


*This Instrument Prepared By, And After  
Recording Should Be Returned To:*

**Damon P. Denney, Esq.**  
**Burr & Forman LLP**  
**3100 Wachovia Tower**  
**420 North 20th Street**  
**Birmingham, Alabama 35203**  
**Telephone: (205) 251-3000**

STATE OF ALABAMA     )  
   :  
COUNTY OF SHELBY     )

**CONSOLIDATED, AMENDED AND RESTATED ASSIGNMENT OF RENTS AND  
LEASES**

**THIS CONSOLIDATED, AMENDED AND RESTATED ASSIGNMENT OF RENTS AND LEASES** (this "Assignment"), made effective the 21<sup>st</sup> day of October, 2013, is from **ACTON INVESTMENTS, LLC**, an Alabama limited liability company (the "Borrower"), as assignor, whose address is c/o Douglas Acton, 2834 Acton Place, Birmingham, Alabama 35243, in favor of **REGIONS BANK**, an Alabama banking corporation (the "Bank"), as assignee, whose address is 1901 6th Avenue North - 19th Floor, Birmingham, Alabama 35203, Attention: N. Ronald Downey, III, Senior Vice President / Team Leader. 

*This Assignment constitutes both a new assignment of the Leases, Rights, Rents, Guaranties, Damages, interests and privileges described herein and a consolidation, amendment and restatement in their entirety of the following assignments:*

- (i) Assignment of Rents dated May 5, 2008 from Acton Pate Investments, LLC in favor of Bank and recorded with the Judge of Probate of Shelby County, Alabama as Instrument Number 20080528000216490;*
- (ii) Assignment of Leases, Rents and Income dated February 9, 2007 from Acton Pate Investments, LLC to AmSouth Bank (predecessor by merger to Bank) and recorded with the Judge of Probate of Shelby County, Alabama as Instrument 20070222000082950; and*
- (ii) Assignment of Rents dated May 5, 2008 from Acton Pate Investments, LLC to Regions Bank and recorded with the Judge of Probate of Shelby County, Alabama as Instrument 20080520000205810,*

*together with any and all prior assignments and/or amendments thereto securing the Loan Obligations referenced herein and any and all renewals, modifications and/or amendments thereof, the "Prior Assignments"). Without limiting the effect of this Assignment as a new and present assignment of all Leases, Rights, Rents, Guaranties, Damages, interests and privileges described herein, the Borrower hereby acknowledges, confirms and agrees that it is obligated to Bank and hereby confirms its assumption of obligations as the assignor under each of the Prior Assignments, as consolidated, amended and restated hereby.*



## **RECITALS:**

This Assignment is made as additional security for certain consolidated, amended and restated indebtedness from Bank to Borrower in the principal amount of **SIX HUNDRED TWENTY-TWO THOUSAND SIX HUNDRED TWENTY-THREE AND 16/100 DOLLARS** (\$622,623.16)(the "Loan") and the Lot 6 Loan (as defined in the Loan Agreement hereinafter described). The Loan is evidenced and/or secured by that certain Consolidated, Amended and Restated Promissory Note of even date herewith payable by Borrower to the order of Bank in the original stated principal amount of the Loan (said Promissory Note, as the same may hereafter be renewed, extended, or modified, being collectively called the "Note"); and that certain Loan Agreement (Consolidation, Amendment and Restatement of Loans 01-731-7000034656, 01-733-7000063891 & 01-733-7000063893) of even date herewith between Borrower and Bank (the "Loan Agreement"). The Loan is secured by, in addition to this Assignment, that certain Consolidated, Amended and Restated Mortgage and Security Agreement of even date herewith from Borrower in favor of Bank (the "Mortgage"), and the "Loan Documents" described in the Loan Agreement. *All defined terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement.*

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, Ten Dollars (\$10.00) and other good and valuable consideration, and as an inducement to the Bank to consolidate, amend and restate the Loan to Borrower, Borrower does hereby sell, assign, transfer and set over unto Bank, its successors and assigns, all of Borrower's right, title and interest in and to the following:

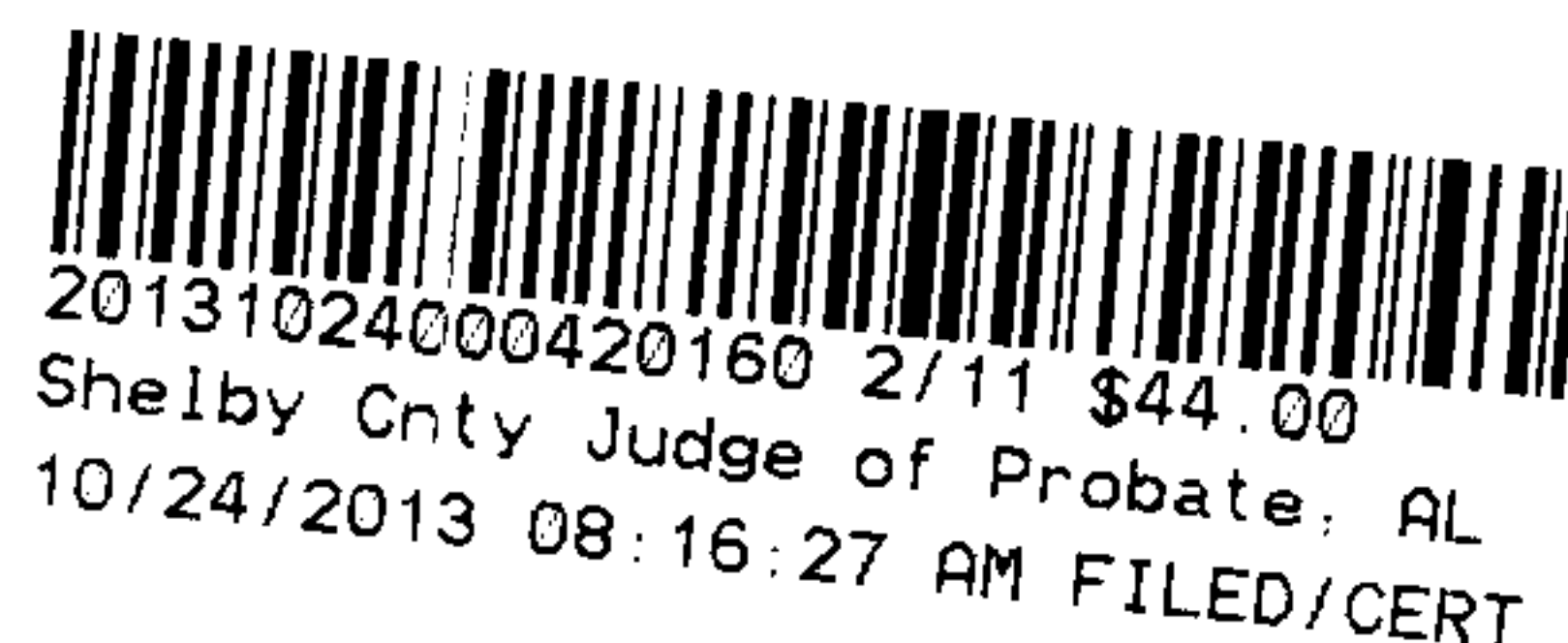
(a) Any oral and written leases and other agreements for the use or occupancy made or agreed to by, any person or entity and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the real property described on Exhibit A attached hereto (the "Property"), whether such leases or other agreements have been heretofore or are hereafter made or agreed to (collectively, the "Leases");

(b) The rents, issues and profits and any other payments by any and all lessees under the Leases in addition to rent (collectively the "Rents") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

(c) Any and all moneys, awards or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

(d) Any and all other guaranties (collectively, the "Guaranties") of any of the Leases, and the rights, powers, privileges, and other benefits of the Borrower under the Guaranties;

(e) All rights, powers, privileges, options and other benefits (collectively the "Rights") of Borrower under the Leases, including without limitation of the foregoing:





(i) the immediate and continuing right to receive, collect and/or hold all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

(ii) the right to make all waivers and agreements, including waivers of obligations of lessees;

(iii) the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;

(iv) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(v) the right to do any and all other things whatsoever which Borrower is or may become entitled to do under the Leases;

(vi) the right to exercise any option required or permitted;

and Borrower hereby authorizes Bank, upon the occurrence of and during the uncured pendency of an Event of Default:

(vii) to manage the Property and let and relet the Property, or any part thereof according to Bank's own discretion;

(viii) to prosecute or defend any suits in connection with the Property in the name of any or all of Bank or Borrower as it may consider desirable;

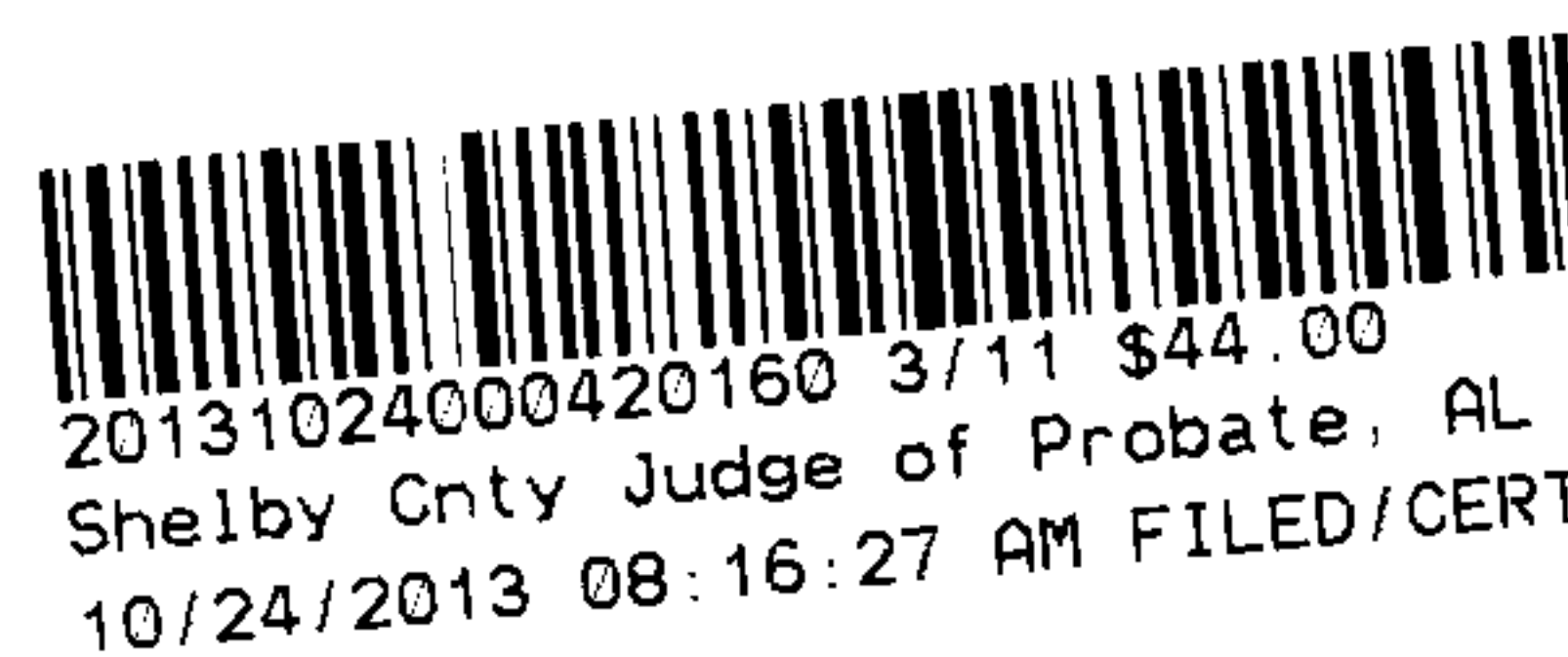
(ix) to enforce or take any other action in connection with the Leases in the name of any or all of Bank or Borrower;

(x) to make such repairs to the Property as Bank may deem reasonably advisable; and

(xi) to do anything in or about the Property that Bank may deem reasonably advisable or that the Borrower has the right or power to do.

**TO HAVE AND TO HOLD** unto Bank, its successors and assigns, forever, subject to and upon the terms set forth herein.

Although this Assignment constitutes a present assignment of the foregoing Leases, Rights, Rents, Guaranties, Damages, interests and privileges, Borrower shall have the right and license to collect and use all rentals due under the Leases, and, subject to the covenants and restrictions on Borrower contained herein and the other paragraphs of this Assignment, to exercise the Rights herein, provided, however, that such license shall be revoked upon the occurrence of an Event of Default.



**ARTICLE I**  
**WARRANTIES AND COVENANTS**

1.01 **Warranties of Borrower.** Borrower hereby represents and warrants to Bank that:

(a) Borrower is the owner of the landlord's interest under the Leases, is entitled to receive the rents, issues, profits and security deposits under the Leases, and has good right to sell, assign, transfer and set over the same and to grant to and confer upon Bank the rights, interests, powers and authorities herein granted and conferred.

(b) Borrower has neither made nor permitted to be made any assignment other than this Assignment of any of its rights under the Leases to any person or entity.

(c) Borrower has not done any act or omitted to do any act which might prevent Bank from, or limit Bank in, acting under any of the provisions of this Assignment.

(d) Borrower has not accepted rent more than thirty (30) days in advance of its due date except as approved in writing by Bank.

(e) To the best of Borrower's knowledge, no Default or Event of Default (which terms include the expiration of any applicable grace or cure periods) exists under the Leases.

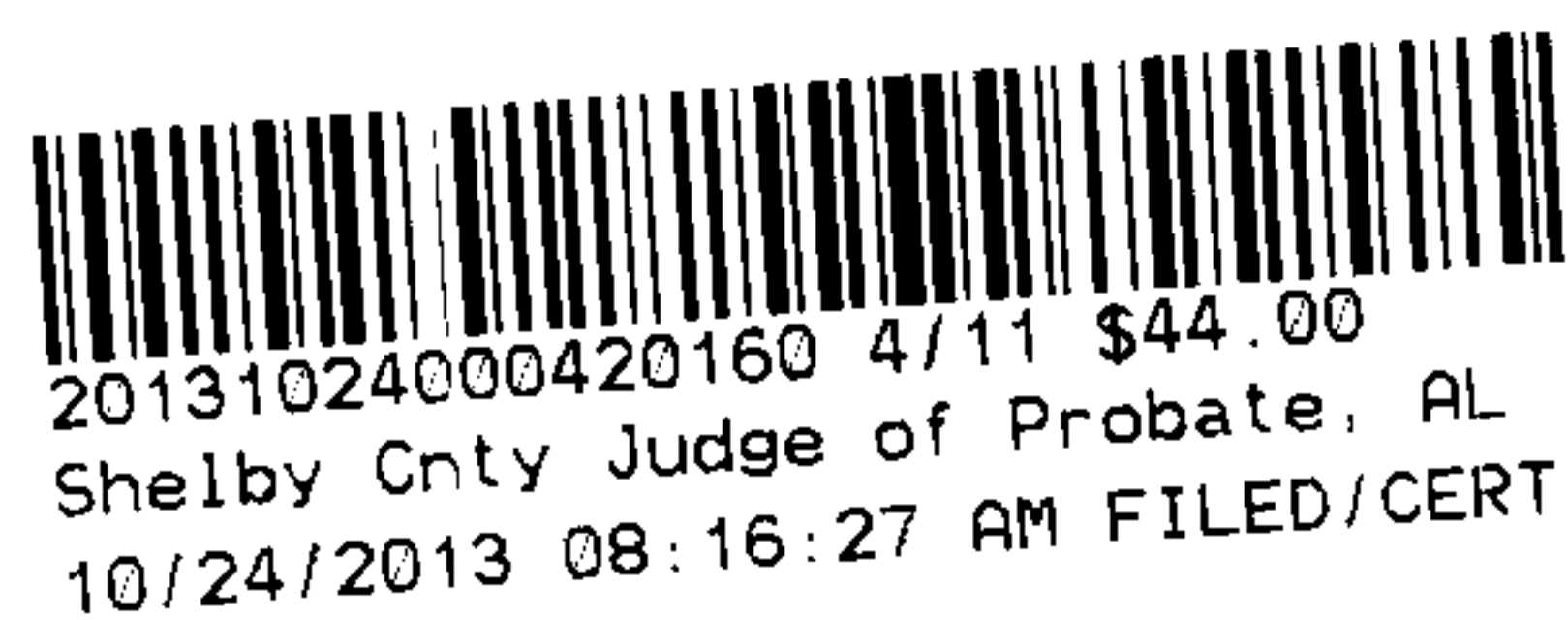
(f) Borrower is not prohibited under any agreement with any other person or entity or under any judgment or decree from the execution and delivery of this Assignment or of the Leases, from the performance of each and every covenant of Borrower hereunder and under the Leases, or from the meeting of each and every condition contained herein or in the Leases.

(g) No action has been brought or threatened which in any way would interfere with the right of Borrower to execute this Assignment and perform all of Borrower's obligations herein contained.

1.02. **Covenants of Borrower.** Borrower hereby covenants and agrees with Bank as follows:

(a) Borrower shall (i) fulfill, perform and observe each and every condition and covenant of Borrower contained in the Leases; (ii) at the sole cost and expense of Borrower, diligently seek to enforce the performance and observance of each and every covenant and condition of the Leases to be performed or observed by the lessees thereunder; and (iii) appear in and defend any action growing out of, or in any manner connected with, any of the Leases or the obligations or liabilities of Borrower, as lessor thereunder, or of any of the lessees or guarantors thereunder.

(b) Borrower shall not, without the prior written consent of Bank: (i) except as provided in the Loan Agreement, terminate the term or accept the surrender of any of the Leases to which it is a party; (ii) except as approved in writing by Bank, permit the prepayment of any rents for more than thirty (30) days prior to the accrual thereof; (iii) except in the ordinary course of business of projects of similar size and nature, waive, or release lessees from





performance or observance of any obligation or condition of the Leases; (iv) except in the ordinary course of business of projects of similar size and nature, give any consent to any assignment by any of the lessees of the Leases, or to any sublease of any part or portion of any of the Property; or (v) further assign its interest in the Leases or the Property.

(c) Upon the occurrence of a Default and after any applicable notice has been provided and after the expiration of any applicable cure period, Borrower shall authorize and direct, and Borrower does hereby authorize and direct each and every present and future tenant under the Leases to which it is a party, to pay rental directly to Bank upon receipt of written demand from Bank to pay the same.

(d) Bank shall not be obligated to perform or discharge any obligation of Borrower under any of the Leases, and Borrower agrees to indemnify and hold Bank harmless from and against any and all liability, loss or damage which Bank may incur under any of the Leases or under or by reason of this Assignment and from and against all claims and demands whatsoever which may be asserted against it by reason of an act of Bank under this Assignment or under any of the Leases, except that Borrower shall not indemnify Bank for claims and demands arising due to Bank's negligence or willful misconduct.

1.03 **Covenants of Bank.** Bank, by its acceptance hereof, covenants and agrees with Borrower that:

(a) Although this Assignment constitutes a present and current assignment of all Rents, so long as there shall exist no Event of Default, Borrower shall have the right (i) to collect, but not more than thirty (30) days prior to accrual (except as approved in writing by Bank), all such Rents, and to retain, use and enjoy the same, and (ii) to maintain the security deposits in a separate, identifiable account in a bank in which funds are federally insured acceptable to Bank; provided, however, upon any Event of Default, Borrower's right to collect any such Rents and/or to use and enjoy the same shall immediately cease without notice and Borrower shall immediately turn over any security deposits held by it or for it in any account described in (ii) above.

(b) This Assignment will remain in full force and effect so long as any of the Borrower's obligations under the Loan Documents and any Bank Swap Documents remain unpaid.

## **ARTICLE II**

### **EVENTS OF DEFAULT; REMEDIES**

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

(a) The failure by Borrower to perform or observe any covenant of Borrower contained in this Assignment after the expiration of any applicable notice and cure periods set forth herein or in the Loan Agreement; or

(b) The failure by Borrower to cause to be true and not misleading any warranty of Borrower contained herein; or



- (c) The occurrence of any Event of Default under any of the Loan Documents.

2.02 **Remedies.** Upon the occurrence of any Event of Default, Bank may at its option, with or without notice or demand of any kind (except as may be provided in any of the Loan Documents), exercise any or all of the following remedies:

(a) Declare any part or all of the Loan Obligations to be due and payable, whereupon the same shall become immediately due and payable; or

(b) Perform any and all obligations of Borrower under any or all of the Leases or this Assignment and exercise any and all rights of Borrower herein or therein as fully as Borrower itself could do, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the Leases; collecting, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new leases on the Property on any terms and conditions deemed desirable by Bank, and, to the extent Bank shall incur any costs in connection with the performance of any such obligations of Borrower, including costs of litigation, then all such costs shall become a part of the Loan Obligations secured by the Loan Documents, shall bear interest from the incurrence thereof at the Default Rate, and shall be due and payable on demand; or

(c) In Borrower's or Bank's name, institute any legal or equitable action which Bank in its sole discretion deems desirable to collect and receive any or all of the Rents assigned herein; or

(d) Collect the Rents due under the Leases and apply the same in such order as Bank in its sole discretion may elect to pay (i) all costs and expenses, including reasonable attorneys' fees, in connection with the operation of the Property, the performance of Borrower's obligations under the Leases and collection of the Rents thereunder; (ii) all costs and expenses, including reasonable attorneys' fees, in the collection of any or all of the Loan Obligations, including all costs, expenses and reasonable attorneys' fees in seeking to realize on or to protect or preserve Bank's interest in any other Collateral securing any or all of the Loan Obligations; (iii) any or all unpaid principal, interest or other charges due under or secured by the Loan Documents; and (iv) to the payment of any obligations of Borrower to Bank under the Loan Documents or any Bank Swap Document. Any amounts remaining after such application shall be applied to the payment of the Loan Obligations secured by the Loan Documents or to monthly payments thereof, and upon the payment in full of the Loan Obligations; then this Assignment and all rights of Bank hereunder shall cease and terminate.

The exercise of any remedies by Bank and the collection of the Rents and the application thereof as aforesaid, shall in no wise operate to cure or waive any Default or Event of Default hereunder or under any other of the Loan Documents, or prohibit the taking of any other action by Bank under any of the Loan Documents or at law or in equity to enforce the payment of such indebtedness or to realize on any other security. Bank shall have the full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the indebtedness, and to the extent permitted by applicable law, with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and to the extent permitted by applicable law, shall have the full right to enter upon, take possession of, use and



operate all or any portion of the Property which Bank in its sole discretion deems desirable to effectuate any or all of the foregoing remedies. In no event shall Bank be liable to any lessee under any of the Leases for the return of any security deposit in any amount in excess of the amount delivered to Bank by Borrower.

### **ARTICLE III** **GENERAL PROVISIONS**

3.01 **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon Borrower and Bank and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Bank," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Bank.

3.02 **Terminology.** All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Assignment.

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

3.04 **No Third Party Beneficiaries.** This Assignment is made solely for the benefit of Bank and its assigns. No tenant under any of the Leases nor any other person shall have standing to bring any action against Bank as the result of this Assignment, or to assume that Bank will exercise any remedies provided herein, and no person other than Bank shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.05 **No Oral Modifications.** Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.06 **Cumulative Remedies.** The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Bank in any of the Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by Bank. The remedies herein provided or otherwise available to Bank shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Bank shall continue and be each and all available to Bank until the indebtedness evidenced by the Loan Documents shall have been paid in full.

3.07 **Cross-Default.** An Event of Default by Borrower under this Assignment shall constitute an Event of Default under all other Loan Documents.



3.08 **Further Assurances.** At any time and from time to time, upon request by Bank, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Bank and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Bank, any and all such other and further assignments, mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Bank, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases, Rents, Damages, Guaranties, and Rights assigned hereby. Upon any failure by Borrower so to do, Bank may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Bank the agent and attorney-in-fact of Borrower so to do.

3.09 **Notices.** Any and all notices, elections or demands permitted or required to be made under this Assignment shall be made in accordance with the provisions relating to notice set forth in the Loan Agreement.

3.10 **Modifications, etc.** Borrower hereby consents and agrees that Bank may at any time and from time to time, without notice to or further consent from Borrower, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account securing the indebtedness evidenced by the Loan Documents; extend or renew the Notes or any other of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Notes or any other of the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Notes, or any other of the Loan Documents; or take or fail to take any action of any type whatsoever, and no such action with Bank shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the indebtedness evidenced by the Loan Documents or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release obligations hereunder, affect this Assignment in any way or afford Borrower any recourse against Bank. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Loan Documents and the Leases, and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.


3.11 **Controlling Law.** **THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA. BORROWER CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER MAY BE BROUGHT IN THE CIRCUIT COURT OF THE STATE OF ALABAMA, JEFFERSON COUNTY, ALABAMA OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND ASSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY SUCH COURT IN ANY ACTION OR PROCEEDING INVOLVING THIS**



ASSIGNMENT. NOTHING HEREIN SHALL LIMIT THE JURISDICTION OF ANY OTHER COURT.

**3.12 Waiver of Jury Trial. BORROWER WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF BANK AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS ASSIGNMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS ASSIGNMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT BANK MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF BANK TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER AND BANK SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

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Shelby Cnty Judge of Probate, AL  
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IN WITNESS WHEREOF, Borrower has caused this Assignment to be properly executed by its duly authorized representative as of the date of the notarial acknowledgement below to be effective as of the day and year first above written.

**BORROWER:**

**ACTON INVESTMENTS, LLC**, an Alabama limited liability company

By: \_\_\_\_\_

Printed Name: Douglas L. Acton

Its: Manager

STATE OF ALABAMA )

Tefferson COUNTY )

I, the undersigned, hereby certify that Douglas L. Acton, whose name as Manager of **ACTON INVESTMENTS, LLC**, an Alabama limited liability company, is signed to the foregoing Assignment, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Assignment, he/she, as such officer, executed the same voluntarily and with full authority for and as the act of said limited liability company.

Given under my hand and seal of office this 21<sup>st</sup> day of October, 2013.

\_\_\_\_\_  
Notary Public

My commission expires: 4-20-16




20131024000420160 10/11 \$44.00  
Shelby Cnty Judge of Probate, AL  
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**EXHIBIT A**

**LEGAL DESCRIPTION**

Lots 7 and 8, according to the Survey of Riverchase Trade Center, as recorded in Map Book 12,  
Page 24, in the Probate Office of Shelby County, Alabama

  
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