

STATE OF ALABAMA                    )  
COUNTY OF SHELBY                 )

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Shelby Cnty Judge of Probate, AL  
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## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF TITLE 7, ARTICLE 9 OF THE CODE OF ALABAMA.

THIS MORTGAGE AND SECURITY AGREEMENT, made as of the 21<sup>st</sup> day of October, 2004, is by TACOA Minerals, L.L.C., an Alabama limited liability company, *mortgagor*, whose mailing address is 4672 CALDWELL MILL RD, DRYAN, AL 35243 hereinafter referred to as the "Borrower"), in favor of Spain & Gillon, L.L.C., an Alabama limited liability company (hereinafter called the "Lender"), *mortgagee*, whose mailing address is 2117 Second Avenue North, Birmingham, Alabama 35203, Attn: Alton B. Parker, Esq.

### WITNESSETH:

**WHEREAS**, Borrower is justly indebted to Lender for borrowed money in the principal sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00) (the "Loan"), as evidenced by one or more promissory notes of even date herewith from Borrower payable to Lender with interest thereon (said promissory notes, as the same may hereafter be renewed, extended or modified, being herein collectively called the "Promissory Note") (the Promissory Note, together with this Mortgage, any amendments, modifications, and replacements hereof or thereof, and all other documents now or hereafter evidencing or securing the Promissory Note and all certificates, documents, and instruments now or hereafter executed by Borrower in favor of Lender, are collectively referred to herein as the "Loan Documents"); and

**WHEREAS**, this is a FUTURE ADVANCE MORTGAGE AND SECURITY AGREEMENT and the Promissory Note evidences proceeds of which are to be advanced by the Lender to the Borrower, and, in addition to the indebtedness evidenced by the Promissory Note, this Mortgage shall also secure all other indebtedness, obligations and liabilities of the Borrower to the Lender, whether now existing or hereafter arising; and

**WHEREAS**, as a condition precedent to making the Loan, Lender has required that Borrower execute this Mortgage and Security Agreement as security for the Loan.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, the sum of Ten Dollars, and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of the Borrower under the Promissory Note, this Mortgage and Security Agreement and all other Loan Documents (all of such indebtedness and obligations secured hereby being referred to herein as the "Secured Indebtedness"), Borrower has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto Lender, its successors and assigns, all of the foregoing described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto, including, but not limited to, all personal property as described herein below (which property is hereinafter referred to collectively as the "Premises"):

(a) All rights, title, and interest that the Borrower has or may have in the future, in those certain tracts or parcels of land located in Shelby County, State of Alabama as described in Exhibit "A" attached hereto and incorporated herein (the "Land"); and



(b) All buildings, structures, fixtures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Premises, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (collectively the "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage; and

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by them; and

(d) All rents, issues, profits, account receivables, and revenues of the Premises from time to time accruing, including, without limitation, all sums due under any leases or tenancies, together with all proceeds of insurance, condemnation payments, security deposits and escrow funds, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, reserving only the right to Borrower to collect the same so long as an Event of Default has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

(e) To the fullest extent assignable (if assignable by law), any and all licenses and permits obtained by Borrower relating to the use and operation of the Premises.

(f) All of the following personal property now owned by Borrower and hereinafter acquired by Borrower;

(g) Any and all of the machinery, equipment, rolling stock, installations, tools, spare parts, supplies, furniture, furnishings, office equipment, maintenance equipment and supplies, materials, and other items of leasehold improvements or personal property of every kind and description now owned by Borrower and hereinafter acquired by Borrower.

(h) All of the inventories, including all raw materials, work in process and finished goods inventories now owned and hereinafter acquired by the Borrower.

(i) All computer software, production records, product files, technical information, confidential information, price lists, marketing plans and strategies, sales records, product development techniques or plans, customer lists and files (including customer credit and collection information), details of client or consultant contracts, operations methods, tax, historical and financial records and files, and other proprietary information now owned by Borrower and hereinafter acquired by Borrower.

(j) All of the proprietary rights now owned by Borrower and hereinafter acquired by Borrower, including without limitation all trademarks, trade names, patents, patent applications, licenses thereof, trade secrets, computer software, slogans, copyrights, processes, operating rights, other licenses and permits and other similar intangible property and rights, and all goodwill developed through the use of such property and rights.



(k) All rights, title and interests of the Borrower in any mortgages, security agreements, instruments, assignment agreements, and promissory notes executed by Borrower at any time whatsoever.

**TO HAVE AND TO HOLD** the Premises and all parts thereof unto Lender, its successors and assigns forever, subject however to the terms and conditions herein set forth;

**PROVIDED, HOWEVER,** that, if Borrower shall pay to Lender the principal and interest payable in respect to the Promissory Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall keep, perform, and observe all and singular the covenants and promises in the Promissory Note and in each of the Loan Documents expressed to be kept, performed, and observed by and on the part of Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

**AND** Borrower covenants and agrees with Lender as follows:

## ARTICLE I

1.01 **Performance of Promissory Note and Mortgage.** Borrower will perform, observe, and comply with all provisions hereof and of the Promissory Note secured hereby and duly and punctually will pay to Lender the sum of money expressed in the Promissory Note with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by Borrower.

1.02 **Intentionally omitted.**

1.03 **Taxes, Liens and Other Charges.**

(a) Borrower shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever, (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Premises, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. Borrower shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless Borrower has given prior written notice to Lender of Borrower's intent to so contest or object, and unless (i) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Premises, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) if required by Lender, Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender; and (iii) Borrower shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(b) Except for income tax, gross receipts tax or similar tax imposed on Lender by reason hereof, Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Promissory Note, this Mortgage or any other instrument now or hereafter evidencing, securing or otherwise relating to the Promissory Note or this Mortgage.

(c) Borrower shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Premises, as required pursuant to Section 1.04, below; and all utility charges which are incurred by Borrower for the benefit of the Premises, or which may become a charge or lien against the Premises for



gas, electricity, water and sewer services and the like furnished to the Premises, and all other public or private assessments or charges of a similar nature affecting the Premises or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. Borrower shall submit to Lender such evidence of the due and punctual payment of all such premiums, rentals and other sums as Lender may require.

(d) Borrower shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Premises; provided, however, that Borrower may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded in such manner as not adversely to affect the priority of this Mortgage. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

1.04 **Intentionally Omitted.**

1.05 **Intentionally Omitted.**

1.06 **Intentionally Omitted.**

1.07 **Care of Premises.**

(a) Borrower will keep the buildings, parking areas, roads and walkways, landscaping, and all other Improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Premises or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Premises.

(b) Borrower will not remove, demolish or alter the structural character of any Improvement located on the Land without the written consent of Lender, nor make or permit use of the Premises for any purpose other than for which the same are now used.

(c) If the Premises or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice thereof to Lender.

(d) Lender or its representative is hereby authorized to enter upon and inspect the Premises during normal business hours.

(e) Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(f) If all or any part of the Premises shall be damaged by fire or other casualty, Borrower will promptly restore the Premises to the equivalent of its original condition; and if a part of the Premises shall be damaged through condemnation, Borrower will promptly restore, repair or alter the remaining portions of the Premises in a manner satisfactory to Lender. Notwithstanding the foregoing, Borrower shall not be obligated so to restore unless in each instance Lender agrees to make available to Borrower any net insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration; provided, however, that the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration shall in no way relieve Borrower of its obligation to restore. In the event all or any portion of the Premises shall be damaged or destroyed by fire or other casualty or by condemnation, Borrower shall promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Premises (as determined by Lender in its good faith judgment) exceeds the actual net insurance or condemnation proceeds with respect to such damage or destruction.

1.08 **Leases.** Borrower will comply with and observe its obligations as landlord under all leases affecting the Premises or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases



now or hereafter created with respect to all or any part of the Premises, and will enter into leases only upon a lease form previously approved by Lender and for a fair market rental, unless Borrower first obtains Lender's written approval of changes to such form or the execution of a lease not on such form. If requested by Lender, Borrower will separately assign to Lender as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues, and profits of the Premises from time to time accruing.

1.09 **Security Agreement.** With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Premises, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and Borrower hereby grants to Lender a security interest in said personal property. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (i) as prescribed herein, or (ii) as prescribed by law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any awareness in eminent domain proceedings for taking or for loss of value, or (iii) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Lender in the event any court shall at any time hold, with respect to the foregoing items (i), (ii), or (iii), that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. This Mortgage may be filed as a financing statement in any office where Lender deems such filing necessary or desirable, and Borrower will promptly upon demand reimburse Lender for the costs therefor.

1.10 **Further Assurances; After-Acquired Property.** At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further deeds of trusts, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Borrower under the Promissory Note and under this Mortgage, and (b) the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Premises, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or re-file any and all such 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 Lender the agent and attorney-in-fact of Borrower so to do. The lien of this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

1.11 **Indemnity; Expenses.** Borrower will pay or reimburse Lender, upon demand therefor, for all reasonable attorney's fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Secured Indebtedness, this



Mortgage or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage. Borrower will indemnify and hold Lender harmless from and against all claims, damages, and expenses, including attorney's fees and court costs, resulting from any action by a third party against Lender relating to this Mortgage or the interest created herein, or the Premises, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those relating to environmental standards or dangerous or hazardous wastes, provided that Borrower shall not be required to indemnify Lender for matters directly caused by Lender's gross negligence or willful misconduct.

1.12 **Estoppel Affidavits.** Upon ten (10) days prior written notice, Borrower shall furnish to Lender a written statement, duly acknowledged, based upon its records, setting for the unpaid principal of, and interest on, the Secured Indebtedness, stating whether or not to its knowledge any off-sets or defenses exist against the Secured Indebtedness, or any portion thereof, and, if such off-sets or defenses exist, stating in detail the specific facts relating to each such off-set or defense.

1.13 **Intentionally Omitted.**

1.14 **Books, Records, Accounts and Reports.**

(a) Borrower shall keep and maintain or shall cause to be kept and maintained, at Borrower's cost and expense, and in accordance with standard accounting principles, proper and accurate books, records and accounts reflecting all items of income and expense in connection with any services, equipment or furnishings provided in connection with the operation of the Premises. Lender, by Lender's agents, accountants and attorneys, shall have the right from time to time to examine such books, records and accounts at the office of Borrower or such other person or entity maintaining such books, records and accounts, to make such copies or extracts thereof as Lender shall desire, and to discuss Borrower's affairs, finances and accounts with Borrower and with the officers and principals of Borrower, at such reasonable times as may be requested by Lender.

(b) For as long as any portion of the Secured Indebtedness shall remain outstanding, Borrower will provide to Lender the following financial information:

(i) annual financial statements of the Borrower within one hundred twenty (120) days of its fiscal year, prepared in accordance with generally acceptable accounting principles consistently applied or with another comprehensive basis of accounting acceptable to Lender, certified by the members or chief financial officer of the Borrower, as applicable, to be true and correct (Lender reserves the right to require that the annual financial statements of the Borrower be audited and prepared by a nationally recognized accounting firm or other certified public accounting firm acceptable to Lender if required by external or internal banking regulations or if an event of default shall have occurred under the Loan Documents);

(ii) such other financial information pertaining to Borrower or the Premises as Lender may from time to time reasonably request.

The delivery of each of the financial statements required herein shall constitute Borrower's contemporaneous certification that (i) Borrower has complied with and is in compliance with all terms, covenants and conditions of this Mortgage which are binding upon it, and; (ii) there exists no Event of Default as defined in this Mortgage and no event which with the giving of notice or lapse of time, or both, would constitute such an Event of Default; or, if such is not the case, that one or more specified Events of Default have occurred, and; (iii) the representations and warranties contained in this Mortgage are true with the same affect as though made on the date of such certificate.

1.15 **Licenses and Permits Obtained.** Borrower represents and warrants that all necessary permits, licenses and certificates have been obtained to permit Borrower to operate the Premises in the manner contemplated,



and Borrower will maintain in effect all such licenses, permits, and certificates, together with any other agreements necessary for the use and operation of the Premises.

1.16 **Limit of Validity.** If from any circumstances whatsoever, fulfillment of any provision of this Mortgage of the Promissory Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or under the Promissory Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section 1.16 shall control every other provision of this Mortgage and of the Promissory Note.

1.17 **Default Affidavits.** Upon the occurrence of any default hereunder, at Lender's request, Borrower shall deliver an affidavit specifying the nature of such default and the period of existence thereof and the action Borrower has taken or proposes to take with respect thereto.

1.18 **Legal Actions.** In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Premises, the Promissory Note, the Secured Indebtedness or the validity or priority of this Mortgage (but excluding any action or proceeding involving a dispute solely between Lender and a participating lender, if any), Borrower shall immediately, upon demand, reimburse Lender for all costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.19 **Compliance with Zoning and Restrictions.** Borrower shall at all times operate the Premises in accordance with all applicable restrictions and zoning ordinances.

1.20 **Conveyance of Premises.** Borrower shall not directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Premises or any ownership interests of Borrower without the prior written consent of Lender. Lender's consent to such a transfer, if given in Lender's sole discretion, shall not release or alter in any manner the liability of Borrower or anyone who has assumed or guaranteed the payment of the Secured Indebtedness or any portion thereof. At the option of Lender the Secured Indebtedness shall be immediately due and payable in the event that Borrower conveys all or any portion of the Premises or any interest therein, or in the event that Borrower's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Lender's prior written consent thereto, and any waiver or consent for any prior transfer shall not preclude Lender from declaring the Secured Indebtedness due and payable for any subsequent transfer.

1.21 **Compliance with Applicable Environmental Law.** The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or asbestos, or oil, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. §6901 et seq.; and the Superfund Amendments and Reauthorization Act of 1986, as codified at 42 U.S.C. §9671, et seq.; the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. Borrower represents and warrants to Lender that neither the Premises nor Borrower are in violation of or subject to any existing, pending or, to the best of Borrower's knowledge, threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Premises; that Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Premises by reason of any Applicable Environmental Law; that Borrower has taken all steps necessary to



determine and has determined that no asbestos, petroleum products, oil, hazardous substances, or solid wastes have been disposed of, or otherwise released on, or are otherwise located on the Premises; and that the use which Borrower has made, makes or intends to make of the Premises will not result in the location on or disposal or other release of any asbestos, petroleum products, oil, hazardous substances or solid waste on or to the Premises. Borrower agrees to notify Lender in the event that any governmental agency or other entity notifies Borrower that it may not be in compliance with any Applicable Environmental Laws. Borrower agrees to permit Lender to have access to the Premises at all reasonable times in order to conduct any tests which Lender deems are necessary to ensure that Borrower and the Premises are in compliance with all Applicable Environmental Laws. Borrower acknowledges that, pursuant to that certain Environmental Indemnity of even date herewith, it has agreed to pay any fines, charges, fees, expenses, damages, losses, liabilities, or response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Premises and to indemnify and forever save Lender harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the Premises or Lender, and that such Environmental Indemnity shall survive any foreclosure of this Mortgage or the taking by Lender of a deed in lieu of foreclosure; provided, however, that such Environmental Indemnity shall not extend to acts of Lender which result in such fines, charges, fees, expenses, damages, losses, liabilities, or response costs.

1.22 **Appraisals.** At Lender's request, Borrower will permit Lender, or its agents, employees or independent contractors, to enter upon and appraise the Premises at any time and from time to time, and Borrower will cooperate with and provide any information requested in connection with such appraisals. At any time while the Secured Indebtedness remains outstanding, Lender may have the Premises reappraised at Borrower's expense if (i) an Event of Default shall then exist under the Loan Documents, or (ii) such appraisal shall be required by any regulatory guideline or authority to which Lender is subject, or (iii) Lender shall have determined, in the exercise of its sole discretion, that the aggregate value of the Premises has materially declined since the date of the last such appraisal, or (iv) Lender shall have determined, in the exercise of its sole discretion, that a material adverse change in the financial condition of Borrower has occurred; provided that Borrower shall in no event be responsible for the cost of more than one such reappraisal during any twelve (12) month period.

1.23 **Future Advances.** Lender, at its option, may make future advances to Borrower, provided, that nothing contained herein shall constitute an obligation to do so except as may otherwise be required of Lender under the Loan Agreement, if applicable. Such future advances, with interest at the rate payable from time to time on the outstanding principal under the Promissory Note, shall be secured by this Mortgage when evidenced by the Promissory Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make such future advances (a) at the request of Borrower, whether or not there is any obligation to make future advances; or (b) to pay, with or without the consent or request of Borrower, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Property.

1.24 **Representations and Warranties.** Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan to Borrower, that:

(a) There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower or any guarantor of the Promissory Note or which might impair the value of any collateral taken or to be taken by Lender in connection with the transactions contemplated hereby. Neither Borrower nor any guarantor of the Promissory Note is in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on Borrower's or such guarantor's business or assets, and neither Borrower nor any guarantor of the Promissory Note is in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Borrower or such guarantor is subject. Neither the execution and performance of this Mortgage, the Promissory Note, or any other Loan Document will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower or any guarantor of the Promissory Note.

(b) All financial statements of Borrower and other business enterprises in which Borrower has an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all respects as of



its respective dates and prepared in accordance with generally accepted accounting principles consistently applied, and fairly represent the financial conditions of the business or persons to which it pertains, and no materially adverse change has occurred in the financial conditions reflected therein since the respective date thereof.

(c) All utility and sanitary sewage services necessary for the use of the Premises and all roads necessary for the use of the Premises are available pursuant to permanent private or public easements which are not subject to the exclusive rights of any other persons which could interfere with Borrower's use thereof.

(d) There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to acquire by power of condemnation or eminent domain any portion of the Premises, or any interest therein, or to enjoin or similarly prevent the use of any of the Premises as presently used.

(e) All documents furnished to Lender by or on behalf of Borrower as part of or in support of the loan application or pursuant to any commitment letter issued by Lender are true, correct, complete and accurately represent the matters to which they pertain.

(f) The Premises do and shall at all times comply with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations to zoning, building codes, set back requirements and environmental matters.

(g) Borrower is a duly organized and validly existing corporation having full power and authority to consummate the transactions contemplated by the Loan Documents.

## ARTICLE II

2.01 **Events of Default.** The terms "Event of Default" or "Events of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure of Borrower (i) to make any scheduled payment of interest or principal under the terms of the Promissory Note on or before the due date thereof, or (ii) to pay any other sum due, whether by acceleration or otherwise, under the terms of any Loan Document within ten (10) days after written demand therefor by Lender (in each case, a "Monetary Default"); or

(b) The failure of Borrower properly and timely to perform or observe any covenant or condition set forth in any Loan Document (other than a Monetary Default) which is not cured within any applicable cure period as set forth herein or, if no cure period is specified therefor, is not cured within thirty (30) days of Lender's notice to Borrower of such Default; or

(c) The occurrence of any "Event of Default" under, and as defined in, any other Loan Document.

2.02 **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire Secured Indebtedness shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.03 **Right to Enter and Take Possession.**

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Premises and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Premises without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower;



(b) If Borrower shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Premises to Lender. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Premises and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed by such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Premises or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits required in Section 1.05 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 2.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Premises to Borrower, its successors and assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

**2.04 Performance by Lender.** Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate provided in the Promissory Note or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holder under Borrower. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

**2.05 Receiver.** If any Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Borrower will pay unto Lender upon demand all expenses, including reasonable receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.05, and upon any Borrower's failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.



2.06 **Lender's Power of Enforcement and Power of Sale.**

(a) In an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Promissory Note or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

(b) If an Event of Default shall have occurred, Lender may sell the Premises at public outcry to the highest bidder for cash in front of the Court House door in the county where the property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.07 **Purchase by Lender.** Upon any foreclosure sale or sale of all or any portion of the Premises under the power herein granted, Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

2.08 **Application of Proceeds of Sale.** In the event of a foreclosure or other sale of all or any portion of the Premises, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees (attorneys' fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender hereunder, and interest thereon; then to payment of the Secured Indebtedness and accrued interest thereon, in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

2.09 **Borrower as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily disposed according to provisions of law applicable to tenants holding over.

2.10 **Waiver of Appraisal, Valuation, Etc.** Borrower agrees, to the full extent permitted by law, that in case of a default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Premises, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

2.11 **Waiver of Homestead.** Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution of the laws of the United States and of any state, in and to the Premises and against the collection of the Secured Indebtedness, or any part thereof.

2.12 **Discontinuance of Proceedings.** In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Borrower and



Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

2.13 **Remedies Not Exclusive.** Lender shall be entitled to enforce payment and performance of the Secured Indebtedness and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Secured Indebtedness may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner effect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as it or either of them may in their absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and either of them may pursue inconsistent remedies.

2.14 **Waivers.** After consulting with and considering the advice of independent legal counsel selected by Borrower, Borrower makes the following arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan.

(a) No delay or omission by Lender or by any holder of the Promissory Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Borrower in the performance of the obligations of Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Promissory Note or this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for payment of all or any portion of the Secured Indebtedness; (ii) take other or additional security for the payment of any of the Secured Indebtedness; (iii) waive or fail to exercise any right granted herein or in the Promissory Note; (iv) release any part of the Premises from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Promissory Note or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Premises; (vi) consent to the granting of any easement or other right affecting the Premises; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Promissory Note, this Mortgage, the Premises or any document or instrument evidencing, securing or in any way related to the Secured Indebtedness, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Secured Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.



(c) Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular State or other jurisdiction. To the fullest extent that Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Borrower, for Borrower, Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, marshaling, stay of execution, and extension. Borrower further agrees that if any law referred to in this paragraph and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Borrower expressly waives and relinquishes any and all rights and remedies that Borrower may have or be able to assert by reason of the laws of the State of jurisdiction pertaining to the rights and remedies of sureties.

(d) Borrower, and by acceptance hereof Lender, hereby mutually waive any right to a trial by jury on any claim, counterclaim, setoff, demand, action or cause of action (a) arising out of or in any way pertaining or relating to this Mortgage, any other Loan Document, or any other instrument, document or agreement executed or delivered in connection herewith or therewith, or (b) in any way connected with or pertaining or relating to or incidental to any dealings of the parties hereto with respect to this Mortgage, any other Loan Document, or any other instrument, document or agreement executed or delivered in connection herewith or therewith or in connection with any transactions related thereto or contemplated thereby or the exercise or either party's rights and remedies thereunder, in all of the foregoing cases whether now existing or hereafter arising, and whether sounding in contract, tort or otherwise. Borrower and Lender agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive trial by jury, and that any dispute or controversy whatsoever between them shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury. Borrower hereby certifies that no representative or agent of Lender, including Lender's counsel, has represented, expressly or otherwise, that Lender would not, in the event of such dispute or controversy, seek to enforce the provisions of this paragraph, and Borrower acknowledges that Lender has, in part, been induced to make the Loan to Borrower in reliance on the provisions of this paragraph.

2.15 **Suits to Protect the Premises.** Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Premises by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Premises and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Lender.

2.16 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

### ARTICLE III

3.01 **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Borrower" or "Lender", such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.



3.02 **Terminology.** All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

3.03 **Severability; Complete Agreement.** If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage 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. This Mortgage, the Promissory Note and the instruments executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

3.04 **Limitation of Interest.** It is the intent of Borrower and Lender in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan evidenced by the Promissory Note. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan evidenced by the Promissory Note. Borrower or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Promissory Note shall never be liable for unearned interest on the Promissory Note and shall never be required to pay interest on the Promissory Note at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan evidenced by the Promissory Note, and the provisions of this paragraph shall control over all other provisions of the Promissory Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Promissory Note shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Promissory Note to a rate in excess of that permitted to be charged by the laws governing the Loan evidenced by the Promissory Note, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Promissory Note and if in excess of such balance, shall be immediately returned to Borrower upon such determination.

3.05 **Notices.** All notices and other communications provided for hereunder shall be in writing and be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below), (b) on the date deposited in U.S. mail, certified, with return receipt requested, or (c) on the date deposited with Federal Express or other national overnight carrier, and in each case properly addressed as set forth below. Either party may change its address for receipt notices to another single address within the United States as provided herein. Actual receipt of any notice other than a change of address notice shall not be required if properly sent in accordance with this Section 3.05.

If to the Borrower:

Attn: Jerry C. Whitt  
Taco Minerals, L.L.C.  
P.O. Box 1781  
Alabaster, Alabama 35007-1781

If to the Lender:

Spain & Gillon, L.L.C.  
2117 Second Avenue North  
Birmingham, Alabama 35203  
Attn: Alton B. Parker, Esq.



3.06 **Replacement of Promissory Note.** Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Promissory Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Promissory Note, Borrower at Lender's expense will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to such Promissory Note and dated as of the date of such Promissory Note, and upon such execution and delivery all references in this Mortgage to the Promissory Note shall be deemed to refer to such replacement note.

3.07 **Assignment.** This Mortgage is assignable by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

3.08 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Promissory Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

3.09 **Governing Law.** THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA. THE LENDER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN SHELBY COUNTY IN THE STATE OF ALABAMA, AND THE BORROWER AGREES THAT THIS AGREEMENT SHALL BE DELIVERED TO AND HELD BY LENDER AT SUCH PRINCIPAL PLACE OF BUSINESS, AND THE HOLDING OF THIS AGREEMENT BY LENDER THEREAT SHALL CONSTITUTE SUFFICIENT MINIMUM CONTACTS OF BORROWER WITH SHELBY COUNTY AND THE STATE OF ALABAMA FOR THE PURPOSE OF CONFERRING JURISDICTION UPON THE FEDERAL AND STATE COURTS PRESIDING IN SUCH COUNTY AND STATE. BORROWER CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER MAY BE BROUGHT IN THE CIRCUIT COURT OF LAW; STATE OF ALABAMA, SHELBY 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 AGREEMENT. NOTHING HEREIN SHALL LIMIT THE JURISDICTION OF ANY OTHER COURT.

3.10 **Waiver of Jury Trial.** BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATED TO THE LOAN, OR (II) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND BORROWER WITH RESPECT TO LOAN DOCUMENTS OR THE LOAN, OR IN CONNECTION WITH THE TRANSACTIONS RELATED HERETO OR CONTEMPLATED HEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES HEREUNDER, OR THE CONDUCT OF 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 LENDER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

3.11 **Authorization to File Financing Statements.** The Borrower hereby irrevocably authorizes the Lender at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of any equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial



Code of the State, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Borrower is an organization, the type of organization and any organizational identification number issued to the Borrower and, (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Borrower agrees to furnish any such information to the Lender promptly upon Lender's request.

3.12 **Cross-Collateralization.** In addition to the Promissory Note, this Mortgage and Security Agreement secures all obligations, debts and liabilities, plus interest thereon, of Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Promissory Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise enforceable.

IN WITNESS WHEREOF, Borrower has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

TACOA MINERALS, L.L.C., an Alabama limited liability company

By:  [SEAL]

JERRY C. WHITT

Its Member

By:  [SEAL]

DARYN BOOKOUT

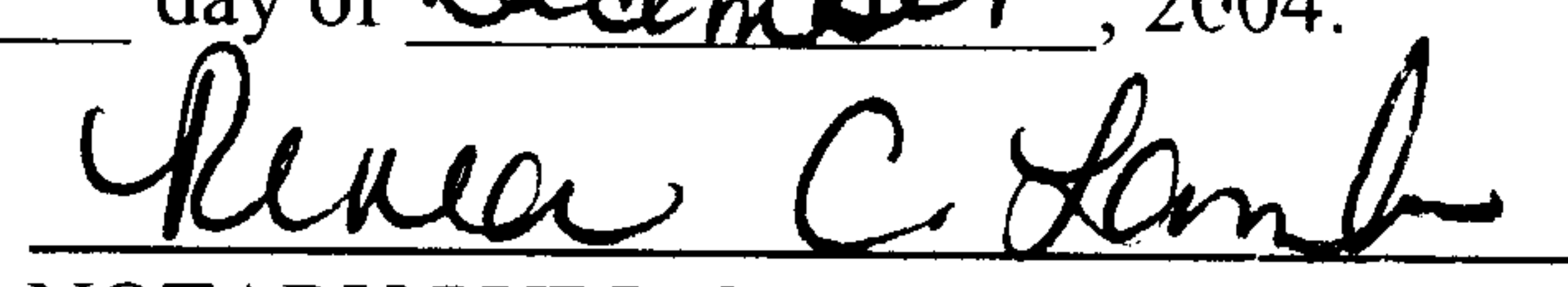
Its Member

*for Tacoa Minerals LLC*

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that JERRY C. WHITT whose name as Member of **Tacoa Minerals, 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 the instrument, he as such Member and with full authority, executed the same for and as the act of said limited liability company.

Given under my hand and official seal this 14<sup>th</sup> day of December, 2004.



NOTARY PUBLIC -

My Commission Expires:

[NOTARIAL SEAL]



20050401000150830 17/20 \$671.00  
Shelby Cnty Judge of Probate, AL  
04/01/2005 04:10:46PM FILED/CERT

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that DARYN BOOKOUT whose name as Member of **Taco Minerals, 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 the instrument, he as such Member and with full authority, executed the same for and as the act of said limited liability company.

Given under my hand and official seal this 14th day of December, 2004.

Linnea C. Lamb  
NOTARY PUBLIC -  
My Commission Expires:

[NOTARIAL SEAL]

**LENDER:**  
**SPAIN & GILLON, L.L.C.**, an Alabama limited liability  
company

By: [Signature] [SEAL]  
Its Member

This Instrument Prepared By and Upon  
Recordation Should be Returned to:

Norman M. Orr, Esq.  
Spain & Gillon, L.L.C.  
2117 Second Avenue North  
Birmingham, Alabama 35203  
(205) 328-4100



Legal description:

PARCEL I:

All that part of West half of Section 14, lying South of Norfolk Southern Railroad Right of Way, Township 21 South, Range 4 West.

PARCEL II:

A tract of land, situated in the East half of the Northeast quarter of Section 29, Township 21 South, Range 4 West of the Huntsville Principal Meridian, Shelby County, Alabama being more particularly described as follows:

Commence at the Northeast corner of Section 29, Township 21 South, Range 4 West; thence in a Westerly direction along the North boundary of said Section 180.22 feet; thence turning an angle of 50 degrees 31 minutes 33 seconds to the left in a Southwesterly direction, 482.08 feet to the point of beginning of tract herein described; thence turning an angle of 93 degrees 21 minutes 45 seconds to the left in a Southeasterly direction 96.69 feet; thence turning an angle of 61 degrees 53 minutes 18 seconds to the right in a Southwesterly direction, 323.04 feet; thence turning an angle of 16 degrees 19 minutes 28 seconds to the right in a Southwesterly direction, 801.74 feet; thence turning an angle of 20 degrees 57 minutes 16 seconds to the right in a Southwesterly direction, 303.15 feet; thence turning an angle of 55 degrees 21 minutes 07 seconds to the right in a Northwesterly direction 258.54 feet; thence turning an angle of 91 degrees 40 minutes 24 seconds to the right in a Northeasterly direction, 535.80 feet; thence turning an angle of 7 degrees 42 minutes 34 seconds to the right in a Northeasterly direction 122.28 feet; thence turning on an angle of 10 degrees 18 minutes 36 seconds to the right in a Northeasterly direction 193.10 feet; thence turning an angle of 2 degrees 11 minutes 48 seconds to the right in a Northeasterly direction, 191.47 feet; thence turning an angle of 6 degrees 59 minutes 06 seconds to the right in a Northeasterly direction, 490.22 feet; thence turning an angle of 86 degrees 36 minutes 15 seconds to the right in a Southeasterly direction, 121.64 feet to the point of beginning.

PARCEL III:

Commence at the Southeast corner of Section 20, Township 21 South, Range 4 West; thence run Northwesterly 292.73 feet along the North line of the South diagonal of the South half of the Southeast quarter of the Southeast quarter of said Section 20, Township 21 South, Range 4 West to the East right-of-way line of Southern Railway Company, said point being the point of beginning; thence continue Northwesterly 1,198.36 feet to the Northwest corner of the Southwest quarter of the Southeast quarter of the Southeast quarter of said Section 20, Township 21 South, Range 4 West; thence run Southwesterly 933.19 feet to the Southwest corner of the Southeast quarter of the Southwest quarter of the Southeast quarter of said Section





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20, Township 21 South, Range 4 West, said point also being on the South line of said Section 20, Township 21 South, Range 4 West, and also being on the North line of Section 29, Township 21 South, Range 4 West; thence run 1,361.87 feet to the Southeast corner of the Southwest quarter of the Southwest quarter of the Northwest quarter of the Northeast quarter of said Section 29, Township 21 South, Range 4 West, said point also being on the South line of the North half of the Northeast quarter of said Section 29, Township 21 South, Range 4 West; thence run Easterly 1,127.39 feet along the South line of said North half of the Northeast quarter of said Section 29, Township 21 South, Range 4 West, to a point on the West line of a tract of land quitclaimed by USX Corporation to Oak Mountain Energy Corporation by deed dated August 24, 1996; thence run Northeasterly along the West line of said tract 208.38 feet; thence turn a deflection angle to the right of 7 degrees 42 minutes 34 seconds and run Northeasterly along the West line of said tract 122.28 feet; thence turn a deflection angle to the right of 10 degrees 18 minutes 36 seconds and run Northeasterly along the West line of said tract 193.10 feet; thence turn a deflection angle to the right of 2 degrees 11 minutes 48 seconds and run Northeasterly along the West line of said tract 191.47 feet; thence turn a deflection angle to the right of 6 degrees 59 minutes 06 seconds and run Northeasterly 490.22 feet; thence turn a deflection angle to the right of 86 degrees 36 minutes 15 seconds and run Southeasterly 100 feet to the East right-of-way line of Southern Railroad Company; thence run Northeasterly along said East right-of-way line of Southern Railway Company 547.31 feet to the point of beginning.

#### PARCEL IV:

A tract of land, situated in the Northeast quarter and also in the East half of the Northwest quarter of Section 22, Township 21 South, Range 4 West more particularly described as follows:

Commence at the Northeast corner of Section 22, Township 21, South, Range 4 West; thence run Westerly along a straight line which is the North line of said Section 22, 1457.97 feet; thence turn left 90 degrees 00 minutes 19 seconds and run Southerly along a straight line 730.86 feet to the point of beginning; thence turn left 55 degrees 21 minutes 55 seconds and run Southeasterly along a straight line 199.96 feet; thence turn right 9 degrees 05 minutes 07 seconds and run Southeasterly along a straight line 190.73 feet to the centerline of a road; thence turn right 81 degrees 40 minutes 50 seconds and run Southwesterly along a straight line and along the centerline of said road 336.14 feet to the beginning of the arc of a curve tangent to straight line, said arc turning to the left, having a radius of 269.77 feet and being subtended by central angle of 43 degrees 09 minutes 15 seconds; thence in a Southwesterly direction along said arc which is the centerline of said road 203.19 feet; thence in a Southerly direction along said centerline and along a straight line tangent to said arc 94.79 feet to the beginning of the arc of a curve tangent to said straight line, said arc turning to the right, having a radius of 552.51 feet and being subtended by a central angle of 58 degrees 56 minutes 00 seconds; thence in a Southwesterly direction along said arc which is the centerline of said road 568.30 feet; thence in a Southwesterly direction along said road and along a straight line tangent to said arc 160.32 feet; thence turn right 78 degrees 15 minutes 52 seconds and run Northwesterly along a straight line 296.04 feet; thence turn left 62 degrees 53 minutes 50 seconds and run Southwesterly along a straight line 440.45 feet; thence turn right 22 degrees 46 minutes 07 seconds and run Westerly along a straight line 261.82 feet; thence turn right 46 degrees 40 minutes 01 seconds and run Northwesterly along a straight line 184.45 feet; thence turn right 28 degrees 41 minutes 00 seconds and run Northwesterly along a straight line 355.92 feet; thence turn right 0 degrees 49 minutes 02 seconds and run Northwesterly along a straight line 333.68 feet; thence turn right 40 degrees 15 minutes 31 seconds and run Northeasterly along a straight line 279.31 feet; thence turn right 14 degrees 59 minutes 29 seconds and run Northeasterly along a straight line 134.55 feet; thence turn right 25 degrees 52 minutes 33 seconds and run Northeasterly along a straight line 119.99 feet; thence turn right 12 degrees 47 minutes 52 seconds and run Northeasterly along a straight line 225.96 feet; thence turn left 5 degrees 57 minutes 24 seconds and run Northeasterly along a straight line 266.84 feet; thence turn right 60 degrees 56 minutes 19 seconds and run Southeasterly along a straight line 201.82 feet; thence turn left 20 degrees 50 minutes 53 seconds and run Southeasterly along a straight line 212.82 feet; thence turn left 67 degrees 55 minutes 36 seconds and run Northeasterly along a straight line 442.38 feet to the point of beginning.

#### PARCEL V:

A tract of land, situated in the Southwest quarter of the Southeast quarter and in the Northwest quarter of the Southeast quarter of Section 21, Township 21 South, Range 4 West, more particularly described as follows:



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Commence at the Southeast corner of Section 21, Township 21 South, Range 4 West; thence run Westerly along the South line of said Section 21, 1875.40 feet; thence turn right an angle of 90 degrees and run Northerly and at right angles to said South line 978.69 feet to the point of beginning; thence turn left an angle of 86 degrees 42 minutes 02 seconds and run Westerly 333.28 feet; thence turn right an angle of 76 degrees 00 minutes 24 seconds and run Northwesterly 444.58 feet; thence turn right an angle of 76 degrees 53 minutes 05 seconds and run Northeasterly 230.20 feet; thence turn left an angle of 26 degrees 45 minutes 26 seconds and run Northeasterly 400.06 feet; thence right an angle of 31 degrees 49 minutes and run Northeasterly 266.25 feet; thence turn right an angle of 52 degrees 51 minutes 13 seconds and run Southeasterly 128.05 feet; thence turn right an angle of 64 degrees 49 minutes 30 seconds and run Southwesterly 675.16 feet; thence turn left an angle of 21 degrees 27 minutes 52 seconds and run Southeasterly 360.58 feet; thence turn right an angle 123 degrees 39 minutes 23 seconds and run Northwesterly 408.55 feet to the point of beginning.

PARCEL VI:

A tract of land lying in the Northwest quarter of the Southwest quarter and the Northeast quarter of the Southwest quarter of Section 28, Township 21 South, Range 4 West, more particularly described as follows:

Commence at the Southwest corner of the Southwest quarter of the Southwest quarter of Section 28, Township 21 South, Range 4 West; thence run North along the West line of said Section 28 a distance of 1760.98 feet; thence turn right 90 degrees 0 minutes 00 seconds and run Easterly 1274.44 feet to the point of beginning; thence turn left 78 degrees 39 minutes 30 seconds and run Northeasterly 219.49 feet; thence turn right 89 degrees 59 minutes 56 seconds and run Southeasterly 87.15 feet; thence turn right 90 degrees 00 minutes 00 seconds and run Southwesterly 219.49 feet; thence turn right 90 degrees 00 minutes 19 seconds and run Northwesterly 87.15 feet to the point of beginning.

PARCEL VII:

A tract of land, situated in the Southeast quarter of the Northwest quarter of Section 28, Township 21 South, Range 4 West more particularly described as follows:

Commence at the Southwest corner of Section 28, Township 21 South, Range 4 West; thence run North along the West line of said Section 28 a distance of 3388.73 feet; thence turn right 90 degrees and run Easterly a distance of 1942.04 feet to the point of beginning; thence turn left 48 degrees 49 minutes 55 seconds and run Northeasterly a distance of 189.06 feet; thence turn right 72 degrees 12 minutes 18 seconds and run Southeasterly a distance of 203.99 feet; thence turn right 90 degrees 42 minutes 46 seconds and run Southwesterly a distance of 200.80 feet; thence turn right 93 degrees 52 minutes 03 seconds and run Northwesterly a distance of 260.10 feet to the point of beginning.