

2-27-2013
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This Instrument Prepared by and Return to:
John H. Adams, Esq.
Emmanuel, Sheppard and Condon
30. S. Spring Street
Pensacola, Florida 32502
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Shelby Cnty Judge of Probate, AL
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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE ("**Mortgage**"), made this 12th day of March, 2013, between **ADAMS HOMES L.L.C.**, an Alabama Limited Liability Company ("**Borrower**"), whose address is 3000 Gulf Breeze Parkway, Gulf Breeze, Florida 32563, and **COMMUNITY & SOUTHERN BANK**, its successors and assigns ("**Lender**" and "**Lender**"), whose address is 2085 Highway 211 NW, Braselton, Georgia 30517.

W I T N E S S E T H :

WHEREAS, Borrower is indebted to Lender in the principal sum of One Hundred Seventy Five Thousand Five Hundred and No/100ths (\$175,500.00) Dollars, together with interest thereon (the "**Loan**"), as evidenced by that certain Note dated March 12, 2013, executed by Borrower and delivered to Lender, payable as provided therein (the "**Note**", which term includes any modification, renewal, extension or alteration thereof);

WHEREAS, the Loan is governed by the terms of that certain Construction Loan Agreement of even date, as modified and amended from time to time (the "**Loan Agreement**"); and

NOW THEREFORE, for valuable consideration and to secure the performance and observance by Borrower of all covenants and conditions of the Note, the Loan Agreement, this Mortgage, and all other instruments securing the Note, and all future advances, obligatory or otherwise, and in order to charge the properties, interests and rights hereinafter described with such payment and performance and for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), Borrower does hereby convey, grant, sell, warrant, assign, transfer, mortgage and set-over and confirm unto Lender all of the Borrower's estate, right, title and interest in and to and under that certain real and personal property described herein, and, where applicable, grant a security interest in:

I. THE MORTGAGED PROPERTY

(A) All of the land in the State of Alabama, described on Exhibit "A" attached hereto and made a part hereof ("**Real Property**"), to have and to hold the same, together with each and every building, structure, tenement, hereditaments, open parking area improvement, easement, right, power, privilege, immunity and appurtenance thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, and also the estate, right, title, interest, homestead, right of dower, separate estate, property, possession and claim whatsoever in law as well as in equity of Borrower of, in and to the same in every part and parcel thereof unto Lender in fee simple.

(B) Together with all other property of every kind and nature set forth and described in Exhibit "B" attached hereto and made a part hereof (collectively the "**Other Property**"), and together with the Real Property (collectively the "**Mortgaged Property**"). To the extent any of the Mortgaged Property is deemed to be personal property or fixtures under the UCC, the Borrower does hereby grant to the Lender a security interest in all of said personal property and fixtures and the Borrower does hereby agree that this Mortgage shall constitute a security agreement from the Borrower to the Lender under the UCC. Further, to the extent that any part of the Mortgaged Property is in the form of cash or other securities

and is deposited with or held by Lender or any of Lender's affiliates, the security interest granted hereunder to the Lender shall continue and encumber all of the Borrower's right, title and interest in and to such deposits, and the Borrower specifically agrees that any such affiliate of the Lender shall be deemed to be the duly designated agent of the Lender for purposes of holding possession of any such deposits, and further agrees that upon the occurrence of an Event of Default (after expiration of any applicable curative or grace period). The Lender or its affiliate as aforesaid may at any time and from time to time, without demand or notice, appropriate and set-off and apply the same to the indebtedness evidenced by the Note due or payable to the Lender hereunder. In addition to all of its other rights under this Mortgage and otherwise, the Lender shall have all the rights of a secured party under the UCC. This Mortgage shall be effective as a financing statement filed as fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each county where the Mortgaged Property is situated. This Mortgage shall also be effective as a financing statement with respect to any other Mortgaged Property as to which a security interest may be perfected by the filing of a financing statement and may be filed as such in any appropriate filing or recording office. The respective mailing addresses of the Borrower and Lender are set forth in the opening paragraph of this Mortgage.

(C) **TO HAVE AND TO HOLD** the Mortgaged Property and all parts thereof unto Lender, its successors and assigns forever, subject however to the terms and conditions herein, together with all and singular the tenements, hereditaments and appurtenances there unto belonging or in anywise appertaining including, but not limited to, any impact fee credits or rebates, sewer, water or trip allocation rights or credits, any other rights of the Borrower with respect to the Mortgaged Property arising out of any agreements between Borrower and the applicable governmental authority where the Mortgaged Property is located, together with the reversion and reversions thereof, and all of the estate, right, title, interest, possession, claim and demand whatsoever, as well in law as in equity, of the Borrower and unto the same, and every part thereof, with the appurtenances of the Borrower in and to same, and every part and parcel thereof unto Lender.

(D) The Borrower warrants that the Borrower has good title to an indefeasible fee estate in the Real Property comprising the Mortgage Property, subject to no liens and encumbrances except such as Lender has agreed to accept in writing (collectively the "Permitted Encumbrances") and Borrower covenants that this Mortgage is and will remain a valid enforceable mortgage on the Mortgage Property subject only to the Permitted Encumbrances. The Borrower has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended hereafter to be done. The Borrower will preserve such title and will forever warrant and defend same unto the Lender and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons whomsoever.

(E) The Borrower will, at the sole cost of the Borrower, and without expense to the Lender, do execute, acknowledge and deliver all and everyone of such further acts, deeds, conveyances, mortgages, assignments, notice of assignment, transfers and assurances as the Lender shall from time to time require in order to preserve the priority of the lien of this Mortgage or to facilitate the performance of the terms hereof.

PROVIDED ALWAYS, that if Borrower shall pay to Lender the Note at the times and in the manner stipulated therein, and in all other instruments securing the Note and faithfully performs all the covenants and agreements in the Loan Agreement, and in all other instruments securing the Note, to be kept, performed or observed by Lender, and Borrower faithfully performs all the covenants and agreements in this Mortgage, to be kept, performed or observed by Borrower, then this Mortgage shall cease and be void, but shall otherwise remain in full force and effect.

II. COVENANTS OF BORROWER


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1. Compliance With Mortgage; Warranty of Title. Borrower shall comply with all provisions hereof. Borrower is indefeasibly seized of the Mortgaged Property in fee simple and Borrower has lawful authority to convey, mortgage and encumber the same as provided by this Mortgage, does hereby so warrant and Borrower shall forever warrant and defend the validity and priority of the lien of this Mortgage against the claims of all persons and parties whomsoever. Borrower (i) is duly organized, validly existing and in good standing under the laws of the State of its organization, (ii) has the power and authority to own its properties and to carry on its business as now being conducted, (iii) is qualified to do business in the jurisdiction in which the Mortgaged Property is located, and (iv) is in compliance with all laws, regulations, ordinances and orders of all public authorities applicable to it. The execution, delivery and performance by Borrower of this Mortgage (i) are within the powers and purposes of Borrower, (ii) have been duly authorized by all requisite action, (iii) have received all necessary governmental approval, and (iv) will not violate any provision of law, any order of any court or other agency of government, the articles of organization, or operating agreement of Borrower or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of this Mortgage; and (b) this Mortgage, when executed and delivered by Borrower, will constitute the legal, valid and binding obligations of Borrower in accordance with their respective terms. Borrower will preserve and keep in full force and effect its existence, rights, franchises and trade names.

2. Payment of Taxes and Liens. Borrower shall pay, or cause to be paid, all taxes, assessments, liens, levies, liabilities, obligations and encumbrances of every nature and kind whether now or hereafter imposed, levied or assessed on the Mortgaged Property, or this Mortgage or the indebtedness secured hereby. All such payments shall be made when due and payable before they become delinquent and before any interest attaches or any penalty is incurred. Insofar as any such lien or encumbrance is of record the same shall be promptly satisfied or released and evidence of such satisfaction or release shall be given to Lender. Borrower shall pay, or cause to be paid, all lawful claims and demands of mechanics, materialmen, laborers, suppliers and others which, if unpaid, might result in, or permit the creation of, lien on the Mortgaged Property or any part thereof and will do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved at the cost of Borrower and without expense to Lender.

3. Borrower agrees to supply to Lender such policies of insurance for builder's risk, liability and otherwise, as required in the Loan Agreement, or as otherwise required by Lender. If the Lender determines that the improvements on the Mortgaged Property will be constructed in an area having special flood hazards, a Flood Insurance Policy for the insurable improvements upon the Mortgaged Property, naming the Lender as Lender must be submitted to Lender. In event of loss, Borrower shall give immediate notice by mail to Lender and Lender may make proof of loss if not made promptly by Borrower. Lender is hereby authorized, at its option, to settle and compromise any claims, awards, damages, rights of action and proceeds, and any other payment or relief under any insurance policy and receive the proceeds from any policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender instead of Borrower and Lender jointly. In the event any insurance fails to disburse directly and solely to Lender, but disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees to immediately endorse and transfer proceeds to Lender. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfer for and in the name of Borrower and Borrower hereby irrevocably appoints Lender as Borrower's agent and attorney-in-fact so to do, which appointment is coupled with an interest and therefore irrevocable. After deducting from said insurance proceeds all of its expenses incurred in collection and administration of such sums, including attorney's fees, Lender may apply the net proceeds or any part thereof in its sole discretion, (i) to the payment of the indebtedness charges herein or in the Note provided, (ii) to the repair and/or restoration of the improvements on the Mortgaged Property, or (iii) for any other purpose or purposes for which Lender is entitled to advance funds under this Mortgage or under the Loan Agreement; all without affecting the lien of this Mortgage or any obligation secured hereby; and any balance of such proceeds then remaining shall be paid to Borrower. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

4. Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used herein shall include any damage or taking by any governmental authority or any

other authority authorized by the laws of the State of Alabama or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily or permanently, then Borrower shall immediately reduce the principal balance of the Note as provided in the Loan Agreement. Lender shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of any damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto, are hereby assigned by Borrower to Lender, who, after deducting therefrom all its expenses including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same, in such manner as Lender shall determine, to the reduction of the sums secured hereby and to any prepayment charge provided in the Note, the Loan Agreement, this Mortgage or any other instruments securing the Note. Any balance of such monies then remaining shall be paid to Borrower. Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Lender may require.

5. Care of Mortgaged Property/Financial Statements. Borrower shall not remove or demolish any building or other property forming a part of the Mortgaged Property without the prior written consent of Lender or permit, commit, or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, and shall keep the same and the improvements thereon in good condition and repair. Borrower shall notify Lender in writing within five (5) days of any injury, damage or impairment of or occurring on the Mortgaged Property including, but not limited to, serious injury or loss by death or otherwise occurring on the Mortgaged Property. Borrower has no knowledge and has not given or received any notice indicating that the Mortgaged Property or the present use thereof or any practice, procedure or policy employed by it, or any lessee, occupant or sublessee of the Mortgaged Property violates any applicable law, regulation, code, order, rule, judgment or agreement including, without limitation, those relating to zoning, building use, concurrency, growth management, and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, and architectural barriers to the handicapped. Lender may at Lender's discretion, have the Mortgaged Property inspected at the time and Borrower shall pay all costs incurred by Lender in executing such inspection. Upon written request, Borrower or successors in interest shall provide Lender with any financial data relative to Borrower, including personal financial statements, balance sheets, profit and loss statements, and income tax returns.

6. Lender's Right to Make Certain Payments. In the event Borrower or Borrower fails to pay and/or discharge the taxes, assessments, liens, levies, liabilities, obligations and encumbrances, or fails to repair the Mortgaged Property as herein agreed, Lender, after thirty (30) days written notice from Lender to Borrower, is hereby authorized at its election to pay and/or discharge the taxes, assessments, liens, levies, liabilities, obligations and encumbrances or any part thereof, to make and pay for such repairs, without any obligation on its part to determine the validity and/or necessity thereof, and without Lender waiving or affecting any option, lien, equity or right under or by virtue of this Mortgage. The full amount of each and every such payment made by Lender shall be immediately due and payable by Borrower and shall bear interest from the date thereof until paid at the Default Rate, as defined in the Note and together with such interest, shall be secured by the lien of this Mortgage. Nothing herein contained shall be construed as requiring Lender to advance or expend monies for any of the purposes mentioned in this paragraph.

7. Payment of Expenses. Borrower shall pay all the costs and charges and expenses, including reasonable attorney's fees, whether incurred at the trial or appellate level, disbursements and costs of abstracts of title, or paid at any time by Lender because and/or in the event of the failure on the part of Borrower promptly and fully to perform, comply with and abide by each and every stipulation, agreement, condition and covenant of the Note, the Loan Agreement, this Mortgage and any other instrument securing the Note. Such costs, charges and expenses, shall be immediately due and payable, without notice, demand, attempt to collect or suit pending. The full amount of each and every such payment shall bear interest from the date thereof until paid at the Default Rate, as hereinafter defined. All such costs, charges and expenses so incurred or paid, together with such interest, shall be secured by the lien of this Mortgage.

8. No Transfer. Except in the ordinary course of business and as expressly provided for in the Loan Agreement, as modified and amended from time to time, Borrower covenants and agrees not to sell, convey, transfer, lease or further encumber any interest in or any part of the Mortgaged Property without the prior written consent of

Lender, and any such sale, conveyance, transfer, lease or encumbrance made without Lender's prior written consent shall be deemed to be an event of default under this Mortgage. If any person should obtain an interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Borrower and a default hereunder. Additionally, the sale, assignment, pledge, transfer, hypothecation, or other disposition of any proprietary or beneficial interest in Borrower without the prior written consent of Lender shall be deemed to be an event of default under this Mortgage.

9. After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of the Mortgaged Property.

10. Additional Documents. At any time and from time to time, upon Lender's request, Borrower shall make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be re-recorded or refiled at such time and in such offices and places as shall be deemed desirable by Lender any and all such further mortgages, instruments of further assurance, certificates and other documents as Lender may consider necessary or desirable in order to effectuate, complete, enlarge or perfect, or to continue and preserve the obligations of Borrower under this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower to do so, Lender may make, execute, record, file, re-record, or refile any and all such mortgages, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender agent and attorney-in-fact of Borrower to do so.

III. EVENTS OF DEFAULT

11. Events of Default. Any one of the following shall constitute an Event of Default:

(a) Failure by Borrower to pay, as and when due and payable, any installments of principal or interest due under the Note, or any deposits for taxes and assessments or insurance premiums due hereunder, or any other sums to be paid by Borrower hereunder, or under the Loan Agreement or any other instrument securing the Note, and such failure shall continue beyond any applicable grace period after written notice thereof from Lender to Borrower.

(b) Failure by Borrower to duly keep, perform and observe the provisions of paragraph 8 of this Mortgage.

(c) Failure by Borrower to duly keep, perform and observe any covenant, condition or agreement in the Note, the Loan Agreement, this Mortgage, or any other instrument securing the Note, and such failure shall continue beyond any applicable grace period after written notice thereof from Lender to Borrower.

(d) Failure by Borrower to duly keep, perform and observe any covenant, condition or agreement in the this Mortgage, or any other instrument securing the Note, and such failure shall continue beyond any applicable grace period after written notice thereof from Lender to Borrower.

(e) If either Borrower or any guarantor or endorser of the Note: (i) files a voluntary petition in bankruptcy, or (ii) is adjudicated as a bankrupt or insolvent, or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (iv) seeks, consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any part of the Mortgaged Property, or (v) makes any general assignment for the benefit of creditors, or (vi) makes any admission in writing of its inability to pay its debts generally as they become due; or (vii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for

an aggregate of sixty (60) days whether or not consecutive from the date of entry thereof; or (viii) any trustee, receiver or liquidator of it or of any part of the Mortgaged Property is appointed without the prior written consent of Lender, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive.

(f) Any breach of any warranty or material untruth of any representation of Borrower contained in the Note, the Loan Agreement, this Mortgage, any financial statement made or given to Lender in connection with the Note, or any other instrument securing the Note, and not corrected by Borrower within thirty (30) days after written notice thereof from Lender to Borrower.

(g) Any breach of any warranty or material untruth of any representation of Borrower contained in this Mortgage, and not corrected by Borrower within thirty (30) days after written notice thereof from Lender to Borrower.

(h) Any event of default under any existing or future notes, loans, advances, guaranties, or other indebtedness owed to the Lender by the Borrower, or any endorser, surety or guarantor of the Note, or under any instrument securing any such indebtedness owed to Lender.

(i) The belief by Lender that the financial condition of the Borrower, or any guarantor of the Note, has changed unfavorably in any material degree, in Lender's reasonable discretion

IV. REMEDIES OF LENDER

12. Acceleration. If an event of default shall have occurred, Lender may declare all sums evidenced by the Note, and all sums due under the Mortgage, to be immediately due and payable, and may resort to any and all remedies provided in the Loan Agreement, the Note, and in law and in equity including without limitation those available to a secured party upon default under Uniform Commercial Code as in effect in the State of Alabama.

13. Other Remedies/Power of Sale.

(a) If an Event of Default shall have occurred, Lender may proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy; (i) to enforce payment of the Note or the performance of any term thereof or any other right; (ii) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property under the judgment or decree of a court or courts of competent jurisdiction; (iii) collect all rents, issues, profits, revenues, income, proceeds or other benefits from the Mortgaged Property; (iv) to obtain ex parte sequestration of all such benefits of the Mortgaged Property into the registry of the court pursuant to Alabama law and/or to seek appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, issues, profits, revenues, income or other benefits thereof and apply the same as the court may direct and such receiver shall have all rights and powers permitted under law; such receiver shall have all the broad and effective functions and powers in anywise entrusted by a Court to a receiver, and such appointment shall be made by such Court, as an admitted equity and a matter of absolute right to said Lender, and without reference to the adequacy or inadequacy of the value of the Mortgaged Property or to the solvency or insolvency of Borrower and/or of the defendants and regardless of whether Lender has an adequate remedy at law; and (v) to pursue any other remedy available to it, including, but not limited to taking possession of the Mortgaged Property without notice or hearing to Borrower. Lender shall take action either by such proceedings or by the exercise of its power with respect to entry or taking possession, or both as Lender may determine.

(b) If an Event of Default shall occur and be continuing, Lender may sell the Mortgaged Property secured hereby at public outcry to the highest bidder for cash in front on the main entrance of the county courthouse of the county where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week, for three successive weeks, or as otherwise required by law, prior to said sale in a newspaper published in said county, and upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the

highest bidder therefore. At the foreclosure sale, the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

14. Waiver of Appraisal, Valuation, Stay, Extension, and Redemption Laws. Borrower agrees to the full extent permitted by law that in case of a default on its part hereunder, neither Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers there at, and Borrower, 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 comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety.

15. No Waiver. No delay or omission of Lender or of any holder of the Note and Mortgage to exercise any right, power or remedy accruing upon any event of default shall exhaust or impair any such right, power or remedy or be construed as a waiver of any such event of default or constitute acquiescence therein.

16. Non-Exclusive Remedies. No right, power or remedy conferred upon or reserved to Lender by the Note, the Loan Agreement, this Mortgage or any other instrument securing the Note is 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 or remedy given hereunder or under the Note, the Loan Agreement, or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

17. Upon the happening and during the continuance of any Event of Default:

(a) The Lender is authorized at any time, without notice, in its sole discretion to enter upon and take possession of the Mortgaged Property or any part thereof, to perform any acts the Lender deems necessary or proper to conserve the security and to collect and receive all rents, issues and profits thereof, including those past due as well as those accruing thereafter; and

(b) The Lender shall be entitled, as a matter of strict right, without notice and ex parte, and without regard to the value or occupancy of the security or the solvency of the Borrower, or the adequacy of the Mortgaged Property as security for the Note, to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the rents and profits therefrom and apply same as the court may direct, such receiver to have all rights and powers permitted under the laws of Alabama.

In either such case, the Lender or the receiver may also take possession of, and for these purposes, use, any and all personal property which is part of the Mortgaged Property and used by the Borrower in or arising from the sale, rental or leasing thereof, or any part thereof. The expense (including receiver's fee, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. The Lender shall (after payment of all costs and expenses incurred) apply such rents, issues, proceeds and profits received by it on the indebtedness secured hereby in such order as the Lender determines. The right to enter and take possession of the Mortgaged Property, to manage and operate the same and to collect the rents, issues, proceeds and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The Lender shall be liable to account only for such rents, issues, proceeds and profits actually received by the Lender.

V. MISCELLANEOUS

18. Successors and Assigns Bound. Whenever one of the parties hereto is named or referred to herein, the heirs, personal representatives, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Borrower or Lender, shall bind and inure to the benefit of their respective heirs, personal representatives, successors and assigns.

19. Invalid or Unenforceable. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

20. Obligation of Borrower. Borrower shall pay the cost of releasing or satisfying this Mortgage of record.

21. Default Rate. The Default Rate shall be the default interest as more particularly described in the Note.

22. Hazardous Substances. In addition to those certain representations and warranties as set forth in that certain Indemnity Agreement Regarding Hazardous Materials and Environmental Compliance and Indemnity Agreement both of even date, executed and delivered to Lender, which representations and warranties expressly add to and supplement and shall not be construed to diminish in any way whatsoever the representations and warranties and obligations set forth in this Mortgage and Security Agreement, Borrower warrants and represents to Lender after thorough investigation:

(1) That neither Borrower nor any other person to the Borrower's knowledge, after reasonable inquiry, has ever used the Mortgaged Property as a facility for the treatment, storage or disposal of any "Hazardous Substances," as that term is hereinafter defined, except in accordance with "Environmental Laws," as that term is hereinafter defined;

(2) That the Mortgaged Property is now and at all times hereafter will continue to be in full compliance with all federal, state and local "Environmental Laws" (as that term is defined hereinafter), including but not limited to, the Comprehensive environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 USC Section 9601, et seq., the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat. 1613, the Resource Conservation and Recovery Act ("RCRA"), 42 USC Section 6901, et seq., and all ordinances, regulations, codes, plans, orders, and decrees now existing or in the future enacted, promulgated, adopted, entered or issued, both within and outside present contemplation of the Borrower and Lender;

(3) That (i) as of the date hereof there are no hazardous or toxic materials, substances, wastes or other environmentally regulated substances (including solids or gaseous products and any materials containing asbestos), the presence of which is limited, regulated or prohibited by any state, federal or local governmental authority or agency having jurisdiction over the Mortgaged Property, or which are otherwise known to pose a hazard to health or safety of occupants of the Mortgaged Property, located on, in or under the Mortgaged Property or used in connection therewith or (ii) Borrower has fully disclosed to Lender in writing the existence, extent and nature of any such hazardous or toxic material waste or other environmentally regulated substance, which Borrower is legally authorized and empowered to maintain on, in or under the Mortgaged Property or use in connection therewith, and Borrower has obtained and will maintain all license, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals;

(4) That Borrower shall notify Lender of any change in the nature or extent of any hazardous or toxic materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will transmit to Lender copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property; and

(5) That Borrower is not aware of, nor has the Borrower nor any of its subsidiary or affiliated entities received notice of, any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws or any ordinance, regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, or which may give rise to any common law or legal liability, or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation, based on or related to the

manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Substance; and

(6) That there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice or demand letter, notice of violation, investigation, or proceeding pending or threatened against Borrower or the Mortgaged Property, relating in any way to any Environmental Laws or any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder;

(7) Borrower hereby agrees to indemnify, reimburse, defend and hold harmless Lender, its officers, directors, employees, successors and assigns from and against all demands, claims, civil or criminal actions or causes of action, liens, assessments, civil or criminal penalties or fines, losses, damages, liabilities, obligations, costs, disbursements, expenses or fees of any kind or of any nature (including, without limitation, cleanup costs, attorneys', consultants' or experts' fees and disbursements and costs of litigation at trial and appellate levels) which may at any time be imposed upon, incurred by or asserted or awarded against, Lender directly or indirectly, resulting from: (a) any acts or activities of Borrower, its agents, employees or contractors, at, on or about the Mortgaged Property which contaminate air, soils, surface waters or ground-waters over, on or under the property; (b) arising from or out of any Hazardous Substance on, in or under the Mortgaged Property; (c) pursuant to or in connection with the application of any Environmental Law to the acts or omissions of Borrower or any other person and any environmental damage alleged to have been caused, in whole or in part, by the transportation, treatment, storage, or disposal of any Hazardous Substance; or (d) arising from or in relation to the presence, whether past, present or future, of any Hazardous Substances on the Mortgaged Property;

Without limiting the foregoing, this indemnification provision specifically protects the Lender against any claim or action from activities described in (a), (b), (c) or (d) above, based in whole or in part upon any environmental statute, rule, regulation or policy, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, ("CERCLA") 42 USC Section 9601, et seq., as amended, the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq., and other laws, whether now in existence or enacted in the future.

Borrower's indemnification obligation hereunder shall be one of strict liability and shall be enforceable without regard to any fault or knowledge of Lender with respect to any act or omission or condition or event which is the basis of the claim under such indemnification obligation. Borrower's obligation under this section shall not be limited to any extent by the term of the Note or other obligations secured hereby, and such obligation shall continue, survive and remain in full force and effect notwithstanding payment in full or other satisfaction or release of said Note (and other obligations secured hereby) and this Mortgage, or any foreclosure under this Mortgage, or any delivery of a deed in lieu of foreclosure. The provisions of this section shall be deemed to survive and continue in full force and effect after any foreclosure or other proceeding by which the Lender, and its successors and assigns succeed to ownership of the Mortgaged Property.

As used herein, "Environmental Law" means any federal, state, or local statutory or common law relating to pollution or protection of the environment, including without limitation, any common law of nuisance or trespass, and any law or regulation relating to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment (including without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

As used herein, "Hazardous Substance" means any (i) substance or material identified in Section 101(14) of CERCLA, 42 USC Section 9601(14), as the same may be amended from time to time, or (ii) determined to be toxic, a pollutant or contaminant, under federal, state or local statute, law, ordinance, rule or regulation or judicial or administrative order or decision, as same may be amended from time to time, including but not limited to petroleum and petroleum products.

23. Intentionally Omitted.

24. Releases. Partial releases may be made as provided in the Loan Agreement.

25. Cross-Collateralization and Cross-Default. Borrower hereby mortgages its Mortgaged Property described herein to secure any and all notes, liabilities and obligations, direct or contingent and of whatsoever kind or description, of Borrower, or one or more of them if more than one Borrower, and of the maker of the Note if different from Borrower, to Lender, whether as maker, endorser, surety, guarantor or otherwise, and whether those notes, liabilities and obligations, or any of them, of Borrower, or one or more of them if more than one Borrower, or of the Note if different from Borrower, be now in existence or accrue or arise hereafter, or be now owned or held by Lender or be acquired hereafter, to include notes, liabilities and obligations owing by Borrower, or one or more of them if more than one Borrower, or of the maker of the Note if different from Borrower, jointly with third persons, it being the intent and purpose of Borrower, and each of them if more than one, to secure by this Mortgage all notes, claims, demands, liabilities and obligations (whether or not otherwise secured) that Lender may have, hold or acquire at any time during the life of this Mortgage against Borrower, or one or more of them if more than one Borrower, or against the maker of the Note if different from Borrower, provided that all such notes, claims, demands, liabilities and obligations secured by this Mortgage must be incurred or arise or have come into existence either on or prior to the date of this Mortgage, or within the period of twenty (20) years from the date of this Mortgage. And it is expressly understood and agreed that Lender in its dealings in the future with any of the notes, liabilities and obligations of Borrower, or one or more or all of them if more than one Borrower, and of the maker of the Note if different from Borrower, intends to rely upon, and will rely upon, the provisions of this Paragraph. Borrower and Lender agree that a default under any such other notes, claims, demands, liabilities and obligations of Borrower, or one or more of them if more than one Borrower, or of the maker of the Note if different from Borrower, shall constitute a default under this Mortgage, and that a default under this Mortgage, or Note, or Loan Agreement, shall constitute a default under such other notes, claims, demands, liabilities and obligations of Borrower, or one or more of them if more than one Borrower, or of the maker of the Note, if different from Borrower.

26. Notice. All notices provided for herein shall be sent by certified or registered-return receipt requested mail, addressed to the appropriate party at the address designated for such party in the preamble to this Mortgage, or such other address as the party who is to receive such notice may designate in writing. Notice shall be completed by depositing the same in a letter box or other means provided for the posting of mail addressed to the party with the proper amount of postage affixed thereto. Actual receipt of notice shall not be required to effect notice hereunder.

27. Captions. The captions of the Articles and Sections of this Mortgage are for the purpose of convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

28. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, BY EXECUTION AND DELIVERY OF THIS MORTGAGE, THE BORROWER AND, BY ACCEPTANCE OF THIS MORTGAGE, THE LENDER HEREBY KNOWING, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE THE RIGHT TO ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, BASED ON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE BORROWER OR LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER TO EXTEND OR CONTINUE TO EXTEND CREDIT OR OTHER FINANCIAL ACCOMMODATIONS TO THE BORROWER. FURTHER, THE BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE LENDER OR THE LENDER'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISIONS. NO REPRESENTATIVE OR AGENT OF THE LENDER OR THE LENDER'S COUNSEL HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISIONS.

29. Governing Law. This Mortgage, the Loan Agreement, the Note, the other Loan documents, and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of Alabama, except to the limited extent that the substantive law of the state in which the Mortgaged Property is located

controls with respect to the Lender's foreclosure rights and remedies relating to the Mortgaged Property. Furthermore, Borrower hereby submits to the jurisdiction of the state and federal courts located in Alabama and agrees that Lender may, at its option, enforce its rights under this Mortgage and the Loan documents in such Alabama courts.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year above first written.

Signed, sealed and delivered in the presence of:

Mary D. Harris
Print Name: Mary D. Harris

Print Name: _____

BORROWER:

ADAMS HOMES, L.L.C., an Alabama Limited Liability Company

By: Glen H. Schneiter
Glen H. Schneiter
Its: Assistant Controller for Closings

STATE OF Alabama
COUNTY OF Baldwin

I, Mary D. Harris, a Notary Public in and for said County in said State, hereby certify that Glenn H. Schneiter, whose name as Assistant Controller for Closing of Adams Homes, L.L.C., an Alabama Limited Liability Company, is signed to the foregoing conveyance and who is known to me or who has produced _____ as identification, acknowledged before me on this day that, being informed of the contents of the conveyance, he as such officer and with full authority, executed the same voluntarily and as the act of said company.

(Notary Seal Must Be Affixed)
My Commission Expires 1-14-15
Commission Number —

Mary D. Harris
Notary Public
Mary D. Harris
Name of Notary Printed



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Shelby Cnty Judge of Probate, AL
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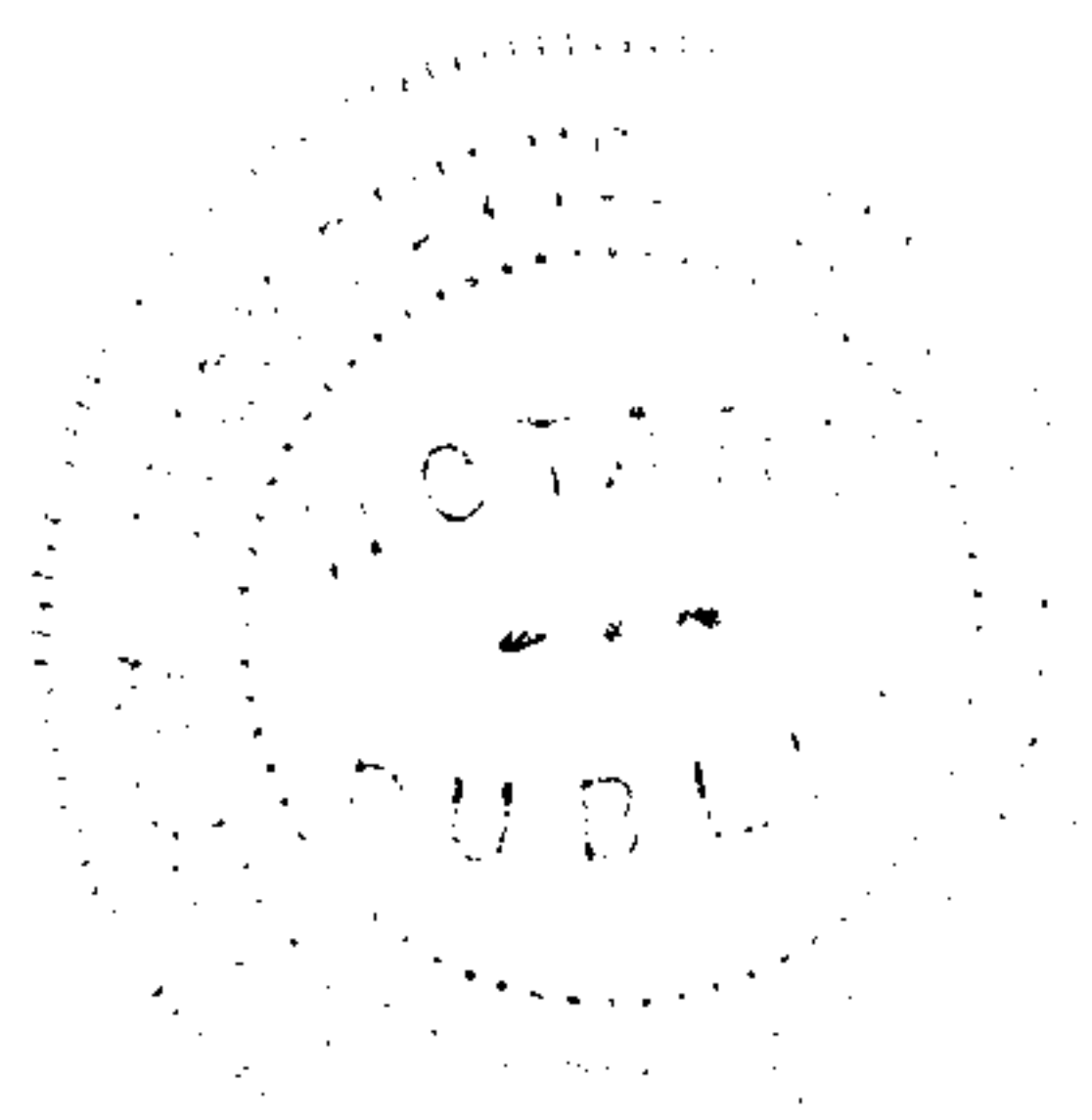
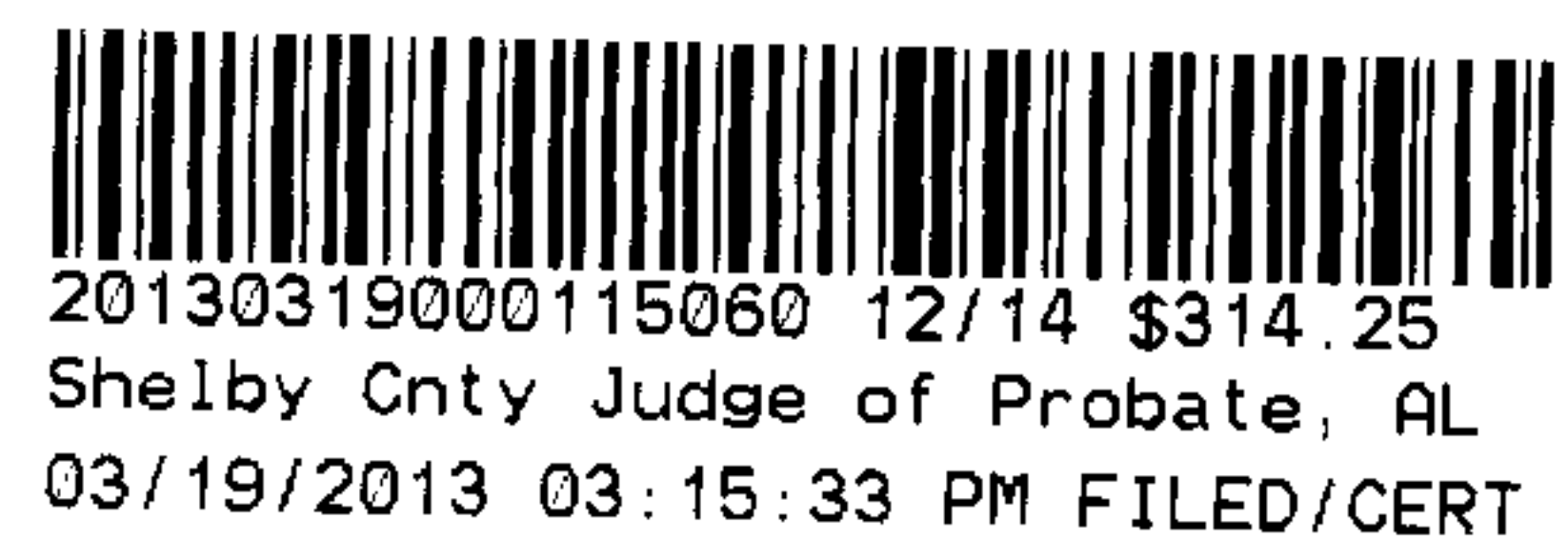


Exhibit "A"

Property Description

Lot 1884, Old Cahaba, Phase V, 3rd Addition, according to the plat thereof recorded in Map Book 37, Page 6-B, in the Office of the Judge of Probate of Shelby County, Alabama.

Exhibit "B"



Description of Other Property

All the following described property:

(a) All of the structures, buildings and improvements now or hereafter situated upon the Real Property.

(b) Any and all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, air rights, water, water stock, water rights, titles, interests, privileges, tenements, hereditaments and appurtenances whatsoever, in any way belong, relating or appertaining to any of the Real Property or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all of the estates, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower, of, in and to the same.

(c) All right, title and interest of the Borrower, if any, in and to the land lying in the bed of any streets, roads or avenues, opened or proposed, in front of or adjoining the Real Property, and in and to the appurtenances thereto.

(d) If applicable at any time, all rents, profits, issues and revenues of the Real Property and the buildings on the Real Property from time to time accruing, whether under leases or tenancies now existing or hereafter created.

(e) All of the Borrower's right, title and interest in and to any judgments, awards of damages, condemnation payments and settlements, including interest thereof, and the right to receive the same, which may be made with respect to the Real Property as a result of the exercise of the right of eminent domain, the alteration of the side of any street, any other injury or a decrease in the value of the Real Property, or proceeds of insurance awards.

(f) All machinery, apparatus, equipment, fittings, fixtures and tangible personal property of every kind and nature whatsoever now or hereafter attached to or forming a part of or located on the Real Property or in any buildings or improvements upon the Real Property, or any part thereof, and used or usable in connection with the construction of or any occupancy of any buildings on the Real Property or the operation of the Real Property, all additions thereto, and all substitutions and replacements therefor, but specifically excluding all equipment, machinery, furniture and other items of tangible personal property owned by tenants occupying buildings on the Real Property or used in the operation of the Borrower's business.

(g) The Borrower's interest in any and all purchase and sale contracts relating to or leases of the Real Property or portions thereof now existing or hereafter entered into by the Borrower, and all right, title and interest of the Borrower thereunder, including without limitation, cash or securities deposited thereunder to secure performance by the purchasers or lessees of their obligations thereunder and other payments whatsoever with respect thereto, subject, however, to the terms of the contracts or leases pursuant to which such deposits are held.

(h) All deposits made with, or other security given to, utility companies by the Borrower or any lessee of the Borrower with respect to the Real Property.

(i) All of the Borrower's rights relating to the Real Property or the operation thereof, or used in connection therewith, including without limitation, the non-exclusive right to use trade names, service marks and trademarks.

(j) All rights to any permits, licenses, authorizations, and approvals granted to or otherwise held by the Borrower in regard to the Real Property such as, but not limited to, all building permits, certificates of occupancy, etc.

(k) All rights of the Borrower to any contracts relating to the Real Property such as, but not limited to, all marketing, management and leasing contracts with regard to any improvements constructed on the Real Property.

(l) All surveys, reports, assessments, soils, tests, feasibility studies, appraisals, engineering reports and similar materials in respect to the Real Property or of any improvements constructed or to be constructed thereon.

(m) All plans and specifications for any improvements constructed or to be constructed on the Real Property and all insurance policies, intellectual property, contracts and agreements relating to the design, construction, operation or inspection of any such improvements or used in connection with or relating to and about the development of the Real property, all payment and performance bonds relating to any construction contract or subcontract in connection with the development or equipping of the Real Property, all warranties (seller's, manufacturer's, contractor's or other), service or maintenance contracts and guarantees in connection with the foregoing, and all claims and causes of action against any architects, engineers, contractors and subcontractors involved in the development of the Real Property.

(n) All of the Borrower's rights in any construction and other materials stored on the Property or elsewhere.

(o) All general intangibles and intangible rights of the Borrower relating to the design, development, construction, ownership, operation, management and use of the Real Property such as, but not limited to, all impact fee credits, sewer and water fee credits, sewer, water and traffic capacity rights, and development rights including, but not limited to, rights regarding concurrency and the right to develop.

(p) All deposit balances, accounts, items, certificates of deposit and monies of the Borrower in possession of or on deposit with the Borrower, including without limitation, any interest reserve, equity deposit, cash collateral, construction or other account established or maintained with respect to the Lender's loan to the Borrower.

(q) All proceeds of the conversion, voluntarily or involuntary, or any of the foregoing into cash or liquidated claims, including proceeds of insurance and condemnation awards.


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