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Shelby Cnty Judge of Probate, AL  
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**This instrument was prepared by and  
when recorded should be returned to:**

Steven L. Kennedy, Esq.  
Seyfarth Shaw LLP  
1075 Peachtree Street, N.E., Suite 2500  
Atlanta, Georgia 30309

**Source of Title:**

**Deed Book LR201210, Page 718, Jefferson County, AL  
Inst. # 20120104000004900, Shelby County, AL**

**NOTICE: This Property is subject to Declaration of  
Protective Covenants, Agreements, Easements, Charges  
and Liens for Riverchase (Business), as recorded in Shelby  
Misc. Book 13, Page 50, refiled in Birmingham 1236, Page  
881, and refiled in Bessemer Real 348, Page 837, as  
amended by Amendment No. 1 to Declaration as recorded  
in Shelby Misc. Book 15, Page 189, refiled in Birmingham  
Real 1294, Page 30 and refiled in Bessemer Real 348, Page  
875, further amended by Amendment No. 2 in Shelby  
Misc. Book 19, Page 633, refiled in Birmingham Real 1437,  
Page 570 and refiled in Bessemer Real 1437, Page 878.**

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### MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE (hereinafter sometimes referred to as this "Mortgage" or "Mortgage and Security Agreement") made and entered into as of the \_\_\_\_ day of May, 2012, between **VISTA COMMUNITIES VENTURE, LLC**, a Delaware limited liability company, (hereinafter referred to as "Mortgagor"), with an address of c/o Crowne Properties, Inc., 505 North 20th Street, Suite 1015, Birmingham, Alabama, 35203, Attn: Alan Z. Engel, and **SUNTRUST BANK**, a Georgia banking corporation (hereinafter called "Mortgagee"), with an address of Mail Code GA-ATL-0081, 1155 Peachtree Street, Suite 300, Atlanta, Georgia, 30309;

### WITNESSETH:

WHEREAS, Mortgagor is the fee simple owner of the Land (as hereinafter defined); and

WHEREAS, Mortgagee has agreed to make a loan to Mortgagor in a principal amount not to exceed the sum of \$38,500,000.00 for the purpose of, among other things: (i) refinancing certain indebtedness relating to the Property (as hereinafter defined), (ii) paying certain costs in connection with the financing of the Property, (iii) returning certain capital contributed to the

Mortgagor by its members; and (iv) paying costs and expenses incurred in connection with the closing of the loan, as approved by Mortgagee.; and

WHEREAS, Mortgagor and Mortgagee have executed and delivered a certain Loan Agreement (the "Loan Agreement"), dated as of even date herewith, to set forth the terms and conditions of the disbursement of the proceeds of the loan. In connection with this loan, the Mortgagor may from time to time enter into one or more Interest Rate Protection Transactions (as defined in the Loan Agreement);

WHEREAS, THIS MORTGAGE SECURES FUTURES ADVANCES AND OBLIGATIONS.

NOW THEREFORE, for and in consideration of the sum of ONE HUNDRED AND NO/100THS DOLLARS (\$100.00) 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 Mortgagor hereinafter set forth, Mortgagor does hereby grant, bargain, sell, convey, mortgage, alien, assign, transfer and set over unto Mortgagee, its successors and assigns, all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances (hereinafter collectively referred to as the "Property");

(a) All that certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (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, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes owned by Mortgagor and attached to said buildings, structures or improvements and all other furnishings, furniture, fixtures, machinery, equipment, appliances, building supplies and materials, books and records, chattels, inventory, accounts, consumer goods, general intangibles and personal property of every kind and nature whatsoever owned by Mortgagor and now or hereafter located in, on or about, or used or intended to be used with or in connection with the use, operation or enjoyment of the Land and the improvements located from time to time thereon, including all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions or proceeds from a permitted sale of any of the foregoing, all tradenames, trademarks, servicemarks, logos, and goodwill related thereto which in any way now or hereafter belong, relate or appertain to the Land and the improvements located thereon or any part thereof and are now or hereafter acquired by Mortgagor; and all inventory accounts, chattel paper, documents, equipment, fixtures, 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 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 building materials, fixtures, building machinery and building equipment delivered on site to the Land during the course of, or in connection with, construction of the buildings and improvements upon the Land and which are now or hereafter owned by Mortgagor;

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

(e) Mortgagor's interest in all proceeds of insurance, condemnation payments, sale, lease, or other escrow agreements, and tenant security deposits, whether held by Mortgagor or in a trust or escrow account, relating to the Land and the improvements located thereon or any part thereof;

TOGETHER WITH all and singular the rights, tenements, hereditaments, members and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Property hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, including but not limited to, all rents, profits, issues and revenues of the Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving only the right to Mortgagor to collect the same for its own account so long as Mortgagor is not in default hereunder.

TO HAVE AND TO HOLD the Property and all of the estate, right, title, interest, separate estate, property, possession, claim and demand whatsoever in law and in equity of Mortgagor in and to the same unto Mortgagee, its respective successors and assigns, to its or their own use forever.

AND Mortgagor does hereby covenant with Mortgagee that (a) it is indefeasibly seized of the Property in fee simple and has full power and lawful right to convey the same as aforesaid and that it shall be lawful for Mortgagee at all times hereafter peaceably and quietly to enter upon, hold, occupy and enjoy the Property and every part thereof, that the Property and every part thereof are free from all encumbrances except for those matters expressly set forth in Exhibit "B" attached hereto and made a part hereof (the "Permitted Encumbrances"), (b) it will make such other and further assurances to perfect the fee simple title to the Property in Mortgagee as may hereafter be required; and (c) it does hereby fully warrant the title to the Property and every part thereof and will defend the same against the lawful claim of all persons whomsoever, subject to the Permitted Encumbrances. This conveyance is intended (i) to constitute a security agreement as required under the Uniform Commercial Code of Alabama, and (ii) to operate and is to be construed as a mortgage creating a first mortgage lien on the Property in favor of Mortgagee and is made under those provisions of the existing laws of the



State of Alabama relating to mortgages, and is given to secure and constitutes a first lien on the Property for the following described indebtedness (the "Secured Indebtedness"):

(a) The debt evidenced by that certain Mortgage Note of even date herewith, made by Mortgagor, payable to the order of Mortgagee, in the principal amount of THIRTY-EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$38,500,000.00) and any and all renewals, modifications, consolidations, and/or extensions of the indebtedness evidenced thereby, or any replacement note that may be substituted for said note after the date hereof (hereinafter said note or any replacement note, as the case may be, is referred to as the "Note" and to which Note reference is hereby made for all purposes), together with interest on said principal amount;

(b) Any and all costs, expenses, charges, liabilities, commissions, and attorneys' fees now or hereafter chargeable to or incurred by, or disbursed by, Mortgagee as provided for herein, or by applicable law;

(c) Any and all other indebtedness now or hereafter owing by Mortgagor to Mortgagee under the Loan Documents, as hereinbelow defined; and

(d) Any and all Additional Interest (as defined in the Loan Agreement) due at any time under any Interest Rate Protection Agreement (as defined in the Loan Agreement),

(d) Any and all additional advances made by Mortgagee to protect or preserve the Property or the security interest created hereby in the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Mortgagor's obligations hereunder or for any other purpose provided herein (whether or not the original Mortgagor remains the owner of the Property at the time of such advances).

This Mortgage secures such future or additional advances (in addition to the principal amount of the Note) as may be made by Mortgagee or the holder hereof, at its exclusive option, to or on behalf of Mortgagor or its successors or assigns in title for any purpose, including, without limitation, any and all advances and disbursements now or hereafter made by Mortgagee to protect or preserve the Property or the lien hereon on the Property or for taxes, assessments or insurance premiums as hereinafter provided, provided that all such advances are made within twenty-four (24) months from the date of this Mortgage or within such lesser period of time as may be provided by law as a prerequisite for the sufficiency of actual notice or record notice of such optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration to the same extent as if such future or additional advances were made on the date of the execution of this Mortgage. The total amount of indebtedness secured by this Mortgage may be increased or decreased from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal amount of \$38,500,000.00 plus any disbursements made for the payment of taxes, levies, or insurance on the Property covered by the lien hereof, and any advances or disbursements made under this Mortgage or the Loan Agreement, with interest on such advances or disbursements. It is the intent of the parties that this Mortgage shall secure the payment of the Note and any additional advances made from time to time pursuant to any additional promissory notes or otherwise to secure the Secured Indebtedness, all of said indebtedness being equally secured hereby and



having the same priority as any amounts advanced as of the date of this Mortgage. It is agreed that any additional sum or sums advanced by Mortgagee shall be equally secured with, and have the same priority as, the original indebtedness and shall be subject to all of the terms, provisions and conditions of this Mortgage, whether or not such additional loans or advances are evidenced by other promissory notes of Mortgagor and whether or not identified by a recital that it or they are secured by this Mortgage. It is further agreed that any additional promissory note or promissory notes executed and delivered pursuant to this section shall automatically be deemed to be included in the term "Note" wherever it appears in the context of this Mortgage.

The Note, this Mortgage, the Loan Agreement and all documents, instruments, deeds, mortgages and agreements now or hereinafter evidencing, securing or otherwise relating to the Note, this Mortgage or the Secured Indebtedness, together with any and all renewals, modifications, consolidations and extensions thereof, are collectively hereinafter referred to as the "Loan Documents."

PROVIDED ALWAYS, that should the Secured Indebtedness be paid according to the tenor and effect thereof when the same shall become due and payable, then the estate hereby granted shall cease, terminate and become void, and this Mortgage shall be canceled and surrendered, but otherwise shall remain in full force and effect.

AND MORTGAGOR HEREBY further covenants and agrees with Mortgagee as follows:

## ARTICLE 1

1.01 Payment of Indebtedness and Performance of Obligations. Mortgagor will pay the Secured Indebtedness according to the tenor thereof promptly as the same shall become due, and each Mortgagor shall perform every obligation of each Mortgagor contained in this Mortgage, as applicable, and in each and every instrument now or hereafter evidencing or securing the Secured Indebtedness secured hereby, and in the Loan Agreement and other Loan Documents.

1.02 Monthly Deposits. To secure further the payment of the taxes and assessments referred to in Section 1.03 below, and the payment of premiums on the insurance policies referred to in Section 1.04 below, Mortgagor shall, upon the request of Mortgagee and after the occurrence of an Event of Default pursuant to this Mortgage or the other Loan Documents, deposit with Mortgagee on the first day of each and every month a sum which, in the reasonable estimation of Mortgagee, shall be equal to one-twelfth of the annual taxes and assessments and one-twelfth of such annual insurance premiums; said deposits to be held by Mortgagee, free of interest, and free of any liens or claims on the part of creditors of Mortgagor and as part of the security of Mortgagee, and to be used by Mortgagee to pay current taxes, assessments and insurance premiums on the Property as the same accrue and are payable. Said deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Mortgagee. If said deposits are insufficient to pay the taxes, assessments and insurance premiums in full as the same become payable, Mortgagor shall deposit with Mortgagee such additional sum or sums as may be required in order for Mortgagee to pay such taxes, assessments and insurance premiums in full. Upon any Event of Default hereunder or under the Note,



Mortgagee may, at its option, apply any money in the fund resulting from said deposits to the payment of the Secured Indebtedness in such manner as it may elect.

1.03 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 debts secured by mortgages or the manner of collecting taxes so as to affect adversely Mortgagee, Mortgagor shall promptly pay any such tax; if Mortgagor fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibit Mortgagor from making such payment or would penalize Mortgagee if Mortgagor makes such payment, then the entire balance of the principal sum secured by this indenture and all interest accrued thereon shall, thirty (30) days after written notice, become due and payable at the option of Mortgagee. Nothing herein shall impose upon Mortgagor the obligation to pay any state or federal income taxes, corporate franchise taxes, or net worth taxes assessed or levied against Mortgagee.

(b) Mortgagor shall pay (to the extent the same are not paid from escrowed funds provided for in Section 1.02 hereof), before the same become delinquent, all taxes, liens, assessments and charges of every character already levied or assessed or that may hereafter be levied or assessed upon or against the Property and all utility charges for the Property, whether public or private; and upon demand shall furnish Mortgagee receipted bills evidencing such payment.

(c) Mortgagor shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to remain outstanding upon any part of the Property without removing, satisfying, bonding or contesting such lien within thirty (30) calendar days after Mortgagor receives actual notice of such lien.

(d) Notwithstanding the provisions of Section 1.03(a), 1.03(b) or 1.03(c) hereinabove to the contrary, Mortgagor may contest the validity and/or amount of any taxes, assessments or other charges referred to in said subparagraphs at Mortgagor's sole cost and expense and shall not be required to pay or discharge any obligation imposed upon Mortgagor in any of said paragraphs so long as (i) Mortgagor shall in good faith contest the same by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale, levy or forfeiture of or upon all or any part of the Property to satisfy the same, and (ii) at Mortgagee's request, Mortgagor shall deposit in escrow with a title insurance company acceptable to Mortgagee, or provide other security satisfactory to Mortgagee, an amount equal to the amount being contested plus a reasonable additional sum to cover possible costs, interest and penalties.

1.04 Insurance/Casualty. Mortgagor shall obtain and maintain the insurance coverage required in Section 4.07 of the Loan Agreement. Provided no Event of Default shall have occurred and be continuing hereunder, Mortgagor shall be authorized and empowered to adjust or compromise any loss under any insurance policies on the Property, subject to Mortgagee's



approval of the terms of any adjustment or compromise, such approval not to be unreasonably withheld. In the event that an Event of Default shall have occurred and be continuing under this Mortgage and Security Agreement, then Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any such loss under any insurance policies on the Property. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Mortgagee, instead of to Mortgagor or to Mortgagor and Mortgagee jointly. In the event any insurance company fails to disburse directly and solely to Mortgagee but disburses to Mortgagor or to Mortgagor and Mortgagee jointly, Mortgagor agrees to immediately endorse and transfer such proceeds to Mortgagee. In case of loss under any such policy of insurance, Mortgagee may, at its option, make all or any portion of the net proceeds available to Mortgagor for the purpose of restoration or repair of the Property or may apply the net proceeds or any portion thereof to the payment of the indebtedness hereby secured, whether due or not. If the Property is partially or totally damaged or destroyed by fire or any other cause and if Mortgagee, at its election, makes available to Mortgagor the proceeds of any fire or other casualty insurance with respect to such damage or destruction, Mortgagor shall proceed with the restoration thereof and diligently pursue the work of restoration to completion. Notwithstanding anything to the contrary contained herein or in any other Loan Document, Mortgagee agrees to make the proceeds of any fire or other casualty insurance available to Mortgagor, after deducting from such proceeds all of Mortgagee's reasonable expenses incurred in the collection of such sums, including reasonable attorneys' fees, for the purpose of restoration or repair of the Property or any portion thereof pursuant to procedures satisfactory to Mortgagee provided that (i) there shall exist no Event of Default hereunder, nor any occurrence, happening or circumstance that would constitute an Event of Default hereunder but for the fact that any applicable cure period has not yet expired, (ii) if the net insurance proceeds described above are less than the projected cost of such restoration or repair, then Mortgagor shall deposit with Mortgagee an amount equal to the difference between the net insurance proceeds collected and the projected cost, (iii) if such damage or destruction results in a loss of rental income, that such income is covered by the proceeds of business interruption insurance to the extent payable under the policies of insurance properly obtained and maintained pursuant to the Loan Documents, and (iv) such construction or repair is economically advisable, as reasonably determined by Mortgagee. In the event all of such conditions are not satisfied, Mortgagee shall, in any case, make a sufficient portion of such proceeds available for razing and clearing the affected portion of the improvements, and thereafter Mortgagee may, at its option, apply all or any portion of such proceeds to reduction of the Secured Indebtedness.

1.05 Use, Care and Operation of the Property.

(a) Mortgagor shall keep the improvements now or hereafter erected on the Property in good condition and repair, shall not commit or suffer any waste and shall not do or suffer to be done anything (other than construction, ownership, operation, maintenance and repair or renovation of improvements) which shall increase the risk of fire or other hazard to the Property or any part thereof.

(b) Except as otherwise permitted pursuant to the terms of the Loan Agreement, Mortgagor shall not remove or demolish nor materially alter the design or



structural character of any building (now or hereafter erected) or other part of the Property without the prior written consent of Mortgagee.

(c) If the Property or any part thereof is damaged by fire or any other cause in an amount in excess of \$50,000.00, Mortgagor shall give prompt written notice of the same to Mortgagee.

(d) Mortgagee or its representative is hereby authorized upon notice reasonable under the circumstances to enter upon and inspect the Property at any time during normal business hours, subject to the rights of tenants of the Property.

(e) Mortgagor shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Property or any part thereof. If Mortgagor receives notice from any federal, state, or other governmental entity that the Property fails to comply with any applicable law, ordinance, rule, order or regulation, Mortgagor will promptly furnish a copy of such notice to Mortgagee.

(f) If all or any part of the Property shall be damaged by fire or other casualty, Mortgagor shall, upon request of Mortgagee and subject to Mortgagee's making available all net insurance proceeds as provided herein, promptly restore the Property, or any portion thereof specified by Mortgagee, to the equivalent of its condition immediately prior to such damage, and if a part of the Property shall be damaged through condemnation (which damage does not result in acceleration of the indebtedness secured hereby by Mortgagee, as provided in Section 1.12 below), Mortgagor shall, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Property in a manner satisfactory to Mortgagee. In the event the Mortgagor is required pursuant to the provisions contained herein or in the Loan Agreement to restore, repair or alter the Property after fire, other casualty or condemnation, Mortgagee agrees that it shall make any net insurance proceeds or condemnation proceeds available to Mortgagor, pursuant to procedures satisfactory to Mortgagee, for the purpose of paying the cost of such restoration, repair, or alteration.

1.06 Further Assurances. At any time, and from time to time, upon request by Mortgagee, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered, to Mortgagee, any and all other further instruments, certificates and other documents in forms reasonably acceptable to Mortgagor as may be reasonably necessary in order to effectuate, complete, or perfect or to continue and preserve the obligations of Mortgagor under the Note and the obligations of Mortgagor under the security interest of this Mortgage and Security Agreement. Upon any failure of Mortgagor so to do, Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of Mortgagor and Mortgagor hereby irrevocably appoints Mortgagee as the agent and attorney-in-fact of Mortgagor so to do.



1.07 Leases, Contracts, Etc.

(a) As additional collateral and further security for the Secured Indebtedness, Mortgagor does hereby assign to Mortgagee, to the extent assignable, Mortgagor's interest in any and all leases, tenant contracts, rental agreements, occupancy agreements, franchise agreements, management contracts, construction contracts, and other contracts, licenses and permits now or hereafter affecting the Property, or any part thereof, and Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be reasonably requested by Mortgagee further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Mortgagee to any lease, tenant contract, rental agreement, franchise agreement, management contract, construction contract, or other contract, license or permit, or to impose upon Mortgagee any obligation with respect thereto. Without first obtaining on each occasion the written approval of Mortgagee, Mortgagor shall not cancel or permit the cancellation of any such lease, tenant contract, rental agreement, franchise agreement, management contract, construction contract, or other contract, license or permit, or materially modify any of said instruments, or accept, or permit to be made, any prepayment of any installment of rent or fees thereunder (except for security deposits and the usual prepayment of rent which results from the acceptance of rent in advance), except with regard to residential tenant leases which Mortgagor may modify or cancel in the sound exercise of its business judgment. Mortgagor shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of said instruments, now or hereafter existing, on the part of Mortgagor to be kept and performed and shall at all times do all things necessary to compel performance by each other party to said instruments of all obligations, covenants and agreements by such other party to be performed thereunder.

(b) Mortgagor shall not execute an assignment of the income, rents, issues or profits, or any part thereof, from the Property unless Mortgagee shall first consent to such assignment and unless such assignment shall expressly provide that it is subordinate to the assignment contained in this Mortgage and any assignment executed pursuant hereto or concerning the Secured Indebtedness.

(c) Notwithstanding any other provision of this Mortgage and except as set unless the same is on a lease form previously approved by Lender, Mortgagor shall not hereafter enter into any lease, tenant contract, rental agreement, occupancy agreement, franchise agreement, management contract or other contract, affecting the Property, or any part thereof, without the prior written consent of Mortgagee, such consent not to be unreasonably withheld, conditioned or delayed.

1.08 Expenses. Mortgagor shall pay or reimburse Mortgagee for all reasonable and actual costs incurred by Mortgagee in connection with the closing of the loan secured hereby and the administration thereof, including but not limited to fees for Mortgagee's inspecting consultants, attorneys and the costs of recording, intangible taxes (if and when applicable) and similar items. Mortgagor shall also pay or reimburse Mortgagee for all reasonable attorneys'



fees, costs and expenses actually incurred at standard hourly rates by Mortgagee in any proceedings involving the estate of a decedent or an insolvent, or in any action, legal proceeding or dispute of any kind in which Mortgagee is made a party, or appears as party plaintiff or defendant (unless due solely to action wrongfully taken or wrongfully failed to have been taken by Mortgagee), including, without limitation, appeals thereof, affecting the Secured Indebtedness, this Mortgage and Security Agreement or the interests created herein or in the Loan Documents, or the Property or any condemnation action involving the Property or any action to protect the security hereof; and any such amounts paid by Mortgagee shall be added to the Secured Indebtedness.

1.09 Estoppel Affidavits. Mortgagor shall, upon ten (10) business days' prior written request, which request shall not be made more than once during any calendar year, furnish Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not, to the best knowledge of Mortgagor, any offsets or defenses exist against such principal and interest, and, if such offsets or defenses exist, stating in detail the specific facts relating to each such offset or defense and such other information as Mortgagee shall reasonably require.

1.10 Subrogation. Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Secured Indebtedness, notwithstanding that any instrument providing public notice of same shall be satisfied and canceled of record.

1.11 Performance by Mortgagee of Defaults by Mortgagor. If Mortgagor shall fail to pay any tax, lien, assessment or charge levied or assessed against the Property, any utility charge, whether public or private required to be paid hereunder; any insurance premium required to be paid in connection with the procurement of insurance coverage and the delivery of the insurance policies required hereunder, or if Mortgagor shall fail to perform or observe any material covenant, term or condition of any leases affecting all or any part of the Property or any other covenant, condition or term of this Mortgage and Security Agreement, then Mortgagee, at its option, after the giving of any notice and expiration of any cure period provided for herein, may perform or observe the same, and all payments made or costs incurred by Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee with interest thereon at the default rate of interest under the Note. Notwithstanding the foregoing, with respect to any payments permitted hereunder other than insurance premiums, Mortgagee shall not make any such payments without first giving Mortgagor ten (10) calendar days prior written notice of its intention to do so; provided, however, that if Mortgagee in its good faith judgment determines that its failure so to make any of the payments permitted hereunder prior to the end of such ten (10) calendar day period would adversely affect either the Property or its security interest therein, then in such event Mortgagee shall have the right to make such payment prior to the end of such ten (10) calendar day period, and any such payment shall be covered by the terms of this Section 1.11. Mortgagee shall be the sole judge of the legality, validity, and priority of any such tax, lien, assessment, charge, claim, premium, and obligation, of the necessity for any such actions, and of the amount necessary to be paid in satisfaction thereof. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof (subject to rights of tenants thereof) upon notice



reasonable in the circumstances for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Mortgagor or any other person in possession holding under Mortgage except to the extent of the gross negligence or willful misconduct of Mortgagee or its agents and employees.

1.12 Condemnation. If all or any material part of the Property shall be damaged or taken through condemnation (which term when used in this Mortgage and Security Agreement shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), the entire indebtedness secured hereby shall, at the option of Mortgagee, become immediately due and payable in accordance with the terms of this Section 1.12. Mortgagee shall be entitled to all compensation, awards, and other payments or relief arising from any such condemnation. If the condemnation shall result in a taking of less than a material portion of the Property, then Mortgagee, after deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including attorney's fees, shall make the net proceeds available to Mortgagor for the repair and/or restoration of the Property upon the terms and conditions, and subject to the limitations, contained in this Section 1.12. Provided no Event of Default shall have occurred and be continuing hereunder, then Mortgagor shall be authorized, at its option, to commence, appear in and prosecute through counsel selected by Mortgagor and reasonably acceptable to Mortgagee, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith, subject to Mortgagee's approval of the terms of any such settlement or compromise. In the event that an Event of Default shall have occurred and be continuing under this Mortgage and Security Agreement or any of the other Loan Documents, then Mortgagor, immediately upon obtaining knowledge of the institution, or the proposed, contemplated, or threatened institution, of any action or proceeding for the taking through condemnation of the Property or any part thereof, will promptly notify Mortgagee and Mortgagee is hereby authorized and empowered, at its option, to commence, appear in, and prosecute any such action or proceeding 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 Mortgagor to Mortgagee, who after deducting therefrom all its expenses, including attorney's fees, may release any monies so received by it without affecting the security interest of this Mortgage and Security Agreement. Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Mortgagee may reasonably require. If, prior to the receipt by Mortgagee of such award or proceeds, the Property shall have been sold on foreclosure of this Mortgage, or by deed in lieu thereof, or under the power of sale herein granted, Mortgagee shall have the right to receive such award or proceeds to the extent of any unpaid Secured 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 counsel fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or proceeds. As used herein, a "material" portion of the Property shall mean any portion of the Property such that the condemnation thereof will in the reasonable judgment of Mortgagee substantially adversely affect the construction or operation of the project contemplated by the Loan Documents for its intended purposes or the rental income therefrom. If Mortgagee, at its election, makes available to Mortgagor the proceeds of such condemnation proceeding, Mortgagor shall immediately proceed with the restoration thereof and diligently pursue the work of restoration to completion. Notwithstanding anything to the contrary contained



herein or in any other Loan Document, Mortgagee agrees to make the proceeds of any such condemnation proceeding available to Mortgagor, after deducting from said condemnation proceeds all of its reasonable expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, for the repair and/or restoration of the Property pursuant to procedures satisfactory to Mortgagee, provided that (i) there shall exist no Event of Default hereunder, nor any occurrence, happening, or circumstance that would constitute an Event of Default hereunder but for the fact that any applicable cure period has not yet expired, (ii) if condemnation proceeds described above are less than the projected cost of such restoration or repair, then Mortgagor shall deposit with Mortgagee an amount equal to the difference between the net condemnation proceeds collected and the projected cost, (iii) if such condemnation results in a loss of rental income, that such income is covered by the proceeds of business interruption insurance to the extent payable under the policies of insurance properly obtained and maintained pursuant to the Loan Documents, and (iv) such reconstruction or repair is economically advisable, as reasonably determined by Mortgagee. In the event all of such conditions are not satisfied, Mortgagee may, at its option, terminate the Loan Agreement by delivering written notice of such election to Mortgagor and declare the entire Secured Indebtedness to be immediately due and payable, and in the event Mortgagor shall fail to pay such Secured Indebtedness in full within forty-five (45) days of such election by Mortgagee, Mortgagee may apply any such condemnation proceeds, or any part thereof, to payment of the Secured Indebtedness in such order as Mortgagee may determine.

1.13 Operating Statements. Mortgagor shall maintain, or cause to be maintained, accurate records of Mortgagor's income and expenses in connection with the operation of the Property and shall promptly furnish to Mortgagee annually as of December 31 of each year, within sixty (60) days after the period to which they relate updated financial statements for the Property for such fiscal year, prepared in accordance with sound accounting principles consistently applied, certified by Mortgagor and itemizing all material financial information with respect to the operation of the Property, including, but not limited to, sources of income, expenses and balance sheets of the Property for calendar year just ended. In addition, Mortgagor will furnish to Mortgagee operating statements (in a format acceptable to Mortgagee), rent rolls and such other reports and information, quarterly as of March 31, June 30, October 31 and December 31 of each year, within forty-five (45) days after the period to which they relate, regarding the Property and the financial condition of Mortgagor as Mortgagee reasonably request. Mortgagor agrees to permit Mortgagee upon reasonable notice to inspect the books and accounts of Mortgagor relating to the Property during normal business hours.

1.14 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 of Mortgagor referred to or described in this Mortgage and Security Agreement, or in any way connected with the use and enjoyment of the Property, this Mortgage and Security Agreement is hereby made and declared to be a security agreement encumbering, and Mortgagor hereby grants to Mortgagee a security interest in and to, each and every item of such property included herein as a part of the Property, in compliance with the



provisions of the Alabama Uniform Commercial Code. Upon request by Mortgagee, at any time and from time to time, a financing statement or statements reciting this Mortgage and Security Agreement to be a security agreement affecting all of such property shall be executed by Mortgagor and Mortgagee and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage and Security Agreement shall be (i) as prescribed herein, or (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 Mortgagee's sole election. Mortgagor and Mortgagee 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 Mortgagor and Mortgagee that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Mortgage and Security Agreement, 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 (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Mortgage and Security Agreement, or (iii) 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 (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for a taking or for loss of value, or (iii) Mortgagee's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Mortgagee as determined by this Mortgage and Security Agreement or affect the priority of Mortgagee'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 Mortgagee in the event any court shall at any time hold with respect to the foregoing clauses (i), (ii) or (iii) of this sentence, that notice of Mortgagee's priority of interest, to be effective against a particular class of persons, must be filed in the Alabama Uniform Commercial Code records.

(b) Mortgagor warrants that (i) Mortgagor's name, identity or corporate structure and residence or principal place of business are as set forth in this Mortgage; (ii) Mortgagor has been using or operating under said name, identity or corporate structure without change since the date of formation of Mortgagor; and (iii) the location of the collateral is or will be upon the Land excepting materials intended to be located thereon and stored temporarily off site. Mortgagor covenants and agrees that Mortgagor will furnish Mortgagee with notice of any change in the matters addressed by clauses (i) or (iii) of this Subsection 1.14(b) within thirty (30) days of the effective date of any such change and Mortgagor will promptly execute any financing statements or other instruments deemed necessary by Mortgagee to prevent any filed financing statement from becoming misleading or losing its perfected status.

1.15 Construction Materials. In addition to the interests in and to the Property granted, bargained, sold, and mortgaged by Mortgagor to Mortgagee as set forth hereinabove, Mortgagor



has also granted, bargained, sold, and mortgaged, and by these presents does grant, bargain, sell, and mortgage unto Mortgagee all building materials, equipment and appliances, including without limiting the generality of the foregoing, bricks, mortar, lumber, and other items and equipment, which are acquired by Mortgagor to be placed upon or used in connection with the Property, whether or not such materials are located upon or attached to the Property, and all guaranties and warranties of workmanship or quality relating to said building materials, equipment, and appliances, or other personal property and improvements and the construction and installation thereof, and all contract rights, business names, and other intangibles of Mortgagor relating to the construction, equipment and operation of the Property; and all of the items and types of items identified in this Section 1.15 shall also be included within the meaning of the term "Property" as used in this instrument.

1.16 Conveyance of the Property. Mortgagor hereby acknowledges and confirms that the identity and expertise of Mortgagor and certain principals of Mortgagor are material circumstances upon which Mortgagee has relied in connection with, and which constitute valuable consideration to Mortgagee for, Mortgagee's entering into the Loan Agreement pursuant to which the Secured Indebtedness has been advanced, as described in Section 5.01 below, and any change in such identity or expertise could materially impair or jeopardize the security afforded to Mortgagee by this Mortgage and Security Agreement for the payment of the principal amount of the Secured Indebtedness. Accordingly:

(a) Except as may be permitted pursuant to the provisions of the Loan Agreement, Mortgagor shall not, without the prior written consent of Mortgagee, which may be withheld for any reason or for no reason, voluntarily or by operation of law, sell, transfer, lease, convey or assign all or any part of the legal or equitable title to the Property, or any part of, or interest in, the Property. For purposes hereof, the change or transfer or encumbrance of the legal or equitable ownership of any membership interest in Mortgagor, the admission of any new member to Mortgagor, or the change or transfer of any direct or indirect interest in any member of Mortgagor shall constitute a transfer of the Property except as otherwise provided in the Loan Agreement. Notwithstanding the prohibitions set forth in this Section 1.16 or any other Loan Document, the following direct or indirect transfers of interests in the Borrower shall be permitted without the prior consent of Lender:

(i) Any transfer of limited partnership interests in Lubert-Adler Real Estate Fund VI, L.P. ("L-A VI"), Lubert-Adler Real Estate Fund VI-A, L.P. ("L-A VI-A"), or Lubert-Adler Real Estate Fund VI-B, L.P. ("L-A VI-B");

(ii) Any transfer of membership interests in Borrower by and among any of L-A VI, L-A VI-A, L-A VI-B, Crowne Hoover Associates Limited Partnership, Core Property Capital Fund I, LP and GLL III, LLC which does not result in a change of control or day-to-day management of the Borrower;

(iii) Any transfer of limited partnership interests in Crowne Hoover Associates, Limited Partnership or membership interests in Crowne



Hoover 150, LLC, or their respective constituent members, so long as Alan D. Levow and/or Alan Z. Engel continue to control the day-to-day management of such entities; or

(iv) Any other transfer of an interest in the Borrower (excluding the transfers of interests permitted pursuant to clauses (i), (ii) and (iii) above), which transfer, standing alone or coupled with any other transfers of interests in Borrower, regardless of the passage of time between such transfers, does not constitute (1) a transfer of more than a 20% direct or indirect interest in the Borrower or the Property or (2) a change of control or day-to-day management of the Borrower.

(b) Mortgagor shall not, without the prior written consent of Mortgagee, voluntarily or by operation of law, mortgage, encumber, transfer, convey or assign the Property, or any part of, or interest in, the Property, as security for an indebtedness other than for the Secured Indebtedness.

Notwithstanding anything provided to the contrary in Section 2.01 hereinbelow, in the event Mortgagor breaches any term of this Section 1.16, such breach shall entitle Mortgagee immediately to exercise all rights and remedies provided herein, and Mortgagor shall not be entitled to any cure period in connection therewith.

1.17 Litigation. Mortgagor shall promptly give notice in writing to Mortgagee of any litigation commenced or threatened affecting the Property, as such litigation is described in Section 3.10 of the Loan Agreement.

1.18 Hazardous Materials. For purposes of this Section 1.18: "Submitted Documents" shall mean that certain Phase I Environmental Site Assessment prepared by Terracon dated August 25, 2011, Project No. E1117754. "Hazardous Materials Laws" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as heretofore or hereafter amended, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, as heretofore or hereafter amended, 42 U.S.C. § 6901 *et seq.*, the Toxic Substances Control Act, as heretofore or hereafter amended, 15 U.S.C. § 2601 *et seq.*, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of any governmental authority having jurisdiction over the Secured Property which regulates or imposes liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter may be in effect.

1.19 Except as disclosed in the Submitted Documents, to Mortgagor's knowledge the Property (including the land, surface water, ground water and all improvements) is free of waste or debris and is free of:

(a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder;



(b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder other than hazardous substances used in the ordinary course of operating the Property and used and stored in accordance with applicable Environmental Requirements (as defined below);

(c) any substance the presence of which on the Property is prohibited by any law similar to those set forth in this Section 1.18;

(d) any asbestos fire proofing or insulation or other form of building materials or substances which may, if not properly handled, pose a threat to the health of building users and occupants;

(e) contamination resulting from any oil or petroleum products and their by-products

(f) any polychlorinated biphenyls (PCBs); and

(g) contamination resulting from any materials which, under federal, state or local law, statute, ordinance or regulations, or court or administrative order or decree, or private agreement (hereinafter referred to collectively as "Environmental Requirements") require special handling in collection, storage, treatment or disposal because of toxic, flammable, explosive, corrosive, reactive, or radioactive properties or because of properties that may be hazardous or harmful to the environment or human health [items (a)-(g) are hereinafter referred to collectively as "Hazardous Materials"].

Except as disclosed in the Submitted Documents, Mortgagor hereby warrants and represents to Mortgagee that (1) with regard to the Property and all activities on the Property, Mortgagor has not received any notice of, and is unaware of, any violation or any action, judicial or administrative, relating to the violation, of any of the Environmental Requirements, (2) Mortgagor has not received, and is unaware of, any notice under any of the Environmental Requirements relating to the existence of any contamination or Hazardous Materials on the Property, and (3) Mortgagor has not spilled, leaked or in any other manner released any Hazardous Materials on the Property, and that to the best of Mortgagor's knowledge, no other person has spilled, leaked or in any other manner released any Hazardous Materials on the Property in violation of applicable Hazardous Materials Laws. Mortgagor shall not hereafter (i) cause or suffer to occur a release, spillage, leak, uncontrolled loss, seepage or filtration of any Hazardous Materials at, upon or within the Property or any contiguous real estate in violation of Hazardous Materials Laws, (ii) engage in any activity or permit any tenant or occupant of the Property to engage in any activity that could lead to the imposition of liability on such tenant or occupant, Mortgagor or any other owner of any part of the Property or the creation of a lien on the Property under the Environmental Requirements, except for activities involving chemicals, substances, and materials routinely used in the construction of improvements such as the improvements to be constructed on the Land or used in the day-to-day operations of properties such as the Property, provided that at all times Mortgagor shall cause any such chemicals, substances and materials to be used, stored, handled and disposed of in compliance with all applicable Environmental Requirements. If Mortgagor shall fail to take or cause to be taken any



and all actions as may be necessary to comply with all Environmental Requirements applicable to Mortgagor, Mortgagee may make advances or payments towards performance or satisfaction of the same, but shall be under no obligation to do so, and any reasonable and actual sums so advanced or paid, including, without limitation, all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, including, without limitation, reasonable attorneys' fees actually incurred at standard hourly rates, fines or other penalty payments, shall be reimbursed by Mortgagor to Mortgagee in accordance with the provisions of Section 1.11 hereinabove. Mortgagor shall at all times indemnify and hold Mortgagee harmless against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges and expenses, of any nature whatsoever suffered or incurred by Mortgagee, whether as Mortgagee under the Mortgage, as mortgagee in possession, or as successor-in-interest to Mortgagor by foreclosure deed or deed in lieu of foreclosure, under or on account of the following (regardless of whether or not any Government Agency, as hereinafter defined, has taken or threatened to take any action relating thereto): (a) the presence of any Hazardous Materials at any time on, in, under, at or affecting all or any portion of the Property, regardless of whether or not caused or within the control of Mortgagor; (b) the application of any Hazardous Materials Laws, including the assertion of any lien thereunder, with respect to any discharge of Hazardous Materials or the threat of a discharge of any Hazardous Materials affecting the Property, whether or not the same originates or emanates from the Property or any contiguous real estate, including any loss of value of the Property as a result of any of the foregoing; (c) the cost of removal or remedial action with respect to any and all Hazardous Materials located upon the Property and any costs relating to damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to the Hazardous Materials Laws; (d) the violation of any Hazardous Materials Laws applicable to the Property, whether or not caused by or within the control of Mortgagor; (e) the breach by Mortgagor of any covenant or representation made by Mortgagor under this Mortgage; (f) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of any abnormally or inherently dangerous activity at or near the Property; and (g) any other environmental matter affecting the Property within the jurisdiction of the Federal Environmental Protection Agency, the Alabama Department of Natural Resources or any other federal, state or local agency (collectively, a "Government Agency").

Notwithstanding the foregoing, Mortgagor shall have no liability to Mortgagee with respect to any expense, damage or loss suffered by Mortgagee arising from (i) acts or circumstances occurring after (A) the period of Mortgagor's ownership of the Property, or (B) the date of repayment of the Secured Indebtedness, or (ii) the negligence or willful misconduct of Mortgagee or its agents. It is expressly agreed by Mortgagor that this covenant of indemnification shall survive any payment and satisfaction of the indebtedness evidenced by the Note and secured hereby and the release and satisfaction of this Mortgage and Security Agreement and the Loan Documents for a period of two (2) years. Without limiting the generality of the foregoing, the foregoing covenant of indemnification shall inure to the benefit of Mortgagee, its successors and assigns, in the event Mortgagee becomes the successor in interest to Mortgagor with respect to the Property; provided, however, that the foregoing covenant of indemnification shall not extend to any expense, damage or loss arising solely from



the acts of Mortgagee in the event Mortgagee becomes the successor in interest to Mortgagor with respect to the Property (or arising from acts or circumstances occurring after the period of Mortgagor's ownership of the Property, as aforesaid); and provided, however, that the foregoing covenant of indemnification shall not inure to the benefit of any purchaser of the Property at foreclosure other than Mortgagee, or its subsidiaries, or if the Property is purchased at foreclosure by Mortgagee or acquired by Mortgagee through deed in lieu of foreclosure, to any subsequent purchaser of the Property from Mortgagee.

1.20 Replacement of Fixtures and Personalty. Mortgagor shall not permit any of the fixtures or personalty owned by Mortgagor comprising a part of the Property to be removed at any time from the Property without the prior written consent of Mortgagee, unless such fixtures or personalty are actually replaced by articles of equal suitability and value owned by Mortgagor free and clear of any lien or security interest, except such as may be approved in writing by Mortgagee.

1.21 Americans with Disabilities Act. Mortgagor, at its sole cost and expense, shall promptly and at all times and from time to time during Mortgagor's ownership of the Property comply with all requirements of Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the regulations promulgated in connection therewith, 28 CFR Part 36, and the applicable ADA Accessibility Guidelines. Mortgagor hereby indemnifies and holds harmless Mortgagee against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges and expenses, of any nature whatsoever suffered or incurred by Mortgagee, whether as Mortgagee of this Mortgage, as mortgagee in possession, or as successor-in-interest to Mortgagor by foreclosure deed or deed in lieu of foreclosure, in connection with the foregoing provision.

## ARTICLE 2

2.01 Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" by Mortgagor hereunder:

(a) Mortgagor shall fail to pay in full when due and payable any installment of principal, interest, escrow deposits, as required by the Note, this Mortgage and Security Agreement, or otherwise, and such failure to pay continues for more than ten (10) days after the date upon which such amount becomes due; or

(b) Mortgagor fails duly to observe any covenant, condition or agreement of this Mortgage and Security Agreement or of any other instrument evidencing, securing or relating to the Secured Indebtedness and such failure is not cured within thirty (30) calendar days after the effective date of written notice from Mortgagee to Mortgagor unless a shorter cure period for any specific covenant or condition is specified herein, provided that if such failure to perform by its nature cannot reasonably be completely remedied within thirty (30) days following such notice or within such shorter cure period, as the case may be, but is capable of cure, Mortgagor shall have such additional period of time as may be necessary to cure such failure, not to exceed an additional ninety (90) calendar days, provided that Mortgagor commences such cure in good faith promptly upon receipt of such notice and proceeds diligently thereafter to cure same; or



(c) There shall have occurred a "Default" or an "Event of Default" under and as defined in the Loan Agreement or under any of the other Loan Documents; or

(d) Any warranties or representations made or agreed to be made in this Mortgage and Security Agreement or in any other instrument evidencing, securing or relating to the Secured Indebtedness shall be breached by Mortgagor or shall prove to be false or materially misleading; or

(e) Any lien or claim of lien for labor, material, taxes, or otherwise shall be filed against the Property and not be removed, bonded, or contested in accordance with the terms of Section 1.03(d) above within thirty (30) calendar days after the date of Mortgagor's receipt of actual notice of such filing; or

(f) A levy shall be made under any process on, or a receiver be appointed for, the Property or any other property of Mortgagor and such levy not be removed or receiver dismissed within sixty (60) calendar days of date of process or appointment; or

(g) Mortgagor, or any guarantor of the Secured Indebtedness (hereinafter called a "Guarantor"), shall file a voluntary petition in bankruptcy, or any other petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other similar relief for debtors; or

(h) Mortgagor, or any Guarantor, shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of such Mortgagor or of any Guarantor or of all or any part of the Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof; or

(i) Mortgagor, or any Guarantor, shall make any general assignment for the benefit of creditors; or

(j) Mortgagor, or any Guarantor, shall commence the process of dissolution, liquidation, or both dissolution and liquidation; or

(k) (i) There shall be filed a petition against Mortgagor, or any Guarantor, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or (ii) there shall be filed a petition seeking the appointment of any trustee, receiver or liquidator of Mortgagor, or of any Guarantor, or of all or any substantial part of the Property, or of any or all of the income, rents, issues, profits or revenues thereof, unless any such petition described in the foregoing clauses of this Subsection 2.01(k) shall be dismissed within one hundred and twenty (120) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition; or



(l) There shall occur, without the prior written consent of Mortgagee, voluntarily or by operation of law, a sale, transfer (as defined in Section 1.16 hereof), conveyance or assignment of all or any part of the legal or equitable title to the Property, or any interest therein; or

(m) Mortgagor shall, without the prior written consent of Mortgagee, voluntarily or by operation of law, transfer, convey, lease or assign the Property, or any part of, or interest in, the Property as security for an indebtedness other than for the indebtedness secured hereby; or

(n) Any member of Mortgagor shall transfer or assign its interest in Mortgagor, or any member, partner or shareholder of any member of Mortgagor shall transfer its interest in such partner of Mortgagor, in violation of the restrictions set forth in Section 1.16 without the prior written consent of Mortgagee.

Any periods of grace, cure or notice provided for the benefit of Mortgagor in this Mortgage and in the other Loan Documents shall run concurrently and not consecutively.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred hereunder and is continuing beyond any applicable notice and cure period, then the whole unpaid principal sum of the Secured Indebtedness and all interest and other charges accrued and accruing under the Note, this Mortgage and the Other Loan Documents shall, at the option of Mortgagee, become due and payable upon notice or demand by Mortgagee, time being of the essence of this Mortgage and Security Agreement and of the Secured Indebtedness, and thereafter such Event of Default may be cured only by the payment of such entire principal balance and all other sums due and payable hereunder and thereunder; and no omission on the part of Mortgagee to exercise such option when entitled so to do shall be considered as a waiver of such right.

2.03 Right to Enter and Take Possession.

(a) If any Event of Default shall have occurred and be continuing beyond any applicable notice and cure period, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Property and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of the Property and may exclude Mortgagor and Mortgagor's agents and employees wholly therefrom.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Property to Mortgagee, and Mortgagor hereby specifically consents to the entry of such judgment or decree. Mortgagor shall pay to Mortgagee, upon demand, all reasonable and actual expenses of obtaining such judgment or decree, including reasonable compensation to Mortgagee, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage and Security Agreement.



(c) Upon every such entering and taking of possession, Mortgagee may hold, store, use, operate, manage, control, and maintain the Property and conduct the business thereof, and, from time to time, (i) make all necessary and proper 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 Property insured; (iii) manage and operate the Property and exercise all the rights and powers of Mortgagor, in its 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 Mortgagee; all as Mortgagee may from time to time determine to be to its best advantage; and Mortgagee may collect and receive all of the income, rents, profits, issues and revenues of the Property, including those past due as well as those accruing thereafter and, after deducting (aa) all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other charges as Mortgagee may determine to pay, (ee) other proper charges upon the Property or any part thereof and (ff) the reasonable compensation and expenses of attorneys and agents of Mortgagee, shall apply the remainder of the money so received by Mortgagee to the payment of the Secured Indebtedness. Notwithstanding anything provided herein to the contrary, Mortgagee shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Mortgagee of its rights under this Mortgage and Security Agreement, and Mortgagee shall be liable to account only for the rents, income, issues and profits actually received by Mortgagee.

(d) For the purpose of carrying out the provisions of this Section 2.03, Mortgagor hereby constitutes and appoints Mortgagee the true and lawful agent and attorney in fact of Mortgagor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact in the Property.

(e) In the event any such Event of Default by Mortgagor hereunder is cured and satisfied to the satisfaction of Mortgagee prior to any action taken to enforce the Mortgage pursuant to Section 2.05 below such that Mortgagee returns possession of the Property to Mortgagor, the right of Mortgagee to take possession from time to time pursuant to Section 2.03(a) above shall exist upon the occurrence of any subsequent Event of Default hereunder.

2.04 Receiver. If an Event of Default shall have occurred hereunder and is continuing beyond any applicable notice and cure period, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the State of Alabama. Mortgagor shall pay unto Mortgagee upon demand all expenses, including receiver's fees,



attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.04 and any such amounts paid by Mortgagor shall be added to the Secured Indebtedness and shall be secured by this Mortgage and Security Agreement.

2.05 Enforcement of Mortgage.

(a) When the Secured Indebtedness shall become due, whether by acceleration or otherwise, and remain unpaid, Mortgagee, at its option, may forthwith or at any time thereafter (i) institute and maintain an action to collect such Secured Indebtedness, (ii) institute and maintain an action of mortgage foreclosure against the Property pursuant to power of sale granted hereby, (iii) take possession of any of the Property and sell such property pursuant to the provisions of the Uniform Commercial Code and exercise such other rights and remedies with respect to such property as may be provided by such Code, (iv) sell the Property in compliance with applicable law at public outcry, in front of the Court House door of the county wherein the Property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and upon the payment of the purchase money, Mortgagee or any person conducting said sale for Mortgagee, is authorized and empowered to execute to the purchaser at said sale a deed to the Property so purchased in the name and on behalf of Mortgagee, and the certificate of the holder of the Secured Indebtedness appointing said auctioneer to make such sale shall be prima facie of his authority in the premises, or (iv) take such other action at law or in equity for the enforcement of any Loan Document as the law may allow, all without declaration of such option and without notice except as otherwise provided herein or in the other Loan Documents.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional Secured Indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree, with appropriate adjustment upon final determination) of procuring all such abstracts of title, title searches and examinations, guarantee policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature in this section mentioned shall become so much additional debt secured hereby and immediately due and payable with interest thereon at the default rate of interest under the Note, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage, or any indebtedness hereby secured, (ii) preparation for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, or (iii) preparation for the defense of any



threatened suit or proceeding with might affect the Property or the security hereof, whether or not actually commenced.

(c) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Property. Such receiver shall have power to collect the rents, issues, and profits of the Property during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period.

(d) Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, guarantee policies, muniments of title, surveys and other papers relating to the Property, and in case of foreclosure hereof and failure to redeem, the same shall be delivered to and become the property of the person obtaining a deed to the Property by reason of such foreclosure.

(e) To the extent permitted by applicable law, Mortgagor hereby waives any and all rights of redemption from the sale under any order or decree of foreclosure of this Mortgage and Security Agreement on its behalf and on behalf of each and every person and its successor and assigns.

(f) Upon any foreclosure sale or sale by power, Mortgagee may bid for and purchase the Property if the highest bidder therefor and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

(g) In any foreclosure sale or sale pursuant to a power granted herein, the Property may be sold in one parcel, several parcels or groups of parcels.

2.06 Application of the Proceeds of Sale. Upon any such sale pursuant to foreclosure, the proceeds of said sale, unless otherwise required by law, shall be applied first to payment of accrued interest and late charges on the principal balance of the indebtedness secured hereby, then to insurance premiums, liens, assessments, taxes and charges including utility charges with accrued interest thereon, and then to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorney's fees, then to the unpaid principal balance of the Secured Indebtedness, and finally, the remainder, if any, shall be paid to Mortgagor.

2.07 Mortgagor as Tenant Holding Over. In the event of any such foreclosure sale, Mortgagor (if Mortgagor shall remain in possession) 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 Completion of Renovation of Improvements Described in Loan Agreement. Mortgagee shall have the right to enter upon the Property for the purpose of completing the renovation of improvements, to continue any and all outstanding contracts for the renovation of such improvements, and to make and enter into any further contracts which may be necessary, either in their or its own name or in the name of Mortgagor. The expenses of completing the renovation of improvements in excess of the amount of the Note, if any, shall be deemed a part of the Secured Indebtedness.

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

2.10 Remedies Cumulative. No right, power or remedy conferred upon or reserved by Mortgagee by this Mortgage and Security Agreement 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.

2.11 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, exemption, homestead, or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage and Security Agreement, or the absolute sale of the Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

2.12 Leases. The failure of Mortgagee to make any tenants of the Property parties to any foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be, by Mortgagor a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby.

2.13 Waiver.

(a) No delay or omission of Mortgagee or of any holder of this Mortgage and Security Agreement to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every right, power and remedy given by this Mortgage and Security Agreement to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.



Failure on the part of Mortgagee to complain of any act or failure to act or to declare an Event of Default hereunder, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies consequent on any breach or Event of Default by Mortgagor. The lien of this Mortgage and Security Agreement shall remain in full force and effect during any postponement or extension of the time of payment of the Secured Indebtedness or any part thereof.

(b) If Mortgagee (i) grants forbearance or 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 Property from the lien of this Mortgage and Security Agreement or otherwise changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage and Security Agreement; (v) consents to the filing of any map, plat or replat affecting the Property; (vi) consents to the granting of any easement or other right affecting the Property; 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 and Security Agreement or any other obligation of Mortgagor or any subsequent purchaser of the Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Mortgagee 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 Event of Default; nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien of this Mortgage and Security Agreement be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Secured Indebtedness, 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.

2.14 Suits to Protect the Property. Mortgagee shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Mortgage and Security Agreement, (b) to preserve or protect its interest in the Property and in the rents, issues, profits and revenues arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Mortgagee; provided, however, Mortgagee shall not institute or maintain any such suits or proceedings against parties other than Mortgagor unless and until Mortgagee shall have first made upon Mortgagor such request so to do as shall then be reasonable under the circumstances, and Mortgagor shall have thereupon failed either to institute and maintain such suit or to otherwise cure or correct any such matters or circumstances.



2.15 Mortgagee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Mortgagee, to the 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 Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage and Security Agreement at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

2.16 WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS MORTGAGE, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF MORTGAGEE TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE AND ANY OTHER INDEBTEDNESS AND THE POWER OF ATTORNEY GIVEN HEREIN TO MORTGAGEE TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY MORTGAGOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS MORTGAGE; (B) WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS OF THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO MORTGAGEE, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS MORTGAGE AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; AND (C) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR LOAN TRANSACTION AND THAT THIS MORTGAGE IS VALID AND ENFORCEABLE BY MORTGAGEE AGAINST MORTGAGOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

### ARTICLE 3

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



3.02 Headings. The headings of the sections, paragraphs and subdivisions of this Mortgage and Security Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

3.03 Invalid Provisions to Affect No Others. If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; in no event and under no circumstances whatsoever shall Mortgagor be charged more than the highest lawful rate of interest permitted under applicable law; if any clause or provision herein contained operates or would prospectively operate to invalidate or impair the enforceability of this Mortgage and Security Agreement in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage and Security Agreement shall remain operative and in full force and effect.

3.04 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

3.05 Notices. Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Mortgage and Security Agreement shall be (i) delivered by hand, (ii) mailed by United States certified mail, return receipt requested, postage prepaid, deposited in a United States post office or a depository for the receipt of mail regularly maintained by the United States Post Office, (iii) delivered by local or nationally recognized overnight courier which maintains evidence of receipt, or (iv) sent by email provided the subject line reads in capitalized letters "URGENT NOTICE REGARDING SUNTRUST LOAN TO VISTA COMMUNITIES VENTURE, LLC", and a copy of such notice is simultaneously sent by one of the other methods set forth above. Any notices, demands, approvals or other communications shall be deemed given and effective when received at the address listed below for each party, or at such other address as any party shall have given notice to the others in accordance with the provisions hereof. Notwithstanding the foregoing, no notice or other communication shall be deemed ineffective because of refusal of delivery to the address or email address specified for the giving of such notice in accordance herewith. Any notice which is intended to initiate a response period set forth in this Agreement shall be effective to do so only if it specifically references such response period and the Section of this Agreement containing such response period. Any party may change the address to which notices will be sent by giving notice of such change to the other party, in conformity with the provisions of this Section for the giving of notice. A notice to a party designated to receive a "copy" shall not in and of itself constitute notice to the primary notice party.



If to Indemnitor: Vista Communities Venture, LLC  
c/o Crowne Partners, Inc.  
505 North 20th Street  
Suite 1015  
Birmingham, Alabama, 35203  
Attn: Alan Z. Engel  
Email Address: [azengel@crownepartners.com](mailto:azengel@crownepartners.com)

With a copy to: Arnall Golden Gregory LLP  
171 17th Street, NW, Suite 2100  
Atlanta, Georgia 30363-1031  
Attention: Scott A. Fisher, Esq.  
Email Address: [scott.fisher@agg.com](mailto:scott.fisher@agg.com)

If to Bank: SunTrust Bank  
Mail Code GA-ATL-0081  
1155 Peachtree Street, Suite 300  
Atlanta, Georgia 30309  
Attention: Lisa R. Smith  
Email Address: [Lisa.R.Smith@SunTrust.com](mailto:Lisa.R.Smith@SunTrust.com)

With a copy to: Seyfarth Shaw LLP  
1075 Peachtree Street, N.E., Suite 2500  
Atlanta, Georgia 30309  
Attention: Steven L. Kennedy, Esq.  
Email Address: [skennedy@seyfarth.com](mailto:skennedy@seyfarth.com)

#### ARTICLE 4

4.01 Governing Law. This Mortgage and Security Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Alabama, without reference to the application of the choice of law principles.

4.02 Time of Essence. Time is of the essence in the performance of all obligations hereunder.

4.03 Assignment. This Mortgage and Security Agreement is assignable by Mortgagee and any assignment hereof by Mortgagee shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Mortgagee.

4.04 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Mortgagor 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 Mortgagor or, in the case of any such mutilation, upon surrender of the Note, Mortgagor shall



sign in lieu thereof a new note, dated the date to which interest has been paid on the lost, stolen, destroyed or mutilated Note and otherwise of like tenor, with appropriate variations.

4.05 Mortgage Tax. If at any time the State of Alabama shall determine that the mortgage tax paid in connection with this Mortgage is insufficient, and that additional mortgage tax should be paid, then Mortgagor shall pay for the same, together with any interest or penalties imposed in connection with such determination, and Mortgagor hereby indemnifies and holds Mortgagee harmless therefrom. If any such sum shall be advanced by Mortgagee, it shall bear interest at the default rate specified in the Note and shall become a part of the Secured Indebtedness.

4.06 Disbursements. Mortgagee agrees to advance principal under the Note pursuant to the terms of the Loan Agreement (i) to pay amounts payable by Mortgagor under the Loan Agreement, (ii) to pay interest due and payable under the Note, and (iii) to pay engineering and other soft costs with respect to the Property.

4.07 WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE THAT:

(a) NEITHER THE MORTGAGOR NOR MORTGAGEE, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, EXECUTOR OR LEGAL REPRESENTATIVE OF ANY OF THE SAME SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS AGREEMENT OR ANY LOAN DOCUMENT EVIDENCING, SECURING OR RELATING TO THE OBLIGATIONS OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES THERETO;

(b) NEITHER THE MORTGAGOR NOR MORTGAGEE SHALL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(c) THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(d) NEITHER THE MORTGAGOR NOR MORTGAGEE HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(e) THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ENTER INTO THIS TRANSACTION.



## ARTICLE 5

5.01 Loan Agreement. It is understood and agreed that principal disbursements advanced under the Note are to be used to (i) refinance certain indebtedness relating to the Property, (ii) pay certain costs in connection with the financing of the Property, (iv) returning certain capital contributed to the Borrower by its members and (iv) pay costs and expenses incurred in connection with the closing of the loan and said funds shall be advanced in accordance with the Loan Agreement to which the Loan Agreement reference is made for all purposes to the same extent and effect as if the same were fully set forth herein and made a part of this Mortgage. To the extent the terms of the Loan Agreement and the terms of this Mortgage are contradictory, the terms of the Loan Agreement shall control.

[SIGNATURES LOCATED ON FOLLOWING PAGE]



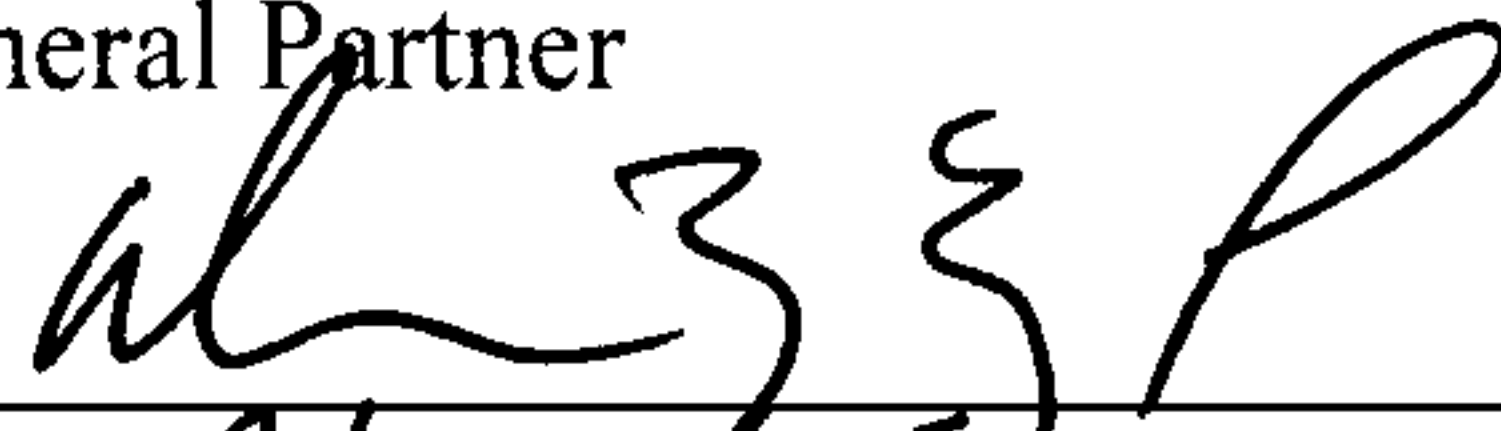
IN WITNESS WHEREOF, Mortgagor has executed this Mortgage and Security Agreement to be executed under seal as of the day and year first above written.

**MORTGAGOR:**

**VISTA COMMUNITIES VENTURE, LLC,**  
a Delaware limited liability company

By: Crowne Hoover Associates, Limited  
Partnership, a Delaware limited partnership,  
its Manager

By: Crowne Hoover 150, LLC  
a Delaware limited liability company  
its General Partner


By:   
Name: Alan Z. Engel  
Title: Manager

STATE OF Alabama

COUNTY OF Jefferson

I, the undersigned Notary Public, in and for said county, in said state, hereby certify that Alan Z. Engel, whose is the Manager of Crowne Hoover 150, LLC, a Delaware limited liability company, as General Partner of Crowne Hoover Associates, Limited Partnership, a Delaware limited partnership, as Manager of VISTA COMMUNITIES VENTURE, LLC, a Delaware limited liability company, is signed to the foregoing Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Mortgage and Security Agreement, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company acting in its capacity as aforesaid.

Given under my hand and seal of office this 3<sup>rd</sup> day of May, 2012.

  
Notary Public

My commission expires: 9/20/14

[Affix notarial seal or stamp]



## EXHIBIT "A"

### LEGAL DESCRIPTION

#### PARCEL I:

Lot 4-A, according to a Resurvey of Lot 4, Crowne Resurvey of Galleria Woods, First Addition, as recorded in Map Book 32, page 35, in the Probate Office of Jefferson County, Alabama, Bessemer Division.

Together with all rights acquired in Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Birmingham Real 1437, page 570 and Bessemer Real 348, page 878 in the Probate Office of Jefferson County, Alabama and in Book 19, page 633, in the Probate Office of Shelby County, Alabama.

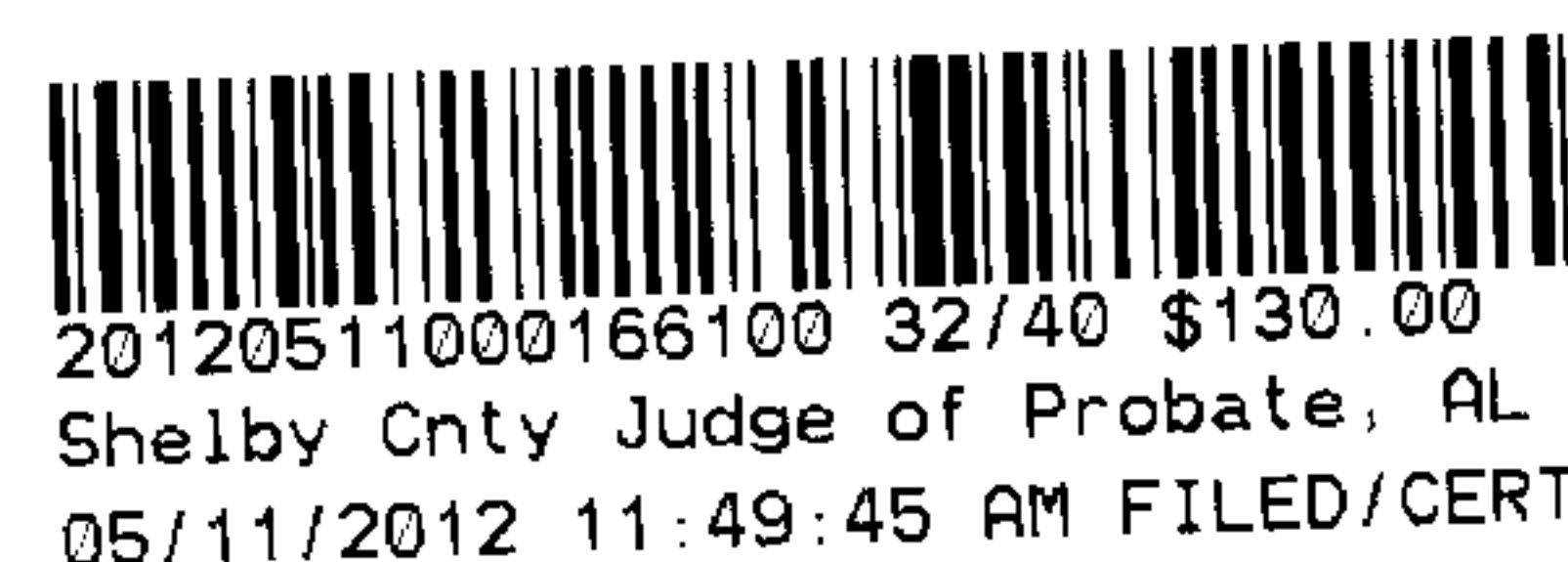
#### **Said property being further described by the surveyed legal description as follows:**

All that tract or parcel of land being Lot 4-A, according to a Resurvey of Lot 4, Crowne Resurvey of Galleria Woods, First Addition, as recorded in Map Book 32, Page 35 in the Probate Office of Jefferson County, Alabama, Bessemer Division and being located in Section 23, Township 19 South, Range 3 West, Jefferson County, Alabama and being more particularly described as follows,

Commencing at 1/2 inch capped rebar found (SAIN CA 00279) at the locally accepted Northeast Corner of the SE 1/4 of the NE 1/4 of Section 23, Township 19 South, Range 3 West, Jefferson County, Alabama; thence leaving the aforesaid 1/4-1/4 corner run with the east line of said 1/4-1/4 Section, South 00°07'29" West, for a distance of 282.59 feet to a corner of Lot 4-A marked by a 1/2 inch capped rebar found (Weygand CA 54) and the POINT OF BEGINNING.

Thence from said POINT OF BEGINNING as thus established and continuing along the east line of said 1/4-1/4 section,

1. South 00°09'01" West, 285.37 feet to a corner of Lot 4-A marked by a 1/2 inch capped rebar found (Weygand CA 54); thence leaving the east line of said 1/4-1/4 section and run
2. South 51°24'10" West, 485.54 feet to a corner of Lot 4-A marked by a 1/2 inch capped rebar found (Weygand CA 54); thence,
3. South 38°15'14" East, 172.59 feet to a corner of Lot 4-A marked by a 1/2 inch capped rebar found (Paragon CA 0082 LS); thence,
4. South 24°07'17" East, 344.84 feet to a corner of Lot 4-A located 0.39' east of a 1 inch open top pipe found; thence,
5. South 88°52'14" East, 130.18 feet to a corner of Lot 4-A marked by a 1 inch open top found at the locally accepted Northeast Corner of the NE 1/4 of the SE 1/4 of Section 23, Township 19 South, Range 3 West; thence, leaving the aforesaid 1/4-1/4 section and run with the east line of said 1/4-1/4 Section
6. South 00°24'25" East, 92.39 feet to a corner of Lot 4-A marked by a 1/2 inch rebar found; thence, leaving the east line of said 1/4-1/4 and run





7. North 73°33'14" West, 167.36 feet to a corner of Lot 4-A marked by a power pole found; thence,
8. North 76°06'34" West, 122.30 feet to a corner of Lot 4-A marked by a power pole found; thence,
9. South 61°51'26" West, 303.45 feet to a corner of Lot 4-A marked by a power pole found; thence,
10. South 45°01'21" West, 233.45 feet to a corner of Lot 4-A; thence,
11. South 44°19'45" West, 246.90 feet to a corner of Lot 4-A marked by a power pole found; thence,
12. South 40°27'13" West, 255.36 feet to a corner of Lot 4-A marked by a power pole found; thence,
13. South 43°50'39" West, 166.14 feet to a corner of Lot 4-A marked by a 1/2 inch capped rebar found (Paragon CA 0082 LS); thence
14. South 46°10'15" East, 38.94 feet to a corner of Lot 4-A marked by a 1/2 inch rebar found inside of a 2 inch open top pipe; thence
15. South 50°11'19" West, 121.11 feet to a corner of Lot 4-A marked by a 1/2 inch rebar found; thence,
16. South 81°31'25" West, 51.08 feet to a 1/2 inch capped rebar found (Paragon CA 0082 LS) on the Easterly right-of-way of Galleria Woods Drive (having a variable right-of-way); thence, run with the aforesaid right-of-way
17. 310.01 feet along the arc of a curve deflecting to the left, having a radius of 513.88 feet and a chord bearing and distance of North 04°59'16" East, 305.33 feet to a point 0.60 feet northeast of a 1/2 inch rebar found; thence,
18. North 12°17'41" West, 102.00 feet to a point 0.62 feet southeast of a Railroad Spike found; thence,
19. 243.06 feet along the arc of a curve deflecting to the right, having a radius of 316.51 feet and a chord bearing and distance of North 09°42'19" East, 237.13 feet to a point 0.34 feet southeast of a disturbed 1/2 inch capped rebar found (Paragon CA 0082 LS); thence,
20. North 31°42'19" East, 115.00 feet to a point 0.33 feet southeast of a 1/2 inch capped rebar found (Paragon CA 0082 LS); thence,
21. 109.02 feet along the arc of a curve deflecting to the right, having a radius of 333.13 feet and a chord bearing and distance of North 41°04'49" East, 108.53 feet to a point 0.33 feet north east of a Railroad Spike found; thence,
22. 236.34 feet along the arc of a curve deflecting to the left, having a radius of 237.43 feet and a chord bearing and distance of North 21°56'20" East, 226.70 feet to a point; thence,
23. 173.91 feet along the arc of a curve deflecting to the left, having a radius of 237.43 feet and a chord bearing and distance of North 27°33'40" West, 170.05 feet to a 1/2 inch capped rebar found (Paragon CA 0082 LS); thence,
24. North 48°32'41" West, 51.07 feet to a 1/2 inch capped rebar found (Paragon CA 0082 LS); thence, leaving the aforesaid right-of-way
25. North 63°00'40" East, 184.19 feet to a corner of Lot 4-A to an iron pin set; thence,
26. North 86°16'41" East, 58.05 feet to a corner of Lot 4-A marked by a 1/2 inch rebar (disturbed) found; thence,
27. North 60°54'49" East, 115.53 feet to a corner of Lot 4-A marked by a 1/2 inch capped rebar found (Paragon CA 0082 LS); thence,



28. North 61°31'23" East, 200.90 feet to a corner of Lot 4-A marked by a 1/2 inch capped rebar found (Paragon CA 0082 LS); thence,
29. North 33°15'50" East, 216.94 feet to a corner of Lot 4-A located 0.72' northwest of a 1/2 inch rebar (disturbed) found; thence,
30. North 33°20'50" West, 22.51 feet to a corner of Lot 4-A marked by a 1/2 inch rebar (disturbed) found; thence,
31. North 66°46'38" East, 192.03 feet to a corner of Lot 4-A located 1.05 feet southeast of a 1/2 inch capped rebar found (Paragon CA 0082 LS); thence,
32. North 42°25'02" East, 418.61 feet to a corner of Lot 4-A marked by a 1/2 inch capped rebar found (Paragon CA 0082 LS); thence,
33. South 46°44'25" East, 100.21 feet to the POINT OF BEGINNING, containing 939,936 square feet or 21.578 acres of land more or less.

PARCEL II:

Lot 3, Crowne Resurvey of Galleria Woods, First Addition as recorded in Map Book 30, page 77, in the Probate Office of Jefferson County, Alabama, Bessemer Division and recorded in Map Book 21, page 91, in the Probate Office of Shelby County, Alabama.

Together with all rights acquired in Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Birmingham Real 1437, page 570 and Bessemer Real 348, page 878 in the Probate Office of Jefferson County, Alabama and in Book 19, page 633 in the Probate Office of Shelby County, Alabama.

**Said property being further described by the surveyed legal description as follows:**

Lot 3, Crowne Resurvey of Galleria Woods, First Addition, as recorded in Map Book 30, page 77, in the Probate Office of Jefferson County, Alabama, Bessemer Division and recorded in Map Book 21, page 91, in the Probate Office of Shelby County, Alabama.

Beginning at a 1/2-inch capped (CA-0082) rebar found on the southeasterly right-of-way of Galleria Woods Drive (60-foot right-of-way) at the most northerly corner of said Lot 3, thence departing said right-of-way, South 29 degrees 32 minutes 20 seconds East, a distance of 96.35 feet 1/2-inch capped (CA-0082) rebar found; thence South 01 degrees 35 minutes 23 seconds East, a distance of 380.42 feet 3/4-inch rebar found; thence South 36 degrees 41 minutes 02 seconds East, a distance of 101.92 feet 1/2-inch open top pipe found; thence South 40 degrees 25 minutes 11 seconds East, a distance of 742.13 feet to a point in the center of the Cahaba River; thence continuing along the center of said river for the following four courses: South 45 degrees 27 minutes 46 seconds West, a distance of 398.78 feet point; thence South 58 degrees 12 minutes 06 seconds West, a distance of 148.47 feet point; thence South 52 degrees 23 minutes 46 seconds West, a distance of 360.68 feet point; thence South 42 degrees 28 minutes 59 seconds West, a distance of 249.68 feet point located at the intersection of the centerline of the Cahaba River with the centerline of Patton Creek and also being the most southerly corner of said Lot 3; thence continuing along the centerline of said Patton Creek the following six courses: North 50 degrees 36 minutes 46 seconds West, a distance of 117.22 feet point; thence North 29 degrees 41 minutes 07 seconds West, a distance of 277.86 feet point; thence North 32 degrees 50 minutes 01 seconds



West, a distance of 127.54 feet point; thence North 32 degrees 46 minutes 05 seconds West, a distance of 134.05 feet point; thence North 26 degrees 48 minutes 30 seconds West, a distance of 311.12 feet point; thence North 32 degrees 50 minutes 56 seconds West, a distance of 142.03 feet point; thence departing said centerline of Patton Creek and running along the northwesterly line of said Lot 3, North 46 degrees 45 minutes 19 seconds East, a distance of 24.66 feet point; thence North 46 degrees 45 minutes 19 seconds East, a distance of 1011.53 feet 1/2-inch capped (CA-0082) rebar found; thence North 01 degrees 51 minutes 18 seconds East, a distance of 95.24 feet 1/2-inch capped (CA-54) rebar found located on the south right-of-way line of said Galleria Woods Drive; thence continuing with said right-of-way the following three courses: along a curve to the left having an arc length of 93.61 feet, with a radius of 50.00 feet, at a chord bearing of North 38 degrees 21 minutes 12 seconds East, for a chord length of 80.52 feet to a point; thence along a curve to the right having an arc length of 20.75 feet, with a radius of 25.00 feet, at a chord bearing of North 08 degrees 30 minutes 09 seconds East, for a chord length of 20.16 feet to a 5/8-inch capped rebar found; thence along a curve to the right having an arc length of 66.52 feet, with a radius of 320.70 feet, at a chord bearing of North 38 degrees 16 minutes 15 seconds East, for a chord length of 66.40 feet to a 1/2-inch capped (CA-0082) rebar found, and the POINT OF BEGINNING.

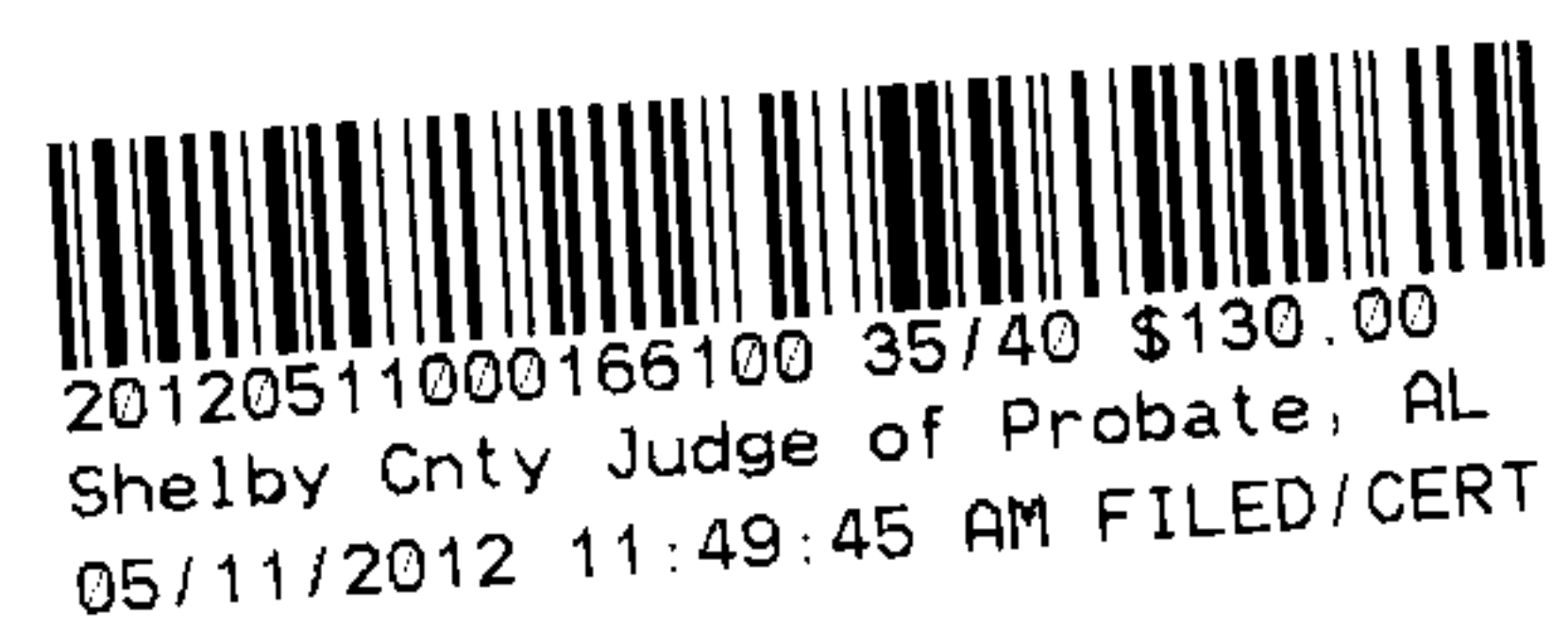
LESS AND EXCEPT that parcel shown as "Jefferson County San. Pump Sta." on a map of Crowne Resurvey of Galleria Woods, First Addition recorded in Map Book 30, page 77, in the Probate Office of Jefferson County, Alabama, Bessemer division and recorded in Map Book 21, page 91, in the Probate Office of Shelby County, Alabama, more particularly described as follows: Commencing at a 1/2-inch capped (CA-0082) rebar found on the southeasterly right-of-way of Galleria Woods Drive (60-foot right-of-way) at the most northerly corner of said Lot 3, thence departing said right-of-way, South 29 degrees 32 minutes 20 seconds East, a distance of 96.35 feet 1/2-inch capped (CA-0082) rebar found; thence South 01 degrees 35 minutes 23 seconds East, a distance of 380.42 feet 3/4-inch rebar found; thence South 36 degrees 41 minutes 02 seconds East, a distance of 101.92 feet 1/2-inch open top pipe found; thence along a tie line South 05 degrees 45 minutes 43 seconds West, a distance of 540.35 feet to a 1/2-inch rebar found, said 1/2-inch rebar found being the TRUE POINT OF BEGINNING; thence South 32 degrees 34 minutes 29 seconds East, a distance of 100.59 feet to a 1/2-inch rebar found; thence South 57 degrees 34 minutes 31 seconds West, a distance of 219.85 feet to a 5/8-inch rebar found; thence North 32 degrees 42 minutes 49 seconds West, a distance of 100.54 feet to a 3-inch crimp top pipe found; thence North 57 degrees 33 minutes 49 seconds East, a distance of 220.09 feet to a 1/2-inch rebar found, and the POINT OF BEGINNING.

Said tract of land contains 28.206 acres.

### PARCEL III:

Lot 2, Crowne Resurvey of Galleria Woods, recorded in Birmingham Map Book 178, page 65 and Bessemer Map Book 29, page 70 in the Probate Office of Jefferson County, Alabama.

Along with the right to use the sanitary sewer easement recorded in Bessemer Real 1025, page 508 in the Probate Office of Jefferson County, Alabama.





Together with all rights acquired in Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Birmingham Real 1437, page 570 and Bessemer Real 348, page 878 in the Probate Office of Jefferson County, Alabama and in Book 19, page 633 in the Probate Office of Shelby County, Alabama.

**Said property being further described by the surveyed legal description as follows:**

All that tract or parcel of land being Lot 2, Crowne Resurvey of Galleria Woods, as recorded in Map Book 29, page 70, in the Probate Office of Jefferson County, Alabama, Bessemer Division and being located in Section 23, Township 19 South, Range 3 West, Jefferson County, Alabama and being more particularly described as follows.

Commencing at intersection of the southern right-of-way of Alabama State Highway 150 a.k.a. John Hawkins Parkway (having an apparent variable right-of-way) and the western right-of-way of Galleria Woods Drive (having a variable right-of-way); thence, leaving the aforesaid point and run with the said right-of-way of Galleria Woods Drive 1048.16 feet to the northern most corner of Lot 2 located 0.48 feet southeast of a 1/2 inch capped rebar (Weygand CA 54) and the POINT OF BEGINNING. Thence from said POINT OF BEGINNING as thus established and continuing along the said right-of-way of Galleria Woods Drive,

1. 228.02 feet along the arc of a curve deflecting to the left, having a radius of 376.51 feet and a chord bearing and distance of South 05°03'18" West, 224.55 feet to a 1/2 inch capped rebar found (Paragon CA 0082LS); thence,
2. South 12°17'41" East, 102.00 feet to a point located 0.65 feet southeast of a 1/2 inch capped rebar (Weygand CA 54); thence,
3. 447.58 feet along the arc of a curve deflecting to the right, having a radius of 453.88 feet and a chord bearing and distance of South 15°57'19" West, 429.66 feet to a point located 0.15 feet southeast of a 1/2 inch rebar found; thence,
4. 88.04 feet along the arc of a curve deflecting to the left, having a radius of 380.71 feet and a chord bearing and distance of South 37°34'50" West, 87.84 feet to a point; thence,
5. 17.06 feet along the arc of a curve deflecting to the right, having a radius of 25.00 feet and a chord bearing and distance of South 50°30'19" West, 16.73 feet to a point; thence,
6. 137.94 feet along the arc of a curve deflecting to the left, having a radius of 50.00 feet and a chord bearing and distance of South 08°58'43" East, 98.17 feet to a 1/2 inch capped rebar found (Weygand CA 54); thence, leaving the aforesaid right-of-way of Galleria Woods Drive
7. South 01°51'18" West, 95.24 feet to a corner of Lot 2 marked by a 1/2 inch capped rebar found (Paragon CA 0082LS); thence,
8. South 46°45'19" West, 1011.53 feet to a corner of Lot 2 on the previously located centerline of Patton Creek; thence,
9. North 37°31'56" West, 59.13 feet to a corner of Lot 2; thence,
10. North 34°01'12" West, 47.21 feet to a corner of Lot 2; thence,
11. North 32°22'31" West, 84.12 feet to a corner of Lot 2; thence,
12. North 42°29'48" West, 49.20 feet to a corner of Lot 2; thence,
13. North 66°50'46" West, 26.19 feet to a corner of Lot 2; thence,
14. North 75°26'29" West, 36.30 feet to a corner of Lot 2; thence,
15. South 81°40'46" West, 30.45 feet to a corner of Lot 2; thence,

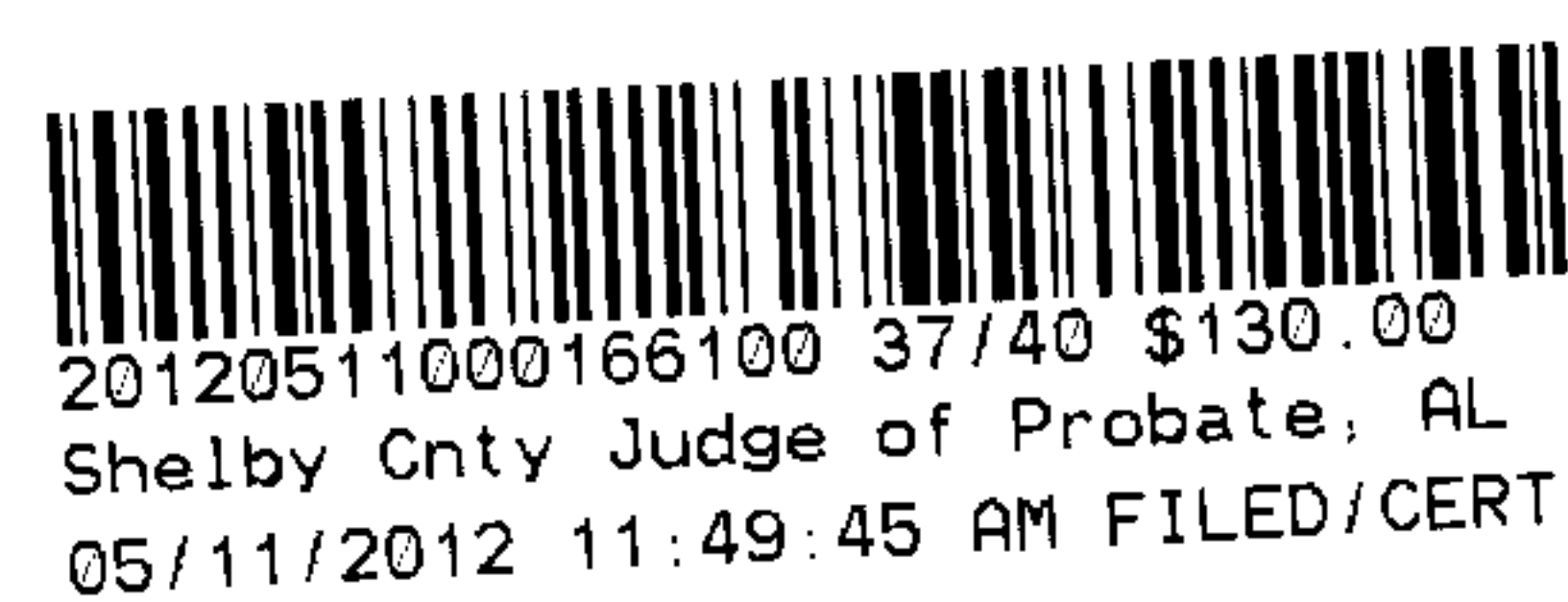


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16. South 76°10'34" West, 108.14 feet to a corner of Lot 2; thence,
17. South 78°05'33" West, 79.55 feet to a corner of Lot 2 on the west line of the SW 1/4 of the SE 1/4, Section 23, Township 19 South, Range 3 West; thence, run with the said 1/4-14 line
18. North 00°01'32" East, 206.82 feet to a corner of Lot 2 on the previously located centerline of Patton Creek; thence, leaving the said 1/4-1/4 line
19. North 53°28'21" East, 156.04 feet to a corner of Lot 2; thence,
20. North 51°27'37" East, 131.80 feet to a corner of Lot 2; thence,
21. North 51°33'24" East, 127.74 feet to a corner of Lot 2; thence,
22. North 48°40'19" East, 67.18 feet to a corner of Lot 2; thence,
23. North 24°00'48" East, 80.26 feet to a corner of Lot 2; thence,
24. North 22°23'29" East, 104.88 feet to a corner of Lot 2; thence,
25. North 01°45'47" East, 100.93 feet to a corner of Lot 2; thence,
26. North 04°03'34" West, 55.55 feet to a corner of Lot 2; thence,
27. North 15°06'39" West, 77.79 feet to a corner of Lot 2; thence,
28. North 78°23'44" East, 406.45 feet to a corner of Lot 2 marked by a 1/2 inch capped rebar found (Weygand CA 54); thence,
29. North 41°57'01" East, 735.14 feet to the POINT OF BEGINNING, containing 873,420 square feet or 20.051 acre of land, more or less.

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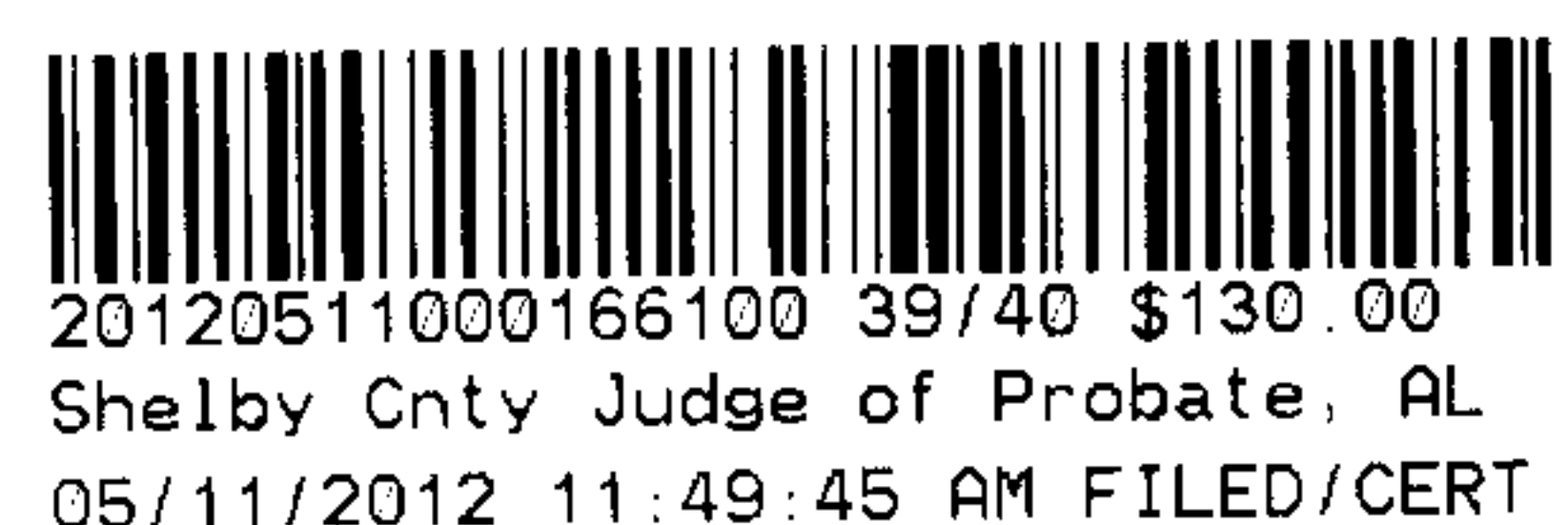
## **EXHIBIT "B"**

### **PERMITTED EXCEPTIONS**

1. All taxes for the year 2012, and subsequent years, not yet due and payable.
2. Rights of tenants in possession, as tenants only, under prior unrecorded written residential leases, without any option to purchase or right of first refusal to purchase contained therein. (All Parcels)
3. Building lines and easements as set out on plat of a Resurvey of Lot 4, Crowne Resurvey of Galleria Woods, recorded in Bessemer Map Book 32, page 35, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (Parcel I)
4. Building lines and easements as set out on plat of Crowne Resurvey of Galleria Woods, First Addition, recorded in Bessemer Map Book 30, page 77, and in Shelby Map Book 21, page 91, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/15/2011. (Parcel I)
5. Mineral and mining rights and rights incident thereto recorded in Bessemer Real 220, page 190 and refiled in Birmingham Real 1035, page 584; Birmingham Deed 3642, page 258 and Bessemer Deed 492, page 471, in the Probate Office of Jefferson County, Alabama. (All Parcels)
6. Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business), as recorded in Shelby Misc. Book 13, Page 50 refiled in Birmingham Real 1236, Page 881 and refiled in Bessemer Real 348, page 837, Amendment No. 1 to Declaration as recorded in Shelby Misc. Book 15, page 189 refiled in Birmingham Real 1294, Page 30 and refiled in Bessemer Real 348, Page 875, further amended by Amendment No. 2 in Shelby Misc. Book 19, page 633, refiled in Birmingham Real 1437, Page 570 and refiled in Bessemer Real 348, Page 878, in the Probate Office of Shelby County, Alabama. (All Parcels)
7. Use restrictions for parking garage, maintenance facilities and ancillary uses for apartment complex as set out in that deed dated 2/25/1997 and recorded 2/25/1997, in Bessemer Instrument 9760/2783, in the Probate Office of Jefferson County, Alabama, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (Parcel I)
8. Amended and Restated Agreement Regarding Development Densities in Bessemer Instrument 9760/4194 in the Probate Office of Jefferson County, Alabama, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011 (as to Parcel I) and as noted or shown on the survey of the land prepared by Jamey R. Coleman, (PLS No. 28852) (Job No. 20114180), last updated 12/15/2011 (as to Parcel II).



9. Easements and rights of way to Alabama Power Company recorded in Bessemer Real 351, page 498 in the Probate Office of Jefferson County, Alabama, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (Parcel I)
10. Grant of easement to TCI Cablevision of Alabama, Inc., dated 4/2/19098, filed for record 6/7/2000, recorded in Bessemer Instrument 200061/4876 in the Probate Office of Jefferson County, Alabama, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (Parcel I)
11. The rights of upstream and downstream riparian owners with respect to any body of water which may lie adjacent to, and/or traversing through, subject property. (Parcel II & III)
12. Right of way to Jefferson County for sewer purposes as recorded in that Order of Condemnation dated 6/25/1984, filed for record 12/13/2004, in Birmingham Instrument 200416/6060; Bessemer Instrument 200464/0446; Real 1032, page 260, in the Probate Office of Jefferson County, Alabama, as noted or shown on the survey of the land prepared by Jamey R. Coleman, (PLS No. 28852) (Job No. 20114180), last updated 12/19/2011 (as to Parcel II) and as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (as to Parcel III)
13. Right of way deed dated 12/15/1998, filed for record 12/18/1998, recorded in Bessemer Instrument 9863/4384 in the Probate Office of Jefferson County, Alabama, as noted or shown on the survey of the land prepared by Jamey R. Coleman, (PLS No. 28852) (Job No. 20114180), last updated 12/15/2011. (Parcel II)
14. Patton Transfer Pump Station Access Road Easement dated 12/4/1998, filed for record 12/18/1998, recorded in Bessemer Instrument 9863/4386 in the Probate Office of Jefferson County, Alabama, as noted or shown on the survey of the land prepared by Jamey R. Coleman, (PLS No. 28852) (Job No. 20114180), last updated 12/15/2011. (Parcel II)
15. Easement to BellSouth recorded in Birmingham Instrument 200013/2818, in the Probate Office of Jefferson County, Alabama, as noted or shown on the survey of the land prepared by Jamey R. Coleman, (PLS No. 28852) (Job No. 20114180), last updated 12/15/2011. (Parcel II)
16. Grant of Easement to TCI Cablevision of Alabama, Inc., dated 3/3/1999, filed for record 6/7/2000, recorded in Bessemer Instrument 200061/4879 in the Probate Office of Jefferson County, Alabama, as noted or shown on the survey of the land prepared by Jamey R. Coleman, (PLS No. 28852) (Job No. 20114180), last updated 12/15/2011. (Parcel II)
17. Right of way granted to Jefferson County by Crowne Woods Associates, Ltd. by instruments recorded in 200363/7814 and 200463/6471, in the Probate Office of Jefferson County, Alabama, as noted or shown on the survey of the land prepared by Jamey R. Coleman, (PLS No. 28852) (Job No. 20114180), last updated 12/15/2011. (Parcel II)





18. Settlement Agreement dated 6/12/1990, filed for record 8/3/1993, recorded in Birmingham Instrument 9311/6077, in the Probate Office of Jefferson County, Alabama, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (Parcel III)
19. Rights of others to that certain Underground Sewer Easement dated 5/7/1994, filed for record 5/17/1994, recorded in Bessemer Real 1025, page 508, in the Probate Office of Jefferson County, Alabama, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (Parcel III)
20. Grant of Easement to TCI Cablevision of Alabama, Inc., dated 5/15/1998, filed for record 6/7/2000, recorded in Bessemer Instrument 200061/4875 in the Probate Office of Jefferson County, Alabama, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (Parcel III)
21. Easement for Sewer Extension granted in Instrument 9706/1249, in the Probate Office of Jefferson County, Alabama, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (Parcel I)
22. Right of way deed for sewer purposes granted to Jefferson County by instrument recorded in Instrument 9762/8951 and corrected by Instrument 9802/330, in the Probate Office of Jefferson County, Alabama, as noted or shown on survey of the land prepared by Paul B. Cannon, (PLS No. 30593-Job No. 2011-086V, last updated 12/19/2011. (Parcel I)
23. The following matters as delineated on the survey of Paul B. Cannon dated 8/23/2011, last revised 12/19/2011 (Parcel I):
  - a.) Encroachment of curbing, asphalt and parking into 20' Sewer Easement
24. The following matters as delineated on the survey of Jamey R. Coleman dated 8/23/2011, last revised 12/15/2011 (Parcel II):
  - a.) Encroachment of curbing, asphalt and parking into 20' Sewer Easement
  - b.) Encroachment of curbing and asphalt over property lines
25. All rights of redemption in favor of any and all parties, except for the right of redemption of Sheila Mead that was conveyed by that certain quit claim deed recorded in Book LR201105, page 10329 and the right of redemption of Vista Apartments, LLC that was conveyed by that certain quit claim deed recorded in Book LR2001105, page 10332, entitled to redeem subject property from that certain mortgage foreclosure sale evidenced by foreclosure deed recorded in Book LR201105, page 5529, in the Probate Office of Jefferson County, Alabama and recorded in Instrument 20110623000183310 in the Probate Office of Shelby County, Alabama, under and in accordance with the laws of the State of Alabama and/or the United States of America. Said rights to expire 6/15/2012, one (1) year from the date of foreclosure.