

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

American Commercial Capital LLC
5963 La Place Court, Suite 300
Carlsbad, CA 92008
Attention: James Kendrick Noble III

THIS INSTRUMENT WAS
PREPARED BY:

Andrews & Kurth L.L.P.
1717 Main Street, Suite 3700
Dallas, Texas 75201
Attention: Brigitte Kimichik

NOTE TO PROBATE JUDGE: This Assignment is being recorded as additional security for the Obligations described in a Mortgage of even date herewith between the Assignee and the Assignor, which Mortgage is being filed for record concurrently with the recording of this Assignment.

ASSIGNMENT OF LEASES AND RENTS

Unit (Pod) No.:	2
Store Unit No.:	4409
Property Address:	101 Cahaba Valley Parkway, Pelham, AL
Debtor:	South Tacala, Inc.
Store Loan No.:	99 0344 002

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of August 31, 1999, by SOUTH TACALA, LLC, a Delaware limited liability company ("Assignor"), having its principal place of business at 4268 Cahaba Heights Court, Birmingham, Alabama 35243, to AMERICAN COMMERCIAL CAPITAL LLC, a Delaware limited liability company ("Assignee"), having its principal place of business at 5963 La Place Court, Suite 300, Carlsbad, California 92008.

Assignor for good and valuable consideration, receipt whereof is hereby acknowledged, hereby unconditionally and absolutely grants, bargains, sells, conveys, transfers and assigns to Assignee all right, title and interest of Assignor in its capacity as lessor under all leases and other agreements affecting the use, enjoyment, or occupancy of all or any part of that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (hereinafter collectively referred to as the "Property");

ASSIGNMENT OF LEASES & RENTS
AMERICAN COMMERCIAL CAPITAL LLC/TACALA - ALABAMA

DAL02:199834.1

-1-

Inst # 1999-45406

11/04/1999-45406
09:00 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
015 HHS 43.50

TOGETHER WITH all other leases and other agreements affecting the use, enjoyment or occupancy of the Property now or hereafter made affecting the Property or any portion thereof, together with any extension, renewal, restatement, replacement or modification of the same, this Assignment of present and future leases and future agreements being effective without further or supplemental assignment;

The leases and other agreements described above together with all other present and future leases and present and future agreements and any extension, renewal, restatement, replacement or modification of the same are hereinafter collectively referred to as the "Leases";

TOGETHER WITH:

(1) all deposits (whether for security or otherwise), rents, income, issues and profits arising from the Leases and renewals thereof and the absolute, unlimited, and continuing right to receive and collect all rents, revenues, income, issues, proceeds and profits (including all oil and gas or other mineral royalties and bonuses) from the use, enjoyment and occupancy of the Property whether paid or accruing before or after the filing by or against Assignor of any petition for relief under the Bankruptcy Code, 11 U.S.C. §101 et seq., as the same may be amended (the "Bankruptcy Code"), (hereinafter collectively referred to as the "Rents");

(2) all of Assignor's claims and rights to (i) the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code, and (ii) any award or other payment which Assignor may hereafter become entitled to receive with respect to any Lease as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving the lessee under such Lease, (herein collectively called, the "Bankruptcy Claims");

(3) all of Assignor's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support given by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor", collectively, the "Lease Guarantors") to Assignor (individually, a "Lease Guaranty", collectively, the "Lease Guaranties"); and

(4) all proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

THIS ASSIGNMENT is made in consideration of, and as additional security for, that certain loan made by Assignee to Debtor evidenced by that certain secured promissory note dated the date hereof, made by Debtor, payable to Assignee, in the initial principal amount of \$10,110,000.00 (the "Note"), and secured by that certain Mortgage, Assignment of Leases and Rents, and Fixture Filing under which Security Instrument recourse liability is limited to the maximum amount of \$1,105,000.00 (the "Security Instrument") and a security agreement ("Security Agreement") each given by Assignor to Assignee, dated the date hereof, covering the collateral described therein, including the Property, and intended to be duly recorded. The Initial Principal Amount, interest and all other sums due and payable under the Note, the Security Instrument, the Security Agreement and

all of the other Loan Documents (hereinafter defined) are collectively referred to as the "Debt." All of the loan documents now or hereafter executed by Assignor and/or others in favor of Assignee in connection with and/or which wholly or partially secure or guarantee payment of the Debt (including the Note, this Assignment and the Security Instrument) are hereinafter collectively referred to as the "Loan Documents." Any capitalized terms not defined herein shall have the meaning set forth in the Security Agreement.

ASSIGNOR WARRANTS that, (a) Assignor is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable; (c) the terms of all alterations, modifications and amendments to the Leases are fully reflected in the copy of the Lease delivered by Assignor to Assignee and the certified rent roll delivered to and approved by Assignee; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated (except to Assignee); (e) none of the Rents have been collected for more than one (1) month in advance (provided that a security deposit shall not be deemed rent collected in advance); (f) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (g) there exist no offsets or defenses to the payment of any portion of the Rents; (h) Assignor has received no notice from any tenant challenging the validity or enforceability of any Lease; (i) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (j) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (k) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (l) each Lease is subordinate to the Loan Documents, either pursuant to its terms or a recorded subordination agreement; and (m) no brokerage commissions or finders fees are due and payable regarding any Lease.

ASSIGNOR COVENANTS with Assignee that Assignor (a) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases; (b) shall promptly send copies to Assignee of all notices of default which Assignor shall send or receive thereunder; (c) shall enforce in a commercially reasonable manner all of the terms covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed; (d) shall not collect any of the Rents more than one (1) month in advance, (provided that a security deposit shall not be deemed rent collected in advance); (e) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (f) shall not (i) materially alter, modify or change the terms of the Leases without the prior written consent of Assignee, or (ii) cancel or terminate any Lease (except for defaults thereunder) of more than ten (10%) percent of the rentable space of the Property or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of lessees thereunder; (g) shall not alter, modify or change the terms of any Lease Guaranty or cancel or terminate such Lease Guaranty without the prior written consent of Assignee; and (h) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Assignee.

ASSIGNMENT OF LEASES & RENTS
AMERICAN COMMERCIAL CAPITAL LLC/TACALA - ALABAMA

ASSIGNOR FURTHER COVENANTS with Assignee that (a) except as otherwise consented to by Assignee, all Leases shall be written on the standard form of lease which shall have been approved by Assignee; (b) upon request, Assignor shall furnish Assignee with executed copies of all Leases; (c) no material changes may be made to the Assignee-approved standard lease without the prior written consent of Assignee; and (d) all proposed Leases and renewals of existing Leases shall be subject to the prior approval of Assignee.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

PART 1

GENERAL PROVISIONS

1. Present Assignment. Assignor does hereby absolutely and unconditionally assign to Assignee Assignor's right, title and interest in all current and future Leases and Rents, Lease Guaranties, and Bankruptcy Claims, it being intended by Assignor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Assignee shall not be construed to bind Assignee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Assignee. Assignor agrees to execute and deliver to Assignee such additional instruments, in form and substance satisfactory to Assignee, as may hereafter be requested by Assignee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph 1, Assignee grants to Assignor a revocable license to operate and manage the Property and to collect the Rents and other sums due under the Lease Guaranties and Bankruptcy Claims, subject to the terms and conditions of the Loan Documents. Assignor shall hold the Rents and all sums received pursuant to any Lease Guaranty and Bankruptcy Claims, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Assignee for use in the payment of such sums. The license granted to Assignor or herein may be revoked at any time by Assignee in its discretion. Upon an Event of Default, as defined in the Note and the Security Instrument, the license granted to Assignor herein shall automatically be revoked without notice to Assignor, and Assignee shall immediately be entitled to possession of all Rents and all sums received pursuant to any Lease Guaranty and Bankruptcy Claims, whether or not Assignee enters upon or takes control of the Property. Assignee is hereby granted and assigned by Assignor the right, at Assignee's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents and all sums received pursuant to any Lease Guaranty and Bankruptcy Claims. Any Rents and all sums received pursuant to any Lease Guaranty and Bankruptcy Claims collected after the revocation of the license may be applied toward payment of the Debt and other Obligations (as defined in the Security Instrument) in such priority and proportions as Assignee in its Discretion (as defined in the Security Instrument) shall deem proper.

2. Remedies of Assignee.

(a) Upon or at any time after an Event of Default, Assignee shall have the immediate and continuing authority, at its option, without waiving such Event of Default, without notice and without regard to the adequacy of the security for the Debt, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, to take possession of the Property and have, hold, manage, lease and operate the Property on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and all sums received pursuant to any Lease Guaranty and Bankruptcy Claims, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee and may apply the Rents and all sums received pursuant to any Lease Guaranty and Bankruptcy Claims to the payment of the following in such order and proportion as Assignee in its Discretion may determine, any law, custom or use to the contrary notwithstanding: (i) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (ii) the Debt and other Obligations, together with all costs and attorneys' fees. In addition to the rights which Assignee may have herein, upon the occurrence of an Event of Default, Assignee, at its option, may either require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Rents and all sums received pursuant to any Lease Guaranty and Bankruptcy Claims, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in possession of Assignor or may require Assignor to vacate and surrender possession of the Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise. For purposes of this paragraph 2 Assignor grants to Assignee its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any or all other actions designated by Assignee for the proper management and preservation of the Property. The exercise by Assignee of the option granted it in this paragraph 2 and the collection of the Rents and all sums received pursuant to any Lease Guaranty and Bankruptcy Claims and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under any of the Loan Documents.

(b) Upon or at any time after the occurrence of an Event of Default, Assignee shall have the right in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right

to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(c) If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Assignee not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Assignee shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Assignee demands that Assignor assume and assign the Lease to Assignee pursuant to Section 365 of the Bankruptcy Code and (ii) Assignee covenants to cure or provide adequate assurance of future performance under the Lease. If Assignee serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Assignee of the covenant provided for in clause (ii) of the preceding sentence.

3. No Liability of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after an Event of Default or from any other act or omission of Assignee in managing the Property after default unless such loss is caused by the willful misconduct of Assignee. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Assignor shall, and hereby agrees, to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any or the terms, covenants, or agreements contained in the Leases. Should Assignee incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the Default Rate (as defined in the Security Instrument) shall be secured hereby and by the Security Instrument and the other Loan Documents and Assignor shall reimburse Assignee therefor immediately upon demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums secured hereby and immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including, without limitation, the presence of any Hazardous Material (as defined in the Security Instrument) or Hazardous Substances (as defined in that certain Environmental Liabilities Agreement executed by Assignor in favor of Assignee concurrently herewith), or for any negligence in the management, upkeep,

repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

4. Notice to Lessees. Assignor hereby authorizes and directs the lessees named in the Leases or any other or future lessees or occupants of the Property upon receipt from Assignee of written notice to the effect that Assignee is then the holder of this Assignment and/ or the Security Instrument and that a default exists thereunder or under this Assignment, the Security Instrument or other Loan Documents to pay over to Assignee all Rents and all sums under any Lease Guaranty and to continue so to do until otherwise notified by Assignee. Assignor hereby agrees that each such lessee and any other or future lessee and occupant may rely upon such written notice from Assignee to so pay the Rents and other sums without any inquiry into whether there exists a default hereunder or under the Security Instrument or Other Loan Documents or whether Assignee is otherwise entitled to the Rents and other sums. Assignor hereby waives any right, claim or demand which Assignor may now or hereafter have against any present or future lessee or occupant by reason of such payment of Rents and other sums to Assignee, and any such payment shall discharge such lessee's or occupant's obligation to make such payment to Assignor.

5. Other Security. Assignee may take or release other security for the payment of the Debt or other Obligations, may release any party primarily or secondarily liable therefor, may grant extensions, renewals or indulgences with respect thereto and may apply any other security held by it to the reduction or satisfaction of the Debt or other Obligations without prejudice to any of its rights under this Assignment.

6. Other Remedies. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any Loan Document and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Debt and other Obligations and to enforce any other security therefor held by it may be exercised by Assignee prior to, simultaneously with or subsequent to any action taken by it hereunder.

7. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor and Assignee shall be obligated to account only for such Rents as are actually collected or received by Assignee.

8. Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of the Security Instrument shall prevail.

9. **No Oral Change.** This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

10. **Certain Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Assignor" shall mean "each Assignor and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Assignee" shall mean "Assignee and any subsequent holder of the Note," the word "Note" shall mean "the note and any other evidence of indebtedness secured by the Security Instrument or the other Loan Documents," the word "person" shall have the meaning accorded to such term in the Security Instrument, the word "Property" shall include any portion of the Property and any interest therein, and the word "Debt" shall mean the Initial Principal Amount with interest thereon as provided in the Note and the Security Instrument and all other sums due pursuant to the Note, the Security Instrument, this Assignment and the other Loan Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. **Non-Waiver.** The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (i) failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Security Instrument, the Note, or any of the other Loan Documents, (ii) the release regardless of consideration, of the whole or any part of the Property or other collateral as security for the Debt or other Obligations, or (iii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Security Instrument, or any of the other Loan Documents. Assignee may resort for the payment of the Debt or other Obligations to any other security held by Assignee in such order and manner as Assignee, in its Discretion, may elect. Assignee may take any action to recover the Debt or other Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

12. **Inapplicable Provisions.** If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

13. Duplicate Originals. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

14. Governing Law: Consent to Jurisdiction.

(a) THIS ASSIGNMENT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT (A) AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND (B) THAT THE CREATION, PRIORITY, VALIDITY AND PERFECTION OF THE LIEN GRANTED HEREBY, AND THE REMEDIES GRANTED HEREIN (INCLUDING, WITHOUT LIMITATION, THE ASSIGNEE'S RIGHTS TO ATTACHMENT OF RENTALS FOLLOWING AN EVENT OF DEFAULT), SHALL BE GOVERNED BY THE APPLICABLE LAWS OF THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED.

(b) ASSIGNOR AND ASSIGNEE HERETO CONSENT, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OTHER THAN PURSUIT OF A JUDGMENT ON THE NOTE, WHERE SUIT IS ALSO BROUGHT IN THE STATE WHERE THE PROPERTY IS LOCATED, TO TAKE JURISDICTION OF THE PROPERTY. ASSIGNOR FURTHER CONSENTS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE WHERE THE PROPERTY IS LOCATED, IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO THE PROPERTY INCLUDING BUT NOT LIMITED TO FORECLOSURES. ASSIGNOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH HEREIN IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ASSIGNOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ASSIGNEE TO SERVE PROCESS IN ANY MANNER PERMITTED BY

LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST ASSIGNOR IN ANY JURISDICTION.

15. **Termination of Assignment.** Upon payment in full of the Debt and other Obligations and the delivery and recording of a satisfaction or discharge of the Security Instrument duly executed by Assignee, this Assignment shall become and be void and of no effect. The affidavit of any officer of Assignee stating that any amount due under the Loan Documents is not satisfied, shall constitute *prima facie* evidence of the validity, effectiveness, and continuing force of this Assignment and any party may and is hereby authorized to rely thereon.

16. **Transfer by Assignee.** No notice to or consent by Assignor shall be required for any assignment or reassignment, from time to time, of any or all of the rights of Assignee under this Assignment. All references to "Assignee" hereunder shall be deemed to include the assigns of Assignee.

17. **Recourse.** Notwithstanding anything to the contrary contained in this Assignment, or the collateral and security granted herein, the liability to pay the Debt and other Obligations and for the obligation to pay and performance of the other agreements, covenants and obligations contained herein and in any Loan Document shall be the full recourse obligations of Assignor and of any general partner or guarantor of Assignor. If at any time there is more than one person who is an Assignor hereinafter, the liability and obligations of each Assignor shall be joint and several.

18. **Notices.** All notices or other written communications hereunder shall be given and become effective as provided in the Security Instrument.

19. **WAIVER OF RIGHT TO JURY TRIAL.** ASSIGNOR BY EXECUTION AND DELIVERY HEREOF, AND ASSIGNEE BY ACCEPTANCE HEREOF, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT OF ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH ASSIGNMENT AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

20. **ENTIRE AGREEMENT.** THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Assignee including any subsequent holder of the Note and shall be binding upon Assignor, his heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.


[Signature Page Follows]

IN WITNESS WHEREOF, Assignor has executed this instrument the date first above written

ASSIGNOR:

SOUTH TACALA, LLC, a
Delaware limited liability company

By: Tacala, Inc., an Alabama corporation,
its Manager

By: 
Richard D. Reese
Chief Executive Officer

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that RICHARD D. REESE, whose name as Chief Executive Office of TACALA, INC., an Alabama corporation, as Manager of SOUTH TACALA, LLC, a Delaware 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 said corporation, acting in its capacity as Manager of said limited liability company as aforesaid.

Given under my hand and official seal, this 27th day of August, 1999.


Notary Public



My Commission Expires: 8/30/02

ASSIGNMENT OF LEASES & RENTS
AMERICAN COMMERCIAL CAPITAL LLC/TACALA - ALABAMA

DAL02:199834.1

Exhibit A

Legal Description

UNIT NO. 4090

That certain leasehold estate created by the Lease dated July 18, 1989, executed by Northport Corners Associates, L.P., a Georgia limited partnership doing business in Alabama as Northport Corners Associates, Ltd., as Landlord, and Taco Bell Corp., a California corporation, as Tenant, as evidenced by memorandum or short form agreement recorded in the real property records where the underlying property subject of the herein described lease is located, the interest of Taco Bell having been assigned to South Tacala, LLC, a Delaware limited liability company, as evidenced by Memorandum of Assignment of Lease and Consent recorded or to be recorded in the real property records where the underlying property subject of the herein described lease is located, all of which cover the following described property:

See Exhibit A-1 attached hereto and made a part hereof for all purposes.

EXHIBIT A

Part of Block 1 of Cahaba Valley Park North as recorded in Map Book 13, page 140, in the Probate Office of Shelby County, Alabama, more particularly described as follows:

Begin at the Southwest corner of said Block 1, said point being on the Northerly right of way line of Alabama Highway 119, and run Northwesterly for 150.00 feet; thence $88^{\circ} 04' 00''$ right and run Northeasterly for 227.16 feet to a point on the Westerly right of way line of Cahaba Valley Parkway; thence $90^{\circ} 00''$ right and run Southeasterly along said right of way line for 99.56 feet to a point; said point being at the beginning of a curve to the right, subtending a central angle of $89^{\circ} 53' 17''$ and having a radius of 50.00 feet; thence run Southwesterly along the arc of said curve for 78.44 feet to a point on the Northerly right of way line of Alabama Highway 119 and end of said curve; thence at tangent to said curve run Southwesterly along said right of way line for 182.32 feet to the point of beginning.

Inst # 1999-45406

11/04/1999-45406
09:00 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
015 MMS 43.50