



20120209000048620 1/34 \$115.00
Shelby Cnty Judge of Probate, AL
02/09/2012 11:38:31 AM FILED/CERT

NOTE TO PROBATE JUDGE: This Mortgage and Security Agreement in favor of the Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, acting solely in its capacity as Administrator of the State of Alabama's HOME Investment Partnerships Program, is exempt from payment of mortgage recordation taxes in the State of Alabama by act of legislature codified at Ala. Code § 24-1A-12 (1992).

STATE OF ALABAMA

SHELBY COUNTY

THIS INSTRUMENT WAS PREPARED BY:
ALABAMA HOUSING FINANCE AUTHORITY
7460 HALCYON POINTE DRIVE, SUITE 200
MONTGOMERY, ALABAMA 36117

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT made and entered on February 8, 2012, by THE SHOALS MILL DEVELOPMENT, LTD., an Alabama limited partnership (hereinafter referred to as "Borrower"), to ALABAMA HOUSING FINANCE AUTHORITY, a public corporation and instrumentality of the State of Alabama, acting solely in its capacity as Administrator of the State of Alabama's HOME Investment Partnerships Program (hereinafter referred to as "Lender");

WITNESSETH:

KNOW ALL MEN BY THESE PRESENTS: THAT WHEREAS Borrower is justly indebted to Lender in the principal sum of ONE MILLION SIX HUNDRED FORTY-ONE THOUSAND ONE HUNDRED THIRTY AND NO/100 DOLLARS (\$1,641,130.00) with interest at the rate provided in that certain Promissory Note of even date herewith and payable as provided therein.

NOW THEREFORE, in order to secure the prompt payment of said Promissory Note when due and for and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, Borrower does hereby grant, bargain, sell, convey, mortgage, assign, transfer, pledge and set over unto Lender, and the successors and assigns of Lender, all of the following described land and interests in land, estates, easements, tenements, rights, improvements, property, fixtures, machinery, equipment, furniture, furnishings, appliances and appurtenances (hereinafter collectively referred to as the "Premises"):

(a) All that tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Land");

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, pipes, heaters, furnaces, engines and machinery, escalators, boilers, ranges, elevators, motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus (including, without limitation, humidity control equipment), refrigeration plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings, and storm sashes, alarm devices of any type, automatic sprinkler systems, carpet, cabinets and shelving, partitions, paneling, and wall covering, and windows of every type, which are or shall be attached to the Land or said buildings, structures, or improvements and all other fixtures, machinery, equipment, furniture, furnishings, appliances, vehicles, building supplies and materials, books and records, chattels, inventory, accounts, farm products, consumer goods, general intangible and personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, on, or about, or used or intended to be used with or in connection with the use, operations, or enjoyment of the Premises, including all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions or proceeds from a permitted sale of any

of the foregoing, and all right, title and interest of Borrower in any such fixtures, machinery, equipment, furniture, furnishings, appliances, vehicles and personal property subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by Borrower or on behalf of Borrower, all tradenames, trademarks, servicemarks, logos and goodwill which in any way now or hereafter belong, relate or appertain to the Premises or any part thereof or are now or hereafter acquired by Borrower; and all inventory, accounts, chattel paper, documents, equipment, fixtures, farm products, consumer goods and general intangibles constituting proceeds acquired with cash proceeds of any of the property described hereinabove, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage;

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, minerals, royalties, easements, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(d) All present and future income, rents, issues, profits and revenues of the Premises from time to time accruing (including, without limitation, all payments under leases or tenancies, unearned premiums on any insurance policy carried by Borrower for the benefit of Lender and/or the Premises, tenant security deposits, escrow funds and all awards or payments, including interest thereon and the right to receive same, growing out of or as a result of any exercise of the right of eminent domain, including the taking of any part or all of the Premises or payment for alteration of the grade of any street upon which said Premises abuts, or any other injury to, taking of or decrease in the value of, said Premises to the extent of all amounts which may be owing on the indebtedness secured by this Mortgage at the date of receipt of any such award or payment by Borrower, less the reasonable attorneys' fees, costs and disbursements incurred by Borrower in connection with the collection of such award or payment), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same; reserving only the right to Borrower to collect the same so long as Borrower is not in default hereunder; and

(e) All insurance policies, contracts, permits, licenses, plans or intangibles now or hereafter dealing with, affecting or concerning the Premises, including, without limitation, all rights accruing to Borrower from any and all contracts with all contractors, architects, engineers or subcontractors relating to the construction of improvements on or upon the Premises, including performance and/or materialmen's bonds and any other related choices;

TO HAVE AND TO HOLD the Premises and all parts, rights, members, and appurtenances thereof, to the use, benefit and behoof of Lender and the successors and assigns of Lender, IN FEE SIMPLE forever; and Borrower covenants that Borrower is lawfully seized and possessed in fee of the Premises as aforesaid, and has good right to convey and mortgage the same, that the same are unencumbered except as to those matters expressly set forth in Exhibit "B" attached hereto and incorporated herein by this reference (the "Permitted Exceptions"), and that Borrower does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Exceptions.

This instrument is given to secure the payment of the following described indebtedness (hereinafter referred to as the "Indebtedness"):

(a) The debt evidenced by that certain Promissory Note, a true and correct copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference (hereinafter referred to as the "Note"), together with any and all renewals, extensions, substitutions, modifications and consolidations of the indebtedness evidenced by the Note;

(b) Any and all additional advances made by Lender to protect or preserve the Premises or the security interest created hereby on the Premises, or for taxes, assessments or insurance premiums as hereinafter provided, or for performance of any of Borrower's obligations hereunder, or for any other purpose provided herein (whether or not the original Borrower remains the owner of the Premises at the time of such advances), provided, however, nothing herein shall be deemed to obligate Lender to make any such advances; and

(c) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, extensions, substitutions, modifications and consolidations thereof.

This Mortgage secures, in addition to the aforescribed Indebtedness, all obligations of Borrower under any other document, instrument or agreement now or hereafter evidencing, securing or otherwise relating to the Note secured hereby (the Note, this Mortgage, the Assignment of Leases and Rents of even date herewith, Alabama's HOME Investment Partnerships Program Agreement dated June 14, 2010, the Borrower's Closing Affidavit of even date herewith, the Environmental Risk Indemnity Agreement of even date herewith, Lender's loan commitment to Borrower dated June 14, 2010, accepted by Borrower on June 24, 2010, and any amendments thereto and any modifications thereof (the "Commitment") and all of such other documents, instruments and agreements being hereinafter sometimes referred to collectively as the "Loan Documents"), and all costs of collection, including reasonable attorneys' fees if collected by or through any attorney-at-law or under the advice thereof.

BUT THIS CONVEYANCE IS MADE UPON THE FOLLOWING CONDITIONS, NEVERTHELESS, that is to say: If Borrower shall pay or cause to be paid to Lender, its successors or assigns, the Indebtedness according to the conditions and agreements of the Note and of this Mortgage, and shall keep, perform and observe all of the covenants, obligations and agreements contained in the Loan Documents, all without delay, as required thereunder and hereunder, then this Mortgage shall cease and be null and void; otherwise this Mortgage shall remain in full force and effect.

Borrower hereby further covenants and agrees with Lender as follows:

ARTICLE 1

1.01 Payment of Indebtedness and Performance of Other Obligations. Borrower will pay the Note according to the tenor thereof and will pay all other sums now or hereafter secured hereby at the time and in the manner provided under the Note, this Mortgage, any instrument evidencing a future advance and any other instrument evidencing and/or securing the Indebtedness, and Borrower will otherwise perform, comply with and abide by each and every one of the stipulations, agreements, conditions, and covenants contained in the Note, this Mortgage and every other instrument evidencing and/or securing the Indebtedness.

1.02 Taxes, Liens and Other Charges.

(a) 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 security agreements or debts secured thereby or the manner of collecting taxes so as to affect Lender adversely, Borrower shall promptly pay any such tax on or before the due date thereof. If Borrower fails to make such prompt payment or if, in the opinion of Lender, any such state, federal, municipal or other governmental law, order, rule or regulation prohibits

Borrower from making such payment or would penalize Lender if Borrower makes such payment or if, in the opinion of Lender, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Indebtedness secured by this Mortgage and all accrued interest thereon shall, at the option of Lender, become immediately due and payable.

(b) Borrower shall pay, at least thirty (30) days before the due date thereof, all taxes, levies, license fees, permit fees, liens, judgments, assessments and all other expenses, fees and charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever now or hereafter levied, assessed, confirmed or imposed on, or with respect to, or which may be a lien upon, the Premises, or any part thereof, or any estate, right, or interest therein, or upon the rents, issues, income or profits thereof, or incurred in connection with the Note, the other Indebtedness or any of the Loan Documents, and all premiums on policies of insurance covering, affecting, or relating to the Premises, as required pursuant to Paragraph 1.03 hereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments, insurance premiums and other fees and charges as Lender may require.

(c) Borrower shall not suffer any mechanic's, materialman's, laborer's, statutory or other lien to be created, filed of record or to remain outstanding upon all or any part of the Premises.

1.03 Insurance.

(a) Borrower shall, at its expense, procure for, deliver to and maintain for the benefit of, Lender until the Loan is fully repaid, original, fully paid (prepaid at least one (1) year in advance) insurance policies providing the following types of insurance relating to the Premises, issued by such insurance companies, in such amounts, in such form and content and with such expiration dates as are approved by Lender, in Lender's sole discretion, such policies to provide that the insurer shall give Lender at least thirty (30) days prior written notice of cancellation or termination, in the manner provided for the giving of notices under Paragraph 3.05 hereof, and to provide that no act or thing done by the insured shall invalidate or diminish the insurance provided to Lender and, except for liability policies, to contain noncontributing mortgagee or "loss payable" clauses satisfactory to Lender. Such policies shall include:

(i) Broad form property insurance against all risks of physical loss, including, without limitation, fire, extended coverage, vandalism, malicious mischief, flood, and collapse, with waiver of subrogation, to the extent of the full replacement cost of the improvements to the Premises, without deduction for depreciation, either without co-insurance requirements or with agreed amount endorsement attached;

(ii) Public liability insurance, with all-risk endorsement, covering all liabilities incident to the ownership, possession, occupancy and operation of the Premises and naming Lender as an additional insured thereunder, having limits of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage.

(iii) Rent or business interruption insurance against loss of income arising out of any hazard against which the Premises are required to be insured under Subparagraph 1.03(a)(i) above, in an amount not less than six (6) months gross rental income from the Premises;

(iv) Flood hazard insurance, if the Premises, or any part thereof, are in an area which is, at any time during the term of this Mortgage, identified by the Secretary of Housing and Urban Development as having special flood or mud slide hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended;

(v) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning, and elevator and escalator equipment,

provided that the Premises contains equipment of such nature, and insurance against loss of occupancy or use arising from any breakdown in such equipment, in amounts satisfactory to Lender;

(vi) Such other insurance on the Premises, any replacements or substitutions therefor, in such amounts as may from time to time be required by Lender, against other insurable casualties which at the time are commonly insured against in the case of properties of similar character and location.

(b) Borrower covenants and agrees that Lender is hereby authorized and empowered, at its option, to adjust, compromise or settle any loss under any insurance policies maintained pursuant hereto, and to collect and receive the proceeds from any policy or policies. Each insurance company is hereby authorized, directed and required to make payment for all such losses in amounts less than Five Thousand and No/100 Dollars (\$5,000.00) to Borrower and Lender jointly. Each insurance company is hereby authorized, directed and required to make payments for all such losses in amounts of Five Thousand and No/100 Dollars (\$5,000.00) or more directly and solely to Lender, instead of to Borrower and Lender jointly. In the event any insurance company fails to disburse directly and solely to Lender under the conditions set out above, and disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as its agent and attorney-in-fact so to do. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including attorneys' fees, Lender may apply the net proceeds of any part thereof, at its sole option, (i) to the payment of the Indebtedness hereby secured, whether or not due and in whatever order Lender elects, (ii) to the repair and/or restoration of the Premises, upon such conditions as Lender may determine, and/or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without affecting the lien of this Mortgage or any obligations secured hereby. Any balance of such proceeds then remaining shall be paid to Borrower or the person or entity lawfully entitled thereto. Lender shall not be obligated to see to the proper application of any amount paid over to Borrower and shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy, regardless of the cause of such failure.

(c) At least twenty (20) days prior to the expiration date of each policy maintained pursuant to this Paragraph 1.03, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the full payment of premiums for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Indebtedness, all right, title and interest of Borrower in and to all insurance policies maintained pursuant to this Paragraph 1.03 then in force shall belong to the purchaser and Lender is hereby irrevocably appointed by Borrower as attorney-in-fact for Borrower to assign any such policy to said purchaser, without accounting to Borrower for any unearned premiums therefor.

1.04 Monthly Deposits. Unless Borrower is already and continues doing so pursuant to the First Mortgage (as hereinafter defined), at Lender's option the Borrower shall deposit with Lender, or with an escrow agent (whose fee or other compensation for its escrow services shall be paid by Borrower) designated by Lender, monthly with each payment due under the Note, until the Loan is fully repaid, such sum or sums determined by Lender in its sole discretion to be sufficient to pay, at least thirty (30) days before due, all taxes, assessments, insurance premiums and similar charges with respect to the Premises (the "Impositions"). Said deposits shall be held by Lender free of any liens or claims on the part of creditors of Borrower and as part of the security of Lender, to be used by Lender to pay the Impositions as the same accrue and are payable. Said deposits may be commingled with the general funds of Lender and no interest shall be payable thereon. If said funds are insufficient to pay the Impositions in full, as the

same become payable, Borrower will deposit with Lender such additional sum or sums as may be required. Nothing contained herein shall cause Lender to be obligated to pay any amounts in excess of the amount of funds deposited with Lender pursuant to this paragraph. Should Borrower fail to deposit with Lender sums sufficient to pay in full such taxes, assessments, insurance premiums and similar charges at least thirty (30) days before the date when due, Lender, at Lender's election, but without any obligation so to do, may advance any amounts required to make up the deficiency, and any amounts so advanced shall be deemed to be part of the Indebtedness secured by the Loan Documents. Upon any default or event of default under this Mortgage or the Note or any instrument evidencing, securing, or in any way relating to the Indebtedness, Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the Indebtedness in such manner as it may elect. In the event of a foreclosure of this Mortgage, the purchaser of the Premises shall succeed to all the rights of Borrower in and to such deposits. The collection of such deposits by Lender shall not relieve Borrower of any of the obligations of Borrower under Paragraph 1.02 or 1.03 or any other provision of this Mortgage, and under no circumstances shall Lender be liable for failure to make any payment on behalf of Borrower, including, without limitation, payments of taxes, assessments or insurance premiums.

1.05 Condemnation. If all or any portion of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or quasi-governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, then the entire Indebtedness shall, at the option of Lender, become immediately due and payable, without notice to Borrower or any other person or entity. Promptly upon learning of the institution or the proposed, contemplated or threatened institution of any condemnation proceeding, Borrower will notify Lender of the pendency of such proceedings, and no settlement respecting awards in such proceedings shall be effected without the consent of Lender. Lender shall be entitled to receive all compensation, awards, proceeds and other payments or relief relating to or payable as a result of such condemnation. Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own name or in the name of Borrower, 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 Borrower to Lender. If Lender does not elect to declare the entire Indebtedness immediately due and payable, as provided above, then Lender, after deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including, without limitation, attorneys' fees, shall apply the net proceeds or any part thereof, at its option, (i) to the payment of the Indebtedness, whether or not due and in whatever order Lender elects, (ii) to the repair and/or restoration of the Premises upon such conditions as Lender may determine, and/or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without affecting the lien of this Mortgage; and any balance of such moneys then remaining shall be paid to Borrower or any other person or entity lawfully entitled thereto; Lender shall not be obligated to see to the proper application of any amount paid over to Borrower. Borrower agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may require. If, prior to the receipt by Lender of such award or proceeds, the Premises shall have been sold on foreclosure of this Mortgage, or as a result of other legal action relating to this Mortgage or the Note, Lender shall have the right to receive such award or proceeds to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage or the Note shall have been sought or recovered, and to the extent of attorneys' fees, costs and disbursements incurred by Lender in connection with the collection of such award or proceeds.

1.06 Care of Premises.

(a) Borrower shall keep all improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, shall not commit or suffer any waste, and shall not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the

Premises or any part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Premises.

(b) Borrower shall not remove, demolish or materially alter, enlarge or change any structure or other improvement located on the Land without Lender's consent, nor shall any new improvements be constructed on the Premises without Lender's consent; provided, however, that this subparagraph (b) shall not apply to any alterations or improvements which, by the terms of their respective leases, tenants of Borrower under leases approved by Lender may perform within their leased premises without Borrower's approval. Borrower shall not remove or permit to be removed from the Land any fixture, chattel or part of the Premises without the consent of Lender, except where appropriate replacements are immediately made which are free of any lien, security interest or claim superior to that of this Mortgage and which have a value and utility at least equal to the value and utility of the fixture or chattel removed, which shall, without further action, become subject to the lien of this Mortgage.

(c) Lender or its representative is hereby authorized to enter upon and inspect the Premises at all reasonable times.

(d) Borrower shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(e) If all or any part of the Premises shall be damaged by fire or other casualty, Borrower shall give immediate written notice thereof to Lender and shall promptly restore the Premises to the equivalent of its original condition; and if a part of the Premises shall be damaged through condemnation, Borrower shall promptly restore, repair or alter the remaining portions of the Premises in a manner satisfactory to Lender. Notwithstanding the foregoing, Borrower shall not be obligated so to restore unless, in each instance, Lender agrees to make available to Borrower pursuant to a procedure satisfactory to Lender any insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, net of Lender's expenses in collecting and handling such proceeds, to the extent such proceeds are required to defray the expense of such restoration; provided, however, that the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration shall in no way relieve Borrower of its obligation to restore. In the event all or any portion of the Premises shall be damaged or destroyed by fire or other casualty or by condemnation, Borrower shall promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Premises, as determined by Lender, exceeds the actual net insurance or condemnation proceeds received by Lender in connection with such damage or destruction.

(f) If any work required to be performed under this Paragraph 1.06 involves an estimated expenditure of more than five percent (5%) of the face amount of the Note secured hereby, no such work will be undertaken until plans and specifications therefor, prepared by an architect or engineer satisfactory to Lender, have been submitted to and approved by Lender.

(g) Borrower shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance, easement or other public or private restrictions limiting or defining the uses which may be made of the Premises, or any part thereof, without Lender's consent.

1.07 Security Agreement.

(a) With respect to the machinery, apparatus, equipment, fittings, fixtures, building supplies and materials, articles of personal property, chattels, chattel paper, documents, inventory, accounts, farm products, consumer goods and general intangibles referred to or described in this Mortgage or in any way connected with the use and enjoyment of the Premises, whether now owned or hereafter from time to time acquired, together with all substitutions, replacements, additions, attachments, accessories and all of the rents, issues, income, revenues and profits derived from the Premises (hereinafter referred to collectively as the "Collateral"), this Mortgage is hereby also made and declared to be a security agreement, and Borrower hereby grants to Lender a security interest in each and every

item of such property comprising a part of the Collateral, in compliance with the provisions of the Alabama Uniform Commercial Code. Upon request by Lender, at any time and from time to time, a financing statement or statements reciting this Mortgage to be a security agreement affecting all of such property shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage shall be (i) as prescribed herein, (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of any such financing statement or statements in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether any such item is physically attached to the improvements, serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Mortgage, or any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (A) the proceeds of any insurance policy, or (B) any award in eminent domain proceedings for a taking or for loss of value, or (C) Borrower's interest as landlord in any present or future lease or sublease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to a tenant lease of space in the Premises or otherwise, shall not in any way alter any of the rights of Lender as determined by this Mortgage or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Lender in the event any court shall at any time hold with respect to the foregoing clauses (A), (B), or (C) of this sentence, that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. Said security interest shall attach thereto as soon as Borrower obtains any interest in any of the Collateral and before the Collateral becomes fixtures or before the Collateral is installed or affixed to other collateral for the benefit of Lender, to secure the indebtedness evidenced by the Note and secured by this Mortgage, and all other sums and charges which may become due hereunder or thereunder. The security interest held by Lender shall cover cash and non-cash proceeds of the Collateral, but nothing contained herein shall be construed as authorizing, either expressly or by implication, the sale or other disposition of the Collateral by Borrower, which sale or other disposition is hereby expressly prohibited without Lender's prior written consent, or as otherwise provided herein. No personal property or business equipment owned by any tenants holding under Borrower is included within this Mortgage, except to the extent of Borrower's landlord's lien with respect thereto, which interest shall be part of the Premises.

In the event of default under the Mortgage, Lender, pursuant to said Uniform Commercial Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that, in the event Lender elects to proceed with respect to the Collateral separately from the real property, the requirements of the Uniform Commercial Code as to reasonable notice of any proposed sale or disposition of the Collateral shall be met if such notice is mailed to the Borrower, as hereinafter provided, at least five (5) days prior to the time of such sale or disposition. Borrower agrees that, without the written consent of Lender, Borrower will not remove or permit to be removed from the real property hereby conveyed, any of the Collateral unless the same is replaced immediately with unencumbered collateral of a quality and value equal or superior to that which it replaces. All such replacements, renewals and additions shall become and be immediately subject to the security interest of this Mortgage and be covered thereby. Borrower warrants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or

additions thereto will be, free and clear of liens, encumbrances or security interests of others, except as to the Permitted Exceptions.

(b) Borrower warrants that: (i) Borrower's (that is, "Debtor's") name, identity, and principal place of business are as referred to in Subparagraph 1.07(c) hereof; (ii) Borrower (that is, "Debtor") has been using or operating under said name and identity without change for the time period set forth in Subparagraph 1.07(c) hereof; and (iii) the location of all tangible Collateral is upon the Land. Borrower covenants and agrees that Borrower will furnish Lender with notice of any change in the matters addressed by clauses (i) or (iii) of this Subparagraph 1.07(b) within thirty (30) days of the effective date of any such change, and Borrower will promptly execute any financing statements or other instruments deemed necessary by Lender to prevent any filed financing statement from becoming misleading or losing its perfected status.

(c) The information in this Subparagraph 1.07(c) is provided in order that this Mortgage shall comply with the requirements of the Alabama Uniform Commercial Code for instruments to be filed as financing statements. The names of the "Debtor" and the "Secured Party," the identity and principal place of business of "Debtor," and the time period for which "Debtor" has been using or operating under said name and identity without change, are as set forth in Exhibit "D" attached hereto and incorporated herein by this reference, the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor," are as set forth in Paragraph 3.05 hereof; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove.

(d) Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Land is located. Information concerning the security interest created by this instrument may be obtained from Lender, as "Secured Party," or Borrower, as "Debtor," at their respective mailing addresses set out in Paragraph 3.05 hereof.

(e) Borrower further covenants and agrees that all of the aforementioned personal property shall be owned by Borrower and shall not be the subject matter of any lease or other instrument, agreement or transaction whereby the ownership or beneficial interest thereof or therein shall be held by any person or entity other than Borrower, except to the extent Lender consents to any lease of any of such property, which consent may be withheld or delayed in Lender's sole discretion; nor shall Borrower create or cause to be created any security interest covering any such property, other than (i) the security interest created herein in favor of Lender, (ii) the rights of tenants lawfully occupying the Premises, and (iii) the Permitted Exceptions.

1.08 Further Assurances; After-Acquired Property. At any time, and from time to time, upon request by Lender, Borrower shall make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, 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 Lender, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, (i) the obligations of Borrower described in the Note and under this Mortgage and (ii) the lien of this Mortgage as a second lien upon and security title in and to all of the Premises, whether now owned or hereafter acquired by Borrower, subject only to the First Mortgage and the other Permitted Exceptions. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien and

security title hereof shall automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Premises or any part thereof, to the extent permitted by law.

1.09 Expenses. Borrower shall pay or reimburse Lender, upon demand therefor, for all attorneys' fees, costs and expenses incurred by Lender in the negotiation preparation, execution or performance of the Mortgage or any other documents related to the Indebtedness, including any modification or amendment of any of the foregoing, or in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as a party plaintiff or defendant, affecting the Indebtedness, this Mortgage, or the interest created herein, or the Premises, including, without limitation, any foreclosure proceedings, any condemnation action involving the Premises, any federal bankruptcy proceeding or state insolvency proceeding involving the priorities or rights of creditors or any action to protect the security hereof; and any such amounts paid by Lender shall be added to the Indebtedness secured by the lien of this Mortgage and shall bear interest from and after the date when paid at the default rate in effect under the Note.

1.10 Subrogation. To the full extent of the Indebtedness, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each lien, claim, demand and other encumbrance on the Premises which is paid or satisfied, in whole or in part, out of the proceeds of the Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Lender as additional collateral and further security for the Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Lender had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that any instrument providing public notice of the same may be satisfied and cancelled of record.

1.11 Transfer of the Premises; Additional Financing.

(a) The identity and expertise of Borrower were and continue to be material circumstances upon which Lender has relied in connection with, and which constitute valuable consideration to Lender for, the extending to Borrower of the loan evidenced by the Note, and any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness. Borrower covenants and agrees with Lender, as part of the consideration for the extending to Borrower of the loan evidenced by the Note, that, without Lender's prior written consent, Borrower shall not, voluntarily or by operation of law: (i) sell, transfer, convey, pledge, encumber, assign, grant a security interest in, or otherwise hypothecate or dispose of, all or any part of the Premises or any interest therein, whether or not as collateral security for any other obligation of Borrower; (ii) if Borrower is a corporation, partnership, limited liability company, trust, or other entity, sell, transfer, convey, pledge, encumber, assign, hypothecate or dispose of any legal or beneficial interest in Borrower, nor change any of its general partners, members or managers; nor (iii) cause or permit any junior encumbrance or lien to be placed on the Premises or other security for the Loan. Such consent may be given or withheld by Lender in its sole discretion and may be conditioned upon payment to Lender of a fee for processing the request for consent and other administrative costs incurred in connection therewith, and/or an increase in the rate of interest on the unpaid balance of the Indebtedness to a then current market rate, and/or a change in the term of the Note, all of which Borrower hereby agrees are reasonable conditions to the approval of any such transfer; provided, however, that with respect to replacement of an existing general partner or member with a new general partner or member that is (x) an existing special limited partner or special member of the Borrower or (y) a wholly owned subsidiary or affiliate of a tax credit investor in the Project, Lender will not unreasonably withhold its consent to such replacement if Lender has received not less than 10 days prior written notice and receives such ownership information for the Borrower, as so modified, and for the replacement general partner or member as is required by Lender's then effective application forms. In all events, if Lender consents to any such sale, transfer, conveyance, pledge, encumbrance, assignment, hypothecation, or disposition, the manager of the Premises shall remain the same before and after the transfer and the transferee shall be a creditworthy person or entity of sound

financial reputation.

(b) The consent by Lender to any sale, transfer, conveyance, pledge, encumbrance, assignment, creation of a security interest in or other hypothecation or disposition of the Premises or the beneficial interests of Borrower shall not be deemed to constitute a novation of the Indebtedness or a consent to any further sale, transfer, pledge, encumbrance, creation of a security interest or other hypothecation or disposition, or to waive Lender's right, at its option, to exercise its remedies for default, without notice to or demand upon Borrower or to any other person or entity, upon any such sale, transfer, pledge, encumbrance, creation of a security interest in or other hypothecation, or disposition to which Lender shall not have consented.

1.12 Limit of Validity. If, from any circumstances whatsoever, fulfillment of any provision of this Mortgage or of the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. Any payments inadvertently charged to Borrower or collected by Lender that would constitute interest in excess of any applicable legal limit shall be applied by Lender to the reduction of the unpaid principal amount due under the Note. It is the intention of Borrower and Lender not to create any obligation in excess of the amount allowable by applicable law. The provisions of this Paragraph 1.12 shall control every other provision of this Mortgage. The provisions of the paragraph of the Note entitled "Limit on Interest" shall govern the situation covered thereby.

1.13 Performance by Lender of Defaults by Borrower. Borrower covenants and agrees that, if it shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Premises, in the payment of any utility charge, whether public or private, in the payment of any 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 other covenant, condition or term of this Mortgage, then Lender, at its option (without obligation), may pay, perform or observe the same, and all payments made or costs incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon, from the date such payment is made or expense is incurred by Lender to the date Lender is reimbursed therefor, at the default rate provided in the Note. 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. Lender is hereby empowered to enter, and to authorize others to enter, upon the Premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term without thereby becoming liable to Borrower or any person in possession of any portion of the Premises holding under Borrower. Borrower expressly acknowledges and agrees, however, that notwithstanding anything contained in this Paragraph 1.13 to the contrary, Lender shall not be obligated under this Paragraph 1.13 to incur any expense or to perform any act whatsoever.

1.14 Assignment of Leases and Rents.

(a) As additional collateral and further security for the Indebtedness, Borrower does hereby assign to Lender Borrower's interest in any and all leases, tenant contracts, rental agreements, franchise agreements, management contracts, construction contracts and other contracts, licenses and permits now or hereafter affecting the Premises, or any part thereof (all of the foregoing being hereinafter collectively referred to as the "Leases"), and all income, rents, issues, and profits from the Premises, and Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a

consent by Lender to any Lease, or to impose upon Lender any obligation with respect thereto; and provided, further, that permission is hereby given to Borrower unless and until Borrower is in default as provided herein, to collect the income, rents, issues, and profits relating to the Premises as they become due and payable but not in advance, except as provided herein below. Without first obtaining on each occasion the approval of Lender, which approval may be granted or withheld in the sole discretion of Lender, Borrower shall not accept, or permit to be made, any prepayment of any installment of rent or other income thereunder (except for security deposits) more than one (1) month in advance of the date when due. Borrower shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of said Leases, now or hereafter existing, on the part of Borrower to be kept and performed and shall at all times do all things necessary to compel performance by each other party to said Leases of all obligations, covenants and agreements by such other party to be performed thereunder. This Mortgage constitutes an absolute, present and irrevocable assignment of the income, rents, issues and profits from the Premises, subject, however to the conditional permission given to Borrower to collect the same as provided hereinabove. The foregoing assignment shall be fully operative without any further action on the part of any party hereto, and, specifically, Lender shall be entitled, at its option upon the occurrence of any such default hereunder, without notice or demand of any kind to Borrower, to collect and retain all such income, rents, issues and profits whether or not Lender takes possession of the Premises. Exercise by Lender of its rights under this paragraph, and the application of any such rents, issues and profits to the Indebtedness, shall not cure or waive any default hereunder or invalidate any act done pursuant hereto, but shall be cumulative of all other rights and remedies.

(b) Borrower shall not, without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion, further assign the income, rents, issues or profits or any part thereof from the Premises, and any such assignment without the express written consent of Lender shall be void as against Lender.

(c) Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so, a written affidavit sworn to and signed by Borrower setting forth the names of all tenants of the Premises, the terms of their respective Leases, the unit occupied, and the rentals payable thereunder, and stating whether any defaults, off-sets or defenses exist under or in connection with any of said Leases. Any and all Leases affecting the Premises shall provide for the giving by the tenants thereunder of certificates with respect to the status of such Leases and Borrower shall exercise Borrower's right to request such certificates within five (5) days of any demand therefor by Lender.

(d) Each Lease pertaining to the Premises, or any part thereof, shall provide (or if such Lease does not so provide, shall be deemed to provide) that, in the event of the enforcement by Lender of the remedies provided by law or by this Mortgage, the tenant thereunder will, upon request of Lender or any other person or entity succeeding to the interest of Lender as a result of such enforcement, automatically become the tenant of Lender or said successor in interest, without change in the terms or other provisions of said Lease; provided, however, that neither Lender nor any such successor in interest shall be (A) bound by any payment of rental, additional rental or other income for more than one (1) month in advance, (B) liable for any act or omission of any prior landlord (including Borrower), (C) except as provided in Section 2.15, liable for the return of any security deposit, or (D) be subject to any offsets or defenses which the tenant might have against any prior landlord (including Borrower). Each Lease pertaining to the Premises shall also provide (or if such Lease does not so provide, shall be deemed to provide) that, upon request by said successor in interest, the tenant thereunder shall deliver an instrument confirming such attornment.

(e) Prior to leasing a HOME-designated unit, Borrower shall qualify and certify the prospective tenants on the basis of income, using the applicable HOME and Low-Income Housing Tax Credit criteria, but shall comply with the procedures for documentation as used in the Department of Housing and Urban Development's ("HUD") Section 8 program. No more than fifteen (15) days after the

anniversary of a tenant's occupancy of a HOME-designated unit, Borrower shall re-qualify and recertify each tenant on the basis of income, using the same procedures as used initially to qualify the tenant. Borrower shall provide to Lender legible copies of tenant qualification and certification documentation no later than twenty days (20) after a tenant initially occupies a HOME-designated unit, and after each anniversary of such occupancy or when the changes have occurred in the number of persons occupying a unit including increases in the incomes of such tenants. Borrower shall maintain records and supporting documentation as evidence to the income qualifications of all HOME-designated units and make such evidence available for inspections by Lender, agents of Lender, or the Secretary of HUD, or designated representative(s) either by providing copies of such evidence by mail or by allowing on-site inspections of the tenant files during normal business hours.

1.15 Estoppel Affidavits. Borrower, upon ten (10) days prior written notice, shall furnish Lender a written affidavit, sworn to and signed by Borrower, setting forth (i) the unpaid principal of, and interest on, the Indebtedness, (ii) whether or not any off-sets or defenses exist against such principal and interest, (iii) whether or not any "default" or "event of default" (or any fact or circumstance that, with lapse of time or notice, or both, would constitute a "default" or "event of default") exists under any of the Loan Documents, and (iv) the then state of facts relative to the condition of the Premises.

1.16 Books, Records, Accounts and Reports. Borrower shall keep and maintain, or shall cause to be kept and maintained, at Borrower's cost and expense and in accordance with generally accepted accounting principles, consistently applied, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Premises and in connection with any services, equipment, or furnishings provided in connection with the operation of the Premises. Lender and Lender's agents, accountants, attorneys, the Secretary of HUD, and a designated representative shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of Borrower or such other person or entity maintaining such books, records or accounts and to make copies or extracts thereof as Lender shall desire and to discuss Borrower's affairs, finances and accounts with Borrower and with the officers and principals of Borrower, at such reasonable times as may be requested by Lender. Borrower shall furnish to Lender annually within ninety (90) days after the end of Borrower's fiscal year, at Borrower's expense, financial statements for the Premises for such fiscal year showing in detail all such revenues derived from rents, profits and all other sources, and all expenses and disbursements made in connection with the Premises, together with a rent roll for the Premises, annual comparative balance sheets, profit and loss statements, and all supporting schedules covering the operation of the Premises. At Lender's option, all such statements shall be audited by an independent certified public accountant selected or approved by Lender and/or certified by Borrower's principal financing officer. Borrower shall further provide Lender, on a quarterly basis, with such interim balance sheet and profit and loss statements as Lender may require, which statements shall cover such additional financial matters as Lender may request, shall fairly present the financial conditions of the subject thereof as of the dates thereof, and shall be certified by Borrower's principal financial or accounting officer. All such statements and reports shall be prepared in accordance with generally accepted accounting principles, consistently applied. In the event that Borrower shall refuse or fail to furnish any statement as aforescribed, or in the event such statement shall be inaccurate or false, or in the event of failure of Borrower to permit Lender or its representatives to inspect the Premises or the said books and records, Lender may consider such acts of Borrower as a default hereunder and proceed in accordance with the rights and remedies afforded it under the provisions hereof.

ARTICLE 2

2.01 Events of Default.

(a) The terms "Default," "default," "Event of Default" or "event of default," wherever used in this Mortgage, shall mean any of the following events:

(i) Failure by Borrower to pay any installment of principal or interest under the Note or other indebtedness secured by this Mortgage or any other sum that may be due and payable under any of the Loan Documents, when due and payable;

(ii) Any transfer under Paragraph 1.11 (other than a transfer, if any, which, by the express terms of Paragraph 1.11, does not require Lender's consent) to which Lender shall not have first consented in writing;

(iii) An event shall occur which under the specific terms of Paragraph 1.05 shall give Lender the option to accelerate the maturity of the Indebtedness; or

(iv) Failure by Borrower duly to observe or perform any other term, covenant, condition or agreement of this Mortgage within fifteen (15) days after written notice of such failure; provided, however, if such failure cannot be cured within such fifteen (15)-day period, then failure by Borrower to commence the curing thereof within such fifteen (15)-day period and diligently to prosecute such curing to completion within a reasonable time thereafter;

(v) The fact that any representation or warranty of Borrower contained in this Mortgage or in any other Loan Document proves to be untrue or misleading in any respect as of the time made or as of any subsequent time prior to the satisfaction in full of all of the Indebtedness;

(vi) The occurrence of any default, event of default or Event of Default under any of the Loan Documents;

(vii) The filing of any federal tax lien against the Premises;

(viii) The filing by Borrower or any endorser or guarantor of the Note of a voluntary petition in bankruptcy pursuant to any federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors (collectively, "Bankruptcy Law") or the issuing of an order for relief against Borrower or any endorser or guarantor of the Note under any such Bankruptcy Law, or the filing by Borrower or any endorser or guarantor of the Note of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future Bankruptcy Law;

(ix) Borrower's or any such endorser's or guarantor's seeking, consenting to or acquiescing in the appointment of any trustee, custodian, receiver, or liquidator of Borrower or of such endorser or guarantor or of all or any substantial part of the Premises or of any or all of the income, rents, revenues, issues, earnings, profits or income thereof or of any other property or assets of Borrower or of such endorser or guarantor; or the making by Borrower or any such endorser or guarantor of any general assignment for the benefit of creditors, or the admission in writing by Borrower or any such endorser or guarantor of its inability to pay its debts generally as they become due, or the commission by Borrower or any such endorser or guarantor of any act providing grounds for the entry or an order for relief under any Bankruptcy Law;

(x) Failure by Borrower to cause the dismissal of any involuntary petition in bankruptcy brought against Borrower within sixty (60) calendar days after the same is filed but in any event prior to the entry of an order, judgment, or decree approving such petition;

(xi) The Premises are subjected to actual or threatened waste, or any part thereof is removed, demolished, or altered without the prior written consent of Lender (other than tenant alterations or improvements to which Paragraph 1.06(b) does not, by its express terms, apply);

(xii) Borrower or any endorser or guarantor of the Note (if a corporation) is liquidated or dissolved or its charter expires or is revoked, or Borrower or such endorser or guarantor (if a partnership, limited liability company or business association) is dissolved, terminated or partitioned, or Borrower or such endorser or guarantor (if a trust) is terminated or expires, or Borrower or such endorser or guarantor (if an individual) dies and the estate of such endorser or guarantor refuses to

acknowledge in writing, promptly upon receipt of written request, its responsibility for such endorsement or guaranty; or

(xiii) The filing by any person or entity of any claim in any legal or equitable proceeding challenging the second priority lien of this Mortgage, subject only to the Permitted Exceptions.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Indebtedness shall, at the option of Lender, become immediately due and payable without notice or demand, which are hereby expressly waived, time being of the essence of this Mortgage; and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.03 Lender's Right to Enter and Take Possession, Operate and Apply Revenues.

(a) If an Event of Default shall have occurred, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Premises and if, and to the extent, permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all the Premises without the appointment of a receiver, or an application therefor, and may exclude Borrower and its respective agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower.

(b) If Borrower shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Premises to Lender, to the entry of which judgment or decree Borrower hereby specifically consents. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents; and all such expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Premises 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 Premises insured; (iii) manage and operate the Premises and exercise all the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be in its best interest; and (v) perform all acts required of Borrower as lessor under any lease of all or any part of the Premises, all as Lender may from time to time determine to be to its best advantage. Lender may collect and receive all the income, rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and, after deducting: (A) all expenses of taking, holding, managing and operating the Premises (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 similar charges as Lender may at its option pay; (E) other proper charges upon the Premises or any part thereof; and (F) the compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the moneys and proceeds so received by Lender to the payment of principal and interest in whatever order or priority Lender may elect. Anything in this Paragraph 2.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as the result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues, profits, and revenues actually received by Lender.

(d) For the purpose of carrying out the provisions of this Paragraph 2.03, Borrower hereby irrevocably constitutes and appoints Lender the true and lawful attorney-in-fact of Borrower to do and perform, from time to time, any and all actions necessary and incidental to such purpose, and Borrower does, by these presents, ratify and confirm any and all actions of said attorney-in-fact in the Premises.

(e) In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage, shall have been paid and all Events of Default cured and satisfied, and as a result thereof, Lender surrenders possession of the Premises to Borrower, the same right of taking possession shall exist if any subsequent Event of Default shall occur.

2.04 Receiver. If an Event of Default shall have occurred, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the sufficiency or value of any security for the indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the income, rents, issues, profits, and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state within which the Land is located. Borrower shall pay to Lender upon demand all expenses, including receiver's fees, attorneys' fees, costs, and agent's compensation, incurred pursuant to the provisions of this Paragraph 2.04; and all such expenses shall be secured by this Mortgage.

2.05 Enforcement. Should Borrower fail to pay the Indebtedness when due, or should there be any other Default hereunder or under any of the other Loan Documents, and should Lender exercise its option to accelerate the maturity of the Indebtedness, then all of the Indebtedness shall become due and payable at once, whereupon Lender, its successors and assigns, agents or attorneys, are hereby authorized and empowered to sell the Premises hereby conveyed at auction for cash, at the Shelby County Courthouse Door in the County of Shelby, Alabama, first having given notice of the time, place, and terms of said sale, together with a description of the property to be sold, once a week for three (3) successive weeks by publication in any newspaper of general circulation then published in the County where the Premises is located and execute proper conveyance to the purchaser, and out of the proceeds of such sale, Lender shall first pay all expenses incident thereto, together with a reasonable attorney's fee, then retain enough to pay the Indebtedness and interest thereon, and any sums advanced by Lender for delinquent taxes, assessments or insurance premiums, and the balance, if any, paid over to the parties entitled thereto according to applicable law. The auctioneer or person making the sale is hereby empowered and directed to make and execute a deed to the purchaser in the name of Borrower. It is also agreed that in case Lender, its successors or assigns, sees fit to foreclose this Mortgage in a court having jurisdiction thereof, Borrower will pay a reasonable attorney's fee therefor, which fee shall be and constitute a part of the Indebtedness.

2.06 Purchase by Lender. Upon any foreclosure sale, Lender may bid for and purchase the Premises the same as if it were a stranger to this Mortgage and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

2.07 Borrower as Tenant Holding Over. In the event of any such foreclosure sale by Lender, Borrower shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

2.08 Leases. Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the Indebtedness.

2.09 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceeding shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case (i) Borrower and Lender shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Lender shall continue as if no such proceedings had been taken, (iii) each and every Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall, and shall be deemed to, be a continuing Default and (iv) neither this Mortgage, nor the Note, nor the Indebtedness, nor any other of the other Loan Documents shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and Borrower hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

2.10 No Reinstatement. If a Default under Paragraph 2.01(a)(1) shall have occurred and Lender shall have proceeded to enforce any right, power or remedy permitted hereunder, then a tender of payment by Borrower or by anyone on behalf of Borrower of the amount necessary to satisfy all sums due hereunder made at any time prior to foreclosure, or the acceptance by Lender of any such payment so tendered, shall not constitute a reinstatement of the Note or this Mortgage.

2.11 Remedies Cumulative. No right, power or remedy conferred upon or reserved to 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 now or hereafter existing at law or in equity or by statute.

2.12 Suits to Protect the Premises. Lender shall have power (i) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Premises by any acts which may be unlawful or any violation of this Mortgage, (ii) to preserve or protect its interest in the Premises and in the income, rents, issues, profits and revenues arising therefrom, and (iii) 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 Lender.

2.13 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender (to the full extent permitted by law) shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed on such proceedings for the entire amount of the Indebtedness at the date of the institution of such proceedings and for any additional amount of the indebtedness after such date.

2.14 Marshalling. At any foreclosure sale, the Premises may, at Lender's option, be offered for sale for one total price, and the proceeds of such sale accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, Borrower hereby waiving (to the full extent allowed by law) the application of any doctrine of marshalling; and, in case Lender, in the exercise of the power of sale herein given, elects to sell the Premises in parts or parcels, said sales may be held from time to time, and the power shall not be fully executed until all of the Premises not previously sold shall have been sold.

2.15 Security Deposits. If Borrower shall obtain from a tenant or subtenant of the Premises, or a part thereof, a deposit to secure such tenant's or subtenant's obligations, such funds, following any default under this Mortgage, shall be deposited with Lender in an account maintained by Lender in its name; but any such deposit actually received by Lender shall be returned to Borrower when and if required, by the terms of any such lease, sublease or occupancy agreement, to be paid over to the tenant or subtenant; and Borrower represents that the provisions of any applicable laws relating to security deposits have been satisfied with respect to each existing tenant, subtenant or occupant of the Premises and agrees

that they will be satisfied with respect to each new tenant, subtenant, or occupant of the Premises; and Borrower will furnish details of such satisfaction from time to time upon the request of Lender in such detail as Lender may require.

2.16 Waiver of Appraisal and Valuation. Borrower agrees (to the full extent permitted by law) that in case of a Default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any moratorium, reinstatement, forbearance, appraisal, valuation, stay, extension, homestead, or exemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives (to the full extent allowed by law) the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshalled upon any foreclosure.

2.17 Waiver of Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States of America and of any state, in and to the Premises as against the collection of the Indebtedness, or any part hereof.

ARTICLE 3

3.01 Successors and Assigns. Subject to Paragraph 1.11(a) hereof, this Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective legal representatives, successors, and assigns. Whenever a reference is made in this Mortgage to Borrower or Lender, such reference shall be deemed to include a reference to the legal representatives, successors, and assigns of Borrower or Lender, whether so expressed or not.

3.02 Terminology. All personal pronouns used in this Mortgage whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage itself and all references herein to Articles, Paragraphs, or Subparagraphs shall refer to the corresponding Articles, Paragraphs, or Subparagraphs of this Mortgage unless specific reference is made to such Articles, Paragraphs, or Subparagraphs of another documents or instrument.

3.03 Severability. If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.04 Applicable Law. This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Alabama.

3.05 Notices, Demands, and Requests. All notices, demands or requests provided for or permitted to be given pursuant to this Mortgage shall be in writing and shall be delivered in person or sent by registered or certified United States mail, postage prepaid, return receipt requested, to the addresses set out below or to such other addresses as are specified by no less than ten (10) days prior written notice delivered in accordance herewith:

LENDER: Alabama Housing Finance Authority
as Administrator of Alabama's HOME Program
P. O. Box 242967
Montgomery, AL 36124-2967
Attention: HOME Coordinator

BORROWER: The Shoals Mill Development, Ltd.
100 Village Street
Birmingham, Alabama 35242
Attention: Chester L. Parker, Jr.

All such notices, demands and requests shall be deemed effectively given and delivered two (2) days after the postmarked date of mailing, or, if delivered personally, when received. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the notice, demand, or request sent.

3.06 Consents and Approvals. All approvals and consents hereunder shall be in writing and no approval or consent shall be deemed to have been given hereunder unless evidenced in a writing signed by the party from whom the approval or consent is sought.

3.07 Waiver.

(a) No delay or omission of Lender or of any holder of the Note 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 to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, express or implied, by Lender to or of any breach or default by Borrower in the performance of the obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies consequent on any breach or default by Borrower.

(b) If Lender: (i) grants forbearance of an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note; (iv) releases any part of the Premises from the lien of this Mortgage or otherwise changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consents to the filing of any map, plat or replat affecting the Premises; (vi) consents to the granting of any easement or other right affecting the Premises; or (vii) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements 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 liabilities, obligations or undertakings of Borrower. In no event, however, shall the provisions of this Paragraph 3.07(b) be construed in derogation of Paragraph 1.11 hereof.

3.08 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the

Note and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement Note.

3.09 Assignment. This Mortgage is assignable by Lender, and any assignment hereof by Lender shall operate to vest in the Assignee all rights and powers herein conferred upon and granted to Lender.

3.10 Time of the Essence. TIME IS OF THE ESSENCE with respect to each and every covenant, agreement, and obligation of Borrower under this Mortgage, the Note and any and all other Loan Instruments.

3.11 Attorneys' Fees. The meaning of the terms "legal fees" or "attorneys' fees" or any other reference to the fees of attorneys or counsel, wherever used in this Mortgage, shall be deemed to include, without limitation, all legal fees relating to litigation or appeals at any and all levels of courts and administrative tribunals.

3.12 Further Stipulations. The covenants, agreements, and provisions, if any, set forth in Exhibit "E" attached hereto are hereby made a part of this Mortgage. In the event of any conflict between such further stipulations and any of the printed provisions of this Mortgage, such further stipulations shall be deemed to control.

ARTICLE 4

4.01 Tenant Income Structure. Except as provided in Paragraph 4.03, no HOME-designated unit may be occupied by a household whose annual income exceeds sixty percent (60%) of the area median income as determined annually by HUD.

4.02 Rent Restrictions. Except as provided in Paragraph 4.03, the units shall be subject to the rent limitation requirements and tenant income requirements set forth in Section 4 of the Declaration of Land Use Restrictive Covenants for Alabama's HOME Program recorded in Instrument No. 20101216000424050 in the Office of the Judge of Probate of Shelby County, Alabama.

4.03 Temporary Violations. Temporary violations of Paragraphs 4.01 and 4.02 caused by an increase in the incomes of an existing tenant shall not constitute a violation of the covenants, terms, and conditions, or agreements contained herein, and a lien shall not be established, provided that vacant HOME-designated units thenceforth are rented to new tenants such that said violations will tend to be corrected.

4.04 Annual Recertification. Borrower shall re-examine and re-certify on an annual basis, the income of each tenant household occupying a HOME-designated unit and shall adjust rents if, and to the extent, required for continued participation of the project in the HOME and Low-Income Housing Tax Credit programs.

ARTICLE 5

5.01 Fair Housing and Equal Opportunity. Borrower shall comply with the following as they may be amended and/or superseded from time to time: Fair Housing Act (24 CFR 100); Executive Order 11063 (24 CFR 107); Section 504 of the Rehabilitation Act of 1973 (24 CFR 8); Age Discrimination Act of 1975 (24 CFR 146); Executive Order 11246 (41 CFR 60); Title IV Civil Rights Act of 1964 (24 CFR 1); and Section 3 of the Housing and Urban Development Act of 1968 (12 U. S. C. 1701u).

5.02 Records. Borrower shall maintain records, and provide legible copies thereof to Lender upon request, which reflect the extent to which each racial and ethnic group, elderly, disabled, and the gender of single-headed households, have applied for a HOME-designated unit, have occupied a HOME-designated unit, or have terminated occupancy of a HOME-designated unit and include reason(s) for

termination.

5.03 Leasing Documentation. Prior to leasing any HOME-designated unit, Borrower shall have in hand, and current: (1) rent schedules, (2) utility allowances, (3) tenant selection, occupancy, and termination policies, and (4) tenant lease forms applicable to HOME-designated units. All of said instruments shall comply with applicable requirements of the HOME Investment Partnerships Program and all other applicable laws.

5.04 Section 8 Tenants. Borrower shall not refuse to lease to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME tenant-based assistance document.

5.05 Equal Housing. Borrower shall display the HUD Equal Housing Opportunity poster, or a reasonable facsimile, at one or more locations within the project that are frequented by tenants and visitors. Borrower shall include the HUD Equal Housing Opportunity logo and/or slogan, or a reasonable facsimile thereof, on project letterhead, forms, advertising, tenant literature, and media releases.

ARTICLE 6

6.01 Exculpatory Provision. Except as hereinafter provided, Lender agrees that (i) Borrower and its partners shall be liable upon the Indebtedness to the full extent (but only to the extent) of the security for the payment of the Note, the same being all properties, rights, and estates described in the Loan Documents, (ii) if default occurs in the timely and proper payment of all or any part of such Indebtedness, any judicial proceedings brought by Lender against Borrower or its partners shall be limited to the preservation, enforcement and foreclosure, or any thereof, or the liens, security titles, estates, assignments, rights and security interests now or at any time hereafter securing the payment of the Note, and no attachment, execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of Borrower or of its partners other than the properties, rights, estates and interests described in the Loan Documents, and (iii) in the event of a foreclosure of such liens, security titles, estates, assignments, rights and security interests securing the payment of the Note, no judgment for any deficiency upon such Indebtedness shall be sought or obtained by Lender against Borrower or its partners; PROVIDED, HOWEVER, that, notwithstanding the foregoing provisions of this paragraph, Borrower and its general partners shall be fully and personally liable at all times for (a) any costs, expenses or liability, including attorney's fees, incurred by Lender arising from any order, consent decree or settlement relating to the clean-up of toxic or hazardous materials or waste products, (b) fraud or misrepresentation, and (c) the misapplication of (i) proceeds paid prior under any insurance policies by reason of damage, loss or destruction to all or any portion of the properties encumbered by the Loan Documents, or any of them, to the full extent of such proceeds, (ii) proceeds or awards resulting from the condemnation or other taking in lieu of condemnation of any portion of the properties encumbered by the Loan Documents, or any of them, to the full extent of such proceeds or awards, or (iii) income, rents, issues, profits and revenues (collectively "rents") arising or issuing from or out of the Premises or any part thereof following Lender's exercise of its rights to receive such rents pursuant to the Loan Documents. Nothing contained in this paragraph shall (1) be deemed to be a release or impairment of the Indebtedness or the lien of the Loan Documents upon the properties described therein, (2) preclude Lender from foreclosing the Loan Documents in case of any default or from enforcing any of the other rights of Lender except as expressly stated in this paragraph, or (3) preclude Lender from enforcing its right under any guarantee(s) of the Indebtedness, pursuant to the terms of such guarantee(s).

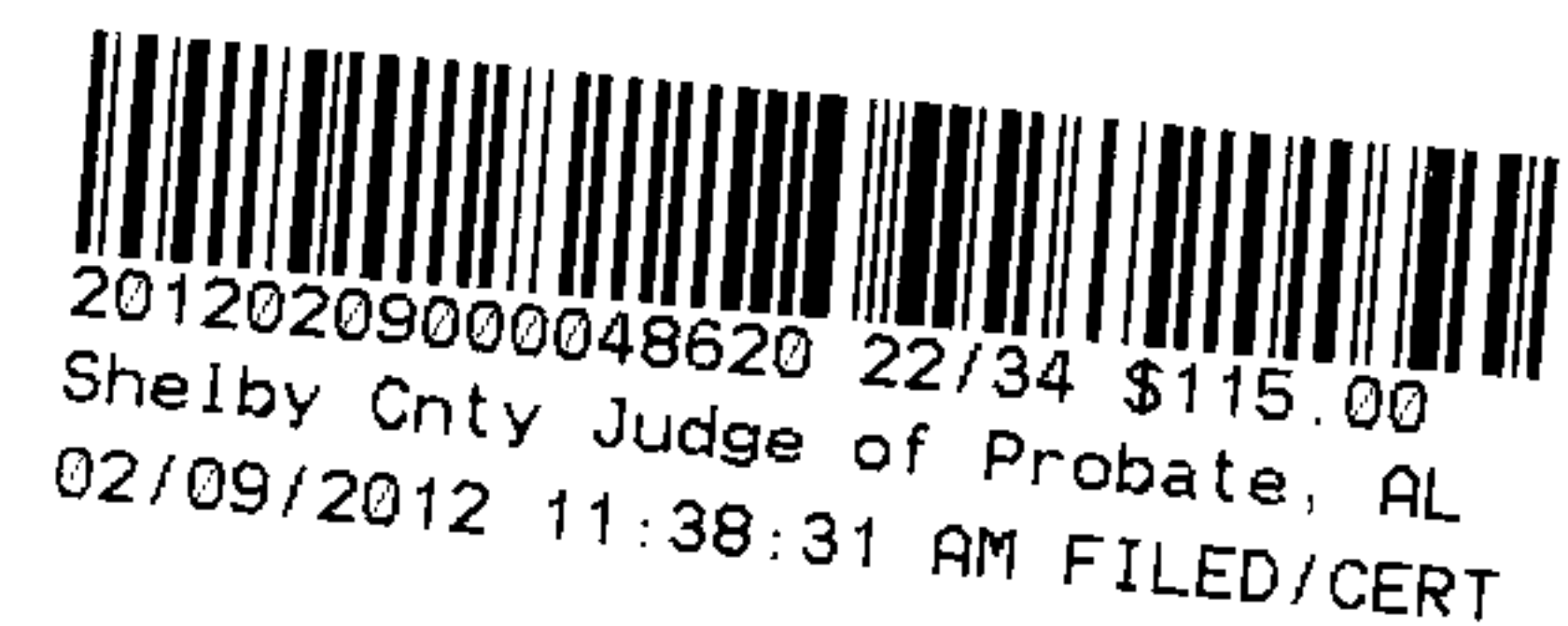
6.02 Reserves.

(a) Borrower shall establish and maintain all reserves required by the Commitment (all such reserves being hereinafter collectively referred to as the "Reserves").

(b) Borrower hereby grants Lender a security interest in the Reserves and any certificate(s) of deposit or other instrument(s) given in lieu of, or in addition to, such Reserves.

6.03 First Mortgage. This Mortgage is subject and subordinate to that certain first mortgage given by Borrower to Bank Independent ("First Mortgagee") dated December 16, 2010, and recorded at Instrument Number 20101216000424010 in the Office of the Judge of Probate of Shelby County, Alabama (the "First Mortgage"). A default under the First Mortgage or under any of the documents evidencing and/or securing the loan secured by the First Mortgage shall, giving consideration to any grace or cure period that may be expressly provided for therein, constitute a default under this Mortgage and the other Loan Documents. Lender acknowledges that its rights to insurance proceeds under Paragraph 1.03 and its rights to condemnation awards under Paragraph 1.05 are subject and subordinate to the rights of First Mortgagee under the First Mortgage with respect thereto.

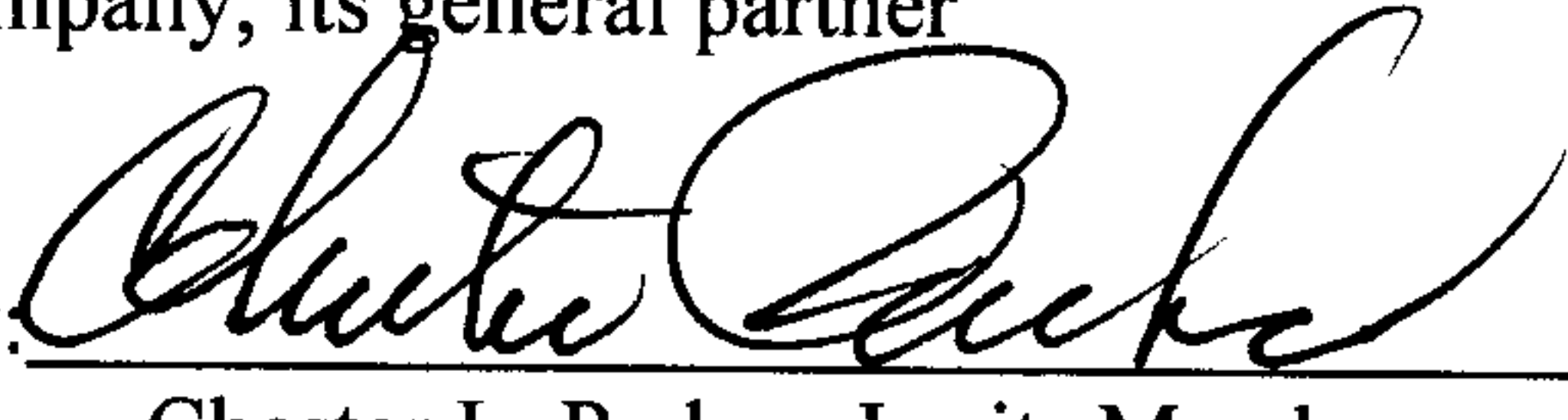
[Remainder of this page intentionally blank.]



IN WITNESS WHEREOF, Borrower has executed, sealed and delivered this Mortgage the day, month, and year first above written.

THE SHOALS MILL DEVELOPMENT, LTD., an
Alabama limited partnership

BY: C & S SHOALS, LLC, an Alabama limited liability
company, its general partner

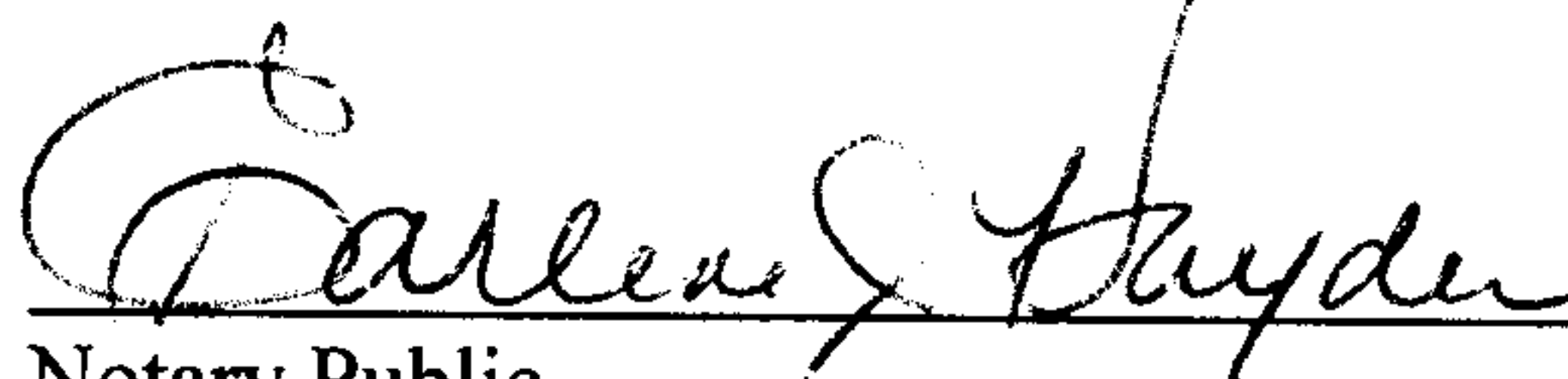
By: 
Chester L. Parker, Jr., its Member

STATE OF ALABAMA)

MONTGOMERY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Chester L. Parker, Jr., whose name as Member of C & S Shoals, LLC, an Alabama limited liability company, general partner of The Shoals Mill Development, Ltd., an Alabama limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, acting in his capacity as such Member and with full authority, executed the same voluntarily on the date hereof, for and on behalf of said corporation acting in its capacity as general partner of said limited partnership.

Given under my hand and official seal this 8th day of February, 2012.



Notary Public

My Commission Expires:

My commission expires 3/16/2015.

[SEAL]


20120209000048620 23/34 \$115.00
Shelby Cnty Judge of Probate, AL
02/09/2012 11:38:31 AM FILED/CERT

LIST OF EXHIBITS

1. Exhibit "A" - Legal Description of the Land
2. Exhibit "B" - List of Permitted Exceptions
3. Exhibit "C" - Copy of Promissory Note
4. Exhibit "D" - UCC Information
5. Exhibit "E" - Further Stipulations, if any


20120209000048620 24/34 \$115.00
Shelby Cnty Judge of Probate, AL
02/09/2012 11:38:31 AM FILED/CERT

EXHIBIT "A"
LEGAL DESCRIPTION

Lot 3, Shoals Mill Final Plat, a subdivision, according to the plat thereof recorded in Map Book 42, page 132 and re-recorded in Map Book 42, Page 133, of the records in the office of the Judge of Probate, Shelby County, Alabama, more particularly described as follows, to wit:

Commence at a 2" open top pipe in place being the Southeast corner of the Southeast one-fourth of the Northwest one-fourth of Section 24, Township 21 South, Range 1 West, Shelby County, Alabama; thence proceed South 00° 03' 21" West along the East boundary of the Northeast one-fourth of the Southwest one-fourth of said section for a distance of 412.67 feet to a 2" open top pipe in place; thence continue South 01° 21' 42" West along the East boundary of said quarter-quarter section for a distance of 293.37 feet to a ½" capped rebar in place, said point being the point of beginning. From this beginning point thence proceed North 32° 06' 43" West for a distance of 448.04 feet (set 1/2" rebar); thence proceed South 63° 53' 34" West for a distance of 1260.24 feet to a 3" capped pipe in place; thence proceed South 01° 28' 32" East or a distance of 114.45 feet to a ½" open top pipe in place; thence proceed South 46° 33' 29" East for a distance of 205.04 feet to a ½" rebar in place; thence proceed North 85° 18' 06" East for a distance of 274.54 feet to a 1" iron pin in place; thence proceed North 89° 07' 07" East for a distance of 138.36 feet to a 1" iron pin in place; thence proceed South 19° 56' 48" West for a distance of 75.09 feet to a 1" iron pin in place; thence proceed South 00° 37' 15" East for a distance of 74.29 feet to a 1" iron pipe in place; thence proceed South 87° 32' 01" East for a distance of 16.19 feet; thence proceed North 87° 29' 56" East for a distance of 17.96 feet to a ½" rebar in place; thence proceed North 89° 22' 31" East for a distance of 16.62 feet to a ½" rebar in place; thence proceed North 00° 29' 24" East for a distance of 32.33 feet to a ½" rebar in place; thence proceed South 89° 49' 42" East for a distance of 187.11 feet to a ½" rebar in place; thence proceed South 01° 09' 17" West for a distance of 29.96 feet to a ½" rebar in place; thence proceed North 88° 52' 25" East for a distance of 497.10 feet (set ½" rebar); thence proceed South 00° 09' 02" West for a distance of 100.01 feet to a 3" open top pipe in place; thence proceed South 88° 37' 24" East for a distance of 98.70 feet to a 1" iron pin in place being located on the East boundary of the Northeast one-fourth of the Southwest one-fourth of said Section 24; thence proceed North 00° 21' 26" East along the East boundary of said quarter-quarter section for a distance of 438.72 feet to a ½" open top pipe in place; thence proceed North 01° 21' 42" West along the East boundary of said quarter-quarter section for a distance of 202.60 feet to the point of beginning. The above described land is located in the Northeast one-fourth of the Southwest one-fourth of Section 24, Township 21 South, Range 1 West, Shelby County, Alabama and contains 19.13 acres.

Together with a permanent, non-exclusive easement for construction, operation, inspection, maintenance, replacement and removal of sanitary sewer lines in, on, under, through, over and across the following described parcel of real property, to-wit:

A 20 foot sanitary sewer easement being 10 feet in equal width on each side of the following described line: Commence at a 2" open top pipe in place being the Northeast corner of the Northeast one-fourth of the Southwest one-fourth of Section 24, Township 21 South, Range 1 West, Shelby County, Alabama; thence proceed South 00° 03' 21" West along the East boundary of said quarter-quarter section for a distance of 412.67 feet to a 2" open top pipe in place; thence proceed South 01° 21' 42" East along the East boundary of said quarter-quarter section for a distance of 293.37 feet; thence proceed North 32° 06' 43" West for a distance of 186.77 feet to the point of beginning in the center of an existing sanitary sewer easement. From this beginning point proceed North 59° 50' 03" East along the centerline of said easement for a distance of 19.88 feet to a sanitary sewer manhole.

EXHIBIT "B"
PERMITTED EXCEPTIONS

1. Current ad valorem taxes.
2. The First Mortgage.
3. Rights of tenants, as tenants only, in possession under unrecorded leases.
4. Transmission line permit to Alabama Power Company as set out in instrument recorded in Deed Book 143, Page 399, and Deed Book 220, page 837.
5. Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits recorded in Instrument No. 20101216000424040, in the Office of the Judge of Probate of Shelby County, Alabama.
6. Declaration of Land Use Restrictive Covenants for Alabama's HOME Program recorded in Instrument No. 20101216000424050, in the Office of the Judge of Probate of Shelby County, Alabama.
7. Assignment of rents from The Shoals Mill Development, Ltd., to Bank Independent dated December 16, 2010 and recorded on December 16, 2010 in Instrument Number 20101216000424020 in the original amount of \$5,053,636.00.
8. UCC financing statement from The Shoals Mill Development, Ltd., to Bank Independent dated December 16, 2010 and recorded on December 16, 2010 in Instrument Number 20101216000424030.
9. Sanitary Sewer line crossing the East boundary of the property as shown on the plat of Shoals Mill Final Plat recorded in Map Book 42, Page 132, and re-recorded in Map Book 42, Page 133, and as shown on the survey by Ray & Gilliland, P.C. dated January 27, 2012.
10. Any loss or damage that may arise from the chain link fence that crosses onto the subject property near the western most boundary as shown on the survey by Ray & Gilliland, P.C. dated January 12, 2012.
11. The 30 foot front, 10 foot side, and 35 foot rear building setback lines as shown on the plat of Shoals Mill Final Plat recorded in Map Book 42, Page 132, and re-recorded in Map Book 42, Page 133, and as shown on the survey by Ray & Gilliland, P.C. dated January 27, 2012.
12. Any loss or damage arising from the differences in the actual and record distances and measurements of the property lines as shown on the survey by Ray & Gilliland, P.C. dated _____, 2012.
13. Assignment of Leases and Rents from The Shoals Mill Development, Ltd., to Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, acting solely in its capacity as the Administrator of the State of Alabama's HOME Investment Partnerships Program dated February 8, 2012 and recorded on February ____, 2012 in Instrument Number 2012_____.
14. UCC-1 Financing Statement from The Shoals Mill Development, Ltd., to Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, acting solely in its capacity as the Administrator of the State of Alabama's HOME Investment Partnerships Program dated February 8, 2012 and recorded on February ____, 2012 in Instrument Number 2012_____.

15. Mortgage by The Shoals Mill Development, Ltd., to Chimney Peak Development Corporation dated January 5, 2012 and recorded January 11, 2012 in Instrument No. 20120111000013850 in the original principal amount of \$210,000.00, as assigned to Bank Independent by instrument dated January 5, 2012 and recorded January 11, 2012 in Instrument No. 20120111000013860 as subordinated to the mortgage described in Schedule A by instrument dated Feb 9, 2012 and recorded Feb 9, 2012 in Instrument Number 2012_____.

The recording references refer to the records in the office of the Judge of Probate, Shelby County, Alabama, unless otherwise indicated.

\$1,641,130.00

February 8, 2012

Montgomery, Alabama

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned ("Borrower" whether one or more) promises to pay to the order of Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, acting solely in its capacity as Administrator of the State of Alabama's HOME Investment Partnerships Program (hereinafter referred to as "Payee"), or any subsequent holder(s) hereof (Payee and any such subsequent holder(s) being referred to as "Holder"), at Payee's address, P.O. Box 242967, Montgomery, Alabama 36124-2967, or at such other place as Holder shall designate from time to time in writing, the principal sum of ONE MILLION SIX HUNDRED FORTY-ONE THOUSAND ONE HUNDRED THIRTY AND NO/100 DOLLARS (\$1,641,130.00), or so much thereof as may have been advanced, together with interest on the unpaid principal balance of such indebtedness from time to time outstanding from the date hereof at the rates hereinafter set forth, in lawful money of the United States of America, such principal and interest being due and payable as follows:

INTEREST RATE

The pre-default interest rate payable under this Note is fixed at one-half of one percent ($\frac{1}{2}$ of 1%) per annum for the term of this Note. Pre-default interest shall accrue and compound annually and shall be payable at the Maturity Date (as hereinafter defined). In the event of a default under any of the Loan Documents (hereinafter defined), giving consideration to any grace or cure period that may be expressly provided for therein, the interest rate on the entire unpaid balance of this Note shall increase to the greater of (i) twelve percent (12%) per annum or (ii) four percent (4%) per annum in excess of the prime rate (to float) published in The Wall Street Journal under the heading "Money Rates," until the default is fully cured or this Note is paid in full.

PAYMENT OF PRINCIPAL

This Note is payable on **DEMAND** in the event, but only in the event, of a default under any of the Loan Documents, giving consideration to any grace or cure period that may be expressly provided for therein; otherwise, this Note is payable in full twenty (20) years after the date of this Note (the "Maturity Date").

EXCESS CASH FLOW

Except as herein otherwise expressly provided, Borrower hereby waives all claims or future claims to any excess cash flow (hereinafter defined) from the project (the "Project") covered by the Mortgage (hereinafter defined) and acknowledges the Holder's rights thereto. For purposes hereof, "excess cash flow" shall mean the amount by which actual rents plus other income from the Project exceed 1.4 times the Project's total actual operating expenses and debt service (including deposits required by Holder made by Borrower to reserve accounts required by Holder). Excess cash flow shall be determined as of the end of each calendar year. Fifty percent (50%) of the excess cash flow shall be remitted to Holder prior to May 1 of the immediately following calendar year to be applied against the outstanding balance of this Note and the remainder shall be retained by Borrower solely for distribution to its members.

SECURITY

Borrower has given the Payee a Mortgage and Security Agreement of even date herewith (the "Mortgage") covering real property (and improvements located thereon) in Shelby County, Alabama, and also covering the personal property described therein. This Note, the Mortgage and any other document evidencing, securing, relating to or guaranteeing all or any part of the indebtedness hereunder are sometimes collectively referred to as the "Loan Documents." This Note also may be secured by other property given to Holder as collateral in other agreements from time to time existing between Borrower and Holder. References to the Loan Documents and to such other agreements shall not affect or impair



20120209000048620 28/34 \$115.00
Shelby Cnty Judge of Probate, AL
02/09/2012 11:38:31 AM FILED/CERT

the absolute and unconditional obligation of Borrower to pay the principal of and interest on this Note when due.

To the full extent not prohibited by applicable law, Holder may, but shall not be required to, apply to or set off against any amount owed under this Note, any funds, credit or property held by, in transit to or in possession of, Holder for the account of any Borrower, all without notice to or consent of Borrower.

LATE CHARGE

If any payment required by this Note or any of the other Loan Documents is not received by Holder within ten (10) days of its due date, Borrower shall pay Holder within five (5) days of receipt of demand therefor a late charge equal to the lesser of (a) five percent (5%) of the amount of the late payment or (b) the maximum amount allowed by law. Holder's acceptance of a subsequent payment not accompanied by any late charge then due and payable shall not constitute a waiver of Holder's right to receive such late payment.

PREPAYMENT CHARGE

Borrower may prepay this Note in full or in part at any time without a prepayment charge or premium.

PURPOSE OF LOAN

The loan evidenced by this Note is made for business purposes.

DEFAULT

Any one or more of the following events shall constitute a default under this Note: (a) Borrower's failure to pay principal or interest under this Note when due; (b) Borrower's failure to perform or comply in a timely manner with any of the (i) other obligations or provisions of this Note and any renewals, modifications, refinancing and extensions thereof, (ii) obligations or provisions under any other Loan Document, or (iii) other obligations and indebtedness of Borrower to Holder now existing or hereafter incurred or arising, direct or indirect, and however incurred or any part thereof; (c) if Borrower shall file for bankruptcy, insolvency, reorganization, moratorium or any other similar proceeding, or be involuntarily placed in any such proceeding and such proceeding not be dismissed within sixty (60) days of the commencement thereof; (d) if Borrower shall be dissolved, terminated or merged with any other entity or, if Borrower is an individual or group of individuals, any such individual shall die; or (e) if Borrower shall default under any of the other Loan Documents and such default shall not be cured within the time specifically provided for therein. Upon the happening of any one or more of said events of default, Holder shall have the right at its election and without notice to Borrower to declare the full amount of principal, interest and other charges under this Note and all other indebtedness of Borrower to Holder, immediately due and payable. No delay in making such election shall be construed as a waiver of the right to make such election.

WAIVERS, COSTS OF COLLECTION, MISCELLANEOUS

Borrower, to the extent not prohibited by applicable law, hereby: (a) waives as to this debt or any renewal, modification, extension or refinancing thereof all rights of exemption under the Constitution or laws of the State of Alabama or any other state as to real or personal property; (b) waives demand, presentment, protest, notice of protest, notice of dishonor, suit against any party and all other requirements necessary to hold Borrower liable hereunder; (c) agrees that time of payment may be extended or renewal notes taken or other indulgence granted without notice of or consent to such action and without release of liability as to Borrower; and (d) agrees to pay all costs of collection and/or attempting to collect or secure this Note, including reasonable attorney's fees whether or not suit be filed. This Note shall be construed in accordance with the laws of the State of Alabama. If a provision of this Note is or becomes invalid or unenforceable, the remaining provisions shall not be affected thereby. Any change or modification to this Note must be in writing signed by both Holder and Borrower.

APPLICATION OF PAYMENTS

All payments made under this Note shall be applied first in reduction of any sums advanced by Holder to cure Borrower's defaults under any of the Loan Documents, next in reduction of current interest, if any, and any remaining amount in reduction of the outstanding principal balance.

FORBEARANCE

Holder shall not be deemed to have waived any of Holder's rights or remedies under this Note unless such waiver is express and in a writing signed by Holder, and no delay or omission by Holder in exercising, or failure by Holder on any one or more occasions to exercise, any of Holder's rights hereunder or under any other of the Loan Documents, or at law or in equity, including, without limitation, Holder's right, after any default by Borrower, to declare the entire indebtedness evidenced hereby immediately due and payable, shall be construed as a novation of this Note or shall operate as a waiver or prevent the subsequent exercise of any or all of such rights. Acceptance by Holder of any portion or all of any sum payable hereunder whether before, on or after the due date of such payment, shall not be a waiver of Holder's right either to require prompt payment when due of all other sums payable hereunder or to exercise any of Holder's rights, powers and remedies hereunder or under the other Loan Documents. A waiver of any right in writing on one occasion shall not be construed as a waiver of Holder's right to insist thereafter upon strict compliance with the terms hereof without previous notice of such intention being given to Borrower, and no exercise of any right by Holder shall constitute or be deemed to constitute an election of remedies by Holder precluding the subsequent exercise by Holder of any or all of the rights, powers and remedies available to it hereunder, under any of the other Loan Documents, at law or in equity. To the full extent not prohibited by law, Borrower expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to, or in conflict with, the foregoing. Borrower consents to any and all renewals and extensions in the time of payment hereof without in any way affecting the liability of Borrower or any person liable or to become liable with respect to any indebtedness evidenced hereby. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part, unless Holder agrees otherwise in writing.

LIMIT ON INTEREST

If, from any circumstances whatsoever, fulfillment of any provision of this Note, at the time performance of such provision shall be due, shall involve transcending the limit on interest presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then Holder may, at its option (i) reduce the obligations to be fulfilled to such limit on interest, or (ii) apply the amount that would exceed such limit on interest to the reduction of the outstanding principal balance of this Note and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Holder had agreed to accept such extra payment(s) as a premium-free prepayment, so that in no event shall any exaction be possible under this Note that is in excess of the applicable limit on interest. It is the intention of Borrower and Holder not to create any obligation in excess of the amount allowable by applicable law. The provisions of this paragraph shall control every other provision of this Note.

NOTICE

Wherever any notice is required or permitted to be given hereunder, the same shall be in writing and shall be delivered in person or sent by registered or certified United States mail, postage prepaid, return receipt requested, or by commercial courier, to Borrower's address set out below or to such other address as Borrower may specify in no less than thirty (30) days prior written notice delivered to Holder in accordance herewith:

The Shoals Mill Development, Ltd.
100 Village Street
Birmingham, Alabama 35242
Attention: Chester L. Parker, Jr.

All such notices shall be deemed effectively given and delivered two (2) days after the postmarked date of mailing or, if delivered personally or by commercial courier, when received. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given in accordance with the time period hereinabove provided, shall be deemed to be receipt of the notice sent.

EXCULPATION

Subject to the provisions of any guarantee(s) of this Note, but notwithstanding anything else to the contrary in this Note or in any other of the Loan Documents, in any action or proceeding brought to enforce the obligation of Borrower to pay the indebtedness evidenced by this Note, to enforce the obligation of Borrower to pay any indebtedness or obligation created or arising under any of the other Loan Documents, or any of them, or to exercise any right of foreclosure or power of sale contained in the Loan Documents, the judgment or decree shall be enforceable against Borrower and its partners only to the extent of the interest of Borrower and its partners in the property described in the Loan Documents, and any such judgment shall not be subject to the execution on, nor be a lien on, any assets of Borrower or of its partners other than Borrower's and its partners' interest in such property, it being specifically understood and agreed that Borrower and its partners shall have no personal liability hereunder for the payment of this Note, and Holder shall look only to the property described in the Loan Documents and any guarantee(s) of this Note for the payment of the indebtedness evidenced hereby; PROVIDED, HOWEVER, that, notwithstanding the foregoing provisions of this paragraph, Borrower and its general partners shall be fully and personally liable at all times for (a) any costs, expenses or liability, including attorney's fees, incurred by Holder arising from any order, consent decree or settlement relating to the clean-up of toxic or hazardous materials or waste products, (b) fraud or misrepresentation and (c) the misapplication of (i) proceeds paid under any insurance policies by reason of damage, loss or destruction to all or any portion of the properties encumbered by the Loan Documents, or any of them, to the full extent of such proceeds, (ii) proceeds or awards resulting from the condemnation or other taking in lieu of condemnation of all or any portion of the properties encumbered by the Loan Documents, or any of them, to the full extent of such proceeds or awards or (iii) income, rents, issues, profits and revenues (collectively "rents") arising or issuing from or out of all of any part of such property encumbered by the Loan Documents following Holder's exercise of its right to receive such rents pursuant to the Loan Documents. Nothing contained in this paragraph shall (1) be deemed to be a release or impairment of the indebtedness evidenced by this Note or the lien of the Loan Documents upon the properties encumbered thereby, (2) preclude Holder, in the case of any default, from foreclosing the Loan Documents, or, exercising any power of sale contained in the Loan Documents, or, except as expressly limited in this paragraph, from enforcing any of the other rights of Holder, or (3) preclude Holder from enforcing its rights under any guarantee(s) of the indebtedness, pursuant to the terms of such guarantee(s).

TIME IS OF THE ESSENCE

TIME IS OF THE ESSENCE in complying with all of the terms, provisions and conditions of this Note.

EXECUTION

Borrower has subscribed its name hereto without condition that anyone else should sign or become bound hereon and without any other condition whatever being made. The term "Borrower" as used herein shall include the maker(s) of this Note and all person(s) or entity(ies) now or hereafter liable with respect to this Note, whether as maker, principal, surety, guarantor, endorser or otherwise, each of whom shall be jointly and severally liable for all of the obligations of Borrower hereunder. The provisions hereof are binding on the heirs, executors, administrators, assigns and successors of Borrower and shall inure to the

benefit of Payee, its successors and assigns, and every subsequent Holder of this Note. Borrower acknowledges receipt of a completed copy hereof.

SIGNED, SEALED AND DELIVERED by Borrower as of the date first above written.

THE SHOALS MILL DEVELOPMENT, LTD., an
Alabama limited partnership

BY: C & S SHOALS, LLC, an Alabama limited liability
company, its general partner

By: 
Chester L. Parker, Jr., its Member

EXHIBIT "D"

UCC INFORMATION

1. The name of the Debtor is The Shoals Mill Development, Ltd..
2. The name of the Secured Party is Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama.
3. The principal place of business of the Debtor is 100 Village Street, Birmingham, Alabama 35242.
4. The Debtor has been operating under said name and identity since June 14, 2005.


20120209000048620 33/34 \$115.00
Shelby Cnty Judge of Probate, AL
02/09/2012 11:38:31 AM FILED/CERT

EXHIBIT "E"

FURTHER STIPULATIONS

NONE.


20120209000048620 34/34 \$115.00
Shelby Cnty Judge of Probate, AL
02/09/2012 11:38:31 AM FILED/CERT