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Shelby Cnty Judge of Probate, AL  
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(205) 251-3000

**The State of Alabama**

**Shelby County**

**MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "**Mortgage**"), made as of November 30, 2011, between CHELSEA PARK 4G INVESTMENT GROUP, LLC an Alabama Limited Liability Company (herein called "**Mortgagor**"), Mortgagor, whose address is 5318 Meadowlark Lane, Birmingham, AL 35242, and CHELSEA PARK HOLDING, LLC, an Alabama limited liability company (hereinafter called the "**Mortgagee**"), Mortgagee, whose address is 2700 U.S. Highway 280, Birmingham, Alabama 35223, Attention: Douglas D. Eddleman, Managing Member.

**WITNESSETH:**

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of ONE MILLION FIFTY-FOUR THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,054,500.00), evidenced by a certain Promissory Note of even date herewith, payable to Mortgagee with interest thereon (said Note, as the same may hereafter be renewed, extended or modified, being herein called the "**Note**").

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, including future advances up to such principal sum, with the interest thereon, and any extensions or renewals of same, and further to secure all other indebtedness, fees, premiums (if any), charges, and expenses from time to time owing to Mortgagee pursuant to the Note, this Mortgage or any other document or instrument delivered to Mortgagee by Mortgagor in connection therewith (each, a "**Loan Document**") and to secure any future indebtedness or obligation of Mortgagor to Mortgagee, and further to secure the performance of the covenants, conditions, and agreements hereinafter set forth, set forth in the Loan Documents, have bargained and sold and do hereby grant, bargain, sell, alien, and convey unto the Mortgagee, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by the Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "**Mortgaged Property**") to-wit:

THIS IS A PURCHASE MONEY MORTGAGE.

(a) All the tract(s) or parcel(s) of land particularly described in Exhibit A attached hereto and made a part hereof.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in Exhibit A, and all fixtures, machinery, equipment, furniture, furnishings, inventory and personal property of every nature whatsoever now or hereafter owned by the Mortgagor and located in, on, or 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 and replacements to any of the foregoing.

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of being used or useful in connection with the improvements located or to be located on the property described in Exhibit A, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said property or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements.

(d) All licenses, franchises, permits, general intangibles, accounts, trade names, trademarks, contract rights, certificates of need, health care insurance receivables and other intangible property, now owned or hereafter acquired, relating to the development or operation of the foregoing real property or the business now or hereafter conducted thereat, it being agreed that the same may not be transferred to other real estate without the Mortgagee's prior written consent; provided, however, nothing herein shall be deemed to constitute a grant or pledge of any interest in the Mortgagor's "doing business as" trade name.

(e) any and all Developer and similar rights in and to the Mortgaged Property.

(f) Proceeds and products of all of the foregoing real and personal property.

To the fullest extent permitted by applicable law, all of the foregoing shall be deemed a part of the real property and may be foreclosed upon and sold upon an Event of Default in accordance with the laws relating to mortgages of real estate.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, oil, gas, minerals, sand, gravel and mining or drilling rights and royalties, and all estates, 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 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 Mortgagor of, in and to the same, including but not limited to:

(i) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Mortgagor, however, so long as Mortgagor is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and

(ii) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Mortgagee hereby is authorized on behalf and in the name of Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Mortgagee may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on 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.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Mortgagee the principal and interest and other indebtedness payable in respect to the Note, this Mortgage and any other Loan Document and any additional indebtedness or obligation of Mortgagor to Mortgagee hereafter incurred, 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 Mortgagor, and shall keep, perform, and observe all and singular the covenants and promises in the Note in this Mortgage and in any other Loan Document expressed to be kept, performed, and observed by and on the part of the Mortgagor, all without fraud or delay, then (i) this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void; and (ii) the Property shall be released from the Prior Mortgage (as defined in Section 1.15 hereof).

AND the Mortgagor covenants and agrees with the Mortgagee as follows:

## ARTICLE 1

Section 1.01 Payment and Performance of Note, Mortgage and other Loan Documents. The Mortgagor will perform, observe and comply with all provisions hereof, of the Note secured

hereby, and duly and punctually will pay to the Mortgagee the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage, the other Loan Documents and any other indebtedness from time to time owing by Mortgagor to Mortgagee, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

Section 1.02 Warranty of Title. The Mortgagor is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except for current year's taxes and improvement district assessments not yet due, the Prior Mortgage, and easements and restrictions of record (the "**Permitted Encumbrances**"), the same is free and clear of all 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 Mortgagor shall and will warrant and forever defend the title thereto unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

Section 1.03 [Intentionally omitted]

Section 1.04 Other Taxes, Utilities and Liens.

(a) The Mortgagor will pay promptly, when and as due, and, upon request by Mortgagee, will exhibit promptly to the Mortgagee receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines 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 interest of the Mortgagee in the Mortgaged Property, this Mortgage, the Note or any other Loan Document, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Mortgagor or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

(b) The Mortgagor will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) The Mortgagor shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property, unless arrangements satisfactory to Mortgagee are made with respect thereto.

Section 1.05 Insurance. The Mortgagor will maintain and provide evidence to Mortgagee of general liability insurance acceptable to Mortgagee and shall name Mortgagee as an additional insured thereunder. The form of such policies and the companies issuing them shall be acceptable to the Mortgagee. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Mortgagee shall be delivered to the Mortgagee. The

Mortgagor shall deliver to the Mortgagee receipts evidencing the payment of all such insurance policies and renewals.

Section 1.06 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 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 Mortgagee become immediately due and payable. The Mortgagee shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings 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 Mortgagor to the Mortgagee, who, after deducting therefrom all its expenses, including attorney's 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 Mortgagee shall determine to the reduction of the sums secured hereby, whether then matured or to mature in the future, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Mortgagee may require.

Section 1.07 Care of the Property.

(a) The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will 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) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Mortgagor will give immediate written notice of the same to the Mortgagee.

(c) The Mortgagee is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(d) The Mortgagor will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters, and with all present and future restrictive covenants affecting the Mortgaged Property.

(e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Mortgagor will restore promptly the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Mortgagor will restore promptly, repair or alter the remaining property in a manner satisfactory to the Mortgagee.

Section 1.08 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Mortgagee 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 Mortgagee any and all such other and further mortgages, instruments of further assurance, certificates, financing statements and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Mortgagor under the Note, this Mortgage and any other Loan Document, and the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor so to do, the Mortgagee may make, execute, and record any and all such mortgages, instruments, certificates, financing statements and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and attorney-in-fact of the Mortgagor so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

Section 1.09 Leases Affecting Mortgaged Property. All leases now or hereafter entered into must be approved by Mortgagee in advance of Mortgagor becoming obligated upon any such leases. If requested by the Mortgagee, the Mortgagor will execute one or more separate assignments to the Mortgagee of any and all such leases, whether now existing or hereafter created, and all rents, royalties, issues, and profits of the Mortgaged Property from time to time accruing.

Section 1.10 Appraisals. At the Mortgagee's request if required by Mortgagee's lender, Mortgagor will permit the Mortgagee, or its agents, employees or independent contractors, to enter upon and appraise the Mortgaged Property at Mortgagee's expense at any time and from time to time, and Mortgagor will cooperate with and provide any information requested in connection with such appraisals.

Section 1.11 Expenses. The Mortgagor will pay or reimburse the Mortgagee for all reasonable attorney's fees, costs, and expenses incurred by the Mortgagee in any proceeding commenced by Mortgagee following the occurrence of an Event of Default, and any such amounts paid by the Mortgagee shall bear interest at the applicable interest rate then borne by the Note, shall be payable upon demand, and shall be secured by the lien of this Mortgage.

Section 1.12 Performance by Mortgagee of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this Mortgage, then the Mortgagee, at its option, may perform or observe the same, and all payments made for costs or incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at a rate equal to the applicable interest rate then borne by

the Note. The Mortgagee is hereby 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 Mortgagor or any person in possession holding under the Mortgagor.

Section 1.13 Books and Records. The Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of any operation or leasing of the Mortgaged Property.

Section 1.14 Estoppel Affidavits. The Mortgagor within twenty (20) days after written request from the Mortgagee shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest.

Section 1.15 Prior Mortgage. It is understood and agreed that the Mortgaged Property is subject to a prior mortgage and security interest given by Mortgagee to Compass Bank to secure the obligations of Mortgagee, which mortgage is more particularly described as the mortgage given by Chelsea Park Holding, LLC to BBVA Compass Bank ("**Compass**") dated September 9, 2011, recorded as Instrument 20110919000277470 and 20110919000277500 in the Probate Office of Shelby County, Alabama (the "**Prior Mortgage**"). With respect to the Prior Mortgage, Mortgagor and Mortgagee agree as follows:

(a) The Mortgagor will pay directly to the Mortgagee, its successors and assigns, the installments of principal and interest required by the Note and will not make any payment whatsoever directly to the holder of the Prior Mortgage or request any release, partial release, amendment or other modification of the Prior Mortgage without the prior written consent of the Mortgagee, its successors and assigns. In consideration of the execution and delivery of the Note, the Mortgagee agrees with the Mortgagor to pay the installments of principal and interest as the same become due under the Prior Mortgage, and that Mortgagee shall apply payments made by Mortgagor pursuant to Section 3.09 hereof directly to Compass in payment on the indebtedness secured by the Prior Mortgage for the release of property from the Prior Mortgage in accordance the Settlement Agreement among Mortgagee, Compass and other parties, dated June 22, 2011, until the Prior Mortgage is fully satisfied and the Property is released therefrom. Upon the receipt of the Release Price for a Lot pursuant to Section 3.09 hereof, the Mortgagee, at Mortgagee's expense, shall deliver to the Mortgagor a partial release executed by Compass releasing the Lot from the Prior Mortgage or in the alternative, a title insurance policy or endorsement to Mortgagor's title insurance policy insuring the Lot free and clear of the Prior Mortgage. Not less than five (5) business days prior to the payment of the Release Price, Mortgagor shall provide the Mortgagee notice designating the Lot(s) to be released upon payment of the Release Price(s).

(b) The references contained in this Mortgage to the obligations of the Mortgagor or Mortgagee (now existing or hereafter arising) to pay any sum or sums owing on the Prior Mortgage will not constitute an assumption of personal liability for any such payment or the agreement by the Mortgagor or Mortgagee as between the Mortgagor or Mortgagee and any holder of the Prior Mortgage to make payment of any such sums. The sole purpose for such provisions in this Mortgage and the sole benefits and burdens derived hereunder will be as

between the Mortgagor and Mortgagee only, and will not in any way modify the obligations of the Mortgagor or Mortgagee under any written or oral agreement with the holder of the Prior Mortgage.

## ARTICLE 2

Section 2.01 Event of Default. The term "Event of Default," wherever used in the Mortgage, shall mean any one or more of the following events:

(a) Failure by the Mortgagor to pay as and when due and payable any principal, interest or other indebtedness secured hereby, including, but not limited to, payments from time to time due under the Note, this Mortgage or any other Loan Document and such failure continues for thirty (30) days or more after written notice to Mortgagor in the manner set forth herein; or

(b) Failure by the Mortgagor duly to observe any other covenant, condition, or agreement of the Note, this Mortgage or any other Loan Document, or any other document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby, which failure continues for thirty (30) days or more after written notice to Mortgagor in the manner set forth herein; or

(c) The sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein other than as permitted under Section 3.11 hereof; or

(d) Unless the written consent of the Mortgagee is first obtained, which consent may be granted or refused by the Mortgagee in its sole discretion, the creation or suffering to exist by the Mortgagor of any lien or encumbrance on the Mortgaged Property, other than the lien of this Mortgage, the lien for ad valorem taxes not then delinquent, and Permitted Encumbrances, if any, and the failure to remove such lien or encumbrance within thirty (30) days or more after written notice to Mortgagor in the manner set forth herein; or

(e) Unless the written consent of the Mortgagee is first obtained, which consent may be granted or refused by the Mortgagee in its sole discretion, in the event the Mortgagor is a partnership, corporation, limited liability company or joint venture, the sale or other transfer by any partner, shareholder, member, manager or venturer (or any partner, shareholder, member, manager or venturer of such entity which is itself a partner, shareholder, member, manager or venturer in such Mortgagor) of any interest in such Mortgagor (or any such entity), other than as permitted under Section 3.11 hereof; or

(f) Any representation or warranty provided herein, in any document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby or in any document, instrument, financial statement or other material given or provided by or on behalf of Mortgagor in connection with the indebtedness secured hereby, is false or materially misleading at the time given or provided or thereafter becomes untrue in any material respect; or

(g) any "Event of Default" (as defined in the Note or any other Loan Document) occurs.

Notwithstanding anything herein, any requirement of notice specified above shall be deemed deleted if Mortgagee is prevented from giving notice by bankruptcy or other applicable law, and the cure period shall be measured from the date of the event or failure rather than from the date of notice. Nothing herein shall require notice except where expressly set forth.

Section 2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

Section 2.03 Right of Mortgagee to Enter and Take Possession.

(a) If an Event of Default shall have occurred, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession, and if and to the extent permitted by law, the Mortgagee may enter and take possession, of all the Mortgaged Property, and may exclude the Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Mortgagee may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, 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 insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor in Mortgagor's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be to its best advantage; and the Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this Mortgage as the Mortgagee may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Mortgagee; shall apply the remainder of the moneys so received by the Mortgagee to the payment of accrued interest, to the payment of tax and insurance, and to the payment of overdue installments of principal, all in such order and priority as the Mortgagee may determine.

(c) Whenever all such Events of Default have been cured and satisfied, the Mortgagee may, at its option, surrender possession of the Mortgaged Property to the Mortgagor,



its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

Section 2.04 Receiver.

(a) If an Event of Default shall have occurred, the Mortgagee, 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, and revenues thereof.

(b) The Mortgagor will pay to the Mortgagee upon demand all expenses, including receiver's fees, attorney's fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section; and all such expenses shall be secured by this Mortgage.

Section 2.05 Power of Sale. If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Mortgagee may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor, and apply all or any part of the indebtedness secured hereby as a credit against the purchase price. 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 Mortgagee may elect.

Section 2.06 Application of Foreclosure Proceeds. The proceeds of any foreclosure sale pursuant to Section 2.06 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon at a rate equal to the applicable interest rate then borne by the Note, which Mortgagee 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;

(c) Third, to the payment and satisfaction of the indebtedness secured hereby, including interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the persons or entities entitled to such balance under applicable law after deducting any expense of ascertaining who is so entitled to such balance.

Section 2.07 Mortgagee's Option on Foreclosure. At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee 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 its rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

Section 2.08 Waiver of Exemption. 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.

Section 2.09 Suits to Protect the Mortgaged Property. The Mortgagee 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 any 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 Mortgagee.

Section 2.10 Delay or Omission No Waiver. No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power, or remedy accruing upon any default or Event of Default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default or Event of Default, or acquiescence therein; and every right, power, and remedy given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

Section 2.11 No Waiver of One Default to Affect Another, etc. No waiver of any default or Event of Default hereunder shall extend to or shall affect any subsequent or any other then existing default or Event of Default or shall impair any rights, powers, or remedies consequent thereon. If the Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note, this Mortgage or any other Loan Document; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage, any

other Loan Document or otherwise of the Mortgagor 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 Mortgagee 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 Mortgagee, shall the lien 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 Mortgagee, at its option, without notice to any person or corporation 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, 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.

Section 2.12 Discontinuance of Proceedings - Position of Parties, Restored. In case the Mortgagee 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 Mortgagee, then and in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of the Mortgagee shall continue as if no such proceeding has been taken.

### ARTICLE 3

Section 3.01 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagor or by or on behalf of Mortgagee shall bind and inure to the benefit of its respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

Section 3.02 Headings, etc. 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.

Section 3.03 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms, or provisions contained in this Mortgage, in the Note or in any other Loan Document shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein and in the Note shall in no way be affected, prejudiced, or disturbed thereby.

Section 3.04 Lien on Personal Property. This Mortgage creates a lien on and grants a security interest in the personal property of the Mortgagor described herein which constitutes part of the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens upon and security interests in

personal property. Mortgagor covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Mortgagee shall require from time to time with respect to such personal property. This Mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code with Mortgagor as the "debtor" and Mortgagee as the "secured party," and their respective addresses are set forth in the heading to this instrument. If an Event of Default occurs, the Mortgagee shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code or other law applicable to liens upon and security interests in personal property.

Section 3.05 Environmental Matters. Mortgagor represents and warrants to Mortgagee that, to Mortgagor's knowledge, neither the Mortgaged Property nor Mortgagor is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any remedial obligations under any applicable laws, rules or regulations pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), and the Resource Conservation and Recovery Act of 1976, as amended ("**RCRA**"), and Mortgagor further represents and warrants that there are no facts, conditions or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions and circumstances, if any, were fully disclosed to the applicable governmental authority. Mortgagor represents and warrants that it will obtain (to the extent it is required to obtain) any permits, licenses, or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment in connection with the Mortgaged Property or improvements constructed or to be constructed by reason of any environmental laws, rules or regulations. Mortgagor represents and warrants that it will not in its use of the Mortgaged Property dispose of or release oil, toxic or hazardous substances or solid wastes on the Mortgaged Property (the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal," "dispose" or "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein). Notwithstanding anything to the contrary herein, Mortgagor shall indemnify and hold Mortgagee harmless from and against any fines, charges, expenses, fees, attorney fees and costs incurred by Mortgagee in the event the Mortgagor or the Mortgaged Property (whether or not due to any fault of Mortgagor) is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto, by virtue of a violation that occurred after the date Mortgagor acquired the Mortgaged Property, and this indemnity shall survive any foreclosure or deed in lieu of foreclosure or payment of the indebtedness secured hereby.

Section 3.06 Notices. Any and all notices, elections or demands permitted or required to be made under this Mortgage, the Note, any Loan Document or any other agreement executed in connection with or relating to Mortgage, the Note, or any other Loan Document, or by applicable law, shall be given and be deemed effective (a) on the date delivered in person, (b) three (3) days following the date deposited with the U.S. Mail, certified or registered, postage prepaid, return receipt requested, or (c) one (1) business day following the date sent by Federal Express or other national overnight carrier, and addressed in each such case to the parties at their respective addresses set forth in the heading of this instrument or such other single address as

either party may designate in a written notice given as herein provided (except that a change of address notice shall not be effective until actual receipt).

Section 3.07 Additional Representations, Warranties and Covenants. Mortgagor represents, warrants and covenants to Mortgagee, knowing that Mortgagee will rely on such representations, warranties and covenants as incentive to extend credit to Mortgagor, that:

(a) Mortgagor is a duly organized and existing limited liability company having full power and authority to consummate the transactions contemplated by this Mortgage, and the execution, delivery and performance of this Mortgage, the Note, any other Loan Document and the documents executed in connection herewith have been duly authorized by all necessary company action.

(b) There are no actions, suits, or proceedings pending or, to the best of Mortgagor's knowledge, threatened, which might adversely affect the financial condition of Mortgagor or any guarantor of the Note or which might impair the value of any collateral taken or to be taken by Mortgagee in connection with this transaction. Mortgagor is not in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on such Mortgagor's business or assets, and Mortgagor is not in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Mortgagor is subject. Neither the execution and performance of this Mortgage, the Note, any Loan Document, or any other document executed in connection herewith by Mortgagor will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Mortgagor.

(c) All documents furnished to Mortgagee by or on behalf of Mortgagor as part of or in support of any request for an extension of credit are true, correct, complete and accurately represent the matters to which they pertain.

(d) Mortgagor agrees to provide on an ongoing basis such financial information as Mortgagee and/or Compass Bank shall reasonably request.

(e) If requested in writing by Mortgagee, Mortgagor shall provide a detailed listing of Lots previously released, Lots remaining as collateral and any contract(s) for the sale of any Lot(s) pending as of such reporting date.

Section 3.08 Non-Recourse Debt. Anything in the Note or in any other instrument or agreement by which it is secured to the contrary notwithstanding, neither Mortgagor or any of its officers, directors, members, stockholders or employees shall have any personal liability for the payment of any principal, interest or other amounts under the Note or due under or secured by this Mortgage or for the performance or observance of any covenants, agreements or obligations of Mortgagor under the Note or this Mortgage. Mortgagee shall have resort only to the Mortgaged Property and shall have no right to any deficiency judgment, attachment, execution or other writ or process against or upon Mortgagor or any of its officers, directors, members, stockholders or employees or against or upon any other assets, properties or funds of Mortgagor or any of its officers, directors, members, stockholders or employees other than the Mortgaged

Property. Notwithstanding the foregoing, nothing herein shall be deemed to limit or otherwise restrict Mortgagee's right to pursue Mortgagor, the Mortgaged Property and/or any other assets of Mortgagor as a result of any loss and/or damage to Mortgagee resulting from waste, conversion, misapplication of sales, insurance and/or condemnation proceeds and/or any transfer of any interest in the Mortgaged Property not expressly permitted in Section 3.11 hereof.

Section 3.09 Release of Lots/Record Map.

(a) The Mortgaged Property includes but is not limited to (i) 31 developed lots (each a "Lot" and collectively, the "Lots") in the 6th Sector of Chelsea Park, Shelby County, Alabama, as more particularly itemized on the attached Exhibit A, said Lots being more particularly set forth and described on that certain plat recorded in Map Book 37, Page 13, Map Book 42, Page 1, and Map Book 42, Page 119 and Map Book 42, Page 120, in the Probate Office of Shelby County, Alabama (the "Recorded Lots"), and (ii) the land described as Parcel I and Parcel II on Exhibit A that is proposed to be subdivided into 26 residential lots as part of the 6th Sector of Chelsea Park (the "Unrecorded Lots"). The Recorded Lots and Unrecorded Lots are collectively referred to as the "Lots" and separately as a "Lot." Upon the sale of any one or more of the Lots by Mortgagor, and provided no Event of Default has occurred, Mortgagee agrees to release such Lot(s) by partial release of lien documents executed in recordable form upon the payment of an amount equal to \$18,500 times the total of such Release Lot(s) (the "Base Release Price") plus interest on the Base Release Price from the date of this Mortgage through the date of the closing of the Release Lot(s) at the Interest Rate the accruing under the Note (together with the Base Release Price, the "Release Price"). In the event Mortgagor fails to meet the Development Benchmark (as defined in the Note) for any applicable calendar quarter and/or year, Mortgagor shall be entitled to cure such failure by paying, on or before the date such Development Benchmark was to have been met, from its separate funds, an amount equal to the Release Price that otherwise would have been collected in the event the Development Benchmarks had been met through the sale and/or refinance of Lot(s). In the event Mortgagor cures any such failure to satisfy the Development Benchmark in the manner set forth in the immediately preceding sentence, Mortgagee agrees to release a corresponding number of Lots as though such Lots were sold and/or refinanced in accordance with the Development Benchmark, with the specific released Lots to be designated by Mortgagor in writing at the time the cure is tendered to Mortgagee.

(b) Mortgagor hereby acknowledges and agrees that, as of the date of this Mortgage, the Unrecorded Lots have not been platted as of the date of this Agreement and are included in the legal description of the Mortgaged Property attached as Exhibit A hereto. Mortgagee hereby agrees to cooperate in good faith to cause such plat or plats to be filed of record from time to time as Unrecorded Lots are released.

Section 3.10 Collateral/Collateral Assignment. Mortgagor acknowledges that Mortgagee's interest in this Mortgage and the other Loan Documents and payments due hereunder and



  
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**EXHIBIT A**

**Legal Description of Mortgaged Property**

**Recorded Lots**

Lots 6-4, 6-78, 6-79, 6-80, 6-92, 6-93, 6-98, 6-99, 6-100, 6-101, 6-127, 6-129, 6-130, 6-131, 6-132, 6-133, and 6-134, according to the Survey of Chelsea Park 6<sup>th</sup> Sector, as recorded in Map Book 37, Page 13, in the Probate Office of Shelby County, Alabama.

Lots 6-52, according to the Survey of Chelsea Park 6<sup>th</sup> Sector, Third Addition, as recorded in Map Book, 42, Page 1, in the Probate Office of Shelby County, Alabama.

Lots 6-39, 6-40, 6-41, 6-42, 6-43, 6-44, 6-45, 6-46, 6-47, 6-48, 6-49, 6-50 and 6-51, according to the Survey of Chelsea Park 6<sup>th</sup> Sector, Fourth Addition, as recorded in Map Book 42, Page 119, in the Probate Office of Shelby County, Alabama.

Together with following described parcels of land identified as Parcels I and II:



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Parcel I

LEGAL DESCRIPTION: PARCEL I

A TRACT OF LAND SITUATED IN THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 19 SOUTH, RANGE 1 EAST, SHELBY COUNTY, ALABAMA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF A COMMON AREA AND INGRESS/EGRESS EASEMENT, AND A POINT ON THE NORTH RIGHT-OF-WAY LINE OF FAIRVIEW LANE, ACCORDING TO THE SURVEY OF CHELSEA PARK 6<sup>TH</sup> SECTOR FORTH ADDITION, AS RECORDED IN MAP BOOK 42, PAGE 119, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; THENCE RUN NORTH 23°59'31" WEST FOR 82.82 FEET; THENCE RUN SOUTH 72°03'54" WEST FOR 86.97 FEET; THENCE RUN SOUTH 08°28'45" WEST FOR 116.83 FEET; THENCE RUN SOUTH 31°44'11" EAST FOR 93.25 FEET; THENCE RUN SOUTH 32°45'46" EAST FOR 38.96 FEET; THENCE RUN SOUTH 71°25'43" EAST FOR 47.08 FEET; THENCE RUN SOUTH 83°10'30" EAST FOR 81.23 FEET; THENCE RUN NORTH 63°26'16" EAST FOR 81.23 FEET; THENCE RUN NORTH 34°18'12" EAST FOR 41.76 FEET; THENCE RUN NORTH 46°06'14" EAST FOR 35.68 FEET; THENCE RUN NORTH 68°48'47" EAST FOR 43.07 FEET; THENCE RUN NORTH 81°37'21" EAST FOR 498.31 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF FAIRBANK WAY AND A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES NORTH 54°18'48" EAST, A RADIAL DISTANCE OF 525.00 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY, THROUGH A CENTRAL ANGLE OF 07°43'03", A DISTANCE OF 70.72 FEET TO A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 76°54'11"; THENCE RUN NORTHWESTERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY, A DISTANCE OF 33.56 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF FAIRVIEW LANE AND A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 200.00 FEET AND A CENTRAL ANGLE OF 06°29'41"; THENCE RUN WESTERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY, A DISTANCE OF 22.67 FEET; THENCE RUN SOUTH 81°37'21" WEST ALONG SAID ROAD RIGHT-OF-WAY FOR 512.21 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 83°37'14"; THENCE RUN SOUTHWESTERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY A DISTANCE OF 36.49 FEET TO A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 65.00 FEET AND A CENTRAL ANGLE OF 238°33'08"; THENCE RUN NORTHWESTERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY, A DISTANCE OF 270.63 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINING 85,441.11 SQUARE FEET OR 1.96 ACRES, MORE OR LESS.

**Parcel II**

LEGAL DESCRIPTION: PARCEL II

A TRACT OF LAND SITUATED IN THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 19 SOUTH, RANGE 1 EAST, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE MOST WESTERLY CORNER OF A COMMON AREA, AND A POINT ON THE NORTHEAST RIGHT-OF-WAY LINE OF FAIRBANK WAY, ACCORDING TO THE SURVEY OF CHELSEA PARK 6<sup>TH</sup> SECTOR COMMON AREA, AS RECORDED IN MAP BOOK 41, PAGE 113, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; THENCE RUN NORTH 48°51'51" EAST ALONG THE NORTHWEST LINE OF SAID COMMON AREA FOR 73.20 FEET; THENCE RUN NORTH 42°18'05" EAST ALONG THE NORTHWEST LINE OF SAID COMMON AREA FOR 126.00 FEET; THENCE RUN NORTH 63°11'04" EAST ALONG THE NORTHWEST LINE OF SAID COMMON AREA FOR 44.95 FEET; THENCE RUN NORTH 65°54'32" EAST ALONG THE NORTHWEST LINE OF SAID COMMON AREA FOR 50.42 FEET; THENCE RUN NORTH 29°54'17" EAST FOR 87.23 FEET; THENCE RUN NORTH 77°59'58" WEST FOR 86.87 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF FAIRVIEW LANE AND A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES NORTH 77°59'58" WEST, A RADIAL DISTANCE OF 55.00 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY, THROUGH A CENTRAL ANGLE OF 81°37'08", A DISTANCE OF 78.35 FEET TO A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 51°19'04"; THENCE RUN WESTERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY, A DISTANCE OF 22.39 FEET; THENCE RUN SOUTH 42°18'05" WEST ALONG SAID ROAD RIGHT-OF-WAY FOR 170.15 FEET TO A TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES NORTH 47°41'56" WEST, A RADIAL DISTANCE OF 200.00 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY, THROUGH A CENTRAL ANGLE OF 07°08'50", A DISTANCE OF 24.95 FEET TO A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 77°28'28"; THENCE RUN SOUTHERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY, A DISTANCE OF 33.80 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF FAIRBANK WAY AND A COMPOUND CURVE TO THE LEFT HAVING A RADIUS OF 475.00 FEET AND A CENTRAL ANGLE OF 07°08'08"; THENCE RUN SOUTHEASTERLY ALONG THE ARC AND SAID ROAD RIGHT-OF-WAY, A DISTANCE OF 59.16 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINING 28,107.61 SQUARE FEET OR 0.65 ACRES, MORE OR LESS.