

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made as of October 2, 2018 (the "**Effective Date**"), by and between **FORTY SEVEN CANAL PLACE, LLC**, an Alabama limited liability company ("**Seller**"), and **BALDWIN COUNTY, ALABAMA**, by and through the **BALDWIN COUNTY COMMISSION**, a political subdivision of the State of Alabama ("**Purchaser**").

FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation ("**Escrow Agent**"; and in its capacity as title insurer sometimes herein called the "**Title Company**"), is a party to this Agreement solely for the limited purposes set forth herein.

WITNESSETH:

ARTICLE 1

PURCHASE AND SALE

1.1 **Agreement of Purchase and Sale.** Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and convey, and Purchaser agrees to purchase, the following:

(a) That certain tract or parcel of land consisting of approximately 44.49 acres, located in the City of Orange Beach, Baldwin County, Alabama and more particularly described in Exhibit A, attached hereto and made a part hereof (the "**Land**"); and

(b) all those rights, easements and appurtenances pertaining to the Land (whether now or hereafter existing), including (i) all right, title and interest of Seller (if any) in and to any streets, alleys or rights-of-way (whether open, closed or proposed), within or adjacent to the Land, and (ii) all right, title and interest of Seller with respect to any easements, covenants, agreements, rights, privileges, tenements, mineral rights, oil and gas rights, water rights, subsurface rights, hereditaments and appurtenances that now or hereafter benefit the Land, but only to the extent that such right, title and interest is assignable and only to the extent that such right, title and interest relates to the Land as opposed to other property of Seller (the property described in this clause (b) is herein referred to collectively as the "**Related Rights**").

1.2 **Property Defined.** The Land and the Related Rights are hereinafter sometimes referred to collectively as the "**Property**."

1.3 **Permitted Exceptions.** The Property shall be conveyed, and Purchaser shall accept the Property, subject to the matters which are, or are deemed to be, Permitted Exceptions pursuant to Article 2 hereof (herein referred to collectively as the "**Permitted Exceptions**").

1.4 **Purchase Price.** Seller shall sell, and Purchaser shall purchase, the Property for a total purchase price of the greater of the following (the "**Purchase Price**"): (a) **SEVEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,500,000.00)**, or (b) the fair market value of the Property as set forth in the Appraisal (as hereinafter defined).

1.5 **Payment of Purchase Price.** The Purchase Price, as adjusted by prorations and adjustments as herein provided, shall be payable in full at Closing (as hereinafter defined), in cash, by wire transfer of immediately available federal funds to a bank account designated by Escrow Agent in writing to Purchaser prior to the Closing ("**Escrow Agent's Account**"). At Closing, Escrow Agent, acting as disbursing agent, shall disburse the Purchase Price, as adjusted by prorations and adjustments as herein provided, in full, in

cash by wire transfer of immediately available federal funds to a bank account designated by Seller in writing to Escrow Agent prior to the Closing.

1.6 **Earnest Money.** Within three (3) business days following the Effective Date, Purchaser shall deposit with the Atlanta, Georgia office of Escrow Agent the sum of **One Hundred Thousand and no/100 Dollars (\$100,000.00)** (the "**Initial Deposit**") in cash, by wire transfer of immediately available funds. If Purchaser has not terminated this Agreement on or prior to the Inspection Date (as hereinafter defined), then Purchaser shall deposit an additional **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** (the "**Additional Deposit**"; the Initial Deposit and the Additional Deposit, when deposited, are herein collectively called the "**Earnest Money**") with Escrow Agent before 5:00 PM (Atlanta, Georgia time) on the Inspection Date. The Escrow Agent shall deposit the Earnest Money in accordance with the terms and conditions of Article 10 of this Agreement. All interest accruing on such sum, if any, shall become a part of the Earnest Money and shall be distributed as Earnest Money in accordance with the terms of this Agreement. If Purchaser fails to deliver any portion of the Earnest Money to the Escrow Agent within the time periods specified above, then this Agreement shall be deemed terminated. If Purchaser is entitled to have the Earnest Money returned to Purchaser pursuant to any provision of this Agreement other than Seller's default under this Agreement, then One Hundred Dollars (\$100.00) of the Earnest Money shall nevertheless be paid to Seller as good and sufficient consideration for entering into this Agreement. In addition, Seller acknowledges that Purchaser, in evaluating the Property and performing its due diligence investigation of the Property, will devote internal resources and incur expenses, and that such efforts and expenses of Purchaser also constitute good, valuable and sufficient consideration for this Agreement.

ARTICLE 2

TITLE AND SURVEY

2.1 **Title Examination; Commitment for Title Insurance.** No later than fifteen (15) days after the Effective Date, Seller will cause the Title Company to issue to Purchaser an updated title commitment covering the Property (the "**Title Commitment**").

2.2 **Survey.** Purchaser may, at Purchaser's cost and expense, obtain a land title survey of the Property. Such survey, as may or may not be updated, shall constitute the "**Survey**" hereunder.

2.3 **Title Objections; Cure of Title Objections.**

(a) Purchaser shall have until the date that is ten (10) days prior to the Inspection Date (the "**Title Objection Deadline**") to notify Seller, in writing, of such objections as Purchaser may have to the title or the survey, other than the Permitted Exceptions described on Exhibit B attached hereto and incorporated herein by this reference. Any item contained in the Title Commitment, any matter shown on the Survey or any document that is of record as of the effective date of, and disclosed in, the Title Commitment to which Purchaser does not object on or before the Title Objection Deadline shall be deemed a "**Permitted Exception.**"

(b) In the event Purchaser should notify Seller of objections to title or to matters shown on the Survey on or before the Title Objection Deadline, Seller shall have the right, but not the obligation, to cure such objections. On or before the fifth (5th) day following Seller's receipt of Purchaser's notice of objections, Seller shall notify Purchaser in writing whether Seller elects to attempt to cure such objections (but Seller's failure to provide a notice shall be deemed an election by Seller not to cure any of the objections). If Seller elects to attempt to cure any such objection, and provided that Purchaser shall not have terminated this Agreement in accordance with Section 3.2 hereof, then Seller shall use commercially reasonable efforts to attempt to remove, satisfy or cure the same. For this purpose, Seller shall be entitled to a reasonable extension of the Closing if additional time is required, but in no event shall the extension extend

for more than fifteen (15) days unless Purchaser consents in writing to a longer period. If Seller elects (or is deemed to have elected) not to cure any valid objections specified in Purchaser's notice, or if Seller fails or is unable to effect a cure, in either case prior to Closing (or by any date to which the Closing had been extended), then in either case, Purchaser shall select one, but not both, of the following options, which election must in each case be made within the time period provided in paragraph (c) below:

(1) to accept a conveyance of the Property subject to the Permitted Exceptions, specifically including any matter objected to by Purchaser which Seller is unwilling or unable to cure, and without reduction of the Purchase Price; or

(2) to terminate this Agreement by sending written notice thereof to Seller, and upon delivery of such notice of termination, this Agreement shall terminate and the Earnest Money shall be returned to Purchaser, and thereafter neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

(c) If Seller notifies Purchaser that Seller does not intend to attempt to cure any title objection, or if Seller is deemed to have elected not to cure any title objections, or if Seller notifies Purchaser of Seller's intent to cure any objection and Seller later notifies Purchaser that Seller has failed or will be unable to effect a cure thereof, then in any such case Purchaser shall, on or before the Inspection Date, notify Seller in writing whether Purchaser shall elect to accept the conveyance under clause (b)(1) above or to terminate this Agreement under clause (b)(2) above (with Purchaser's failure to provide such a notice deemed an election by Purchaser to accept conveyance under clause (b)(1) above).

(d) Purchaser acknowledges that the Property is encumbered by loan documents described on the attached Schedule 1. Whether or not Purchaser shall have furnished to Seller any notice of title objections pursuant to the foregoing provisions of this Agreement, Seller shall (i) pursue the release of the Property from the Mortgage (as defined on the attached Schedule 1), the termination of the Loan Documents (as defined on the attached Schedule 1), and Seller's release from all Secured Obligations (as defined in the Mortgage); and (ii) satisfy or discharge at or prior to Closing (A) all past due ad valorem taxes and assessments and water/sewer bills of any kind constituting a lien against the Property; (B) any undisputed mechanic's or materialmen's liens arising by, through or under Seller, and (C) all disputed monetary liens not exceeding Twenty-Five Thousand and No/100 Dollars (\$25,000.00). Notwithstanding anything to the contrary herein, Purchaser acknowledges that Seller has no obligation to incur any cost or expense, commence any legal action or proceeding, nor undertake any payment or performance obligation as consideration for, or to otherwise bring about, the termination or release of the Mortgage, Loan Documents or Secured Obligations. Further, the terms "discharge" and "discharged" as used in this paragraph include compliance with a statutory bonding procedure that has the legal effect of removing the encumbrance or monetary lien as a lien on the Property and allows the encumbrance or monetary lien to be removed from the title exceptions in the Title Policy (as defined below).

2.4 Conveyance of Title. At Closing, Seller shall convey and transfer the Property to Purchaser, subject to the Permitted Exceptions. It shall be a condition to Purchaser's obligation to close this transaction that title to the Property conveyed and transferred to Purchaser shall be such title to the Property as will enable the Title Company to issue to Purchaser an American Land Title Association (ALTA) Form 2006 Owner's Policy of Title Insurance (the "**Title Policy**") covering the Property, in the full amount of the Purchase Price, subject to the following matters, which shall be deemed to be Permitted Exceptions:

- (a) all matters set forth on Exhibit B, attached hereto and by this reference incorporated herein;
- (b) the VCUP Covenant (as hereinafter defined); and

(c) additional items, if any, appearing of record or shown on the Survey, except to the extent Seller agrees to cure, or is obligated to cure, any such matters pursuant to Section 2.3 or 2.5 hereof, but not any item created in violation of Section 2.6 hereof; and

2.5 Pre-Closing "Gap" Title Defects. Whether or not Purchaser shall have furnished to Seller any notice of title objections pursuant to the foregoing provisions of this Agreement, Purchaser may, at or prior to Closing, notify Seller in writing of any objections to title having a material adverse effect on the development, operation or value of the Property and first discovered by the Title Company or the surveyor that prepared the Survey, and first appearing of record or physically affecting the Property (as the case may be), between (a) the effective date of the Title Commitment or Survey (as the case may be) prior to the Title Objection Deadline, and (b) the Closing Date; provided, however, that Purchaser must notify Seller of any such objections within five (5) days after Purchaser's first receipt of any updated version of the Title Commitment, updated version of the Survey or other document, whichever first discloses the condition giving rise to any such objection. With respect to any objections to title set forth in such notice, Seller shall have the same option to cure and Purchaser shall have the same option to accept title subject to such matters or to terminate this Agreement as those which apply to any notice of objections made by Purchaser on or before the Title Objection Deadline. If Seller elects to attempt to cure any such matters, Seller shall have the right, at its election, to extend the date for Closing by a reasonable additional time to affect such a cure, but in no event shall the Closing be extended for more than fifteen (15) days unless Purchaser agrees in writing to a longer period.

Notwithstanding the foregoing, Purchaser may not object to any VCUP Covenant, unless such VCUP Covenant imposes restrictions upon activities at the Property or uses that may be made of the Property in addition to (i) the prohibition of any groundwater use at the Property, (ii) the prohibition of development of enclosed improvements intended for occupancy on that portion of the Property in the approximate location depicted and labeled as 'Groundwater Restricted Area' on the map attached hereto as Exhibit D, and (iii) the prohibition of development of improvements for residential uses on that portion of the Property in the approximate location depicted and labeled as 'Proposed Restricted Use Area' on the map attached hereto as Exhibit D without the installation of a physical "cap" over such area.

2.6 Seller's Covenant Not to Encumber. Seller agrees that, between the Effective Date and the Closing Date, except for execution and recordation of the VCUP Covenant, Seller will not sell, assign, rent, convey (absolutely or as security), grant a security interest in, or otherwise encumber or dispose of, the Property (or any part thereof or estate therein) in any manner that will survive Closing, except as approved in writing by Purchaser in Purchaser's reasonable discretion.

ARTICLE 3

INSPECTION PERIOD

3.1 Right of Inspection.

(a) Beginning on the Effective Date and continuing thereafter so long as this Agreement is not terminated, Purchaser shall have the right to make a physical inspection of the Property, and Purchaser, personally or through agents, employees or contractors, may go upon the Property during normal business hours or at other reasonable times approved by Seller to make boundary line or topographical surveys and to conduct such studies, tests, samplings, investigations and analyses of any and all aspects of the Property as Purchaser deems desirable, including, without limitation, engineering, environmental, soil, groundwater and other tests, samplings, investigations and studies of the Property; provided, however, that Purchaser shall not undertake any "Phase Two" environmental site assessment, nor any invasive testing or sampling (including, without limitation, removing, sampling or testing any soil, groundwater or any other substance at or from the

Property), without Seller's prior written consent, which may be granted or withheld in Seller's sole discretion.

(b) Prior to the Inspection Date, Purchaser shall obtain an appraisal of the Property that complies with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition and any other appraisal requirements or standards as required by any applicable laws, rules or regulations, including 49 C.F.R. §§24.101 – 24.108 (the "**Appraisal**") from a duly qualified appraiser that sets forth an opinion as to the fair market value of the Property.

(c) Except to the extent prohibited by applicable law, Purchaser shall indemnify, hold harmless and defend Seller and its members, and their respective officers, directors, employees, partners and shareholders (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, causes of action, liabilities, losses, costs, damages, penalties, fines, judgments, suits and expenses (including attorneys' fees and expenses, consultant fees, expert fees, and court costs incurred in defending any such claim or in enforcing this indemnity) of whatsoever nature (individually, a "**Claim**"; and collectively, "**Claims**") that may be incurred by Seller or any of the other Indemnified Parties and arising out of or in connection with the acts or omissions of Purchaser or its agents, representatives, contractors or consultants, or any of them, including but not limited to personal injury or death of persons, loss, destruction or damage to property, or liens or claims of lien filed against the Property. This Section 3.1(c) shall survive Closing or any termination of this Agreement.

3.2 **Right of Termination.** Seller agrees that in the event Purchaser determines, in Purchaser's sole discretion, for any reason or no reason, that it does not wish to acquire the Property, then Purchaser shall have the right to terminate this Agreement by giving written notice of such termination to Seller on or before the date that is one hundred twenty (120) days after the Effective Date (the "**Inspection Date**"). Upon any such termination of this Agreement pursuant to Purchaser's rights under this Section 3.2, the Earnest Money shall be promptly returned to Purchaser in accordance with Section 1.6 hereof, and Purchaser and Seller shall have no further rights and obligations hereunder except those which expressly survive termination of this Agreement. If Purchaser fails to give Seller timely notice of termination on or before the Inspection Date, then Purchaser shall no longer have the right to terminate this Agreement under this Section 3.2 and, subject to any contrary provisions of this Agreement, shall be bound to proceed to Closing and consummate the transaction contemplated hereby pursuant to the terms of this Agreement.

ARTICLE 4

CLOSING

4.1 **Time and Place.** Unless extended under other provisions of this Agreement, the consummation of the transaction contemplated hereby (the "**Closing**") shall be held at the office of Escrow Agent in metropolitan Atlanta, Georgia on or before the date that is thirty (30) days after the Inspection Date. At Closing, Seller and Purchaser shall perform the obligations set forth in, respectively, Section 4.2 and Section 4.3. The Closing may be held at such other place or such earlier time and date as Seller and Purchaser shall mutually approve in writing. The date on which the Closing is scheduled to occur hereunder (or, if earlier, the date on which Closing occurs) is referred to herein as the "**Closing Date**". The parties will endeavor to "pre-close" on the business day prior to the Closing Date, so as to allow the wire transfers of the Purchase Price to occur at the opening of business on the Closing Date or as promptly thereafter as practical.

4.2 **Seller's Obligations at Closing.** At Closing, Seller shall:

(a) deliver to Purchaser its duly executed statutory warranty deed (the "Deed") in recordable form, conveying the Property, subject to the Permitted Exceptions, such deed to be in the form attached hereto as Exhibit C;

(b) deliver to the Title Company such evidence as the Title Company may reasonably require as to the authority of Seller to consummate the Closing, and the authority of the person or persons executing documents on behalf of Seller;

(c) deliver to Purchaser an affidavit duly executed by Seller stating that Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended;

(d) deliver to Purchaser such documents as may be required by applicable law to determine whether, and how much, income tax should be withheld from the proceeds of the sale of the Property and submitted to the Alabama Department of Revenue, pursuant to Section 40-18-86 of the Code of Alabama (1975);

(e) deliver to the Title Company a title insurance certificate, duly executed on behalf of Seller, in form and content reasonably satisfactory to Seller and the Title Company, for the purpose of permitting the Title Company to issue the Title Policy at Closing without exception for mechanics' or materialmen's liens for work performed by or on behalf of Seller, or exception for parties in possession of the Property under unrecorded leases;

(f) deliver to Purchaser possession of the Property, subject to the Permitted Exceptions; and

(g) deliver such additional documents as shall be reasonably requested by the Title Company or required to consummate the transaction contemplated by this Agreement; provided, however, that in no event shall Seller be required to indemnify the Title Company, Purchaser, or any other party pursuant to any such documents, or undertake any other material liability not expressly contemplated in this Agreement, unless Seller elects to do so in its sole discretion.

Seller may satisfy its foregoing obligations for deliveries to Purchaser by delivering such items to the Escrow Agent with instructions to release the same to Purchaser upon the Closing.

4.3 Purchaser's Obligations at Closing. At Closing, Purchaser shall:

(a) deliver to Seller the full amount of the Purchase Price, as increased or decreased by prorations and adjustments as herein provided, prior to 2:00 p.m. (Atlanta, Georgia local time) on the Closing Date, in immediately available federal funds wire transferred to Escrow Agent's Account pursuant to Section 1.5 above, it being agreed that at Closing the Earnest Money shall be applied towards payment of the Purchase Price;

(b) deliver to Seller such evidence as Seller and/or the Title Company may reasonably require as to the authority of Purchaser to consummate the Closing, and the authority of the person or persons executing documents on behalf of Purchaser; and

(c) deliver such additional documents as shall be reasonably requested by the Title Company or required to consummate the transaction contemplated by this Agreement, provided, however, that in no event shall Purchaser be required to undertake any other material liability not expressly contemplated in this Agreement, unless Purchaser elects to do so in its sole discretion.

Purchaser may satisfy its foregoing obligations for deliveries to Seller by delivering such items to the Escrow Agent with instructions to release the same to Seller upon the Closing.

4.4 **Credits and Prorations.**

(a) All expenses in connection with the operation of the Property shall be apportioned, as of 11:59 P.M. (Atlanta, Georgia local time) on the day prior to the Closing Date, as if Purchaser were vested with title to the Property during the entire Closing Date, such that, except as expressly provided to the contrary in this Agreement, Seller shall have the burden of expenses for the day preceding the Closing Date (and all periods prior to Closing) and Purchaser shall have the burden of expenses for the Closing Date and thereafter. Item (1) below will be prorated at Closing utilizing the information known at that time and a post-closing "true-up" shall take place within thirty (30) days of the availability of tax bills for the year of Closing to adjust said prorations, if necessary, and item (2) below will actually be prorated at Closing. Such prorated items shall include, without limitation, the following:

(1) ad valorem taxes and assessments levied against the Property for the tax year of the year of Closing;

(2) any gas, electricity, water and other utility charges for which Seller is liable, if any, such charges to be apportioned at Closing on the basis of the most recent meter reading occurring prior to Closing or the most recent utility bill received by Seller, as applicable; and

(3) any other operating expenses or other items pertaining to the Property which are customarily prorated between a purchaser and a seller of vacant land in the area in which the Property is located.

(b) Notwithstanding anything contained in the foregoing provisions:

Any ad valorem taxes paid at or prior to Closing shall be prorated based upon the amounts actually paid for the current tax year. If all taxes and assessments for the current tax year have not been paid before Closing, Seller shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the period before Closing and, after Closing, Purchaser shall pay the taxes and assessments prior to their becoming delinquent. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation last fixed. To the extent that the actual taxes and assessments for the current tax year differ from the amount apportioned at Closing, the parties shall make all necessary adjustments by appropriate payments between themselves following Closing.

(c) The provisions of this Section 4.4 shall survive Closing.

4.5 **Closing Costs.** Seller shall pay (a) the fees of any counsel representing it in connection with this transaction, (b) one-half (½) of any escrow fee which may be charged by Escrow Agent or Title Company, (c) the costs of curing all title objections for which Seller is responsible under this Agreement, and (d) any costs that may be incurred by Seller to obtain the release of the Property from the Mortgage, the termination of the Loan Documents and the release of Seller from the Secured Obligations; (e) Seller's costs to pursue and obtain VCUP Completion, including fees and expenses charged by Terracon (as hereinafter defined). Purchaser shall pay (i) the fees of any counsel representing Purchaser in connection with this transaction, (ii) one-half (½) of any escrow fees charged by the Escrow Agent or Title Company, (iii) all applicable transfer taxes, documentary stamp taxes and similar charges relating to the transfer of the Property, (iv) the fees for recording the Deed, (v) the premium for the Title Policy in the amount of the

Purchase Price, and the premiums for any lender's policy or title insurance endorsements, (vi) the costs of any financing obtained by Purchaser, (vii) the cost of Purchaser's inspections of the Property, (viii) the cost of the Survey and any updates or revisions thereto, including revisions necessary so that the Survey complies with Purchaser's lender's requirements, and (ix) all fees, costs and expenses incurred in connection with the Appraisal. All other costs and expenses incident to this transaction and the closing thereof shall be paid by the party incurring same.

4.6 Conditions Precedent to Obligation of Purchaser. The obligation of Purchaser to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing (or such earlier time as otherwise required hereby) of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

(a) Seller shall have delivered to Purchaser at Closing all of the material items required to be delivered to Purchaser by Seller at Closing pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 4.2;

(b) All of the representations and warranties of Seller set forth in Section 5.1 of this Agreement shall be true and correct in all material respects as of the date of Closing (with appropriate modifications permitted under this Agreement or not adverse to Purchaser);

(c) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the date of Closing;

(d) If Purchaser obtains the Appraisal prior to the Inspection Date, such Appraisal shall set forth an opinion that the fair market value of the Property is equal to, or greater than, Seven Million Five Hundred Thousand and No/100 U.S. Dollars (\$7,500,000.00);

(e) The Property shall have been released from the Mortgage and all existing liens (as described in paragraph 2.3(d)), all of the Loan Documents shall have been terminated, and Seller shall have been released from all Secured Obligations (as such term is defined in the Mortgage), and subject to the consummation of the Closing, the payment of all applicable premiums, and the satisfaction of all other requirements in the Title Commitment, the Title Company shall be committed to issue an owner's title insurance policy to Purchaser without exception for the Mortgage;

(f) Seller shall have achieved VCUP Completion (as hereinafter defined); and

(g) All other conditions precedent to Purchaser's obligation to consummate the transaction hereunder (if any) which are expressly set forth in this Agreement shall have been satisfied on or before the date of Closing.

In the event any of the foregoing conditions has not been satisfied by the Closing Date, and the failure of such condition would cause a diminution in the value of the Property in excess of \$25,000.00, Purchaser shall have the right to terminate this Agreement by written notice given to Seller on the Closing Date, whereupon Escrow Agent shall promptly refund the Earnest Money to Purchaser and the parties shall have no further rights, duties or obligations hereunder, other than those which are expressly provided herein to survive the termination of this Agreement; provided, however, that if any of the foregoing conditions has not been satisfied due to a default by Purchaser or Seller hereunder, then Purchaser's and Seller's respective rights, remedies and obligations shall instead be determined in accordance with Article 6.

4.7 Conditions Precedent to Obligation of Seller. The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

(a) Seller shall have received the Purchase Price as adjusted pursuant to and payable in the manner provided for in this Agreement;

(b) Purchaser shall have delivered to Seller at Closing all of the material items required to be delivered to Seller by Purchaser or Purchaser's agents pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 4.3;

(c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date of Closing (with appropriate modifications permitted under this Agreement);

(d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the date of Closing;

(e) Seller shall have achieved VCUP Completion (as hereinafter defined);

(f) The Property shall have been released from the Mortgage, all of the Loan Documents shall have been terminated, and Seller shall have been released from all Secured Obligations (as such term is defined in the Mortgage); and

(g) All other conditions precedent to Seller's obligation to consummate the transaction hereunder (if any) which are expressly set forth in this Agreement shall have been satisfied on or before the date of Closing.

In the event any of the foregoing conditions has not been satisfied by the Closing Date, Seller shall have the right to terminate this Agreement by written notice given to Purchaser on the Closing Date, whereupon Escrow Agent shall promptly refund the Earnest Money to Purchaser and the parties shall have no further rights, duties or obligations hereunder, other than those which are expressly provided herein to survive a termination of this Agreement; provided, however, if any of the foregoing conditions has not been satisfied due to a default by Purchaser or Seller hereunder, then Purchaser's and Seller's respective rights, remedies and obligations shall instead be determined in accordance with Article 6.

4.8 **ADEM Voluntary Cleanup Program.**

(a) **General.** Purchaser acknowledges that (i) Seller has delivered to Purchaser for its review the documents described on Schedule 2 attached hereto and incorporated herein by this reference (the "**Environmental Documents**"), which describe (among other things) certain soil and groundwater conditions at the Property; (ii) the Property is the subject of that Application for Voluntary Cleanup Program dated January 24, 2007, prepared by MACTEC Engineering and Consulting, Inc., under MACTEC Project No. 6325-06-0097, for Colonial Properties Trust, and submitted to the Alabama Department of Environmental Management ("**ADEM**"), a copy of which is included with the Environmental Documents along with a copy of ADEM's approval thereof; (iii) the purpose of such application was to obtain ADEM's acceptance of the Property into the Voluntary Cleanup Program ("**VCUP**") contemplated in Section 335-15-1, *et seq.*, of the Alabama Department of Environmental Management Administrative Code (the "**Administrative Code**"); and (iv) Seller would not be willing to sell the Property to Purchaser without the satisfaction of all requirements in the Administrative Code to obtain, through ADEM's issuance of a "letter of concurrence" or otherwise, the full extent of the liability protections afforded by VCUP pursuant to Section 22-30E-9(a) of the Code of Alabama (1975) ("**VCUP Completion**").

(b) **VCUP Covenant.** Seller has engaged Terracon Consultants, Inc. ("**Terracon**") as its environmental consultant to facilitate Seller's pursuit of VCUP Completion. Terracon's efforts may include,

without limitation, performing additional environmental investigations at the Property, preparing a plan for any remediation work necessary to achieve VCUP Completion, overseeing any such remediation work, and managing correspondence with ADEM in the pursuit of VCUP Completion. Seller will keep Purchaser reasonably informed of all matters related to the status of VCUP Completion, and at Purchaser's request, Seller will arrange for conference calls or meetings among Seller, Purchaser and Terracon for such purposes. Seller has directed Terracon to prepare a site assessment and plan with respect to the Property for submission to ADEM, which will propose for ADEM's approval a plan for achieving VCUP Completion (the "**VCUP Plan**"). Following such submittal, Seller agrees to provide a copy of such document to Purchaser. Seller anticipates that the VCUP Plan will propose that title to the Property be subjected to a recorded restrictive covenant (the "**VCUP Covenant**") that would impose certain activity and use limitations on the Property. If the VCUP Plan is approved by ADEM, Seller agrees to use commercially reasonable efforts to achieve VCUP Completion; provided, however, that Seller shall have no obligation to (i) perform (or cause to be performed) any additional excavation or other remediation work at the Property, (ii) incur any additional costs or expenses to achieve VCUP Completion beyond ordinary fees and expenses imposed by ADEM for participation in the VCUP program, nor (iii) file any legal action or proceeding to bring about VCUP Completion.

(c) **Closing Extension.** If VCUP Completion has not been achieved by the date that is five (5) business days prior to the Closing Date set forth above in Section 4.1, Seller may extend the date for Closing up to ninety (90) days by providing written notice of such extension to Purchaser prior to the Closing.

ARTICLE 5

REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 **Representations and Warranties of Seller.** Seller hereby makes the following representations and warranties to Purchaser as of the Effective Date. Such representations and warranties are subject to (i) the Permitted Exceptions and (ii) all other applicable provisions of this Agreement, including without limitation Article 9. In addition, each individual representation and warranty is qualified to the extent of any applicable information or exception which is otherwise disclosed in another representation or warranty of Seller herein.

(a) **Organization and Authority.** Seller has been duly organized and is validly existing and in good standing as a limited liability company under the laws of the State of Alabama. Seller has the full right and authority to enter into this Agreement and to transfer the Property pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein. The person signing this Agreement on behalf Seller is authorized to do so. Neither the execution and delivery of this Agreement, nor any other documents executed and delivered, or to be executed and delivered, by Seller in connection with the transactions described herein, will violate any provision of Seller's organizational documents or of any agreements, regulations, or laws to or by which Seller is bound. This Agreement has been, and each document to be executed and delivered by Seller at Closing shall have been as of Closing, duly authorized, executed and delivered by Seller, and is or shall be a valid and binding obligation of Seller and is or shall be enforceable against Seller in accordance with its terms subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally; and (ii) the exercise of judicial discretion in accordance with general principles of equity.

(b) **Consents.** Seller has obtained all consents and permissions (if any) related to the transactions herein contemplated and required under any covenant, agreement, encumbrance, law or regulation by which Seller or the Property is bound.

(c) **Pending Actions.** To Seller's knowledge, Seller has not received written notice of any action, suit, violation, arbitration, administrative or judicial proceeding, or unsatisfied order or judgment against Seller which pertains directly to the Property or the transaction contemplated by this Agreement, which in either case, if adversely determined, would have a material adverse effect on the use, operation or value of the Property.

5.2 **Knowledge Defined.** References to the "knowledge" of Seller shall refer only to the actual knowledge, without investigation or inquiry, on the Effective Date of the Designated Representative (as hereinafter defined) of Seller, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any broker, or to any other officer, agent, manager, representative or employee of Seller or any affiliate of Seller, or to impose upon such Designated Representative any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. As used herein, the term "**Designated Representative**" shall refer to the following person: Albert M. Campbell III, Executive Vice President and Chief Financial Officer. There shall be no personal liability on the part of the individual named above arising out of any representations or warranties made herein or otherwise and Purchaser waives all such claims which Purchaser now has or may later acquire against them in connection with the transactions contemplated in this Agreement.

5.3 **Survival of Seller's Representations and Warranties.** The representations and warranties of Seller set forth in Section 5.1, shall survive Closing for a period of ninety (90) days after Closing.

5.4 **Representations and Warranties of Purchaser.** Purchaser hereby makes the following representations and warranties to Seller as of the Effective Date:

(a) **Organization and Authority.** Purchaser has been duly organized and is validly existing as a political subdivision under the laws of the State of Alabama. Purchaser has the full right and authority to enter into this Agreement and to purchase the Property pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein. The person signing this Agreement on behalf of Purchaser is authorized to do so. Neither the execution and delivery of this Agreement nor any other documents executed and delivered, or to be executed and delivered, by Purchaser in connection with the transactions described herein, will violate any provision of Purchaser's charter or organizational laws or of any agreements, regulations, or laws to or by which Purchaser is bound. This Agreement has been duly authorized, executed and delivered by Purchaser, is a valid and binding obligation of Purchaser and is enforceable against Purchaser in accordance with its terms subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally; and (ii) the exercise of judicial discretion in accordance with general principles of equity.

(b) **Consents.** Purchaser has obtained all consents and permissions (if any) related to the transactions herein contemplated and required under any covenant, agreement, encumbrance, law or regulation by which Purchaser is bound.

(c) **Pending Actions.** To Purchaser's knowledge, there is no action, suit, arbitration, administrative or judicial administrative proceeding, or unsatisfied order or judgment pending or threatened against Purchaser which, if adversely determined, could individually or in the aggregate have a material adverse effect on Purchaser's ability to consummate the transaction contemplated herein.

5.5 **Survival of Purchaser's Representations and Warranties.** The representations and warranties of Purchaser set forth in Section 5.4 shall survive Closing for a period of ninety (90) days after Closing.

ARTICLE 6

DEFAULT

6.1 **Default by Purchaser.** If the sale of the Property as contemplated hereunder is not consummated due to Purchaser's default hereunder, then Seller shall be entitled, as its sole and exclusive remedy for such default, to terminate this Agreement and receive the Earnest Money as liquidated damages for the breach of this Agreement and not as a penalty, it being agreed between the parties hereto that the actual damages to Seller in the event of such breach are impractical to ascertain and the amount of the Earnest Money is a reasonable estimate thereof, Seller hereby expressly waiving and relinquishing any and all other remedies at law or in equity. Seller's right to receive the Earnest Money is intended not as a penalty, but as full liquidated damages. The right to receive the Earnest Money as full liquidated damages is Seller's sole and exclusive remedy in the event of default hereunder by Purchaser, and Seller hereby waives and releases any right to (and hereby covenants that it shall not) sue Purchaser: (a) for specific performance of this Agreement, or (b) to recover any damages of any nature or description other than or in excess of the Earnest Money. Purchaser hereby waives and releases any right to (and hereby covenants that it shall not) sue Seller or seek or claim a refund of the Earnest Money (or any part thereof) on the grounds it is unreasonable in amount and exceeds Seller's actual damages or that its retention by Seller constitutes a penalty and not agreed upon and reasonable liquidated damages. This Section 6.1 is subject to Section 6.4 hereof.

6.2 **Default by Seller.** If Seller fails to perform any material obligation of Seller pursuant to the terms of this Agreement, then Purchaser shall be entitled, as its sole and exclusive remedy for such default, to either (a) receive the return of the Earnest Money, which return shall operate to terminate this Agreement and release Seller from any and all liability hereunder; or (b) bring an action against Seller for specific performance of this Agreement, so long as such action is filed within ninety (90) days of Seller's alleged breach. Purchaser expressly waives its rights to seek damages in the event of Seller's default hereunder. This Section 6.2 is subject to Section 6.4 hereof. Notwithstanding anything to the contrary herein, the remedy described in clause (a) above shall be Purchaser's sole and exclusive remedy for (i) Seller's failure to pursue or obtain the release of the Property from the Mortgage, the termination of the Loan Documents or Seller's release from all Secured Obligations pursuant to Section 2.3(d) above, and (ii) Seller's failure to use commercially reasonable efforts to obtain VCUP Completion pursuant to Section 4.8(b) above.

6.3 **Notice of Default; Opportunity to Cure.** Neither Seller nor Purchaser shall be deemed to be in default hereunder until and unless such party has been given written notice of its failure to comply with the terms hereof and thereafter does not cure such failure within five (5) business days after receipt of such notice; provided, however, that this Section 6.3 shall not (i) apply to Purchaser's failure to deliver the Earnest Money or any portion thereof on the dates required hereunder or to either party's failure to make any deliveries required of such party on the Closing Date, or, accordingly, (ii) have the effect of extending the Closing Date or the due date of any Earnest Money deposit hereunder.

6.4 **Recoverable Damages.** Notwithstanding Sections 6.1 and 6.2 hereof, in no event shall the provisions of Sections 6.1 and 6.2 limit (a) either Purchaser's or Seller's obligation to indemnify the other party, or the damages recoverable by the indemnified party against the indemnifying party due to, a party's express obligation to indemnify the other party in accordance the terms of this Agreement, or (ii) either Purchaser's or Seller's obligation to pay costs, fees or expenses under Section 4.4 or 4.5 hereof, or the damages recoverable by either party against the other party due to a party's failure to pay such costs. In addition, if this Agreement terminates for any reason, other than a default by Seller hereunder, and Purchaser or any party related to or affiliated with Purchaser asserts any claim or right to the Property that would otherwise delay or prevent Seller from having clear, indefeasible, and marketable title to the Property, then

Seller shall have all rights and remedies available at law or in equity with respect to such assertion by Purchaser and any loss, damage or other consequence suffered by Seller as a result of such assertion.

ARTICLE 7

CONDEMNATION

If prior to the Closing any part of the Property is subject to a bona fide threat of condemnation by a body having the power of eminent domain or condemnation, or sale in lieu thereof, where such taking or sale in lieu would permanently and materially impair Purchaser's ability to develop the Property for Purchaser's intended use as a public park with a boat ramp, parking and other outdoor recreational facilities, Purchaser may elect to terminate this Agreement by giving Seller notice to such effect within five (5) business days after receipt of notice of such occurrence, and the parties hereto shall be relieved and released of and from any and all further liability hereunder, and the Earnest Money shall forthwith be returned to Purchaser, whereupon this Agreement shall terminate, and the parties hereto shall have no further rights or obligations hereunder, except for any right or obligation under any paragraph hereof which by its terms survives any termination hereof. If Purchaser does not elect so to cancel, this Agreement shall remain in full force and effect and the purchase contemplated herein, less any property taken by eminent domain or condemnation, shall be effected without reduction in the Purchase Price, and Seller shall, at the Closing, assign, transfer and set over unto Purchaser all of Seller's right, title and interest in and to any awards paid or payable for such taking.

ARTICLE 8

COMMISSIONS

8.1 **Brokers' Commissions.** The parties acknowledge that Ashurst & Niemeyer, L.L.C. ("Broker") has been retained by and represents Seller as broker in connection with the sale of the Property by Seller to Purchaser. Seller agrees that Seller shall pay to each Broker upon, but only upon, final consummation of the transaction contemplated herein, a real estate brokerage commission pursuant to a separate written agreement between Seller and Broker.

8.2 **Representation and Indemnity.** Each of Purchaser and Seller hereby represents and warrants to the other that it has not disclosed this Agreement or the subject matter hereof to, and has not otherwise dealt with, any real estate broker (other than Broker), agent or salesman so as to create any legal right or claim in any such broker, agent or salesman for a real estate commission or similar fee or compensation with respect to the negotiation and/or consummation of this Agreement or the conveyance of the Property by Seller to Purchaser. Purchaser and Seller shall indemnify, hold harmless and defend each other from and against any and all claims and demands for a real estate brokerage commission or similar fee or compensation arising out of any claimed dealings with the indemnifying party and relating to this Agreement or the purchase and sale of the Property (including reasonable attorneys' fees and expenses and court costs incurred in defending any such claim or in enforcing this indemnity).

8.3 **Survival.** This Article 8 shall survive the rescission, cancellation, termination or consummation of this Agreement.

ARTICLE 9

DISCLAIMERS, WAIVERS AND INDEMNITY

9.1 No Reliance on Documents. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 5.1 HEREOF, SELLER MAKES NO REPRESENTATION OR WARRANTY AS TO THE TRUTH, ACCURACY OR COMPLETENESS OF ANY MATERIALS, DATA OR INFORMATION DELIVERED BY SELLER TO PURCHASER IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREBY. PURCHASER ACKNOWLEDGES AND AGREES THAT ALL MATERIALS, DATA AND INFORMATION DELIVERED BY SELLER TO PURCHASER IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREBY ARE PROVIDED TO PURCHASER AS A CONVENIENCE ONLY AND THAT ANY RELIANCE ON OR USE OF SUCH MATERIALS, DATA OR INFORMATION BY PURCHASER SHALL BE AT THE SOLE RISK OF PURCHASER, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PURCHASER ACKNOWLEDGES AND AGREES THAT (A) THE ENVIRONMENTAL DOCUMENTS, ANY ENVIRONMENTAL OR OTHER REPORT WITH RESPECT TO THE PROPERTY WHICH IS DELIVERED BY SELLER TO PURCHASER SHALL BE FOR GENERAL INFORMATIONAL PURPOSES ONLY, (B) PURCHASER SHALL NOT HAVE ANY RIGHT TO RELY ON ANY SUCH REPORT DELIVERED BY SELLER TO PURCHASER, BUT RATHER WILL RELY ON ITS OWN INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AND ANY REPORTS COMMISSIONED BY PURCHASER WITH RESPECT THERETO, AND (C) NEITHER SELLER, ANY AFFILIATE OF SELLER NOR THE PERSON OR ENTITY WHICH PREPARED ANY SUCH REPORT DELIVERED BY SELLER TO PURCHASER SHALL HAVE ANY LIABILITY TO PURCHASER FOR ANY INACCURACY IN OR OMISSION FROM ANY SUCH REPORT.

9.2 Disclaimers. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN SECTION 5.1 HEREOF, PURCHASER UNDERSTANDS AND AGREES THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S LIMITED OR SPECIAL WARRANTY OF TITLE TO BE SET FORTH IN THE DEED), ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAWS, THE ABSENCE OR PRESENCE OF HAZARDOUS MATERIALS OR OTHER TOXIC SUBSTANCES, COMPLIANCE WITH ENVIRONMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO PURCHASER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

PURCHASER REPRESENTS TO SELLER THAT PURCHASER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS PURCHASER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL OR ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S AND ITS MEMBERS' RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT OR UNDER ANY ENVIRONMENTAL LAW), LOSSES, DAMAGES, LIABILITIES, FINES, PENALTIES (WHETHER BASED ON STRICT LIABILITY OR OTHERWISE), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S AND ITS MEMBERS' RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. THE FOREGOING SHALL NOT BE INTERPRETED TO WAIVE ANY CLAIM OF PURCHASER WITH RESPECT TO ANY BREACH BY SELLER OF ANY EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN SECTION 5.1 THAT EXPRESSLY SURVIVE CLOSING PURSUANT TO SECTION 5.3.

PURCHASER AGREES THAT SHOULD ANY INVESTIGATION, CLEANUP, REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON OR RELATED TO THE PROPERTY BE REQUIRED AFTER THE DATE OF CLOSING, SELLER SHALL HAVE NO LIABILITY TO PURCHASER TO PERFORM OR PAY FOR SUCH INVESTIGATION, CLEAN-UP, REMOVAL OR REMEDIATION, AND PURCHASER EXPRESSLY WAIVES AND RELEASES ANY CLAIM TO THE CONTRARY. THE FOREGOING SHALL NOT BE INTERPRETED TO WAIVE ANY CLAIM OF PURCHASER WITH RESPECT TO ANY BREACH BY SELLER OF ANY EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN SECTION 5.1 THAT EXPRESSLY SURVIVE CLOSING PURSUANT TO SECTION 5.3.

PURCHASER REPRESENTS AND WARRANTS THAT THE TERMS OF THE RELEASE CONTAINED HEREIN AND ITS CONSEQUENCES HAVE BEEN COMPLETELY READ AND UNDERSTOOD BY PURCHASER, AND PURCHASER HAS HAD THE OPPORTUNITY TO CONSULT WITH, AND HAS CONSULTED WITH, LEGAL COUNSEL OF PURCHASER'S CHOICE WITH REGARD TO THE TERMS OF THIS RELEASE. PURCHASER ACKNOWLEDGES AND WARRANTS THAT PURCHASER'S EXECUTION OF THIS RELEASE IS FREE AND VOLUNTARY.

9.3 **Environmental Indemnity.** At its sole cost and expense, from and after the Closing, Purchaser shall indemnify, protect, hold harmless and defend the Indemnified Parties, with counsel selected by Seller, from and against any and all Claims, which may at any time be imposed upon, incurred, suffered by, or asserted or awarded against, any of the Indemnified Parties directly or indirectly relating to or arising from any future Environmental Activity or Condition (as hereinafter defined) affecting all or any portion of the Property.

As used herein, the following terms shall have the corresponding meanings set forth below:

“Environmental Activity or Condition” means the presence, use, generation, manufacture, production, processing, storage, release, threatened release, discharge, disposal, treatment or transportation of any Hazardous Material on, onto, in (or within), under, over or from the Property, or within any improvement on the Property, or the violation of any Environmental Law because of the condition of, or any activity on, the Property.

“Environmental Law” means any applicable federal, state or local law, statute, ordinance, regulation, rule, court order or decree, or administrative order relating to the environment, or protection of public health from any pollutant, contaminant, or hazardous or toxic material, substance, waste or irritant, in effect from time to time, including (without limitation) (a) the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 *et seq.*), (b) the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 *et seq.*), (c) the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. §9601 *et seq.*), (d) the Federal Clean Air Act, as amended (42 U.S.C. §7401 *et seq.*), (e) the Federal, Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §136 *et seq.*), (f) the Toxic Substances Control Act, as amended (15 U.S.C. §2601 *et seq.*), and (g) all regulations and legally binding guidelines promulgated pursuant to all of the foregoing, as the same may be amended from time to time.

“Hazardous Material” means any petroleum or petroleum product, and any hazardous or toxic material, substance, pollutant, allergen, irritant, mold, fungus, bacteria, contaminant, waste, any of which are (a) defined by or regulated as such under any Environmental Law, or (b) determined by any final court ruling or order to be hazardous or toxic.

9.4 **Effect and Survival of Disclaimers.** Seller and Purchaser acknowledge that the provisions of this Article 9 are an integral part of the transactions contemplated in this Agreement and a material inducement to Seller to enter into this Agreement and that Seller would not enter into this Agreement but for the provisions of this Article 9. Seller and Purchaser agree that Sections 9.1 and 9.2 above shall survive the Closing or any termination of this Agreement, and Section 9.3 above shall survive the Closing.

ARTICLE 10

ESCROW AGENT

10.1 **Investment of Earnest Money.** Escrow Agent shall deposit the Earnest Money in an interest bearing account at a commercial bank whose deposits are insured by the FDIC, and the interest on the Earnest Money deposit will be deemed part of the Earnest Money. Escrow Agent shall promptly advise Seller and Purchaser of the investment of the Earnest Money. However, Escrow Agent shall invest the Earnest Money only in such accounts as will allow Escrow Agent to disburse the Earnest Money upon no more than one (1) business days' notice and with no penalty or premium for early withdrawal. Notwithstanding the foregoing, Escrow Agent shall only be obligated to invest the Earnest Money upon receipt of a completed and signed W-9 form on behalf of Purchaser.

10.2 **Payment at Closing.** If the Closing takes place under this Agreement, unless jointly directed otherwise by Seller and Purchaser, Escrow Agent shall deliver the Earnest Money to, or upon the instructions of, Seller on the Closing Date.

10.3 **Payment on Demand.** Upon receipt of any written certification from Seller or Purchaser claiming the Earnest Money pursuant to the provisions of this Agreement, Escrow Agent shall promptly forward a copy thereof to the other such party (i.e., Purchaser or Seller, whichever did not claim the Earnest Money pursuant to such notice) and, unless such other party within five (5) days thereafter notifies Escrow Agent of any objection to such requested disbursement of the Earnest Money, in which case Escrow Agent shall retain the Earnest Money subject to Section 10.5 below, Escrow Agent shall disburse the Earnest Money to the party demanding the same and shall thereupon be released and discharged from any further duty or obligation hereunder.

10.4 **Exculpation of Escrow Agent.** It is agreed that the duties of Escrow Agent are herein specifically provided and are purely ministerial in nature, and that Escrow Agent shall incur no liability whatsoever except for its willful misconduct or negligence, so long as Escrow Agent is acting in good faith. Seller and Purchaser do each hereby release Escrow Agent from any liability for any error of judgment or for any act done or omitted to be done by Escrow Agent in the good faith performance of its duties hereunder and do each hereby indemnify Escrow Agent against, and agree to hold, save, and defend Escrow Agent harmless from, any costs, liabilities, and expenses incurred by Escrow Agent in serving as Escrow Agent hereunder and in faithfully discharging its duties and obligations hereunder.

10.5 **Stakeholder.** Escrow Agent is acting as a stakeholder only with respect to the Earnest Money. If there is any dispute as to whether Escrow Agent is obligated to deliver the Earnest Money or as to whom the Earnest Money is to be delivered, Escrow Agent may refuse to make any delivery and may continue to hold the Earnest Money until receipt by Escrow Agent of an authorization in writing, signed by Seller and Purchaser, directing the disposition of the Earnest Money, or, in the absence of such written authorization, until final determination of the rights of the parties in an appropriate judicial proceeding. If such written authorization is not given, or a proceeding for such determination is not begun, within thirty (30) days of notice to Escrow Agent of such dispute, Escrow Agent may bring an appropriate action or proceeding for leave to deposit the Earnest Money in a court of competent jurisdiction pending such determination. Escrow Agent shall be reimbursed for all costs and expenses of such action or proceeding, including, without limitation, reasonable attorneys' fees and disbursements, by the party determined not to be entitled to the Earnest Money. Upon making delivery of the Earnest Money in any of the manners herein provided, Escrow Agent shall have no further liability or obligation hereunder.

10.6 **Interest.** All interest and other income earned on the Earnest Money deposited with Escrow Agent hereunder shall be reported for income tax purposes as earnings of Purchaser. Purchaser's taxpayer identification number is 63-6001408.

10.7 **Execution by Escrow Agent.** Escrow Agent has executed this Agreement solely for the purpose of acknowledging and agreeing to the provisions of this Article 10. Escrow Agent's consent to any modification or amendment of this Agreement other than this Article 10 shall not be required. This Article 10 shall survive any termination of this Agreement.

ARTICLE 11

MISCELLANEOUS

11.1 **Confidentiality.** Except for any disclosure that may be required by law or applicable regulation to be made by Purchaser to any applicable governmental or quasi-governmental authorities or to

the public, Purchaser and its representatives shall hold in strictest confidence all data and information obtained with respect to the Property, Seller or Seller's business, whether obtained before or after the execution and delivery of this Agreement, and shall not disclose the same to others; provided, however, that Purchaser may disclose such data and information (i) as and to the extent required by applicable law, (ii) to the employees, consultants, accountants and attorneys of Purchaser provided that such persons are advised of the confidential nature of such data and information and instructed to maintain such confidentially, and (iii) to the extent reasonably required in connection with evaluating the Property, to governmental officials in order to evaluate the Property's compliance with zoning, building and other applicable codes, laws and regulations as expressly permitted herein. In the event this Agreement is terminated or Purchaser fails to perform hereunder, Purchaser shall promptly return to Seller any statements, documents, schedules, exhibits or other written information obtained from Seller in connection with this Agreement or the transaction contemplated herein. In the event of a breach or threatened breach by Purchaser or its agents or representatives of this Section 11.1, Seller shall be entitled to an injunction restraining Purchaser or its agents or representatives from disclosing, in whole or in part, such confidential information. Nothing herein shall be construed as prohibiting Seller from pursuing any other available remedy at law or in equity for such breach or threatened breach. This Section 11.1 shall survive Closing or any termination of this Agreement.

11.2 **Public Disclosure.** Prior to Closing, any release to the public of information with respect to the sale contemplated herein or any matters set forth in this Agreement will be made only in the form approved by Purchaser and Seller except for any disclosure that may be required by law or applicable regulation to be made by Seller to any applicable governmental or quasi-governmental authorities or to the public. Following Closing, Seller may make such disclosures with respect to the transaction as are consistent with Seller's customary disclosures in quarterly earnings releases, press releases and supplemental financial disclosures; however no such releases or disclosures to the general public in writing shall include the name of the purchaser of the Property. Notwithstanding any terms or conditions in this Agreement to the contrary this Section 11.2 shall survive the Closing.

11.3 **Assignment.** Purchaser and Seller may not assign their rights under this Agreement without first obtaining written approval from the non-assigning party, which approval may be given or withheld in the non-assigning party's sole discretion. No transfer or assignment shall release or relieve Purchaser or Seller of their obligations hereunder.

11.4 **Notices.** Any notice, request or other communication (a "**notice**") required or permitted to be given hereunder shall be in writing and shall be delivered by hand or overnight courier (such as United Parcel Service or Federal Express) or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth below. Any such notice shall be considered given on the date of such hand or courier delivery, deposit with such overnight courier for next business day delivery, or deposit in the United States mail, but the time period (if any is provided herein) in which to respond to such notice shall commence on the date of hand or overnight courier delivery or on the date received following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. By giving at least five (5) days' prior written notice thereof, any party may from time to time and at any time change its mailing address hereunder. Any notice of any party may be given by such party's counsel.

If to Seller:

Forty Seven Canal Place, LLC
4401 Northside Parkway, Suite 600
Dallas, TX 75001
Attention: Ms. Elizabeth Long

with a copy to:

Forty Seven Canal Place, LLC
4401 Northside Parkway, Suite 800
Atlanta, Georgia 30327-3057
Attention: Trey McGowan, Esq.

If to Purchaser:

Baldwin County Commission
Attn: Mr. Ron Cink
322 Courthouse Square
Bay Minette, AL 36507

with a copy to:

J. Bradford Boyd Hicks, Esq.
Stone Crosby PC
8820 US Highway 90
Daphne, AL 36526

If to Escrow Agent:

Fidelity National Title Insurance Company
c/o Fidelity National Title Group
National Commercial Services - Atlanta
5565 Glenridge Connector, Suite 300
Atlanta, Georgia 30342
Attention: Ms. Linda Hart

11.5 **Modifications.** This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

11.6 **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Baldwin County, Alabama local time.

11.7 **Successors and Assigns.** Subject to Section 11.3 hereof, the terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.

11.8 **Entire Agreement.** This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersede all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

11.9 **Further Assurances.** Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any review or diligence materials delivered by Seller to Purchaser with respect to the Property. The provisions of this Section 11.9 shall survive Closing.

11.10 **Counterparts.** This Agreement may be executed in identical counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

11.11 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

11.12 **Applicable Law.** This Agreement is performable in the state in which the Property is located and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of such state. Seller and Purchaser hereby irrevocably submit to the jurisdiction of any state or federal court sitting in the state and judicial district in which the Property is located in any action or proceeding arising out of or relating to this Agreement and hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in the state and judicial district in which the Property is located. Purchaser and Seller agree that the provisions of this Section 11.12 shall survive the Closing of the transaction contemplated by this Agreement.

11.13 **No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

11.14 **Exhibits and Schedules.** The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:

<u>Exhibit A</u>	-	Legal Description of the Land
<u>Exhibit B</u>	-	Permitted Exceptions
<u>Exhibit C</u>	-	Form of Statutory Warranty Deed
<u>Schedule 1</u>	-	Description of Loan Documents
<u>Schedule 2</u>	-	List of Environmental Documents

11.15 **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

11.16 **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

11.17 **Termination of Agreement.** It is understood and agreed that if either Purchaser or Seller terminates this Agreement pursuant to a right of termination granted hereunder, such termination shall operate to relieve Seller and Purchaser from all obligations under this Agreement, except for such obligations as are specifically stated herein to survive the termination of this Agreement.

11.18 **Survival.** Those provisions of this Agreement that by their terms expressly survive the Closing shall survive Closing and shall not be merged into the execution and delivery of the Deed and other documents to be executed and delivered by Seller at Closing (the "**Obligations Surviving Closing**"). Except for the Obligations Surviving Closing, all representations, warranties, covenants and agreements contained in this Agreement shall be merged into the instruments and documents executed and delivered at Closing.

11.19 **Time of Essence.** Time is of the essence with respect to this Agreement.

11.20 **Covenant Not to Record.** Purchaser shall not record this Agreement or any memorandum or other evidence thereof. Any such recording shall constitute a material default hereunder.

11.21 **Limitation of Seller's Liability.** Purchaser shall have no recourse against any of the past, present or future, direct or indirect, shareholders, partners, members, managers, principals, directors, officers, agents, affiliates or representatives of Seller or its members or of any of the assets or property of any of the foregoing for the payment or collection of any amount, judgment, judicial process, arbitral award, fee or cost or for any other obligation or claim arising out of or based upon this Agreement and requiring the payment of money by Seller. This Section 11.21 shall survive the Closing.

11.22 **JURY WAIVER.** IN ANY LAWSUIT OR OTHER PROCEEDING INITIATED BY SELLER OR PURCHASER UNDER OR WITH RESPECT TO THIS AGREEMENT, SELLER AND PURCHASER EACH WAIVE ANY RIGHT IT MAY HAVE TO TRIAL BY JURY.

[Signatures Commence on Following Page]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

SELLER:

FORTY SEVEN CANAL PLACE, LLC,
an Alabama limited liability company

By: CPSI, LLC,
an Alabama limited liability company, its manager

By: Mid-America Apartments, L.P.,
a Tennessee limited partnership,
its Manager

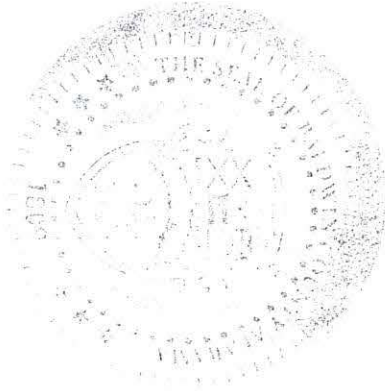
By: Mid-America Apartments Communities, Inc.,
a Tennessee corporation,
its sole general partner

By: 
Name: DAVID WARD
Title: EVP

[SIGNATURES CONTINUED ON THE FOLLOWING PAGES]

This is a signature page to, and may be attached to a master counterpart of, the Purchase and Sale Agreement between Forty Seven Canal Place, LLC, as Seller, and Baldwin County, Alabama, by and through Baldwin County Commission, as Purchaser, with respect to land located in Baldwin County, Alabama.

Fidelity National Title Insurance Company, as Escrow Agent, is a party to such Purchase and Sale Agreement for the limited purposes set forth therein.



PURCHASER:

BALDWIN COUNTY, ALABAMA, by and through the
BALDWIN COUNTY COMMISSION, a political
subdivision of the State of Alabama

By: *Frank Burt, Jr.*
Name: *Frank Burt, Jr.*
Title: *Chairman*

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

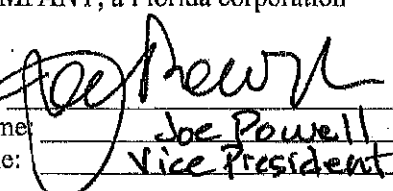
This is a signature page to, and may be attached to a master counterpart of, the Purchase and Sale Agreement between Forty Seven Canal Place, LLC, as Seller, and Baldwin County, Alabama, by and through Baldwin County Commission, as Purchaser, with respect to land located in Baldwin County, Alabama.

Fidelity National Title Insurance Company, as Escrow Agent, is a party to such Purchase and Sale Agreement for the limited purposes set forth therein.

Escrow Agent has executed this Agreement for the limited purposes set forth herein.

ESCROW AGENT:

FIDELITY NATIONAL TITLE INSURANCE
COMPANY, a Florida corporation

By: 
Name: Joe Powell
Title: Vice President

This is a signature page to, and may be attached to a master counterpart of, the Purchase and Sale Agreement between Forty Seven Canal Place, LLC, as Seller, and Baldwin County, Alabama, by and through Baldwin County Commission, as Purchaser, with respect to land located in Baldwin County, Alabama.

Fidelity National Title Insurance Company, as Escrow Agent, is a party to such Purchase and Sale Agreement for the limited purposes set forth therein.

EXHIBIT A

LAND DESCRIPTION

Commence at a 2 inch iron pipe at the Northeast corner of Section 2, Township 9 South, Range 4 East, Baldwin County, Alabama; thence South 00°04'06" West for a distance of 601.91 feet to an iron rod on the Southerly right of way line of the Foley Beach Expressway marked "PLS 10675" for the POINT OF BEGINNING.

From said POINT OF BEGINNING run South 00°03'56" West for a distance of 350.29 feet to an iron rod on the northerly line of the Gulf Intracoastal Waterway marked "G.H. GILLEON 21774-LS"; thence run South 39°18'06" West along said northerly line for a distance of 1113.20 feet; thence South 70°18'06" West along said northerly line for a distance of 661.43 feet to a point on the west line of the East One-Half of the Northeast Quarter of said Section 2, said point also being South 00°04'37" West a distance of 30.00 feet from an iron rod marked "G.H. GILLEON 21774-LS"; thence run North 00°04'37" East along said west line for a distance of 2000.02 feet to an iron rod marked "G.H. GILLEON 21774-LS" on the south right of way line of Brown Lane; thence run North 89°38'58" East along said south right of way line for a distance of 393.63 feet to an iron rod marked "G.H. GILLEON 21774-LS"; thence run South 89°14'47" East along said south right of way line for 207.45 feet to an iron rod marked "G.H. GILLEON 21774-LS"; thence run Southeasterly along said south right of way line and along a curve to the right (having a radius of 300.00 feet and an internal angle of 48°37'00") for 254.56 feet to an iron rod marked "G.H. GILLEON 21774-LS"; thence run South 40°37'47" East along said south right of way line for 469.20 feet to an iron rod marked "G.H. GILLEON 21774-LS"; thence run North 49°22'13" East along said south right of way line for 80.00 feet to an iron rod marked "G.H. GILLEON 21774-LS"; on the south right of way line of the Foley Beach Expressway; thence run South 40°37'47" East along said south right of way line for a distance of 206.10 feet back to the POINT OF BEGINNING.

Said parcel of land is part of the East Half of the Northeast Quarter of Section 2, Township 9 South, Range 4 East, Baldwin County, Alabama and is part of the real property of S.J. Brown as recorded in Real Property Book 314, Pages 1231-1232 in the Office of Probate Court, Baldwin County, State of Alabama.

EXHIBIT B

PERMITTED EXCEPTIONS

1. Taxes and assessments for the year of Closing, and subsequent years, which are not yet due and payable.
2. All matters that would be disclosed by a current and accurate survey and inspection of the property.
3. All matters of record.
4. Local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property.
5. Rights of upstream and downstream riparian owners with respect to any body of water that may lie adjacent to, or traverse through, the property.
6. All rights of the United States of America, the State of Alabama, the City of Orange Beach or the County of Baldwin pertaining to any body of water that may lie adjacent to, or traverse through, the property.

EXHIBIT C

FORM OF STATUTORY WARRANTY DEED

THIS INSTRUMENT PREPARED BY:

SEND TAX NOTICE TO:

STATE OF ALABAMA)
 :
COUNTY OF BALDWIN)

STATUTORY WARRANTY DEED

THIS STATUTORY WARRANTY DEED (this "Deed") is executed and delivered on this ____ day of _____, 201__, by FORTY SEVEN CANAL PLACE, LLC, an Alabama limited liability company ("Grantor"), in favor of BALDWIN COUNTY, ALABAMA, a political subdivision of the State of Alabama ("Grantee").

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), in hand paid by Grantee to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor does by these presents, GRANT, BARGAIN, SELL and CONVEY unto Grantee that certain real property (the "Property") situated in Baldwin County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

TOGETHER WITH all improvements and appurtenances thereto belonging or in anywise appertaining, including all right, title and interest of Grantor in and to any streets, alleys or rights-of-way (whether open, closed or proposed) within or adjacent to the Property; and any easements, covenants, agreements, rights, privileges, tenements, mineral rights, oil and gas rights, water rights, subsurface rights, hereditaments and appurtenances now or hereafter appurtenant to the Property, but only to the extent appurtenant to only the Property, and not any other property of Grantor.

The Property is conveyed subject to those matters (collectively, the "Permitted Exceptions") described in Exhibit B attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever; subject, however, to the Permitted Exceptions.

[*Signature page follows*]

IN WITNESS WHEREOF, Grantor has caused this Statutory Warranty Deed to be executed as of the ____ day of _____, 201____, to be effective as of the day and year first above written.

FORTY SEVEN CANAL PLACE, LLC,
an Alabama limited liability company

By: CPSI, LLC,
an Alabama limited liability company, its manager

By: Mid-America Apartments, L.P.,
a Tennessee limited partnership,
its Manager

By: Mid-America Apartments Communities, Inc.,
a Tennessee corporation,
its sole general partner

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that _____, whose name as _____ of Mid-America Apartment Communities, Inc., a Tennessee corporation, the general partner of Mid-America Apartments, L.P., a Tennessee limited partnership, the Manager of CPSI, LLC, an Alabama limited liability company, the manager of Forty Seven Canal Place, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the aforesaid corporation.

Given under my hand and official seal this the ____ day of _____,
201____.

Notary Public

[NOTARIAL SEAL]

My Commission Expires: _____

EXHIBIT D



Schedule 1

Loan Documents

- (a) that certain Purchase Money Mortgage and Security Agreement dated as of October 4, 2005, between Borrower and Shirley Faye Brown [sic] and Warren Ted Brown, as personal representatives of the Estate of Shirley J. Brown, deceased, and TBF Company, Inc., a Florida corporation, recorded as Instrument Number 927765 in the Office of the Judge of Probate of Baldwin County, Alabama; as amended by that certain Modification of Purchase Money Mortgage and Security Agreement and Promissory Note dated as of April 12, 2006 (the "First Amendment"), between Borrower and Shirley Faye Bryan and Warren Ted Brown, as personal representatives of the Estate of Shirley J. Brown, deceased, and TBF Company, Inc., a Florida corporation (collectively, "Original Lender"), and recorded as Instrument Number 971301 in the aforesaid records; as assigned by that certain Mortgage Assignment dated March 3, 2009 (the "First Assignment"), by Original Lender in favor of Warren Ted Brown and Synovus Trust Company, as co-trustees of the Trust Under the Will of Shirley J. Brown for The Benefit of Warren Ted Brown; Shirley Faye Bryan and Larry K. Hicks as co-trustees of the GST Trust under the Will of Shirley J. Brown for the benefit of Shirley Faye Bryan; Warren Ted Brown; Brown & Brown Holding Company; Shirley Faye Brown; and William H. Bryan, and recorded as Instrument Number 1166472 of the aforesaid records; and as further assigned by that certain Assignment of Promissory Note and Mortgage effective as of January 1, 2016 (the "Second Assignment"), by Warren Ted Brown and Synovus Trust Company, as co-trustees of the Trust Under the Will of Shirley J. Brown for The Benefit of Warren Ted Brown; Shirley Faye Bryan and Joseph McNair as co-trustees of the GST Trust under the Will of Shirley J. Brown for the benefit of Shirley Faye Bryan; Warren Ted Brown; Brown & Brown Holding Company; Shirley Faye Bryan; and William H. Bryan, in favor of Lender, and recorded as Instrument Number 1607797 in the aforesaid records (collectively, as so amended and assigned, the "Mortgage");
- (b) that certain Promissory Note dated October 4, 2005, made by Borrower in favor of Shirley Faye Brown [sic] and Warren Ted Brown, as ancillary personal representatives of the Estate of Shirley J. Brown, deceased, and TBF Company, Inc., a Florida corporation, in the original principal amount of \$9,000,000 (collectively, as amended by the First Amendment, as assigned by the First Assignment, and as further assigned by the Second Assignment, the "Note"); and
- (c) those "Loan Documents" (as such term is defined in the Mortgage; as the same may have been amended or assigned), and any and all other instruments that evidence or secure the loan contemplated by the Note or otherwise memorialize obligations related to such loan (collectively, as the same may have been amended or assigned, and together with the Mortgage and the Note, the "Loan Documents").

Schedule 2

List of Environmental Documents

- a. Preliminary Wetlands Delineation Report, dated August 13, 2004, prepared by Solutions, Inc. for Wink, Incorporated
- b. Report binder compiled by MACTAC containing a Phase I Environmental Assessment, dated February 2005, prepared by Wink Incorporated for Colonial Properties, and other, subsequent reports (several of which are listed below).
- c. Letter Report regarding 47 Canal Place Project Site Environmental, dated July 26, 2005, by Wink, Inc. (unexecuted)
- d. Phase II, Field Notes – Environmental Sampling at 47 Canal Place, LLC, dated June 2, 2006, together with Report of Analyses (for June 2, 2006 sample), dated June 30, 2006, prepared by Micro-Methods Laboratory, Inc.
- e. Letter to MACTEC regarding Request for Clarification of Laboratory Analysis Results, dated August 8, 2006, by Wink Companies, Inc. (Contains report by Micro-Methods Laboratory Inc. dated July 25, 2005)
- f. Report of Data Assessment, dated August 29, 2006, prepared by MACTEC Engineering and Consulting, Inc.
- g. [DRAFT] Report of Soil and Groundwater Sampling Analysis, dated October 18, 2006, prepared by MACTEC Engineering and Consulting, Inc.
- h. [DRAFT] Report regarding Regulatory Strategy, Conceptual Cleanup Plan and Opinion of Cost, dated November 7, 2006, by MACTEC Engineering and Consulting, Inc.
- i. [DRAFT] On-Site Compensatory Mitigation Plan, not dated
- j. Delineation of Potential Section 404 Issues, dated April 22, 2010, for Wink Companies, LLC by FTN Associates, Ltd.
- k. Table 1: Comparison of Concentrations at Site with Regulatory Preliminary Action Levels (Note: This document was filed outside of a report, and contains no date or note about who prepared it.)

Voluntary Cleanup Program

- l. Notes from Meeting with Alabama Department of Environmental Management, November 29, 2006
- m. Application for Voluntary Cleanup Program (Brownfield Redevelopment) to Alabama Department of Environmental Management, dated January 24, 2007, prepared by MACTEC Engineering and Consulting, Inc. on behalf of Colonial Properties Trust
- n. Voluntary Cleanup Program Acceptance Letter, dated January 30, 2007, from Alabama Department of Environmental Management

Environmental Impact Statement

- o. [DRAFT] Agreement Regarding Joint Funding of Environmental Impact Study and Permit Application for Development of Proposed Boat Slips on Intracoastal Waterway in Baldwin County, Alabama, dated October 24, 2005
- p. Agreement Regarding Joint Funding of Environmental Impact Study for Development of Proposed Boat Slips on Intracoastal Waterway in Baldwin County, Alabama, dated March 8, 2006 (unexecuted)

- q. [DRAFT] Collateral Agreement Among Study Participants Regarding Joint Funding of Environmental Impact Study for Development of Proposed Boat Slips on Intracoastal Waterway in Baldwin County, Alabama, dated March 13, 2006
- r. [DRAFT] Waterway Capacity Study for the Foley Land Cut Section of the Gulf Intercoastal Waterway (GIWW) between Mobile Bay and Wolf Bay, dated December 2006, prepared by Taylor Engineering, Inc.; together with Memorandum from Brandy Marine International, L.L.C., dated February 2, 2007 regarding Comments to Study
- s. Site Selection Rationale for 47 Canal Place LLC, dated April 20, 2007, prepared by Wink Companies, LLC
- t. [DRAFT] Description of the Proposed Action and Alternatives Environmental Impact Statement for the Foley Land Cut Portion of the Gulf Intercoastal Waterway, dated June 2008, submitted to the U.S. Army Corps of Engineers
- u. [DRAFT] Environmental Impact Statement for the Foley Land Cut Portion of the Gulf Intracoastal Waterway, dated February 2009, submitted to the U.S. Army Corp of Engineers
- v. Final Environmental Impact Statement, pages ES-1 through ES-7, dated December 2009
- w. Progress Reports
 - i. Kickoff Meeting Agenda for Gulf Intracoastal Waterway Environmental Impact Statement, May 4, 2006
 - ii. Monthly Progress Report, Gulf Intracoastal Waterway EIS, March 2007
 - iii. Monthly Progress Report, Gulf Intracoastal Waterway EIS, January 2009
- x. Various EIS Support Documents prepared by Wink, Incorporated