

This instrument Prepared By:

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**FUTURE ADVANCE ACCOMMODATION MORTGAGE,
ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT
(ALABAMA)**

STATE OF ALABAMA

COUNTY OF SHELBY

THIS INDENTURE (this "**Mortgage**") made this 9th day of September, 2011, between **CHELSEA PARK HOLDING, LLC**, a Delaware limited liability company (hereinafter called the "**Accommodation Mortgagor**"), mortgagor, and **COMPASS BANK** (hereinafter called "**Lender**"), mortgagee.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

WITNESSETH:

WHEREAS, Lender, Compass Mortgage Corporation, Accommodation Mortgagor, and other parties have executed that certain Settlement Agreement dated as of June 22, 2011 (the "**Settlement Agreement**"); and

WHEREAS, Lender and/or Compass Mortgage Corporation, an Alabama corporation (which is a subsidiary of Lender), have made those loans more particularly described on **Exhibit C** hereto and described thereon as the "**Surviving Non-Participated Loans**"; and

WHEREAS, Chelsea Park Holding, LLC is indebted to Compass Mortgage Corporation in connection with the "**Chelsea Deficiency Note**" described on **Exhibit C** hereto; and

WHEREAS, Lender executed and delivered the Settlement Agreement only on the condition that Accommodation Mortgagor grant to Lender this Mortgage on certain real property owned by Accommodation Mortgagor and described on **Exhibit A** attached hereto, together with other property more particularly described herein, this Mortgage being

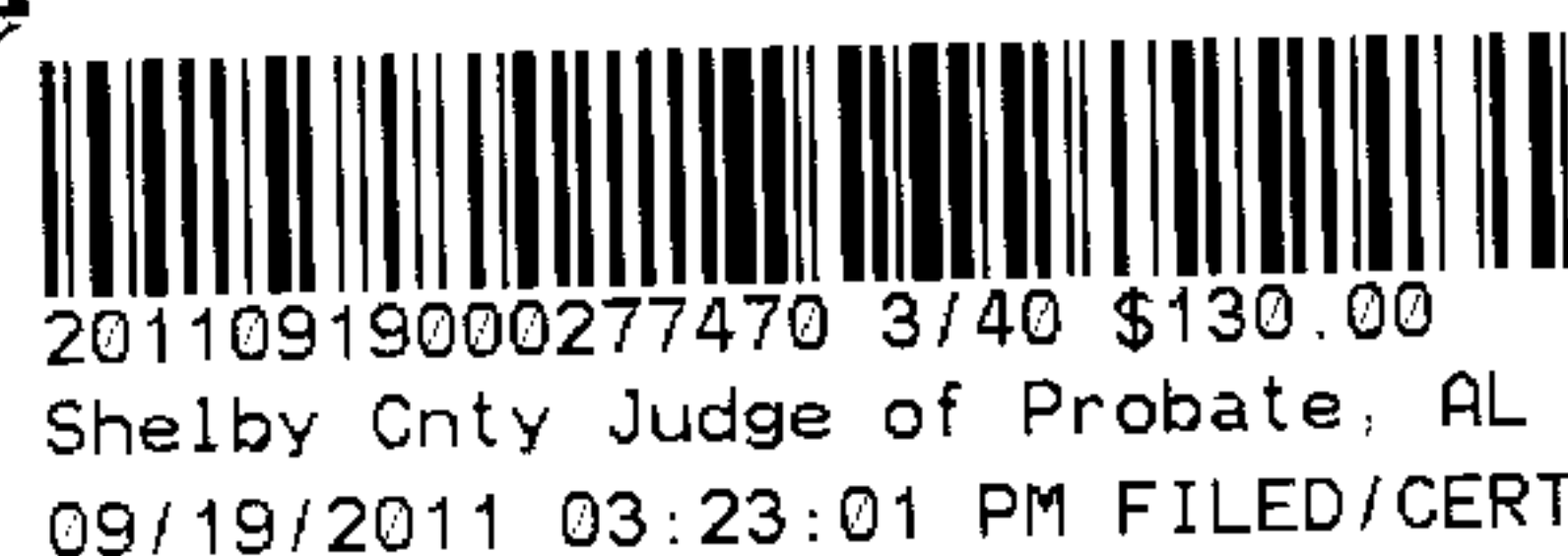
given as **ADDITIONAL COLLATERAL** for the other Surviving Non-Participated Loans and for the Chelsea Deficiency Note; and

WHEREAS, the parties desire that this Mortgage be **ADDITIONAL COLLATERAL** for the Surviving Non-Participated Loans and for the Chelsea Deficiency Note, to secure the principal amount of the Surviving Non-Participated Loans and the Chelsea Deficiency Note, with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Surviving Non-Participated Loans and the Chelsea Deficiency Note, and any and all other additional indebtedness of the obligors under the Surviving Non-Participated Loans and the Chelsea Deficiency Note (individually and collectively, the "**Obligors**") to Lender or Compass Mortgage Corporation, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise, including all obligations incurred by such Obligors under any agreement between any of the Obligors and Lender, Compass Mortgage Corporation or any other affiliate of Lender, whether now existing or hereafter entered into, which provides for an interest rate currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign currency exchange transaction, cross currency rate swap, currency option, any combination of, or option with respect to, any of the foregoing or similar transactions, for the purpose of hedging the Obligors' exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (herein "**Other Indebtedness**").

NOW, THEREFORE, the Accommodation Mortgagor, in consideration of Lender's entering into the Settlement Agreement, and to serve as **ADDITIONAL COLLATERAL** for the Surviving Non-Participated Loans and for the Chelsea Deficiency Note and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of the Obligors or Accommodation Mortgagor, including but not limited to attorneys' fees, and any and all Other Indebtedness as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in all other documents evidencing, securing or executed in connection with the Surviving Non-Participated Loans and the Chelsea Deficiency Note (this Mortgage, and such other documents are sometimes referred to herein as the "**Loan Documents**"), and as may be set forth in instruments evidencing or securing Other Indebtedness (the "**Other Indebtedness Instruments**") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture and personal property (which together with any additional such property in the possession of the Lender or hereafter acquired by the Accommodation Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "**Mortgaged Property**") to-wit:



- (a) All that tract or parcel or parcels of land and estates particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Land**");
- (b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property of every nature whatsoever now or hereafter owned by the Accommodation Mortgagor and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property actually are located on or adjacent to the Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the "**Improvements**");
- (c) All accounts (as presently or hereafter defined in the UCC), general intangibles, goods, contracts and contract rights relating to the Land and Improvements, whether now owned or existing or hereafter created, acquired or arising, including without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and Improvements;
- (d) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Accommodation Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Accommodation Mortgagor of, in and to the same, including but not limited to:
 - (i) All rents, royalties, profits, issues and revenues of the Land and Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created; and
 - (ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land and Improvements or any part thereof under the power of eminent



domain, or for any damage (whether caused by such taking or otherwise) to the Land and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf of and in the name of Accommodation Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released;

- (e) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a), (b), (c) or (d) above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a), (b), (c) or (d) above.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject, however, to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if the Obligors or the Accommodation Mortgagor shall fully pay or cause to be fully paid to the Lender the principal and interest payable with respect of the Surviving Non-Participated Loans and the Chelsea Deficiency Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Obligors or the Accommodation Mortgagor, and shall pay all charges incurred herein by Lender on account of Obligors or Accommodation Mortgagor, including, but not limited to, attorneys' fees, and shall pay any and all Other Indebtedness, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of the Obligors or Accommodation Mortgagor, all without fraud or delay, and (ii) the Lender shall have no further commitment or agreement to make advances, incur obligations or give value under the Surviving Non-Participated Loans, the Chelsea Deficiency Note, or under any other Loan Document or any Other Indebtedness Instrument (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

AND the Accommodation Mortgagor further represents, warrants, covenants and agrees with the Lender as follows:

ARTICLE I GENERAL

1.01 Performance of Mortgage, Note and Loan Documents. The Accommodation Mortgagor, to the full extent applicable, shall perform, observe and comply with all provisions hereof, and shall duly and punctually pay to the Lender all sums required to be paid by the Accommodation Mortgagor pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Obligors or Accommodation Mortgagor.

1.02 Warranty of Title. Accommodation Mortgagor hereby warrants that, subject to those matters set forth on **Exhibit B** hereto, it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is described on **Exhibit A** hereto, and has good and absolute title to all existing personal property hereby granted as security, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Accommodation Mortgagor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Future Advances, Revolving and Open-End Loans, and Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Surviving Non-Participated Loans and the Chelsea Deficiency Note, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of the Obligors to the Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Surviving Non-Participated Loans, the Chelsea Deficiency Note and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

1.04 Monthly Tax Deposit. If required by Lender following an Event of Default, Accommodation Mortgagor shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, if any and as may be estimated by Lender, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Accommodation Mortgagor agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums



may be applied by the Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by the Lender in writing, no application of tax deposits to the Surviving Non-Participated Loans, the Chelsea Deficiency Note or the Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Surviving Non-Participated Loans, the Chelsea Deficiency Note, the Other Indebtedness, or any such other obligations.

1.05 Other Taxes, Utilities and Liens.

- (a) The Accommodation Mortgagor shall pay or cause to be paid promptly, when and as due, and, if requested, will exhibit promptly to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.
- (b) The Accommodation Mortgagor promptly shall pay or shall cause to be paid and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Mortgaged Property.
- (c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Accommodation Mortgagor immediately shall pay any increased taxes if allowed by law, and if Accommodation Mortgagor or Obligors fail to pay such additional taxes, or if Accommodation Mortgagor or Obligors are prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.06 Insurance.

- (a) The Accommodation Mortgagor shall procure for or cause to be procured, deliver to, and maintain or cause to be maintained for the benefit of the Lender during the term of this Mortgage insurance policies in such amounts as the Lender shall require, insuring the improvements on Mortgaged

Property, if any, against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the Lender, and, unless otherwise agreed by the Lender in writing, shall provide for coverage without coinsurance or deductibles. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender, as mortgagee. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Accommodation Mortgagor shall deliver or caused to be delivered to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Accommodation Mortgagor, or its assigns, in and to all insurance policies then in force shall pass to the purchaser or grantee.

- (b) The Lender hereby is authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company hereby is authorized and directed to make payment for all such losses directly to the Lender instead of to the Accommodation Mortgagor (and/or Obligors) and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said funds, the Lender may apply the net proceeds, at its option, either toward repairing or restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Surviving Non-Participated Loans and the Chelsea Deficiency Note selected by Lender, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be used to repair such improvements, or to build new improvements in their place or for any other purpose and in a manner satisfactory to the Lender, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be liable to Accommodation Mortgagor or Obligors or otherwise responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.
- (c) If required by the Lender following an Event of Default, the Accommodation Mortgagor shall pay or cause to be paid on the first day of each month, in addition to any regular installment of principal and interest and other charges with respect to indebtedness secured hereby, and the monthly tax deposit provided for in Paragraph 1.04 hereof, one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the provisions of this Paragraph 1.06. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be

deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Accommodation Mortgagor agrees to deliver or cause to be delivered to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts deposited by Accommodation Mortgagor with Lender pursuant to this Paragraph 1.06 to enable the Lender to pay such insurance premiums when due. Upon the occurrence of an Event of Default hereunder, the Lender may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Lender, but, unless otherwise agreed by the Lender in writing, no application of insurance proceeds to the Surviving Non-Participated Loans, the Chelsea Deficiency Note Loan or to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Surviving Non-Participated Loans, the Chelsea Deficiency Note Loan, the Other Indebtedness, or any such other obligations.

1.07 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief for any condemnation and hereby is authorized, at its option, to commence, appear in and prosecute, in its own or the Accommodation Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Accommodation Mortgagor to the Lender, which, after deducting therefrom all its expenses, including attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Accommodation Mortgagor. The Accommodation Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require. The Accommodation Mortgagor promptly shall notify the Lender in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. The Lender shall be entitled to retain, at the expense of the Accommodation Mortgagor, its own legal counsel in connection with any such proceedings or threatened proceedings. Lender shall be under no obligation to the Accommodation Mortgagor or to Obligor or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.



1.08 Care of the Property.

- (a) The Accommodation Mortgagor will preserve and maintain, or cause to be preserved and maintained, the Mortgaged Property in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.
- (b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Accommodation Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery or appurtenances, subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Five Thousand Dollars (\$5,000.00) for any single transaction, or a total of Twenty Thousand Dollars (\$20,000.00) in any one year, upon replacing the same with, or substituting for the same, free and clear of all liens and security interests except those created by the Loan Documents or Other Indebtedness Instruments, other furniture, furnishings, equipment, tools, appliances, machinery or appurtenances not necessarily of the same character, but of at least equal value and of equal or greater utility in the operation of the Mortgaged Property, and costing not less than the amount realized from the property sold or otherwise disposed of. Such substitute furniture, furnishings, equipment, tools, appliances, machinery and appurtenances shall forthwith become, without further action, subject to the provisions of this Mortgage.
- (c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Accommodation Mortgagor shall give immediate written notice of the same to the Lender.
- (d) The Lender hereby is authorized to enter upon and inspect the Mortgaged Property, and to inspect the Accommodation Mortgagor's or Accommodation Mortgagor's agent's, or the Obligors' or the Obligors' agent's records, with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours.
- (e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Accommodation Mortgagor promptly shall restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor; provided, however, that if there are insurance proceeds, the Accommodation Mortgagor shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds from the casualty



in question and held by Lender, as allowed under Paragraph 1.06, toward restoring the damaged improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Accommodation Mortgagor promptly shall restore, repair or alter the remaining property in a manner satisfactory to the Lender; provided, however, that if there are condemnation proceeds or awards, the Accommodation Mortgagor shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds or awards from the condemnation and held by Lender, as provided in Paragraph 1.07, toward restoring the damaged improvements.

1.09 Further Assurances; After-Acquired Property.

- (a) At any time, and from time to time, upon request by the Lender, the Accommodation Mortgagor, at Accommodation Mortgagor's expense, will make, execute and deliver or cause to be made, executed and delivered to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Obligors under the Surviving Non-Participated Loans and the Chelsea Deficiency Note and the obligation of Accommodation Mortgagor under this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Accommodation Mortgagor. Upon any failure by the Accommodation Mortgagor so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Accommodation Mortgagor, and the Accommodation Mortgagor hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Accommodation Mortgagor so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Lender has given value under the documents evidencing the indebtedness) attached to and/or used in the operation of the Mortgaged Property or any part thereof.
- (b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.09, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by the Accommodation Mortgagor by whatsoever means, including that in the event the Accommodation Mortgagor is the owner of an estate or interest in the Mortgaged Property or any part thereof (such as, for example,

as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage the Accommodation Mortgagor obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of the Accommodation Mortgagor or the Lender or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lender's entering into the Settlement Agreement as aforesaid, and to secure the Surviving Non-Participated Loans, the Chelsea Deficiency Note and the Other Indebtedness and obligations set forth above, Accommodation Mortgagor hereby grants, bargains, sells and conveys to Lender, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

1.10 Additional Security. The Lender also shall have and hereby is granted a security interest in all monies, securities and other property of the Accommodation Mortgagor, now or hereafter assigned, held, received, or coming into the possession, control, or custody of the Lender by or for the account of the Accommodation Mortgagor (including indebtedness due from the Lender to the Accommodation Mortgagor, and any and all claims of Obligors or Accommodation Mortgagor against Lender, at any time existing) whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, the Lender may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Surviving Non-Participated Loans, the Chelsea Deficiency Note and the Other Indebtedness secured hereby, and in such manner as the Lender may determine, any such monies, securities or other property held or controlled by the Lender. No such application of funds shall, unless otherwise expressly agreed by the Lender in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Surviving Non-Participated Loans, the Chelsea Deficiency Note or such Other Indebtedness or obligations.

1.11 Leases Affecting Mortgaged Property. The Accommodation Mortgagor shall comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Accommodation Mortgagor shall furnish Lender with executed copies of all leases now or hereafter existing on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Accommodation Mortgagor shall not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by the Lender, the Accommodation Mortgagor shall execute and deliver to Lender, as additional security, such other documents as may be requested by Lender to evidence further the assignment to Lender hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. The Accommodation Mortgagor shall not cancel, surrender or modify any lease affecting the Mortgaged Property or any part thereof without the written consent of the Lender.



1.12 Expenses. The Accommodation Mortgagor shall pay or reimburse the Lender for all reasonable attorneys' fees, costs and expenses incurred by the Lender in connection with this Mortgage or the enforcement of any rights or remedies provided for in this Mortgage, or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, Accommodation Mortgagor or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, any environmental condition of or affecting the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid or incurred by the Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

1.13 Performance by Lender of Defaults by Accommodation Mortgagor. If the Accommodation Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or otherwise described in Paragraphs 1.04 and 1.05 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, then the Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by the Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Accommodation Mortgagor to the Lender with interest thereon at the rate set forth in the Chelsea Deficiency Note, plus three percent (3%). The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender hereby is empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Accommodation Mortgagor or Obligors or any person in possession holding under the Accommodation Mortgagor or under Obligors for trespass or otherwise.

1.14 Books and Records. The Accommodation Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of the Lender, the Accommodation Mortgagor shall furnish to the Lender (i) within ninety (90) days after the end of the Accommodation Mortgagor's fiscal year a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by a Certified Public Accountant, and (ii) within ten (10) days after request therefor from Lender, a rent schedule of the Mortgaged Property, certified by the Accommodation Mortgagor, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date and the rent paid.

1.15 INTENTIONALLY DELETED.



1.16 Alienation or Sale of Mortgaged Property. Except as permitted by the Settlement Agreement, the Accommodation Mortgagor shall not sell, assign, mortgage, encumber, grant a security interest in or otherwise convey all or any part of the Mortgaged Property without obtaining the express written consent of the Lender at least thirty (30) days prior to such conveyance. If Accommodation Mortgagor should sell, assign, mortgage, encumber, grant a security interest in or convey all, or any part, of the Mortgaged Property without such consent by Lender, except as permitted by the Settlement Agreement, then, in such event, the entire balance of the indebtedness (including the Surviving Non-Participated Loans, the Chelsea Deficiency Note and all Other Indebtedness) secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of the Lender.

1.17 Environmental and Compliance Matters. Accommodation Mortgagor represents, warrants and covenants, to the best of its knowledge, as follows:

- (a) No Hazardous Materials (hereinafter defined) have been, are, or will be, while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "**Hazardous Materials**" includes, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("**CERCLA**") (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act ("**RCRA**") (42 U.S.C. Sections 6901, *et seq.*), the Clean Water Act (33 U.S.C. Sections 1251, *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*), the Toxic Substances Control Act (15 U.S.C. Sections 2601, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration ("**OSHA**") pertaining to occupational exposure to asbestos, as amended from time to time, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;
- (b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;
- (c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

- (d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;
- (e) The Accommodation Mortgagor promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Mortgaged Property or any part thereof. Without limiting the foregoing, the Accommodation Mortgagor represents and covenants that the Mortgaged Property is in present compliance with, and in the future shall comply with, as applicable, the Americans With Disabilities Act of 1990, ("**ADA**") (42 U.S.C. Sections 12101, *et seq.*) and the Rehabilitation Act of 1973 ("**Rehabilitation Act**") (29 U.S.C. Sections 749, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto.
- (f) Accommodation Mortgagor shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.17, or of any notice of other claim relating to the environmental or physical condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Accommodation Mortgagor agrees to and does hereby indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation or warranty set forth in this Paragraph 1.17, (ii) Accommodation Mortgagor's failure to perform any obligations of this Paragraph 1.17, (iii) Accommodation Mortgagor's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, with all occupational health and safety laws, rules and regulations, with the ADA or the Rehabilitation Act, as applicable, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the delivery of this Mortgage, payment of the Surviving Non-Participated Loans and the Chelsea Deficiency Note, the exercise of any right or remedy under any Loan Document, and any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences. However, this indemnification shall not apply to any new Hazardous Materials first stored, generated or placed on the Mortgaged Property after the acquisition of title to the Mortgaged Property by Lender through foreclosure or deed in lieu of foreclosure or purchase from a third party after the Loan has been paid in full.

1.18 Inspection Rights and Easements. In addition to other inspection rights of Lender, the Accommodation Mortgagor shall and hereby does grant and convey to the Lender, its agents, representatives, contractors, and employees, to be exercised by Lender following an Event of Default hereunder or under any of the other Loan Documents, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and

testing and groundwater testing (herein "**Inspections**"), as the Lender, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, the ADA and the Rehabilitation Act, as applicable, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to the Lender, the Lender shall have no obligation to perform any such Inspections, or to take any remedial action. All the costs and expenses incurred by the Lender with respect to any Inspections which the Lender may conduct or take pursuant to this Paragraph 1.18, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid or cause to be repaid by the Accommodation Mortgagor, with interest, and shall be secured by this Mortgage and the other Loan Documents.

1.19 Use, Governmental Compliance, etc. The Accommodation Mortgagor shall: (a) use the Mortgaged Property solely for the uses provided for in the Settlement Agreement, or otherwise as permitted in writing by the Lender; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) compliance with the environmental laws, rules and regulations referenced in Paragraph 1.17(a) hereof or as otherwise may be applicable to the Mortgaged Property from time to time, (ii) the use of the Mortgaged Property and the conduct of any business or activity on the Mortgaged Property, and (iii) the construction, completion and occupancy of the improvements constructed or to be constructed on the Mortgaged Property, including all required zoning, building, land use, environmental, wetlands, coastal development, endangered species, cultural resources, storm water discharge, liquor, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Mortgaged Property or any business or activity conducted thereon; and (d) not permit any act to be done on the Mortgaged Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto. For the purposes hereof, (a) a "**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 having jurisdiction over or with respect to all or any part of the Mortgaged Property, and (b) "**Governmental Requirements**" means all laws, rules, regulations, ordinances, judgments, decrees, codes, order, injunctions, notices and demand letters of any Governmental Authority.

ARTICLE II ASSIGNMENT OF RENTS AND LEASES

2.01 Assignment. Accommodation Mortgagor, in consideration of Lender's executing the Settlement Agreement as aforesaid and for other good and valuable consideration, and to secure the prompt payment of the Surviving Non-Participated Loans, the Chelsea

Deficiency Note and the Other Indebtedness, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Accommodation Mortgagor, including but not limited to attorneys' fees, and further to secure the performance of the covenants, conditions and agreements set forth herein and set forth in the Loan Documents, and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto the Lender all leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, including without limitation those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to the Lender, and the Accommodation Mortgagor does hereby appoint irrevocably the Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

2.02 Prepayment of Rent. The Accommodation Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Accommodation Mortgagor. The Accommodation Mortgagor waives any right of setoff against any person in possession of any portion of the Mortgaged Property. The Accommodation Mortgagor agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

2.03 Not Mortgagee in Possession; No Liability. Nothing herein contained shall be construed as constituting the Lender as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Lender, no liability shall be asserted or enforced against the Lender, all such liability being expressly waived and released by the Accommodation Mortgagor.



2.04 Present Assignment. It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Accommodation Mortgagor shall have the right to collect the rents so long as there exists no Event of Default under this Mortgage, and provided further, that Accommodation Mortgagor's right to collect such rents shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Lender.

2.05 No Obligation of Lender Under Leases. The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and the Accommodation Mortgagor and Obligors, jointly and severally, shall and do hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should the Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Lender in connection with any one or more of said leases, subleases or agreements, the Accommodation Mortgagor agrees to reimburse the Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Accommodation Mortgagor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

2.06 Instruction to Lessees. The Accommodation Mortgagor does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to the Lender upon receipt of demand from said Lender to pay the same.

2.07 Default (Assignment). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, then, in addition to the right to demand and collect directly from tenants rents accruing from leases of the Mortgaged Property, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE III SECURITY AGREEMENT

3.01 Grant of Security Interest. Accommodation Mortgagor (the "debtor" for purposes of the Uniform Commercial Code), in consideration of Lender's (the "secured party" for purposes of the Uniform Commercial Code) executing the Settlement Agreement as aforesaid and for other good and valuable consideration, and to secure the prompt



payment of the Surviving Non-Participated Loans and the Chelsea Deficiency Note, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Accommodation Mortgagor, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements set forth herein and set forth in the Loan Documents, and in the Other Indebtedness Instruments, does hereby assign and grant to Lender title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the "**Collateral**").

3.02 Definitions and Interpretation of Uniform Commercial Code. All terms used herein which are defined in the Alabama Uniform Commercial Code (the "**Uniform Commercial Code**") shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein. References herein to the Uniform Commercial Code shall mean the Alabama Uniform Commercial Code as existing on the date of this Mortgage and as revised and amended from time to time. Anything to the contrary herein notwithstanding, rights and remedies of the debtor and secured party under the Uniform Commercial Code shall be deemed to mean such rights and remedies existing under the Uniform Commercial Code as in effect on the date such rights or remedies are enforced; provided, that no such interpretation shall have the effect of invalidating any security interest created hereunder. No reference herein to rights or remedies existing under the Uniform Commercial Code on the date of this Mortgage, which may not exist or which may be modified under later revisions or amendments to the Uniform Commercial Code, shall have the effect of invalidating this Mortgage or any security interest created hereunder.

3.03 Financing Statements. No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on an addendum attached hereto, if any, and except for the financing statements executed by Accommodation Mortgagor and Lender. At the Lender's request, the Accommodation Mortgagor will join with Lender in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to the Lender, and will pay the cost of filing the same in all public offices wherever filing is deemed by the Lender to be necessary or desirable. The Accommodation Mortgagor authorizes the Lender to prepare and to file financing statements covering the Collateral signed only by the Lender, or without signature, and to sign the Accommodation Mortgagor's signature to such financing statements in jurisdictions where such signature is required. The Accommodation Mortgagor promises to pay to the Lender the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

3.04 Representations of Accommodation Mortgagor (Collateral). With respect to all of the Collateral, Accommodation Mortgagor represents and warrants that:

- (a) The Collateral is used or bought primarily for business purposes;



- (b) All the Collateral will be kept at the address of Accommodation Mortgagor shown in Paragraph 5.08(a) or, if not, at the real property described in **Exhibit A** hereto. Accommodation Mortgagor promptly shall notify Lender of any change in the location of the Collateral. Except for transactions in the ordinary course of Accommodation Mortgagor's business, Accommodation Mortgagor, its agents or employees, will not remove the Collateral from said location without the prior written consent of the Lender;
- (c) If certificates of title are issued or outstanding with respect to any of the Collateral, the Accommodation Mortgagor shall cause the Lender's interest to be properly noted thereon; and
- (d) Accommodation Mortgagor's name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to the Lender. Accommodation Mortgagor promptly shall advise the Lender in writing of any change in Accommodation Mortgagor's name.

3.05 Assignment of Liabilities. If at any time or times by sale, assignment, negotiation, pledge, or otherwise, Lender transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Lender's rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Lender retains any of such indebtedness or instruments, Lender shall continue to have the rights and remedies herein set forth with respect thereto.

3.06 No Obligation of Lender Under Assigned Contracts. The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any contracts or agreements relating to the Mortgaged Property, and the Accommodation Mortgagor and Obligors, jointly and severally, shall and do hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any such contracts or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said contracts or agreements. Should the Lender incur any such liability, loss or damage, under said contracts or agreements or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Lender in connection with any one or more of said contracts or agreements, the Accommodation Mortgagor agrees to reimburse the Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Accommodation Mortgagor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

3.07 Default (Security Agreement). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, the Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

4.01 Event of Default. The term "Event of Default," wherever used in this Mortgage, shall mean:

- (a) the occurrence or existence of an event of default under any document evidencing or securing the Surviving Non-Participated Loans, the Chelsea Deficiency Note or the Other Indebtedness;
- (b) the failure by the Accommodation Mortgagor to duly observe any other covenant, condition or agreement of this Mortgage and the continuance of such failure for thirty (30) days or more after notice from Lender;
- (c) The filing or enforcement of any other mortgage, lien or encumbrance on the Mortgaged Property or any part thereof, or of any interest or estate therein; or
- (d) If any portion of the Mortgaged Property is a leasehold estate, the occurrence of a default under such lease or other instrument creating the estate.

4.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire balance of the indebtedness (including but not limited to the Surviving Non-Participated Loans, the Chelsea Deficiency Note and the Other Indebtedness) secured hereby (or such parts as Lender may elect) with interest accrued thereon (or such parts as Lender may elect) shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

4.03 Right of Lender to Enter and Take Possession.

- (a) If an Event of Default shall have occurred, the Accommodation Mortgagor, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Lender or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Accommodation Mortgagor or then owner of the Mortgaged Property relating thereto, and may exclude the Accommodation Mortgagor and its agents and employees wholly therefrom.

- (b) Upon every such entering upon or taking of possession, the Lender, as attorney-in-fact or agent of the Accommodation Mortgagor, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Lender) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Lender) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Lender) and exercise all the rights and powers of the Accommodation Mortgagor in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Accommodation Mortgagor to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as the Lender may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender, Lender shall apply the remainder of the moneys so received by the Lender, first to the payment of accrued interest under the Surviving Non-Participated Loans and the Chelsea Deficiency Note, in such order as Lender shall select; second to the payment of tax deposits required in Paragraph 1.04; third to the payment of any other sums required to be paid by Accommodation Mortgagor under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Surviving Non-Participated Loans and the Chelsea Deficiency Note, in such order as Lender shall select; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.

- (c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Accommodation Mortgagor, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.04 Receiver.

- (a) If an Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.
- (b) The Accommodation Mortgagor and Obligors shall pay to the Lender upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 4.04; and all such expenses shall be secured by this Mortgage.

4.05 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Surviving Non-Participated Loans and the Chelsea Deficiency Note; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Lender, all as the Lender may elect.

4.06 Rights of a Secured Party. Upon the occurrence of an Event of Default, the Lender, in addition to any and all remedies it may have or exercise under this Mortgage or any of the Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

- (a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Accommodation Mortgagor and without any liability for rent, storage, utilities or other sums;
- (b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at

public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Accommodation Mortgagor at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Accommodation Mortgagor agrees shall be reasonable notice of any sale or disposition of the Collateral;

- (c) The right to require Accommodation Mortgagor, upon request of Lender, to assemble and make the Collateral available to Lender at a place reasonably convenient to Accommodation Mortgagor and Lender; and
- (d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Lender upon default, Accommodation Mortgagor does hereby irrevocably appoint Lender attorney-in-fact for Accommodation Mortgagor, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Accommodation Mortgagor could do, and to sell, assign, and transfer any collateral to Lender or any other party.

4.07 Power of Sale. If an Event of Default shall have occurred, Lender may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The provisions of Paragraph 4.06 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

4.08 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 4.07, or any sale pursuant to Paragraph 4.06, shall be applied as follows:

- (a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the

collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

- (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in this Mortgage, as applicable, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided herein, such repayment to be applied in the manner determined by Lender;
- (c) Third, to the payment of the indebtedness (including but not limited to the Surviving Non-Participated Loans, the Chelsea Deficiency Note and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due;
- (d) Fourth, the balance, if any, shall be paid as provided by law.

4.09 Lender's Option on Foreclosure. At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Accommodation Mortgagor a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

4.10 Waiver of Exemption. Accommodation Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Accommodation Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

4.11 Suits to Protect the Mortgaged Property. The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

4.12 Obligors to Pay the Note on any Default in Payment; Application of Moneys by Lender. If default shall occur in the payment of any amount due under this Mortgage, the Surviving Non-Participated Loans, the Chelsea Deficiency Note, any of the Loan Documents or any of the Other Indebtedness Instruments, or if any other Event of Default shall occur under this Mortgage, then, upon demand of the Lender, the whole amount of the Surviving Non-Participated Loans, the Chelsea Deficiency Note and the Other Indebtedness shall become immediately due and payable; and in case the Obligors shall fail to pay the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Lender's agents and attorneys.

4.13 Delay or Omission No Waiver. No delay or omission of the Lender or of any holder of the Surviving Non-Participated Loans, the Chelsea Deficiency Note or the Other Indebtedness to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage, any of the Loan Documents, or the Other Indebtedness Instruments to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

4.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder, under the Surviving Non-Participated Loans, the Chelsea Deficiency Note, the Loan Documents, or under any of the Other Indebtedness Instruments shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Lender (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in any of the other Loan Documents, or in any of the Other Indebtedness Instruments; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, any of the Loan Documents or the Other Indebtedness Instruments; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Loan Documents, or the Other Indebtedness Instruments of the Accommodation Mortgagor or the Obligors or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, without notice to any person, corporation or other entity



(except notice shall be given to Accommodation Mortgagor so long as Accommodation Mortgagor retains any interest in the Mortgaged Property) hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the other Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings -- Position of Parties Restored. In case the Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Accommodation Mortgagor and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

4.16 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Loan Documents, the Other Indebtedness Instruments or now or hereafter existing at law or in equity or by statute.

4.17 Additional Agreements of Accommodation Mortgagor. Accommodation Mortgagor further agrees as follows:

- (a) **Actions of Lender With Respect to Indebtedness.** Lender is authorized, without notice or demand and without affecting this Mortgage, from time to time to (i) renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Surviving Non-Participated Loans, the Chelsea Deficiency Note or the Other Indebtedness, or any part thereof, including increase or decrease of the rate of interest thereof; (ii) take and hold security for the payment of the Surviving Non-Participated Loans, the Chelsea Deficiency Note or the Other Indebtedness, and exchange, enforce, waive and release any such security; and (iii) apply such security and direct the order or manner of sale thereof as Lender in its discretion may determine. Lender may without notice assign this Mortgage in whole or in part.
- (b) **Waiver of Accommodation Mortgagor; No Right of Subrogation.** Accommodation Mortgagor waives any right to require Lender to (i) proceed against Obligors or any guarantor or other person or entity whatsoever; (ii) proceed against or exhaust any security held from Obligors; (iii) pursue any other remedy in Lender's power whatsoever. Accommodation Mortgagor waives any defense arising by reason of any disability or other defense of Obligors or by reason of the cessation from any cause whatsoever of the

liability of Obligors. Until the Surviving Non-Participated Loans, the Chelsea Deficiency Note and all Other Indebtedness of Obligors to Lender shall have been paid in full, Accommodation Mortgagor shall have no right of subrogation, and waives any right to enforce any remedy which Lender now has or may hereafter have against Obligors, and waives the benefit of, and any right to participate in any security now or hereafter held by Lender. Accommodation Mortgagor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, and notices of dishonor, and of the existence, creation, or incurring of new or additional indebtedness.

- (c) **Other Security or Collateral of Lender.** It is the intent hereof that this Mortgage shall be and remain unaffected, (i) by the existence or non-existence, validity or invalidity of any pledge, assignment or conveyance given as security for the Surviving Non-Participated Loans, the Chelsea Deficiency Note or the Other Indebtedness of Obligors, or (ii) by any understanding or agreement that any other person, firm or corporation was or is to execute any other instrument evidencing any indebtedness of Obligors, or any part thereof; or (iii) by resort on the part of the Lender to any other security or remedy for the collection of any indebtedness of Obligors; or (iv) by the bankruptcy of Obligors and in case of any such bankruptcy, by failure of Lender to file claim against such bankrupt's estate, for the amount of such bankrupt's liability to Lender.
- (d) **Mortgage Independent of Obligations of Obligors.** This Mortgage is independent of the obligations of Obligors, and Lender may exercise its rights under this Mortgage whether or not action is brought against Obligors or any other person or entity liable for the indebtedness secured hereby or any part thereof; and Accommodation Mortgagor waives the benefit of any statute of limitations or other defenses affecting this Mortgage or the enforcement thereof.

ARTICLE V MISCELLANEOUS

5.01 Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Accommodation Mortgagor, or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, the Accommodation Mortgagor shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur



(voluntarily or involuntarily, or directly or indirectly), without the prior written consent of the Lender.

5.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof. "Herein," "hereby," "hereunder," "hereof," and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.

5.03 Gender; Number. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

5.04 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in any of the other Loan Documents, or in the Other Indebtedness Instruments shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Loan Documents and in the Other Indebtedness Instruments shall be in no way affected, prejudiced or disturbed thereby.

5.05 Loan Documents. Wherever reference is made herein to this Mortgage, the Surviving Non-Participated Loans, the Chelsea Deficiency Note, the Loan Documents, or the Other Indebtedness Instruments, such reference shall include all renewals, extensions, modifications and refinancings thereof.

5.06 Instrument Under Seal. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

5.07 Addresses and Other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements

(a) **Name of Accommodation
Mortgagor:**

CHELSEA PARK HOLDING, LLC,
a Delaware limited liability company

**Address of Accommodation
Mortgagor:**

c/o Eddleman Properties, LLC
2700 U.S. Highway 280 South, Suite 425
Birmingham, Alabama 35223
Attention: Mr. Douglas D. Eddleman
Fax No. 205-801-7548

(b) Name of Lender (Secured Party): **COMPASS BANK**

Address of Lender: P.O. Box 10566
Birmingham, Alabama 35296
Attention: Commercial Real Estate
Loan Department

(c) **Record Owner of Real Estate**
described on Exhibit A hereto: Accommodation Mortgagor

5.08 Applicable Law. This Mortgage shall be governed in all respects by the laws of the State of Alabama.

5.09 Release of Mortgaged Property. Lender agrees to release all or portions of the Mortgaged Property on the terms set forth in the Settlement Agreement.

5.10 Intercreditor Agreement. Lender agrees to enter into an intercreditor agreement with respect to this Mortgage on the terms set forth in Section 3(L) of the Settlement Agreement.

5.11 Obligors. References are made in this instrument to the Obligors. The failure of any Obligor other than Accommodation Mortgagor to sign this instrument shall have no effect on the Accommodation Mortgagor's obligations and liabilities hereunder.

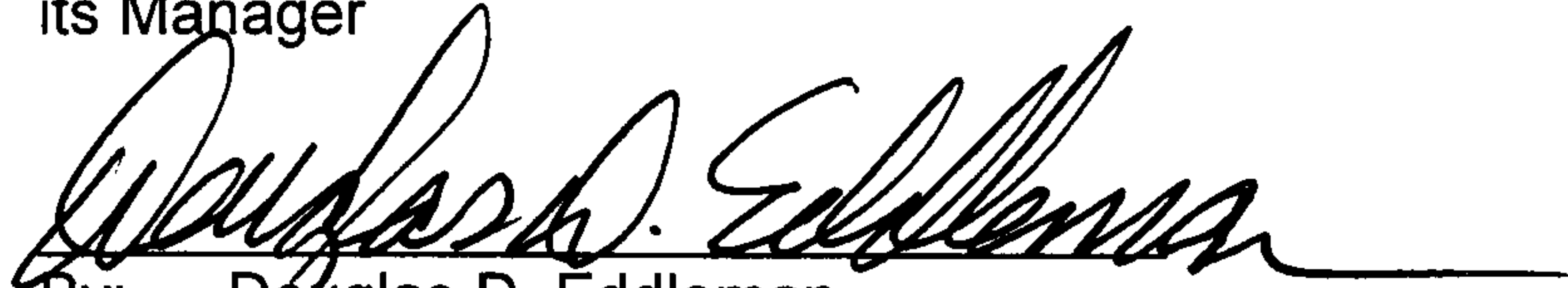

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IN WITNESS WHEREOF, Accommodation Mortgagor has caused this Mortgage to be executed and effective as of the day and year first above written, although actually executed on the date or dates reflected below.

ACCOMMODATION MORTGAGOR:

CHELSEA PARK HOLDING, LLC,
a Delaware limited liability company

By: **EDDLEMAN PROPERTIES, LLC,**
an Alabama limited liability company,
its Manager



By: Douglas D. Eddleman
Its: Manager



By: Billy D. Eddleman
Its: Manager

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Ellen C. Prescott, 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, as the Manager of **CHELSEA PARK HOLDING, LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company, in its capacity as Manager of said Chelsea Park Holding, LLC.

Given under my hand and official seal this 18th day of August, 2011.


Notary Public

[Notarial Seal]

My Commission Expires: 2/3/12



STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Ellen C. Prescott, a notary public in and for said county in said state, hereby certify that **Billy D. Eddleman**, whose name as Manager of **Eddleman Properties, LLC**, an Alabama limited liability company, as the Manager of **CHELSEA PARK HOLDING, LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company, in its capacity as Manager of said Chelsea Parking Holdings, LLC.

Given under my hand and official seal this 18th day of August, 2011.

Ellen C. Prescott
Notary Public

[Notarial Seal]

My Commission Expires: 2/3/12



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EXHIBIT A

Description of Mortgaged Property

Parcel I

Lots 1-88 and 1-94, according to the Plat of Chelsea Park First Sector, Phase I and Phase II, as recorded in Map Book 34, Page 21A and 21B, in the Probate Office of Shelby County, Alabama.

Parcel II

Lots 1-91A and 1-92A, according to the Resurvey of Lots 1-91 thru 1-93 Chelsea Park First Sector Phase I and Phase II, as recorded in Map Book 36, Page 87, in the Probate Office of Shelby County, Alabama.

Parcel III

Lots 1-28, 1-29, 1-30, 1-31, 1-32, 1-33, 1-34, 1-35, 1-36, 1-37, 1-38, 1-39, 1-40, 1-41, 1-42, 1-43, 1-44, 1-45, 1-46, 1-47 and 1-51, according to the Plat of Chelsea Park 1st Sector, Phase 3, as recorded in Map Book 36, Page 34, in the Probate Office of Shelby County, Alabama.

Parcel IV

Lots 1-105, 1-106, 1-108, 1-133, 1-134, 1-135, 1-136, 1-137, 1-138, 1-139 and 1-140, according to the Plat of Chelsea Park 1st Sector, Phase 4, as recorded in Map Book 36, Page 24, in the Probate Office of Shelby County, Alabama.

Parcel V

Lots 1-109A, 1-110A, 1-111A, 1-112A and 1-113A, according to the Resurvey of Lots 1-107 thru 1-113 Chelsea Park, as recorded in Map Book 39, Page 46, in the Probate Office of Shelby County, Alabama.

Parcel VI

Lots 4-4, 4-15, 4-96, 4-101, 4-102, 4-107, 4-109 and 4-111, according to the Plat of Chelsea Park 4th Sector, as recorded in Map Book 34, Page 147A and 147B, in the Probate Office of Shelby County, Alabama.

Parcel VII

Lots 6-2, 6-3, 6-4, 6-78, 6-79, 6-80, 6-81, 6-82, 6-92, 6-93, 6-94, 6-95, 6-96, 6-98, 6-99, 6-100, 6-101, 6-127, 6-128, 6-129, 6-130, 6-131, 6-132, 6-133 and 6-134, according to



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the Plat of Chelsea Park 6th Sector, as recorded in Map Book 37, Page 13, in the Probate Office of Shelby County, Alabama.

Parcel VIII

Lots 6-52, 6-53, 6-54, 6-55, 6-56 and 6-57, according to the Plat of Chelsea Park 6th Sector, 3rd Addition, as recorded in Map Book 42, Page 1, in the Probate Office of Shelby County, Alabama.

Parcel IX

All that part of the following described property NOT contained in the plat of Chelsea Park 6th Sector, (Map Book 37, Page 13); Chelsea Park, 6th Sector, 3rd Addition (Map Book 42, Page 1); a Resurvey of Park, Chelsea Park, 6th Sector, (Map Book 41, Page 137) and Chelsea Park, 6th Sector Common Area, (Map Book 41, Page 113):

Part of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 31, Township 19 South, Range 1 East, and also part of the East $\frac{1}{2}$ of Section 36, Township 19 South, Range 1 West, both in Shelby County, Alabama, being more particularly described as follows:

Beginning at an existing iron rebar being the locally accepted most Southerly corner of Lot 3-76, Chelsea Park 3rd Sector, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 34, Page 23, run in a Northwesterly direction along the West line of Lot 3-76 and Lot 3-75 of said subdivision for a distance of 96.97 feet to the most Southerly corner of Lot 3-74 of said subdivision; thence turn an angle to the right of 3° 47' 33" and run in a Northwesterly direction along the Southwest line of said Lot 3-74 for a distance of 48.46 feet to an existing iron rebar being the most Southerly corner of Lot 3-73; thence turn an angle to the right of 6° 05' 24" and run in a Northwesterly direction along the Southwest line of Lots 3-73 thru 3-69 for a distance of 214.48 feet to an existing iron rebar being the most Southerly corner of Lot 3-68; thence turn an angle to the left of 50° 53' 43" and run in a Northwesterly direction along the Southwest line of said Lot 3-68 for a distance of 50.32 feet to an existing iron rebar being the most Southerly corner of Lot 3-67; thence turn an angle to the right of 31° 31' 59" and run in a Northwesterly direction along the Southwest line of said Lot 3-67 for a distance of 86.97 feet to an existing iron rebar being the most Southerly corner of Lot 3-66; thence turn an angle to the right of 38° 59' 59" and run in a Northerly direction along the West line of said Lot 3-66 for a distance of 87.25 feet to an existing iron rebar being the Northwest corner of said Lot 3-66; thence turn an angle to the left of 45° 59' 51" and run in a Northwesterly direction for a distance of 146.62 feet to an existing iron rebar being the most Easterly corner of Lot 2-36, Chelsea Park 2nd Sector, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 34, Page 22; thence turn an angle to the left of 89° 50' 49" and run in a Southwesterly direction along the Southeast line of said Lot 2-36 for a distance of 60.61 feet to an existing iron rebar



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being the most Easterly corner of Lot 2-35; thence turn an angle to the left of $8^{\circ} 07' 10''$ and run in a Southwesterly direction along the Southeast line of said Lot 2-35 for a distance of 60.0 feet to an existing iron rebar being the most Easterly corner of Lot 2-34; thence turn an angle to the left of $4^{\circ} 30' 01''$ and run in a Southwesterly direction along the Southeast line of said Lot 2-34 for a distance of 60.19 feet to an existing iron rebar being the most Southerly corner of said Lot 2-34; thence turn an angle to the left of $15^{\circ} 34' 23''$ and run in a Southwesterly direction along the East line of Lot 2-33 for a distance of 63.88 feet to an existing iron rebar being the most Easterly corner of Lot 2-32; thence turn an angle to the right of $17^{\circ} 25' 14''$ and run in a Southwesterly direction along the Southeast line of said Lot 2-32 for a distance of 48.82 feet to an existing iron rebar; thence turn an angle to the right of $19^{\circ} 07' 02''$ and run in a Southwesterly direction along the Southeast line of said Lot 2-32 for a distance of 39.89 feet; thence turn an angle to the left of $80^{\circ} 34' 30''$ and run in a Southeasterly direction for a distance of 32.0 feet; thence turn an angle to the right of $91^{\circ} 11' 14''$ and run in a Southwesterly direction for a distance of 15.0 feet; thence turn an angle to the right of $88^{\circ} 48' 46''$ and run in a Northwesterly direction for a distance of 32 feet, more or less, to a point on the Southeast line of Lot 2-31 of said Chelsea Park 2nd Sector; thence turn an angle to the left of $78^{\circ} 16' 49''$ and run in a Southwesterly direction along the Southeast line of said Lot 2-31 for a distance of 51.25 feet to an existing iron rebar and being a corner of Lot 2-31; thence turn an angle to the right of $21^{\circ} 50' 28''$ and run in a Westerly direction for a distance of 59.27 feet to the Southwest corner of said Lot 2-31; thence turn an angle to the right of $22^{\circ} 01' 08''$ and run in a Northwesterly direction along the Southwest line of Lots 2-30, 2-29 and 2-28 for a distance of 181.49 feet; thence turn an angle to the right of $1^{\circ} 54' 31''$ and run in a Northwesterly direction along the Southwest line of Lot 2-27 of said subdivision for a distance of 68.62 feet to the most Southerly corner of Lot 2-26 of said subdivision; thence turn an angle to the right of $19^{\circ} 59' 49''$ and run in a Northwesterly direction for a distance of 58.91 feet to an existing iron rebar; thence turn an angle to the left of $52^{\circ} 57' 06''$ and run in a Westerly direction for a distance of 140.77 feet to an existing iron rebar being the most Easterly corner of Lot 4-106, Chelsea Park 4th Sector, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 34, Page 147 A & B; thence turn an angle to the left of $47^{\circ} 51' 08''$ and run in a Southwesterly direction along the Southeast line of said Lot 4-106 for a distance of 74.79 feet to an existing iron rebar being the most Southerly corner of said Lot 4-106; thence turn an angle to the right of $5^{\circ} 44' 46''$ and run in a Southwesterly direction for a distance of 50.0 feet to an existing iron rebar being the most Easterly corner of Lot 4-105 of said subdivision; thence turn an angle to the right of $5^{\circ} 50' 07''$ and run in a Southwesterly direction along the Southeast line of said Lot 4-105 for a distance of 75.21 feet to the most Easterly corner of Lot 4-104 of said subdivision; thence turn an angle to the right of $6^{\circ} 27' 13''$ and run in a Southwesterly direction along the Southeast line of Lot 4-104 for a distance of 63.26 feet to the most Easterly corner of Lot 4-103; thence turn an angle to the right of $6^{\circ} 13' 26''$ and run in a Southwesterly direction along the Southeast line of Lot 4-103 for a distance of 62.77 feet; thence turn an angle to the left of $86^{\circ} 43' 27''$ and run in a Southeasterly direction for a distance of 35.43 feet; thence turn an angle to the right of 90° and run in a Southwesterly direction for a distance of 15.0



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feet; thence turn an angle to the right of 90° and run in a Northwesterly direction for a distance of 35.39 feet to a point on the Southeast line of Lot 4-102 of said subdivision; thence turn an angle to the left of 87° 02' 31" and run in a Southwesterly direction for a distance of 55.96 feet to the most Easterly corner of Lot 4-101; thence turn an angle to the right of 6° 14' 02" and run in a Southwesterly direction for a distance of 70.29 feet to the Southeast corner of Lot 4-100; thence turn an angle to the right of 6° 13' 26" and run in a Westerly direction for a distance of 63.26 feet to the Southeast corner of Lot 4-99 of said subdivision; thence turn an angle to the right of 5° 23' 38" and run in a Westerly direction for a distance of 65.32 feet to the Southeast corner of Lot 4-98 of said subdivision; thence turn an angle to the right of 0° 56' 38" and run in a Westerly direction along the South line of Lots 4-98, 4-97, 4-96, 4-95, 4-94 and 4-93 for a distance of 342.0 feet to the Southwest corner of Lot 4-93; thence turn an angle to the left of 71° 55' 50" and run in a Southwesterly direction for a distance of 79.20 feet; thence turn an angle to the right of 30° 05' 30" and run in a Southwesterly direction for a distance of 81.23 feet; thence turn an angle to the left of 33° 23' 13" and run in a Southerly direction for a distance of 81.23 feet; thence turn an angle to the left of 29° 10' 55" and run in a Southeasterly direction for a distance of 81.23 feet; thence turn an angle to the left of 33° 23' 13" and run in a Southeasterly direction for a distance of 81.23 feet; thence turn an angle to the right of 81° 18' 20" and run in a Southwesterly direction for a distance of 112.57 feet to a point on the North right-of-way line of the C.S.X. Railroad right-of-way, said North line of C.S.X. Railroad right-of-way being on a curve, said curve being concave in a Northerly direction and having a central angle of 63° 16' 32" and a radius of 1,864.69 feet; thence turn an angle to the left and run in a Southeasterly, Easterly and Northeasterly direction along the arc of said curve for a distance of 2,059.29 feet to a point of ending of said curve and still being on the Northwest right-of-way line of the C.S.X. Railroad right-of-way; thence run in a Northeasterly direction along the Northwest right-of-way line of the C.S.X. Railroad for a distance of 131.16 feet; thence turn an angle to the left of 90° and run in a Northwesterly direction for a distance of 137.79 feet to an existing iron rebar; thence turn an angle to the right of 12° 03' 56" and run in a Northwesterly direction for a distance of 50.0 feet, more or less, to the point of beginning.

This property does include all of those lots designated for future development according to the Plat of Chelsea Park 6th Sector, as recorded in Map Book 37, Page 13 in the Probate Office of Shelby County, Alabama, including, specifically, that property described as Lots 6-20, 6-21, 6-22, 6-23, 6-24, 6-25, 6-26, 6-27, 6-28, 6-29, 6-30, 6-31, 6-32, 6-33, 6-34, 6-35, 6-36, 6-37, 6-38, 6-39, 6-40, 6-41, 6-42, 6-43, 6-44, 6-45, 6-46, 6-47, 6-48, 6-49, 6-50, 6-51, 6-58, 6-59, 6-60, 6-61, 6-62, 6-63, 6-64, 6-65, 6-66, 6-67, 6-68, 6-69, 6-70 and 6-71.

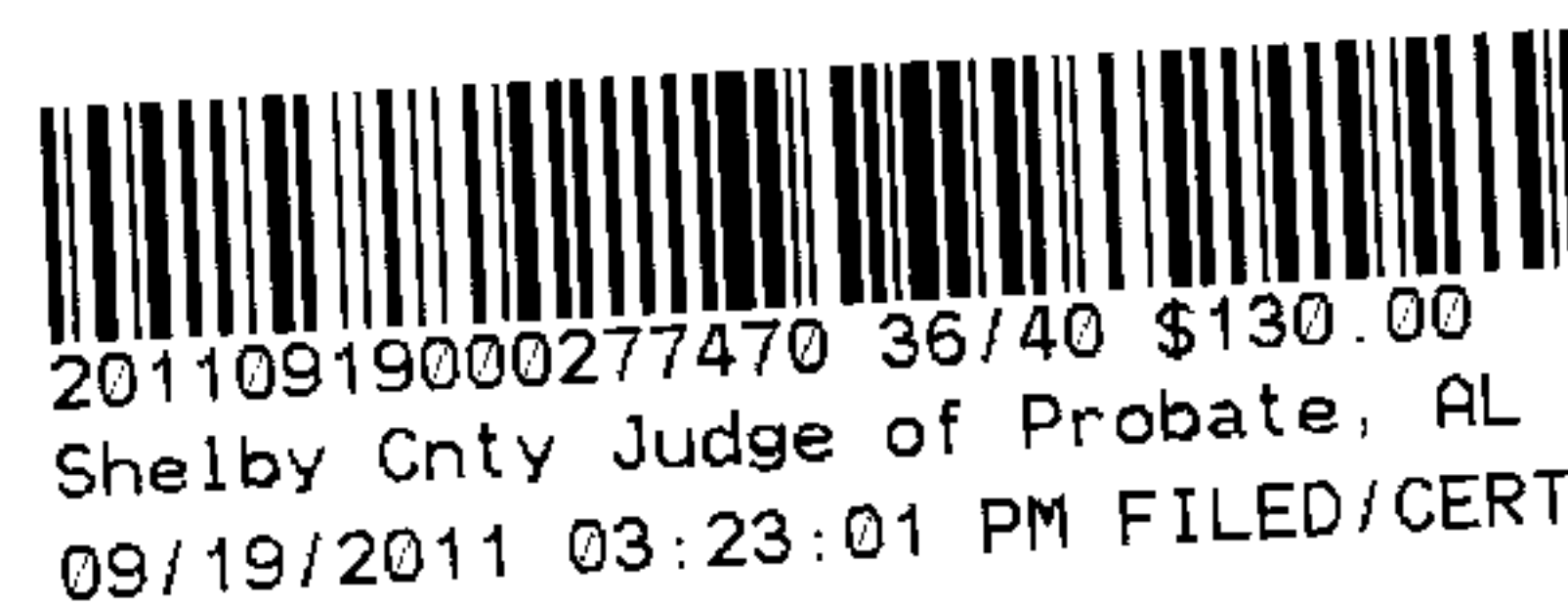


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EXHIBIT B

Permitted Exceptions to Title

1. Intentionally Omitted
2. Intentionally Omitted
3. Taxes for the year 2011 and subsequent years.
4. Easement(s), building line(s) and restriction(s) as shown on recorded maps. (All lots)
5. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including release of damages, are not insured herein. (All Lots)
6. Declaration of easements and Master Protective Covenants for Chelsea Park appearing of record in Inst. No. 2004-566950 (All lots) Inst. No. 2004-59079; Inst. No. 2005-5620 and Inst. No. 2006-26385 (Lots 1-88 and 1-94; 1-91A and 1-92A) Inst. No. 2005-56408 and Inst. No. 2004-56695 (Lots 1-28 thru 1-44, 1-46, 1-47 and 1-51) Inst. No. 2005-56411 and Inst. No. 2004-56695 (Lots 1-105, 1-106, 1-108, 1-133 thru 1-140) Inst. No. 2004-56695 and Inst. No. 2005-56411 (Lots 1-109A thru 1-113A) Inst. No. 2004-56695; Inst. No. 2005-195430 and Inst. No. 2005-65974 (Lots 4-4, 4-15, 4-96, 4-101, 4-102, 4-107, 4-109 and 4-111) Inst. No. 2004-56695 and Inst. No. 2006-351160 (Lots 6-2 thru 6-4, 6-78 thru 6-82, 6-92 thru 6-96, 6-98 thru 6-101, 6-127 and 6-128) Inst. No. 2004-56695 and Inst. No. 2006-351160 (Lot 6-52) and all covenants, conditions, restrictions and liens for assessments contained therein.
7. Right-of-way granted to Bellsouth Telecommunications recorded in Inst. No. 2005-496730. (Lots 1-188 and 1-94; 1-91A and 1-92A)
8. Notice of final assessments by the Chelsea Park Improvement District One as recorded in Inst. No. 20050209000066520; District Two recorded in Inst. No. 20050209000065530 and District Three recorded in Inst. No. 20050209000065540.
9. Easement to Town of Chelsea as recorded in Inst. No. 20040107000012460.
10. Certificate of Incorporation of The Chelsea Park Cooperative District as recorded in Inst. No. 20050714000353260.
11. Covenants, conditions, restrictions, liens and assessments set forth in the Chelsea Park Improvements District One Articles of Incorporation as recorded in Inst. No. 20041223000699620.
12. Supplemental Declaration and amendment to Declaration of Covenants for Chelsea Park First Sector Phase 3 and 4 as recorded in Inst. No. 20060605000263850.
13. Declaration of Restrictive Covenants as set out in Inst. No. 20030815000539670 and Inst. No. 20051222000659740.
14. Conservation Easement and Declaration of Restrictions and Covenants as recorded in Inst. No. 20031222000822880; Inst. No. 20041228000703980 and Inst. No. 20041228000703990.
15. Easement Agreement between Chelsea Park Investments, Ltd., Chelsea Park, Inc. and Chelsea Park Properties, Ltd., as set forth in Inst. No. 20040816000457750.
16. This item intentionally deleted.



17. Restrictive Covenants and grant of land easements to Alabama Power Company recorded in Inst. No. 2005020300056190 (Sectors 2, 3 and 4) Inst. No. 2005020300056200 (Sector I Phase I), Inst. No. 200501031000564080 (Sector I Phase III), Inst No. 20060828000422540 (Sector 6 Phase I) and Inst No. 20060630000314940.
18. Release from damages as recorded in Inst. No. 20060424000189000 and Inst No. 20060720000351150.
19. Easement to Level 3 Communications, LLC recorded in Inst. No. 2000-0007 and Inst. No. 2000-0671.
20. Easement to Colonial Pipeline Company recorded in Deed Book 283, Page 716 and Deed Book 253, Page 324.
21. Easements, covenants, conditions, restrictions and reservations and agreements recorded in Inst. No. 20040816000457750.
22. Notice of Final Assessment of Real Property as recorded in Inst. NO. 20050209000065530.
23. Covenants, conditions, restrictions, liens and assessments set forth in the Chelsea Park Improvements District Two Articles of Incorporation as recorded in Inst. No. 20041223000699630.
24. Declaration of Easements and Master Protective Covenants for Chelsea Park, a Residential Subdivision, as set out in instrument recorded in Inst. No. 20041014000566950 in the Probate Office of Shelby County, Alabama, along with Articles of Incorporation of Chelsea Park Residential Association, Inc. as recorded in Instrument No. 200413 at Page 8336, in the Probate Office of Jefferson County, Alabama and By-Laws thereof, along with Declaration of Covenants, Conditions and Restrictions for Chelsea Park 9th Sector, as recorded in Instrument No. 20051229000659740 and Instrument No. 20060920000468120, in said Probate Office.
25. Declaration of Restrictive Covenants as recorded in Instrument No. 20030815000539670 in said Probate Office.
26. Right of way granted to Alabama Power Company as set forth in Instrument No. 20060630000314940; Instrument No. 20050203000056210 and Instrument No. 20060828000422650 in said Probate Office.
27. Covenants, releasing predecessor in title from any liability arising from sinkholes, limestone formations, soil conditions or any other known or unknown surface or subsurface conditions that may now or hereafter exist or occur or cause damage to subject property, as shown by instruments recorded in Instrument No. 20061229000634390 in said Probate Office.


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EXHIBIT C**Surviving Non-Participated Loans**

The Chelsea District Three Loan, the Obligations to Repay the Chelsea Park Cooperative District Letter of Credit, the Obligations to Repay the Eddleman Letters of Credit and the Highland Lakes Community Lot Holding Line of Credit, as described below, are collectively referred to herein as the "**Surviving Non-Participated Loans**".

1. **The Chelsea District Three Loan.** Loan from Compass Mortgage Corporation ("CMC"), an Alabama corporation and a subsidiary of Compass Bank, in the original principal amount of \$5,000,000.00 to The Chelsea Park Improvement District Three ("**Chelsea District Three**" – such loan, as amended from time to time, the "**Chelsea District Three Loan**"), as evidenced by the Bond of Chelsea District Three in such amount dated February 16, 2009, as amended and restated by the Temporary Special Assessment Revenue Note dated December 30, 2010 from Chelsea District Three to CMC (the "**Chelsea District Three Note**"), made available pursuant to Bond Repayment Agreement between CMC and Chelsea Park Development, Inc., as amended and restated by the Amended and Restated Note Repayment Agreement dated December 30, 2010, and subject to the term and conditions of the Indenture (and Supplements thereto), as amended and restated by Amended and Restated Financing Agreement dated December 30, 2010, and Amended and Restated Supplement to Financing Agreement dated December 30, 2010, both between Chelsea District Three and CMC, and secured by, among other collateral, (i) a Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement from Chelsea District Three to CMC recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20090218000058220, as amended at Instrument No. 20100106000004980 (as amended from time to time, the "**Chelsea District Three Mortgage**") regarding real property located in Shelby County, Alabama, (ii) a Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement from Chelsea Park Development, Inc. to CMC recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20090218000058210, as amended at Instrument No. 20100106000004970, (as amended from time to time, the "**Chelsea Park Development Three Mortgage**") regarding real property located in Shelby County, Alabama, and (iii) a Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement from Chelsea Park Lands, Ltd. to CMC recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20090218000058200, as amended at Instrument No. 2100106000004960 (as amended from time to time, the "**Chelsea Park Lands Three Mortgage**") regarding real property located in Shelby County, Alabama. **THE SECURED INDEBTEDNESS REMAINS UNCHANGED IN AMOUNT AND TIME OF MATURITY.**



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2. **The Obligations to Repay the Chelsea Park Cooperative District Letter of Credit.** In connection with and to secure Bonds issued by The Chelsea Park Cooperative District in the principal amount of \$15,403,833.33 (as amended from time to time, the "**Chelsea Park Cooperative District Bonds**"), Compass Bank issued its Irrevocable Direct Pay Letter of Credit No. S27384C in the same amount dated August 25, 2005 (as amended from time to time, the "**Chelsea Park Cooperative District Letter of Credit**"), such Chelsea Park Cooperative District Letter of Credit being issued pursuant to a Letter of Credit Reimbursement Agreement dated as of August 1, 2005 among Compass, The Chelsea Park Cooperative District, William Thornton, III, Douglass D. Eddleman and Billy D. Eddleman (the "**Chelsea Park Cooperative L/C Reimbursement Agreement**"), and secured by, among other collateral, the second Mortgage, Assignment of Leases and Security Agreement from Chelsea Park Lands, Ltd., recorded at Instrument No. 20050826000442250 1/24 in the Probate Office of Shelby County, Alabama, as amended and reaffirmed at Instrument No. 20100413000112900 1/3, and as further amended at Instrument No. 20110915000274060 (as amended from time to time, the "**Chelsea Park Cooperative District Mortgage**"). **THE SECURED INDEBTEDNESS REMAINS UNCHANGED IN AMOUNT AND TIME OF MATURITY.**
3. **The Obligations to Repay the Eddleman Letters of Credit.** In connection with various real estate projects, Compass Bank has issued letters of credit with an unfunded commitment of \$1,492,531.00 as set forth on Exhibit A to that certain Settlement Agreement dated June 22, 2011 among Compass Bank, Compass Mortgage Corporation and other parties (as amended from time to time, the "**Eddleman Letters of Credit**"), each such Eddleman Letter of Credit being issued pursuant to an Application for Standby Letter of Credit (individually an "**Eddleman Letter of Credit Application**" and collectively, the "**Eddleman Letters of Credit Applications**"), the obligations of the obligors under such Eddleman Letters of Credit Applications being secured by Amendment to Mortgage recorded in the Probate Office of Shelby County, Alabama at Instrument No. 20110915000274070. **THE SECURED INDEBTEDNESS REMAINS UNCHANGED IN AMOUNT AND TIME OF MATURITY.**
4. **Highland Lakes Community Lot Holding Line of Credit.** Compass Bank made a \$4,400,000 line of credit for lot holding purposes to Highland Lakes Community, Inc. (as amended from time to time, the "**Highland Lakes Community Lot Holding Line of Credit**"), as evidenced by the Promissory Note of Highland Lakes Community, Inc. in such amount dated November 5, 2001 (as amended from time to time, the "**Highland Lakes Community Lot Holding Note**"), and secured by, among other collateral, a Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement from Eddleman Properties, Inc. (now known as Highland Lakes Community, Inc.), recorded at Instrument No. 2001-50614 in the Probate Office of Shelby County, Alabama, as

amended by Amendment to Mortgage recorded in the Probate Office of Shelby County, Alabama at Instrument No. 20110915000274070. (as amended from time to time, the "Highland Lakes Community Lot Holding Mortgage"). **THE SECURED INDEBTEDNESS REMAINS UNCHANGED IN AMOUNT AND TIME OF MATURITY.**

Chelsea Deficiency Note

Promissory Note from Chelsea Park Holding, LLC to Compass Mortgage Corporation in an amount not to exceed \$2,800,000.00, given to secure certain obligations of Chelsea Park Holding, LLC to Compass Mortgage Corporation, as secured by that certain mortgage from Chelsea Park Holding, LLC to Compass Mortgage Corporation on real property located in Shelby County, Alabama, and recorded in the Probate Office of Shelby County, Alabama at Instrument No. 20110915000274080. **THE SECURED INDEBTEDNESS REMAINS UNCHANGED IN AMOUNT AND TIME OF MATURITY.**


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