

STATE OF ALABAMA     )  
SHELBY COUNTY        )

**ASSIGNMENT AND ASSUMPTION OF LOAN DOCUMENTS AND SECURED  
INDEBTEDNESS, MODIFICATION AND RELEASE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF LOAN DOCUMENTS AND SECURED INDEBTEDNESS, MODIFICATION AND RELEASE AGREEMENT (this "**Agreement**") is made and entered into as of August 31, 2004 (the "**Effective Date**") by and among **INTERSTATE RESTAURANT INVESTORS, L.L.P.**, an Alabama limited liability partnership ("**Interstate**"), whose address is 162 Cahaba Valley Road, Pelham, Alabama 35214, **FRANK C. ELLIS, JR., LLC**, an Alabama limited liability company ("**Ellis**" and, together with Interstate, referred to herein as "**Assignor**"), whose address is P.O. Box 587, Columbiana, Alabama 35051, **SOUTHMARK PROPERTIES, L.L.C.**, an Alabama limited liability company, whose address is 100 Centerview Drive, Suite 220, Birmingham, Alabama 35216 ("**Assignee**"), and **COMPASS BANK**, an Alabama banking corporation, whose address is P.O. Box 10566, Birmingham, Alabama 35296 ("**Lender**").

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Assignor, Assignee and Lender hereby agree as follows:

1. **Recitals.** Lender heretofore made a loan to Assignor and Assignee in the original principal amount of \$3,200,000 (the "**Loan**"), which Loan is evidenced by that certain Promissory Note in the principal amount of \$3,200,000 dated as of August 28, 2002 (the "**Note**"), executed by Assignor and Assignee in favor of Lender. Assignor desires to assign and Assignee desires to assume all of the Assignor's obligations under the Note, the indebtedness evidenced thereby, including without limitation an interest rate swap agreement, together with the rights and obligations of Assignor under the related loan documents as more fully described below, subject to the terms and conditions of this Assignment and Assumption of Loan Documents and Secured Indebtedness, Modification and Release Agreement (this "**Agreement**"). Lender joins in this Agreement to provide its consent to the terms hereof as more fully set forth below.

2. **Effectiveness.** Unless otherwise indicated to the contrary, all terms and conditions of this Agreement shall be effective as of the Effective Date.

3. **Assignor's Assignment.** Assignor hereby transfers, sells, conveys and assigns unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to the documents executed in favor of the Lender referenced on Exhibit "A" attached hereto (collectively, the "**Loan Documents**") and the indebtedness evidenced and secured thereby.

4. **Assignee's Assumption and Acceptance.** Assignee accepts said assignment of the Loan Documents from Assignor and expressly assumes and agrees to keep and perform each of the obligations on the part of Assignor to be kept and performed arising on or after the Effective Date and shall be and become liable for the performance thereof for and after the Effective Date, including, but not limited to, the indebtedness evidenced by the Note.



5. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that (i) all payments of principal and interest and other amounts owing in connection with the Loan are current; (ii) there exists no Event of Default nor any event or condition known to Assignor, which, with the giving of notice or passage of time or both, would constitute an Event of Default; (iii) the Loan Documents constitute the entire agreement between Assignor and Lender with respect to the Loan; (iv) all representations and warranties made by Assignor in the Loan Documents were and are true and correct in all material respects as of the date of the Loan Documents and as of the Effective Date; (v) Assignor has full authority to execute and deliver this Agreement and to perform its obligations hereunder, all of which have been authorized by all requisite action of Assignor; (vi) to Assignor's knowledge, this Agreement does not violate, conflict with, or constitute any default under any decree, judgment, or any other agreement or instrument binding upon Assignor and does not violate or conflict with the organizational or governing documents of Assignor; (vii) no action or investigation is pending or, to Assignor's knowledge, threatened before or by any state or federal court or administrative agency which might result in any material adverse change in the financial condition, operations or prospects of Assignor; and (viii) to Assignor's knowledge, Assignor is not in violation of any order, judgment, or decree of any state or federal court.

6. **Representations and Warranties of Assignee.** Assignee represents and warrants to Assignor that (i) to Assignor's knowledge, there exists no Event of Default nor any event or condition known to Assignor, which, with the giving of notice or passage of time or both, would constitute an Event of Default; (ii) all representations and warranties made by Assignee in the Loan Documents were and are true and correct in all material respects as of the date of the Loan Documents and as of the Effective Date; (iii) Assignee has full authority to execute and deliver this Agreement and to perform its obligations hereunder, all of which have been authorized by all requisite action of Assignee; (iv) to Assignee's knowledge, this Agreement does not violate, conflict with, or constitute any default under any decree, judgment, or any other agreement or instrument binding upon Assignee and does not violate or conflict with the organizational or governing documents of Assignee; (v) no action or investigation is pending or, to Assignee's knowledge, threatened before or by any state or federal court or administrative agency which might result in any material adverse change in the financial condition, operations or prospects of Assignee; and (vi) to Assignee's knowledge, Assignee is not in violation of any order, judgment, or decree of any state or federal court.

7. **Lender's Consent and Agreement.** Lender hereby consents to the assignment of Loan Documents and the obligations thereunder by Assignor and to the acceptance and assumption of same by Assignee. Lender agrees to amend its records to indicate the assignment and assumption set forth herein.

8. **Modification of Note, Mortgage, Assignment of Leases and Other Loan Documents.** The Note and each of the other Loan Documents are hereby modified and amended to reflect "Southmark Properties, L.L.C., an Alabama limited liability company" as the Borrower, Mortgagor, or Assignor, as applicable, thereunder, and the address of the said Southmark Properties, L.L.C. to be 100 Centerview Drive, Suite 220, Birmingham, Alabama 35216. In furtherance of the foregoing, each of said Loan Documents are hereby modified and amended as of the Effective Date to provide that any and all references therein to "Interstate



Restaurant Investors, L.L.P., Frank C. Ellis, Jr., and/or Southmark Properties, L.L.C.” shall be deemed to mean “Southmark Properties, L.L.C.”.

9. **Release of Assignor and Guarantors.** Lender hereby releases Assignor, John McGeever, John G. Benner, William R. Robertson and Frank C. Ellis, Jr., as Guarantors, from any obligations, indebtedness and liabilities of any kind or nature whatsoever under the Loan Documents arising or accruing after the Effective Date, although none of Assignor, John McGeever, John G. Benner, William R. Robertson and Frank C. Ellis, Jr. shall be released from any obligations or liabilities of any kind or nature arising or accruing under the Loan Documents on or before the Effective Date.

10. **Transfer Restrictions.** The parties hereto agree that, except for the transfer provided for herein, no provision hereof shall constitute a waiver of any restriction on transfer contained in any of the Loan Documents and any such restrictions, if any, shall continue in full force and effect.

11. **Representations and Warranties of Lender.** Lender makes no representation or warranty of any kind with respect to the Loan, except Lender represents and warrants to Assignee that (i) all payments of principal and interest and other amounts owing in connection with the Loan are current, and as of the Effective Date the principal amount owing under the Note is \$3,046,170.50, and interest owing under the Loan is \$6,168.29; and (ii) there exists no Event of Default nor any event or condition known to Lender, which, with the giving of notice or passage of time or both, would constitute an Event of Default.

12. **Further Assurances.** Assignee and Lender agree to perform any further acts and to execute and deliver any other documents which may be reasonably necessary to carry out the provisions of this Agreement, including, but not limited to, executing and filing all documents or instruments necessary or appropriate to amend the UCC financing Statements.

13. **Miscellaneous.** This Agreement shall be interpreted according to the laws of the State of Alabama. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement shall not be modified or amended except by mutual written agreement. The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision. In the event any provision of this Agreement is held to be unenforceable or invalid for any reason, this Agreement shall remain in full force and effect and enforceable in accordance with its terms disregarding such unenforceable or invalid provision. The captions or headings in this Agreement are made for convenience and general reference only and should not be construed to describe, define or limit the scope and intent of the provisions of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be an original and taken together shall constitute one and the same document. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. This Agreement shall be binding and shall enure solely to the benefit of the parties hereto, and their respective heirs, legatees, executors, administrators, legal representatives, successors and assigns. The parties acknowledge that this

Agreement was initially prepared by Lender solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all of the language used in this Agreement. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement which construes ambiguous and unclear language in favor of or against any party because such party drafted this Agreement.

14. **Entire Agreement.** This Agreement sets forth the entire understanding and agreement of the parties hereto in relation to the subject matter hereof and supersedes any prior negotiations and agreements among the parties relative to such subject matter.

15. **Force and Effect of Modification.** Notwithstanding the execution of this Agreement, the indebtedness evidenced by the Loan Documents shall remain in full force and effect, and nothing contained herein shall be interpreted or construed as resulting in a novation or acceleration of such indebtedness. Except for the release provided for in paragraph 9 of this Agreement and as hereby specifically assigned, amended, modified or supplemented herein, each of the Loan Documents is hereby confirmed and ratified in all respects and each shall remain in full force and effect according to its respective terms.

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**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates set forth below but effective as of the Effective Date first set forth above.

“Assignor:”

**INTERSTATE RESTAURANTS INVESTORS,  
L.L.P.**


By:   
John McGeever  
Partner

**FRANK C. ELLIS, JR., LLC**

By \_\_\_\_\_  
Frank C. Ellis, Jr.  
Sole Member

“Assignee:”

**SOUTHMARK PROPERTIES, L.L.C.**

By:   
James A. Bruno  
Manager

“Lender:”

**COMPASS BANK**

By \_\_\_\_\_  
Martin R. Brown  
Vice President

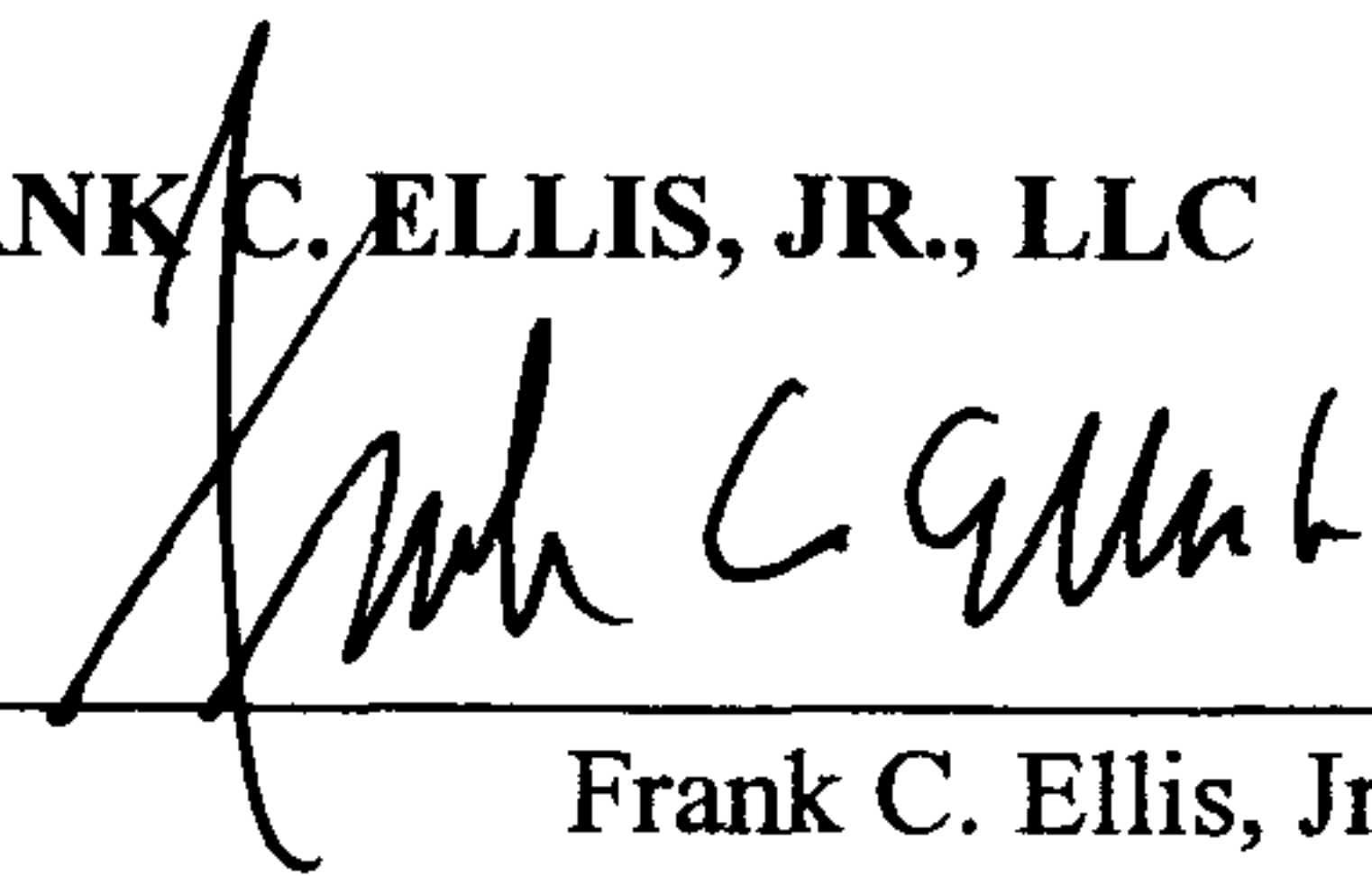
**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates set forth below but effective as of the Effective Date first set forth above.

“Assignor:”

**INTERSTATE RESTAURANTS INVESTORS,  
L.L.P.**

By: \_\_\_\_\_  
John McGeever  
Partner

**FRANK C. ELLIS, JR., LLC**

By:  \_\_\_\_\_  
Frank C. Ellis, Jr.  
Sole Member

“Assignee:”

**SOUTHMARK PROPERTIES, L.L.C.**

By: \_\_\_\_\_  
James A. Bruno  
Manager

“Lender:”

**COMPASS BANK**

By: \_\_\_\_\_  
Martin R. Brown  
Vice President

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates set forth below but effective as of the Effective Date first set forth above.

“Assignor:”

**INTERSTATE RESTAURANTS INVESTORS,  
L.L.P.**

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

John McGeever  
Partner

**FRANK C. ELLIS, JR., LLC**

By \_\_\_\_\_

Frank C. Ellis, Jr.  
Sole Member

“Assignee:”

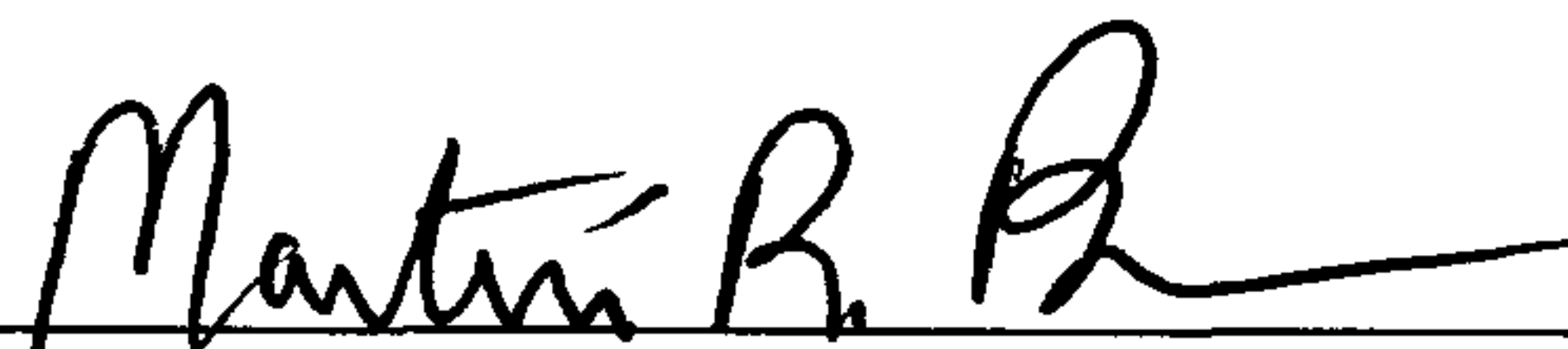
**SOUTHMARK PROPERTIES, L.L.C.**

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

James A. Bruno  
Manager

“Lender:”

**COMPASS BANK**

By  \_\_\_\_\_

Martin R. Brown  
Vice President

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **John McGeever**, whose name as Partner of INTERSTATE RESTAURANT INVESTORS, L.L.P., an Alabama limited liability partnership, 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, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand and official seal, this the 31<sup>st</sup> day of August, 2004.

[SEAL]

Pamela B. Griffith  
Notary Public  
My Commission Expires: 6/15/05

STATE OF ALABAMA  
COUNTY OF ~~JEFFERSON~~

Shelby

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Frank C. Ellis, Jr., whose name as sole member of FRANK C. ELLIS, JR., 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, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 30 day of August, 2004.

[SEAL]

Stephanie Glass  
Notary Public  
My Commission Expires: 2-4-07



STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **James A. Bruno**, whose name as Manager of SOUTHMARK PROPERTIES, L.L.C., 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, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 31 day of August, 2004.

[SEAL]

Pamela B. Griffith  
Notary Public  
My Commission Expires: 6/15/05

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Martin R. Brown, whose name as Vice President of COMPASS BANK, an Alabama banking corporation, 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 banking corporation.

Given under my hand and official seal, this the 31 day of August, 2004.

[SEAL]

Jennifer McGurk Lawley  
Notary Public  
My Commission Expires: 6-18-06

**This Instrument Prepared by:**  
Tom A. Ansley  
Sirote & Permutt, P.C.  
2311 Highland Avenue South  
Birmingham, Alabama 35205  
(205) 930-5300

## **EXHIBIT "A"**

### **LOAN DOCUMENTS**

1. Promissory Note dated August 28, 2002, in the original principal amount of \$3,200,000, executed by SOUTHMARK PROPERTIES, L.L.C., an Alabama limited liability company, INTERSTATE RESTAURANT INVESTORS, L.L.P., an Alabama limited liability partnership and FRANK C. ELLIS, JR., LLC, an Alabama limited liability company ("Borrower"), in favor of COMPASS BANK, an Alabama banking corporation.

2. Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated August 28, 2002, executed by the Borrower in favor of the Lender, as recorded on August 30, 2002, as Instrument No. 20020830000416130, Probate Office of Shelby County, Alabama.

3. UCC Financing Statement numbered 20020830000416140 in favor of Compass Bank recorded on August 30, 2002, Probate Office of Shelby County, Alabama.

4. UCC Financing Statement numbered 1998-44674 in favor of Compass Bank recorded on November 10, 1998 and as continued by UCC Financing Statement numbered 20031010000682360 recorded on October 10, 2003, Probate Office of Shelby County, Alabama.

5. UCC Financing Statement numbered 1998-44676 in favor of Compass Bank recorded on November 10, 1998 and as continued by UCC Financing Statement numbered 20031010000682350 recorded on October 10, 2003, Probate Office of Shelby County, Alabama.

6. UCC Financing Statement numbered 1998-44678 in favor of Compass Bank recorded on November 10, 1998 and as continued by UCC Financing Statement numbered 20031010000682370 recorded on October 10, 2003, Probate Office of Shelby County, Alabama.

7. Subordination, Non-Disturbance and Attornment Agreement by and between Southmark Properties, L.L.C., Interstate Restaurant Investors, L.L.P., Frank C. Ellis, Jr., Logan's Roadhouse, Inc., and Compass Bank, dated November 10, 1998, recorded as Instrument #1999-06334, in Probate Office (as to Lot 1A).

8. Subordination, Non-Disturbance and Attornment Agreement by and between Southmark Properties, L.L.C., Interstate Restaurant Investors, L.L.P., Frank C. Ellis, Jr., Kinko's Inc., and Compass Bank, dated April 15, 1999, recorded as Instrument #1999-21938, in Probate Office (as to Lot 2C).

9. Subordination, Non-Disturbance and Attornment Agreement by and between Southmark Properties, L.L.C., Interstate Restaurant Investors, L.L.P., Frank C. Ellis, Jr., GMRI, Inc., and Compass Bank, dated November 10, 1998, recorded as Instrument #1999-23929, in Probate Office (as to Lot 2A).

10. All other instruments, documents and other writings evidencing, securing or executed in connection with the Note, including without limitation any interest rate swap agreements, together with the indebtedness from time to time owing pursuant to the Note



evidenced and secured by the Loan Documents, together with any and all right, title, interest and estate of Assignor in and to the property described in conveyed or encumbered by the Loan Documents, together with all of Assignor's rights, remedies, privileges and options with respect to the Loan Documents arising at law, in equity or under the Loan Documents.

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Shelby Cnty Judge of Probate, AL  
08/31/2004 14:14:00 FILED/CERTIFIED