous Substance Law, or (4) the Property otherwise to be subject to special remediation, regulation, restriction or treatment under any Hazardous Substance Law; (d) not permit any underground storage tanks or underground deposits of Hazardous Substances to be located on the Property; (e) not permit the Property to be used in any manner that would cause a violation of, or that would support a claim under any Hazardous Substance Law; (f) permit the Mortgagee from time to time to inspect the Property and observe the operations thereon and to perform tests (including soil and ground water tests) for Hazardous Substances on the Property; (g) undertake all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (1) required by any applicable Hazardous Substance Law or (2) necessary to prevent or minimize any property damage (including damage to any of the Property), personal injury or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or the operations on the Property; and (h) deliver to the Mortgagee, at the Mortgagee's request, copies of any and all documents in the Mortgagor's possession or to which the Mortgagor has access relating to Hazardous Substances or Hazardous Substance Laws and the Property, and the operations on the Property, including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports. If the Mortgagee at any time reasonably believes that the Mortgagor is not complying with all applicable Hazardous Substance Laws applicable to the Property or the requirements of this Agreement regarding the same, or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, or if any other Event of Default exists, the Mortgagee may require the Mortgagor to furnish to the Mortgagee an environmental audit or site assessment reasonably satisfactory to the Mortgagee with respect to the matters of concern to the Mortgagee. Such audit or assessment shall be performed at the Mortgagor's expense by a qualified consultant approved by the Mortgagee.

**SECTION 4.7 Required Hazardous Substance Notices.** The Mortgagor shall immediately advise the Mortgagee in writing of any of the following of which the Mortgagor shall become aware: (a) any violation of any Hazardous Substance Law with respect to the Property or the operations at the Property; (b) any spill, release, discharge, disposal of any Hazardous Substances, or imminent threat thereof, at the Property, in connection with the operations at the Property, or at any property adjoining or in the vicinity of the Property, that could result in the violation of any Hazardous Substance Law with respect to the Property or such operations; (c) any action instituted or threatened by any Governmental Authority under any Hazardous Substance Law affecting the Property or the operations thereon, including any notice of inspection, abatement or noncompliance; (d) all claims made or threatened by any person against the Mortgagor, the Mortgagee or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from the presence of any Hazardous Substance in, on, under or from the Property or any violation of any Hazardous Substance Law with respect to the Property or the operations at the Property; (e) the Mortgagor's discovery of any occurrence or condition on the Property or on any real property adjoining or in the vicinity of the Property that could (1) result in the violation of any Hazardous Substance Law, (2) support any claim under any Hazardous Substance Law, or (3) subject the Mortgagor, the Mortgagee or the Property to any restrictions on ownership, occupancy, transferability



or use of the Property under any Hazardous Substance Law. The Mortgagor shall immediately deliver to the Mortgagee any documentation or records that the Mortgagee may reasonably request in connection with any such notices, inquiries, and communications and shall advise the Mortgagee of any subsequent developments.

**SECTION 4.8      Maintenance of Lien Priority.** The Mortgagor shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property purported to be created by this Agreement. The Mortgagor shall execute, acknowledge, deliver, file and record such additional instruments as the Mortgagee may deem necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as first priority Liens on the Property, subject to Permitted Encumbrances, or to subject after-acquired property or proceeds to such Liens. If the Liens, validity or priority of this Agreement, or if title to any of the rights of the Mortgagor or the Mortgagee in or to the Property shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against the Mortgagor or the Mortgagee with respect thereto, the Mortgagor shall promptly notify the Mortgagee thereof and shall diligently endeavor to cure any defect that may be claimed, and shall take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of the litigation, and subject to the Mortgagee's approval, the compromise, release or discharge of any and all adverse claims other than Permitted Encumbrances. The Mortgagee (whether or not named as a party to such actions or proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the Liens, validity or priority of this Agreement, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of adverse claims, and the removal of prior Liens. The Mortgagor shall, on demand, reimburse the Mortgagee for all expenses (including attorneys' fees and disbursements) reasonably incurred by the Mortgagee in connection with any of the foregoing matters.

**SECTION 4.9      Permitted Encumbrances.** The Mortgagor shall not permit any default or violation to occur with respect to any agreement, covenant or restriction included in Permitted Encumbrances.

## ARTICLE 5

### DEFEASANCE, DEFAULT AND REMEDIES

**SECTION 5.1      Defeasance.** This Agreement is made upon the condition that if (a) all of the Obligations (as defined in Section 1.2, including all future advances and other future indebtednesses, obligations and liabilities included therein) are paid in full, and (b) the Mortgagor reimburses the Mortgagee for any amounts the Mortgagee has paid in respect of Liens, Impositions, prior mortgages, insurance premiums, repairing or maintaining the Property, performing the Mortgagor's obligations under any lease related to the Real Property, performing the Mortgagor's obligations under Section 4.6 with respect to environmental matters, and any other advancements hereunder, and interest thereon, and (c) the Mortgagor fulfills all of the Mortgagor's other obligations under this Agreement, and (d) any other conditions set forth in Section 6.19 are fulfilled, this conveyance shall be null and void upon the filing by the Mortgagee of the written instrument of termination described in Section 6.19.



**SECTION 5.2      Events of Default.** The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Agreement (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any Governmental Requirement):

(a) an event of default, as therein defined, shall occur under any Bond Document other than this Agreement and the applicable grace period, if any, shall expire; or

(b) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of the Mortgagor to be observed or performed pursuant to the terms of this Agreement (other than any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 5.2 specifically dealt with) and such default shall continue unremedied for a period of thirty (30) days.

**SECTION 5.3      Rights and Remedies of Mortgagee Upon Default.**

(a) **Acceleration of Obligations.** Subject to the Indenture, if an Event of Default exists, the Mortgagee shall have the right without further notice to the Mortgagor (except any such notice as may be specifically required under the other Bond Documents) to declare all of the Obligations immediately due and payable.

(b) **Possession and Operation of Property.** If an Event of Default exists, in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person designated by the Mortgagee) may, but will not be obligated to, (1) enter upon the Real Property and take possession of any or all of the Property without being guilty of trespass or conversion, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; (2) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (3) make repairs and purchase needed additional property; (4) insure or reinsure the Property; (5) maintain and restore the Property; (6) prepare the Property for resale, lease or other disposition; (7) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (8) exercise every power, right and privilege of the Mortgagor with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** If an Event of Default exists, the Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property, to sue the Mortgagor for damages on account of said default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right (upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Agreement, to the extent required by law), to the appointment by any competent court or tribunal, without notice to the Mortgagor or any other party, of a receiver of the rents, issues, profits and revenues of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Power of Sale.** If an Event of Default exists, this Agreement shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to the Mortgagee, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by



publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Mortgagee may bid at any sale held under this Agreement and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Agreement shall have been terminated as provided herein. Notwithstanding anything contained herein to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Mortgagee to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Mortgagee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses (including attorney's fees, costs and expenses) to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action.

(e) **Personal Property and Fixtures.** If an Event of Default exists, the Mortgagee shall have with respect to the UCC Property all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the UCC Property or its value and without the necessity of a court order. At the Mortgagee's request, the Mortgagor shall assemble the UCC Property and make it available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of the UCC Property or exercise of any other right or remedy upon default. The Mortgagor agrees that the Mortgagee may sell or dispose of both the Real Property and the UCC Property in accordance with the rights and remedies granted under this Agreement with respect to Real Property.

(f) **Rents and Leases.** If an Event of Default exists, the Mortgagee, at its option, shall have the right, power and authority to terminate the license granted to the Mortgagor in Section 2.1(d) to collect the rents, profits, issues and revenues of the Real Property, whether paid or accruing before or after the filing of any petition by or against the Mortgagor under the federal Bankruptcy Code, and, without taking possession, in the Mortgagee's own name to demand, collect, receive, sue for, attach and levy all of such rents, profits, issues and revenues, to give proper receipts, releases and acquittances therefor, and to apply the proceeds thereof as set forth in Section 5.3(h).

(g) **Foreclosure Deeds.** To the extent permitted by applicable law, the Mortgagor hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(h) **Order of Application of Proceeds.** All payments received by the Mortgagee as proceeds of any of the Property, as well as any and all amounts realized by the Mortgagee in connection



with the enforcement of any right or remedy under this Agreement, shall be applied by the Mortgagee as follows: (1) to the payment of all expenses incident to the exercise of any remedies under this Agreement, including attorneys' fees and disbursements as provided in the Bond Documents, appraisal fees, environmental site assessment fees, title search fees and foreclosure notice costs, (2) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) in such order as the Mortgagee may elect in its sole discretion, (3) to a cash collateral reserve fund to be held by the Mortgagee in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (4) the remainder, if any, shall be paid to the Mortgagor or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) **Multiple Sales.** If an Event of Default exists, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Agreement, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations this Agreement shall remain in full force and effect as though no sale had been made under this Section 5.3(i). Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Obligations, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting the power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(j) **Waiver of Certain Laws.** The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (1) any appraisal before sale of any portion of the Property (commonly known as appraisal laws), or (2) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws). The Mortgagor also waives any and all rights the Mortgagor may have to a hearing before any Governmental Authority prior to the exercise by the Mortgagee of any of its rights or remedies under the Bond Documents and applicable law.

(k) **Prerequisites of Sales.** In case of any sale of the Property as authorized by this Section 5.3, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

**SECTION 5.4 Remedies Cumulative.** The rights, powers and remedies of the Mortgagee under this Agreement are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.

**SECTION 5.5 Right of Mortgagee to Cure.** Subject to the rights of any tenants, the Mortgagee and any person designated by the Mortgagee shall have, and is hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of paying any such amount, performing any such act or taking any such action, and all moneys expended by the Mortgagee in connection therewith (including reasonable attorneys' fees and disbursements), together with interest thereon at the Post-Default Rate, shall be payable by the Motgagor to the Mortgagee forthwith upon demand by the Mortgagee, and shall constitute part of the Obligations. In the event of any failure by the Motgagor to pay, observe or perform any covenant on the part of the Motgagor to be paid, observed and performed under any agreement with respect to the Property, the payment or performance by the Mortgagee in behalf of the Motgagor of said covenant



shall not remove or waive, as between the Motgagor and the Mortgagee, the corresponding default under the terms hereof, and any such failure aforesaid shall be subject to all of the rights and remedies of the Mortgagee hereunder when any Event of Default exists.

## ARTICLE 6

### PROVISIONS OF GENERAL APPLICATION

#### SECTION 6.1 Notices.

(a) **Methods.** Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, the Mortgagor or the Mortgagee must (except as otherwise expressly provided in this Agreement) be in writing and be delivered by one of the following methods: (1) by personal delivery at the hand delivery address specified below, (2) by first-class, registered or certified mail, postage prepaid, addressed as specified below, or (3) if facsimile transmission facilities for such party are identified below or pursuant to a separate written notice from such party, sent by facsimile transmission to the number specified below or in such notice.

(b) **Addresses.** The hand delivery address, mailing address and (if applicable) facsimile transmission number for receipt of notice or other documents by such parties are as follows:

(1) Motgagor:

By hand/mail: Pine Mountain Preserve, LLLP  
c/o Eddleman Properties  
Suite 425  
2700 Highway 280 South  
Birmingham, Alabama 35223

With a copy to: Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
2400 Regions/Harbert Plaza  
Birmingham, Alabama 35203-2618  
Attention: Heyward C. Hosch

(2) Mortgagee:

By hand/mail: Regions Bank  
Corporate Trust Department  
Regions/Harbert Plaza  
1901 6th Avenue North, 28th Floor  
Birmingham, Alabama 35203

Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Section 6.1.



(c) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, director, partner or other legal representative of the party) at the address or number specified pursuant to Section 6.1(b), or, if sent by mail, three Business Days after such notice or document is deposited in the United States mail, addressed as provided above.

(d) Five Business Days' written notice to the Mortgagor as provided above shall constitute reasonable notification to the Mortgagor when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

**SECTION 6.2 Expenses.** The Mortgagor shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to the Mortgagee, incurred by the Mortgagee in connection with (a) the negotiation, preparation and review of this Agreement (whether or not the transactions contemplated by this Agreement shall be consummated), (b) the enforcement of this Agreement, (c) the custody and preservation of the Property, (d) the protection or perfection of the Mortgagee's rights and interests under this Agreement in the Property, (e) the exercise by or on behalf of the Mortgagee of any of its rights, powers or remedies under this Agreement, and (f) the prosecution or defense of any action or proceeding by or against the Mortgagee, the Mortgagor, any other Debtor, or any one or more of them, concerning any matter related to this Agreement, any of the Property, or any of the Obligations. All such amounts shall bear interest from the date demand is made at the Post-Default Rate and shall be included in the Obligations secured hereby. The Mortgagor's obligations under this Section 6.2 shall survive the payment in full of the Obligations and the termination of this Agreement.

**SECTION 6.3 Heirs, Successors and Assigns.** Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party, except that the Mortgagor may not assign or transfer this Agreement without the prior written consent of the Mortgagee; and all covenants and agreements of the Mortgagor contained in this Agreement shall bind the Mortgagor's heirs, successors and assigns and shall inure to the benefit of the successors and assigns of the Mortgagee.

**SECTION 6.4 Joint and Several Liability.** If the Mortgagor is comprised of more than one person, all of the Mortgagor's representations, warranties, covenants and agreements under this Agreement shall be joint and several and shall be binding on and enforceable against either, any or all of such persons comprising the Mortgagor. If any one or more of the persons comprising the Mortgagor is in default, the Mortgagee may exercise its remedies on default against any or all of the persons comprising the Mortgagor.

**SECTION 6.5 Independent Obligations.** The Mortgagor agrees that each of the obligations of the Mortgagor to the Mortgagee under this Agreement may be enforced against the Mortgagor without the necessity of joining any other Debtor, any other holders of Liens in any Property or any other person, as a party.

**SECTION 6.6 Governing Law.** This Agreement shall be construed in accordance with and governed by Title 9 of the U.S. Code and the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the Liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.



**SECTION 6.7 Date of Agreement.** The date of this Agreement is intended as a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on that date.

**SECTION 6.8 Separability Clause.** If any provision of the Bond Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**SECTION 6.9 Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

**SECTION 6.10 No Oral Agreements.** This Agreement is the final expression of the agreement between the parties hereto, and this Agreement may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Agreement and the other Bond Documents, and there is no unwritten oral agreement between the parties hereto in existence.

**SECTION 6.11 Waiver and Election.** The exercise by the Mortgagee of any option given under this Agreement shall not constitute a waiver of the right to exercise any other option. The filing of a suit to foreclose the Liens granted by this Agreement, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later or simultaneous suit to collect the Obligations or foreclose by judicial foreclosure the Liens granted by this Agreement. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Bond Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless in writing and signed by an authorized officer of the Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

**SECTION 6.12 No Obligations of Mortgagee; Indemnification.** The Mortgagee does not by virtue of this Agreement or any of the transactions contemplated by the Bond Documents assume any duties, liabilities or obligations with respect to any of the Property unless expressly assumed by the Mortgagee under a separate agreement in writing, and this Agreement shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or willful conduct. The Mortgagor agrees to indemnify and hold the Mortgagee harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including attorney's fees, costs and expenses) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments (collectively, "claims and losses") directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the Mortgagor or any Debtor in this Agreement or any other Financing Document; (b) any breach of any of the warranties or obligations of the Mortgagor or any Debtor under this Agreement or any other Financing Document; and (c) the Property, or the Liens of the Mortgagee thereon. Without limiting the generality of the foregoing, the Mortgagor agrees that the Mortgagor's obligation to defend, indemnify and save harmless the Mortgagee set forth in this Section 6.12 shall specifically include all claims and losses asserted against or suffered by the Mortgagee that are related to or arise out of (1) any representations or warranties in Section 3.2 that prove to be false or untrue in any



material respect, (2) any default in the performance or nonperformance of the Mortgagor's covenants in Section 4.6, and (3) any clean up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Property, that may be required by any Hazardous Substance Law or Governmental Authority. The provisions of this Section 6.12 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Agreement. The Mortgagor's obligations under this Section 6.12 shall be in addition to any obligations of the Mortgagor under any Environmental Indemnity Agreement or similar document executed in favor of the Mortgagee.

**SECTION 6.13 Advances by the Mortgagee.** If the Mortgagor shall fail to comply with any of the provisions of this Agreement, the Mortgagee may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing the Mortgagor's obligations under any such provision. The Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at the Post-Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Mortgagee of any Event of Default resulting from the Mortgagor's failure to pay such amounts.

**SECTION 6.14 Rights, Liens and Obligations Absolute.** All rights of the Mortgagee hereunder, all Liens granted to the Mortgagee hereunder, and all obligations of the Mortgagor hereunder, shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any of the Bond Documents, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Bond Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

**SECTION 6.15 Construction of Mortgage.** This Agreement is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, fixture filing, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and agreements herein set forth.

**SECTION 6.16 Fixture Filing.** This Agreement shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Real Property. The goods are described by item or type in Section 2.1. The Mortgagor is the debtor, and the Mortgagee is the secured party. The names of the debtors (Mortgagor) and the secured party (Mortgagee) are given in the first paragraph of this Agreement. This Agreement is signed by the debtor (Mortgagor) as a fixture filing. The mailing address of the Mortgagee set out in Section 6.1(b)(2) is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Mortgagor set out in Section 6.1(b)(1) is mailing addresses for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section 6.16 and in Section 2.1. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Mortgagor is record owner of the real estate.

**SECTION 6.17 Landlord-Tenant Relationship.** Any sale of the Property under this Agreement shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Issuer.

**SECTION 6.18 Other Mortgages Encumbering the Real Property.**

(a) **Authorization to Disclose.** The Mortgagor hereby authorizes the holder of any other mortgage encumbering any of the Real Property to disclose to the Mortgagee at any time the following



information: (1) the amount of debt secured by such mortgage; (2) the amount of such debt that is unpaid; (3) whether such debt is or has been in arrears; (4) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (5) any other information regarding such mortgage or the debt secured thereby that the Mortgagee may request from time to time.

(b) **No Amendments; Default, etc.** The Mortgagor agrees to comply with the terms of any other mortgage encumbering any of the Real Property and agrees not to consent to or permit any amendment or modification thereof without the prior written consent of the Mortgagee. The Mortgagor further agrees not to permit any default to occur under any other mortgage encumbering any of the Real Property, but that if any default should be made in the payment of principal, interest or any other sum secured by any such mortgage, the Mortgagee may (but shall not be required to) pay all or any part of such amount in default, without notice to the Mortgagor. Any such action by the Mortgagee shall not cure any Event of Default created under this Agreement by virtue of the default in the other mortgage.

**SECTION 6.19 Termination.** This Agreement and the Mortgagee's Liens under this Agreement in the Property will not be terminated until a written mortgage satisfaction instrument executed by one of the Mortgagee's officers is filed for record in the county in which the Land is located. Except as otherwise expressly provided in this Agreement, no satisfaction of this Agreement shall in any way affect or impair the representations, warranties, agreements or other obligations of the Mortgagor or the powers, rights and remedies of the Mortgagee under this Agreement with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction. Even if all of the Obligations owing to the Mortgagee at any one time should be paid in full, this Agreement will continue to secure any Obligations that might later be owed to the Mortgagee until such mortgage satisfaction instrument has been executed and recorded. In no event shall the Mortgagee be obligated to satisfy its Liens under this Agreement or return or release any of the Property to the Mortgagor (a) until the payment in full of all Obligations then outstanding, (b) if the Mortgagee is obligated to extend credit to the Mortgagor, (c) if any contingent obligation of the Mortgagor to the Mortgagee remains outstanding or (d) until the expiration of any period for avoiding or setting aside any payment to Mortgagee under bankruptcy or insolvency laws.

**SECTION 6.20 Reinstatement.** This Agreement, the obligations of the Mortgagor hereunder, and the Liens, rights, powers and remedies of the Mortgagee hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to the Mortgagor, any Debtor, or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Mortgagor, any Debtor or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.*[Signature and Acknowledgments on Following Page]*





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Shelby Cnty Judge of Probate, AL  
01/12/2011 01:34:05 PM FILED/CERT

**IN WITNESS WHEREOF**, the undersigned has caused this Agreement to be executed by its duly authorized representative on the date of the acknowledgment of the Motgagor's signature below.

**PINE MOUNTAIN PRESERVE, LLLP**, a Delaware  
limited liability limited partnership

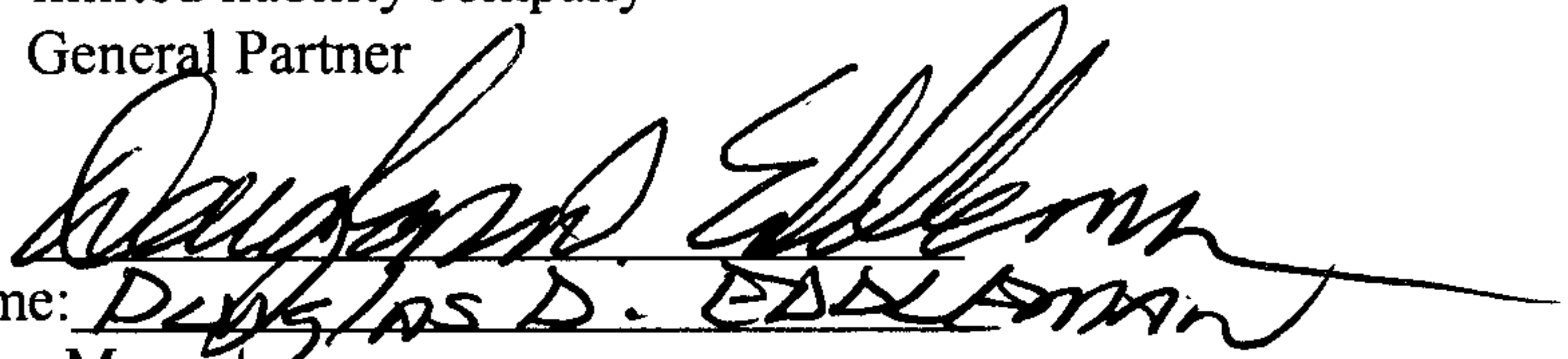
By: Eddleman Properties, LLC, an Alabama  
limited liability company

Title: General Partner

By:

Name:

Its: Manager

  
DOUGLAS D. EDDLEMAN



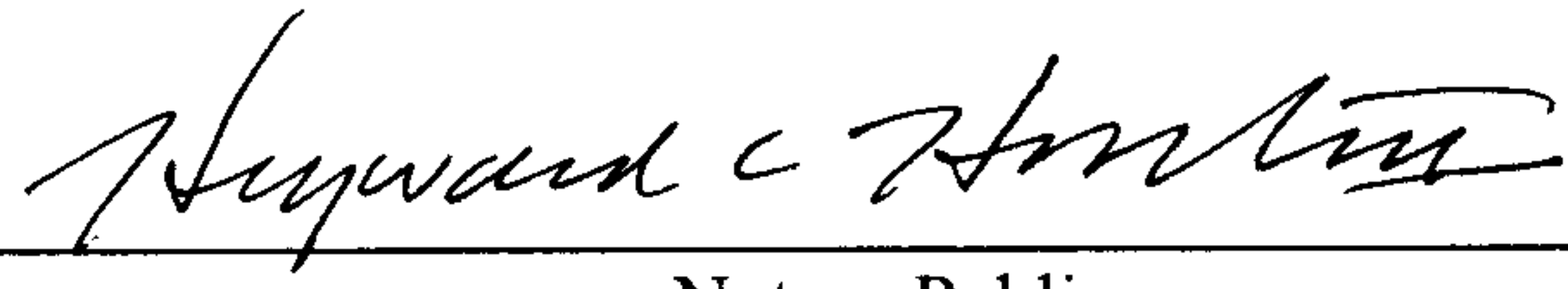


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STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Douglas D. Eddleman, whose name as Manager of Eddleman Properties, LLC, an Alabama limited liability company, the General Partner of PINE MOUNTAIN PRESERVE, LLLP, a Delaware limited liability limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company acting as such general partner, as aforesaid, of said limited liability limited partnership.

Given under my hand and official seal this the 30th day of December, 2010.

  
\_\_\_\_\_  
Notary Public

[AFFIX SEAL]

My commission expires: June 19, 2012

This instrument prepared by:  
Heyward C. Hosch  
C. Bradley Cherry  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North  
2400 Regions/Harbert Plaza  
Birmingham, Alabama 35203-2618  
(205) 254-1000





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**EXHIBIT A**

(Land Description)



**Pine Mountain Preserve – Tract 3**

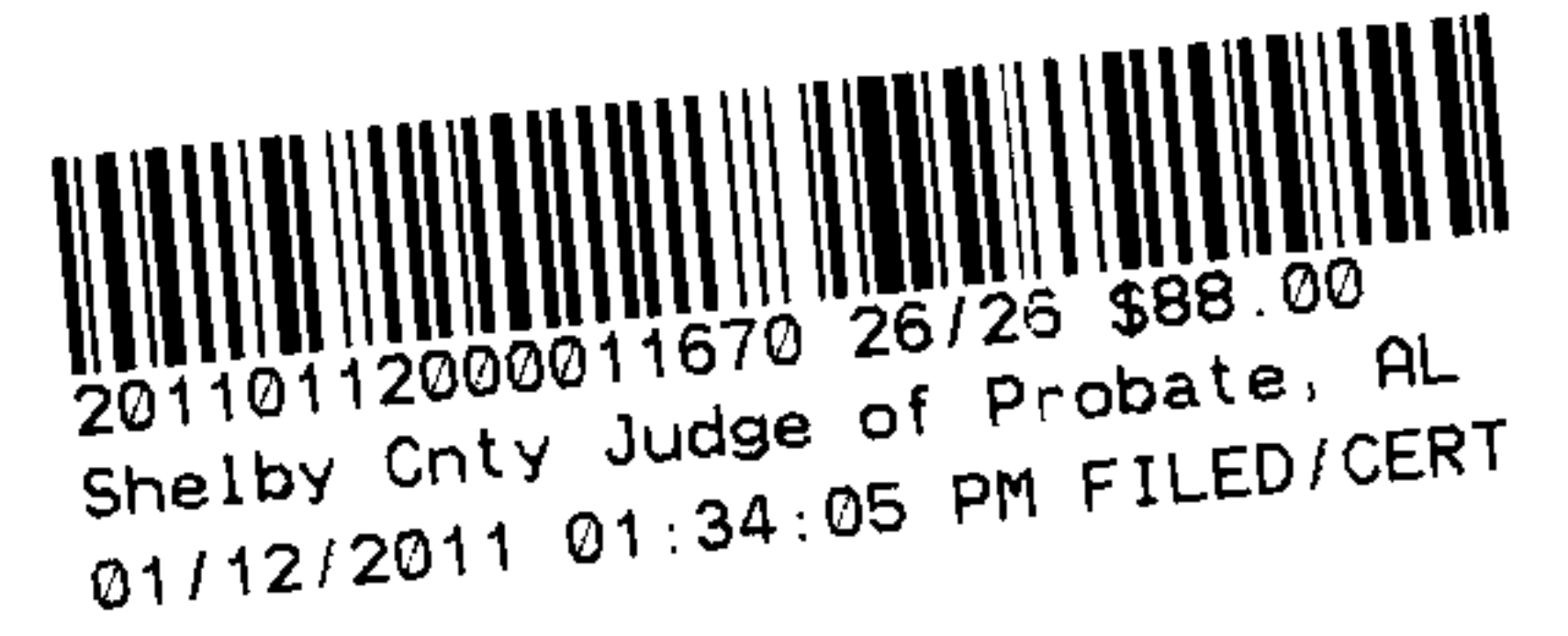
Part of the North  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 29 and part of Section 20, and part of the South  $\frac{1}{2}$  of Section 17, all in Township 19 South, Range 1 East, Shelby County, Alabama, being more particularly described as follows:

Beginning at an existing nail in a pine knot, being the locally accepted Northeast corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 20, run in a Southerly direction along the East line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 1317.24 feet to a 5/8" iron rebar being the locally accepted Southeast corner of said Southeast  $\frac{1}{4}$  of Northeast  $\frac{1}{4}$  of said Section 20; thence turn an angle to the right of  $91^{\circ} 56' 42''$  and run in a Westerly direction for a distance of 1332.58 feet to an existing  $\frac{3}{4}$ " pipe being the locally accepted Southeast corner of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 20; thence turn an angle to the left of  $1^{\circ} 22' 31''$  and run in a Westerly direction along the South line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 1329.79 feet to an existing  $\frac{1}{2}$ " iron pipe; thence turn an angle to the right of  $0^{\circ} 17' 16''$  and run in a Westerly direction along the South line of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of said Section 20 for a distance of 1373.70 feet to an existing  $\frac{1}{2}$ " iron rebar being the locally accepted Northeast corner of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of said Section 20; thence turn an angle to the left of  $89^{\circ} 15' 29''$  and run in a Southerly direction for a distance of 1291.81 feet to an existing  $\frac{1}{2}$ " iron pipe; thence turn an angle to the left of  $90^{\circ} 25' 11''$  and run in an Easterly direction for a distance of 41.20 feet to an existing 2" pipe; thence turn an angle to the right of  $84^{\circ} 45' 10''$  and run in a Southeasterly direction for a distance of 1462.80 feet to a point on the Northwest right-of-way line of Old U.S. Highway # 280; thence turn an angle to the right of  $69^{\circ} 45' 32''$  and run in a Southwesterly direction along the Northwest right-of-way line of said Old U.S. Highway # 280 for a distance of 550.68 feet to a point on the East line of the Carden Crest Subdivision, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 35, Page 64; thence turn an angle to the right of  $110^{\circ} 14' 53''$  and run in a Northwesterly direction along the East line of said Carden Crest Subdivision for a distance of 1700.75 feet to a point of intersection with the South line of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of said Section 20; thence turn an angle to the left of  $84^{\circ} 45' 35''$  and run in a Westerly direction along the South line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 502.10 feet to an existing  $\frac{1}{2}$ " iron pipe; thence turn an angle to the right of  $84^{\circ} 49' 13''$  and run in a Northwesterly direction for a distance of 2436.23 feet to a point on a curve, said curve being concave in a Southeasterly direction and having a central angle of  $1^{\circ} 19' 20''$  and a radius of 4658.80 feet; thence turn an angle to the right ( $49^{\circ} 29' 32''$  to the chord of said curve) and run in a Northeasterly direction along the arc of said curve for a distance of 107.51 feet to a point of reverse curve, said newest curve being concave in a Northwesterly direction and having a central angle of  $23^{\circ} 51' 40''$  and a radius of 2265.19 feet; thence run in a Northeasterly direction along the arc of said curve for a distance of 943.35 feet to a new point of reverse curve, said latest curve being concave in a Southeasterly direction and having a central angle of  $39^{\circ} 40' 20''$  and a radius of 1495.55 feet; thence turn an angle to the right and run in a Northeasterly direction along the arc of said curve for a distance of 1035.54 feet to another point of reverse curve, said latest curve being concave in a Northwesterly direction and having a central angle of  $18^{\circ} 24' 26''$  and a radius of 3000.00 feet; thence turn an angle to the left and run in a Northeasterly direction along the arc of said curve for a distance of 963.79 feet to another point of reverse curve, said latest curve being concave in a Southeasterly direction and having central angle of  $22^{\circ} 1' 51''$  and a radius of 3000.00 feet; thence turn an angle to the right and run in a Northeasterly direction along the arc of said curve for a distance of 1153.53 feet to the point of ending of said curve; thence run in a Northeasterly direction along the line tangent to the end of said curve for a distance of 1995.01 feet; thence turn an angle to the right of  $90^{\circ}$  and run in a Southeasterly direction for a distance of 128.32 feet to the point of beginning of a new curve, said curve being concave in a Westerly direction and having a central angle of  $61^{\circ} 13' 53''$  and a radius of 349.70 feet; thence turn an angle to the right and run in a Southeasterly, Southerly and Southwesterly directions along the arc of said curve for a distance of 373.72 feet to the point of ending of said curve; thence run in a Southwesterly direction along the line tangent to the end of said curve for a distance of 200.00 feet; thence turn an angle to the left of  $30^{\circ} 10' 39''$  and run in a Southwesterly direction for a distance of 1631.10 feet; thence turn an angle to the right of  $19^{\circ} 00' 49''$  and run in a Southwesterly direction for a distance of 1454.02 feet to the locally accepted Northwest corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 20; thence turn an angle to the left of  $114^{\circ} 19' 19''$  and run in an Easterly direction along the North line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 1345.25 feet, more or less, to the point of beginning. Containing 414.42 acres, more or less.



**EXHIBIT B**

(Permitted Encumbrances)



1. The Lien for ad valorem taxes on the Property so long as such taxes are not delinquent.
2. All easements, restrictions, and encumbrances of record prior to the date of recordation of this Mortgage.
3. The Project Assessments defined in the within referenced Indenture.