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Shelby Cnty Judge of Probate, AL
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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Jeremy L. Retherford
Balch & Bingham LLP
P. O. Box 306
Birmingham, Alabama 35201-0306

STATE OF ALABAMA

:

:

COUNTY OF SHELBY

:

MORTGAGE

THIS MORTGAGE (the "Mortgage") is made and entered into as of the 15th day of April, 2005, between **JOHN H. CRILLY and PAMELA J. CRILLY**, a married couple (herein called the "Borrowers"), as Mortgagor, and **BANCPARTNERS LEASING INC., f/k/a FIRST COMMERCE LEASING CORP.**, a corporation (the "Lender"), as Mortgagee.

WITNESSETH:

WHEREAS, Borrowers and Lender have entered into that certain Loan Agreement of even date herewith pursuant to which Lender has loaned Borrowers money in a total principal amount of **THIRTY-EIGHT THOUSAND EIGHT HUNDRED EIGHTY-SEVEN AND 30/100 DOLLARS (\$38,887.30)** (the "Loan"), as evidenced by the Promissory Note of even date herewith having a total principal amount of \$38,887.30 (the "Note");

WHEREAS, as security for the repayment of the Loan, Borrowers desire to grant unto the Lender a mortgage lien in and to their interest in the Real Property (as defined herein); and

WHEREAS, Lender would not have extended the Loan but for the execution and delivery of this Mortgage by the Borrowers.

NOW, THEREFORE, in consideration of the foregoing and to induce the Lender to extend the Loan, the Borrowers agree with Lender as follows:

ARTICLE I
TERMS AND DEFINITIONS

1.1 Terms. For the purposes of this Mortgage, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.

(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and do not limit or describe the scope or intent of, or in any way affect, this Mortgage.

(c) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

(d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(e) All recitals set forth hereinabove, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage by reference.

(f) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.

(g) All references in this Mortgage to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

1.2 Definitions. As used in this Mortgage, the following terms are defined as follows:

(a) "Business Day" means any day other than a Saturday, a Sunday or a day on which banking institutions are required or authorized to close in Birmingham, Alabama.

(b) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq.

(c) "Environmental Law" means any and all Governmental Requirements (including CERCLA) relating to pollution or protection of human health or the environment, including any Governmental Requirement relating to Hazardous Substances.

(d) "Event of Default" is defined in Section 5.2. An Event of Default "exists" if the same has occurred and is continuing.

(e) "Governmental Authority" means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

(f) “Governmental Requirements” means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.

(g) “Hazardous Substances” means all pollutants, contaminants, toxic or hazardous wastes and other substances (including asbestos, urea formaldehyde foam insulation and materials containing either petroleum or any of the substances referenced in Section 101(14) of CERCLA), the removal of which is required or the manufacture, use, maintenance and handling of which is regulated, restricted, prohibited or penalized by any Environmental Law, or even if not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto.

(h) “Impositions” means all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the operations thereon, the use or occupancy thereof, the Liens or other interests created by this Mortgage, the filing or recording of this Mortgage or the Obligations.

(i) “Improvements” is defined in Section 2.1(b).

(j) “Land” is defined in Section 2.1(a).

(k) “Lien” means any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement.

(l) “Loan” means, individually and collectively, all loans, forbearances, advances, disbursements and other extensions of credit now or hereafter made by the Lender to or for the account of the Borrowers pursuant to the Loan Agreement.

(m) “Loan Agreement” means that certain Loan Agreement between Borrowers and the Lender dated the date hereof.

(n) “Loan Documents” means any document, instrument or writing executed in connection with the Loan Agreement. The Loan Documents are sometimes referred to as the “Security Documents”.

(o) “Obligations” means: (1) the payment of all amounts now or hereafter becoming due and payable under the Loan Documents, including the principal amount due under the Loan, all interest thereon and all other fees, charges and costs (including attorneys' fees and disbursements) payable in connection therewith; (2) the observance and performance by the Borrowers of all of the provisions of the Loan Documents; (3) the payment of all sums advanced or paid by the Lender in exercising any of its rights, powers or remedies under the Loan Documents, and all interest (including post-bankruptcy petition interest, as aforesaid) on such sums provided for herein or therein; and (4) all renewals, extensions, modifications and

amendments of any of the foregoing, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

(p) "Obligors" means the Borrowers, each other person, if any, executing any Security Document as a surety, guarantor, endorser, or other person now or hereafter liable for the payment or performance, in whole or in part, of any of the Obligations.

(q) "Permitted Encumbrances" means other matters affecting title to all or any of the Property on the date hereof, it being represented that the Property is unencumbered by any Lien, other than: (i) that certain mortgage by Borrowers in favor of AmSouth Bank in the original principal sum of \$193,600.00, dated the third (3rd) day of February, 2003, as recorded in Instrument 20030217000096470 in the Public Records of Shelby County, Alabama; (ii) that certain equity line mortgage by Borrowers in favor of AmSouth Bank in the original principal sum of \$48,000.00, dated the third (3rd) day of February, 2003, as recorded in Instrument 20030217000096520 in the Public Records of Shelby County, Alabama; (iii) other matters of public record; and (iv) that created hereunder, on the date hereof.

(r) "Person" (whether or not capitalized) includes natural persons, sole proprietorships, corporations, trusts, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships and Governmental Authorities.

(s) "Real Property" is defined in Section 2.1(b).

(t) "Security Documents" shall have the meaning ascribed to it in Section 1.2(n) hereof.

ARTICLE II

2.1 Granting Clauses. As security for the Obligations, the Borrowers hereby grant, bargain, sell, assign and convey unto the Lender, and hereby grant to the Lender a lien and security interest in, all of the Borrowers' right, title and interest in, to and under the following property and interests in property (collectively, the "Property"):

(a) Land. The land more particularly described in Exhibit A attached hereto and herein incorporated by reference, and reversions and remainders in and to said land and all tenements, hereditaments, easements, rights-of-way, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anyway appertaining thereto, including any right, title and interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any other property, and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land; and all claims or demands of the Borrowers, at law or in equity, in possession or expectancy of, in or to any of the same (all of the foregoing hereinafter collectively called the "Land").

(b) Improvements. All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building materials, building equipment and fixtures ("fixtures" is sometime referred to herein as the "UCC Property") of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by the Borrowers (all of the foregoing hereinafter collectively called the "Improvements," and together with the Land called the "Real Property").

(c) Rents and Leases. All leases, subleases, lettings and licenses, and other use and occupancy agreements, now or hereafter pertaining to any of the Real Property and all rents, profits, issues and revenues of the Real Property now or hereafter accruing; provided, however, that if no Event of Default exists, then Borrowers shall have a license to collect and receive all of such rents, profits, issues and revenues.

(d) Insurance Policies. All policies of hazard insurance now or hereafter in effect that insure the Real Property or any other property conveyed or encumbered hereby, together with all right, title and interest of the Borrowers in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums.

(e) Litigation Awards. All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to the Borrowers or any subsequent owner of any of the Real Property or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Real Property or any other such property.

(f) Proceeds. All proceeds of any of the foregoing.

SUBJECT, HOWEVER, to the Permitted Encumbrances.

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto the Lender, its successors and assigns forever.

ARTICLE III REPRESENTATIONS AND WARRANTIES

The Borrowers represent and warrant to the Lender that:

3.1 Valid Title, Debt, etc. (a) The Borrowers are or will be lawfully seized in fee simple interest of the Real Property and are the lawful owners of, and have good title to, the remainder of the Property, and the Borrowers have good right to mortgage, assign and grant a security interest in the Property as aforesaid; (b) the Property is free of all Liens other than Permitted Encumbrances; (c) the Borrowers have full power to encumber, assign and convey the Property as provided herein; (d) this Mortgage is and will remain a valid and enforceable

mortgage lien on, and security interest in, the Property, subject only to Permitted Encumbrances; and (e) the Borrowers shall forever warrant and defend the title to the Property unto the Lender against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

3.2 Environmental Compliance. To the best knowledge of the Borrowers: (a) the Property has not been used to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substance; (b) the Property is not now, and has never been, in violation of any applicable Environmental Law; (c) there are no pending or threatened investigations or claims with respect to the Property by any Governmental Authority or other person under any Environmental Law; (d) there are no Hazardous Substances present on property adjacent to the Property that could migrate to, through or under the Property; (e) the past, current and intended uses of the Property comply and will comply with all Environmental Laws; and (f) the Borrowers have obtained all certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities required by Environmental Laws.

3.3 Certificates and Permits. (a) The Borrowers have obtained all certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the operation of the Property and the conduct of the Borrowers' business at the Real Property, if any, including all required zoning, building, land use, environmental, occupancy, fire and other approvals; (b) the present and contemplated use and occupancy of the Property does not conflict with or violate any of the same; and (c) the Borrowers, promptly upon request by the Lender, shall deliver to the Lender copies of all of the same.

ARTICLE IV COVENANTS AND AGREEMENTS OF BORROWERS

4.1 Payment of Impositions. The Borrowers shall pay or cause to be paid all Impositions and at the Lender's request shall furnish evidence of the payment thereof at least ten (10) business days before the Impositions are due. The Borrowers may, at the Borrowers' own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of the contested items shall be effectively stayed.

4.2 Insurance. The Borrowers shall keep or cause to be kept the Property insured against loss or damage by flood (if the Property is located in a flood-prone area) fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties and other contingencies as from time to time may be required by the Lender, all in such manner and with such companies and in such amounts as the Lender may approve. All such policies shall be subject to the Lender's approval and shall name the Lender as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to the Lender, to be attached to each policy) be payable to the Lender, subject to the rights of the holders of any prior mortgages. The Borrowers shall cause duplicate originals of such insurance policies (or, at the Lender's option, certificates satisfactory to the Lender) to be

deposited with the Lender. If requested by the Lender, the Borrowers shall furnish to the Lender evidence of the payment of the premiums for such policies. The Borrowers shall cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to the Lender) to give the Lender at least thirty (30) days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. The Borrowers shall not take any action or fail to take any action that would result in the invalidation of any insurance policy required hereunder. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Property in extinguishment of the Obligations, complete title to all insurance policies held by the Lender and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Property.

4.3 Damage and Destruction.

(a) Borrower's Responsibilities. In the event of any damage to or loss or destruction of the Property (which damage, loss or destruction would, immediately thereafter, result in a reduction in the value of the Property of \$5,000 or more), the Borrowers shall (1) promptly notify the Lender of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property, and (2) unless otherwise instructed by the Lender, promptly, regardless whether any insurance proceeds are sufficient for the purpose or (unless such insurance proceeds are otherwise applied by the Lender as provided herein), commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction and in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by the Lender.

(b) Lender's Rights; Application of Proceeds. If any portion of the Property is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance described in Section 4.2, then (1) the Lender may, but shall not be obligated to, make proof of loss, and may settle, adjust or compromise any claims thereunder, (2) each insurance company concerned is hereby authorized and directed to make payment therefor directly to the Lender, and (3) the Lender shall have the right to apply the insurance proceeds, first, to reimburse the Lender for all reasonable costs and expenses, including all attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and second, the remainder of such proceeds shall be applied, at the Lender's option, (A) in payment of all or any part of the Obligations in the order and manner determined by the Lender in its sole discretion (provided that the remainder of the Obligations shall continue in full force and effect and the Obligors who are obligated therefor shall not be excused from the payment thereof), (B) to the cure of any then-existing Event of Default, or (C) to the repair, restoration, or replacement, in whole or in part, of the Property. The Borrowers expressly assume all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any casualty whatsoever, whether or not insurable or insured against. The Lender shall not be liable for any failure to collect, or exercise any due diligence in the collection of, any insurance proceeds.

4.4 Condemnation.

(a) Borrowers' Responsibilities; Proceeding. The Borrowers, immediately upon obtaining knowledge thereof, shall notify the Lender of any pending or threatened proceedings for the condemnation of any of the Property or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to any of the Property. The Lender may participate in any such proceedings, and the Borrowers from time to time shall execute and deliver to the Lender all instruments requested by the Lender to permit such participation. The Borrowers shall, at the Borrowers' expense, diligently prosecute any such proceedings, deliver to the Lender copies of all papers served in connection therewith and consult and cooperate with the Lender, its attorneys and agents, in carrying on and defending any such proceedings. No settlement of any such proceedings shall be made by the Borrowers without the Lender's consent, not to be unreasonably withheld.

(b) Lender's Rights to Proceeds. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to the Lender. The Borrowers authorize the Lender to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Lender shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) Application of Proceeds. The Lender shall have the right to apply any proceeds, judgments, decrees or awards referred to in Section 4.4(b), first, to reimburse the Lender for all reasonable costs and expenses, including attorneys' fees and disbursements, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof in the same manner as provided in Section 4.3(b) with respect to insurance proceeds.

4.5 Liens and Liabilities.

(a) Discharge of Liens. The Borrowers shall pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others that, if unpaid, might result in, or permit the creation of, a Lien on any of the Property, and in general, the Borrowers shall do, or cause to be done, at the Borrowers' sole cost and expense, everything necessary to fully preserve the Lien and priority of this Mortgage.

(b) Creation of Liens. The Borrowers shall not, without the Lender's consent, create, place or permit to be created or placed, or allow to remain, any voluntary or involuntary Lien on any of the Property, whether prior to, on a parity with or subordinate to the Lien of this Mortgage, other than Permitted Encumbrances. If any such Lien is created or placed on the Property without the Lender's consent, the Borrowers shall cause the same to be discharged, released or bonded off to the Lender's satisfaction within ten (10) days after the filing thereof.

(c) No Consent. Nothing in the Loan Documents shall be deemed or construed as constituting the consent or request by the Lender, express or implied, to any contractor, subcontractor, laborer, mechanic or materialmen for the performance of any labor or the furnishing of any material for any improvement, construction, renovation, alteration or repair of the Property. The Borrowers agree that the Lender does not stand in any fiduciary relationship to the Borrowers by reason of the transactions contemplated by the Loan Documents.

4.6 Operations; Utilities; Waste, Demolition, Alteration or Replacement. The Borrowers shall: (a) not engage in any activity that would diminish the value of the Property or decrease the income from the Property; (b) pay or cause to be paid all bills for utilities and other materials and services used on or in connection with the Property; (c) cause the Property and every part thereof to be maintained and kept in good and safe repair, working order and condition; (d) not commit or permit waste thereon; (e) not remove, demolish or alter the design or structural character of any Improvements; and (f) make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. The Borrowers shall not remove from the Real Property any of the fixtures included in the Property unless the same are immediately replaced with like property of at least equal value and utility.

4.7 Sale, Lease or Transfer, etc.

(a) Real Property. The Borrowers shall not (1) sell, assign, transfer, convey, lease with an option to purchase, exchange or otherwise dispose of, any of the Real Property or any interest therein; (2) contract with any person for any of the foregoing; or (3) subject any of the Real Property or any interest therein to any additional Lien, either voluntarily or involuntarily.

(b) Lender's Rights. The occurrence of any of the events described in Section 4.7(a) will constitute an Event of Default under this Mortgage, and the Lender may, in its sole discretion, exercise any of its rights and remedies on default under Section 5.3 or require the payment after the date of such occurrence of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such rights and remedies, whether such rights and remedies be exercised by the Lender to obtain a higher rate of interest on the Obligations or to protect the security afforded by this Mortgage.

(c) Lender's Reliance. The Borrowers acknowledge the Lender's express reliance on this Section 4.7 in extending the Loan under the Loan Documents based on the security of this Mortgage.

4.8 Use, Governmental Compliance, etc. The Borrowers shall (a) use the Property solely in the manner contemplated by the Loan Documents or otherwise permitted in writing by the Lender; (b) maintain all Governmental Permits necessary for the use of the Property and the conduct of any business or commercial activity on the Real Property, including all required zoning, building, land use, environmental, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Property or any business or

activity conducted on the Real Property; and (d) not permit any act to be done on the Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto.

4.9 Zoning; Title Matters. The Borrowers shall not: (a) initiate or support any zoning reclassification of the Property or seek any variance under existing zoning laws or use or permit the use of the Property in a manner that would result in such use becoming a non-conforming use under, or otherwise violate, applicable zoning laws; (b) modify, amend or supplement any Permitted Encumbrances in any manner that would materially increase the obligations or decrease the rights of the Borrowers or adversely affect the rights of the Lender under the Loan Documents; (c) subject the Property to any restrictive covenants or encumbrances (other than the Permitted Encumbrances), execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality; or (d) permit the Property to be used by the public or any person in any manner that might make possible a claim of adverse possession or of any implied dedication easement or easement by prescription.

4.10 Environmental Compliance. The Borrowers shall (a) not, and shall not permit any other person to, bring any Hazardous Substances on to the Property; (b) if any Hazardous Substances are brought or found on the Property, immediately and properly remove and dispose of them in accordance with applicable Environmental Laws; (c) cause the Property and all operations conducted thereon (including all operations conducted thereon by other persons) to comply with all Environmental Laws; (d) permit the Lender from time to time to inspect the Property and observe the Borrowers' operations thereon and to perform tests (including soil and ground water tests) for Hazardous Substances on the Property; (e) undertake all preventive, investigatory and remedial action -including emergency response, removal, clean up, containment and other remedial action) that is (1) required by any applicable Environmental Law or (2) necessary to prevent or minimize any property damage (including damage to any of the Property), personal injury or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or the operations of the Borrowers on the Property; (f) promptly give notice to the Lender in writing if the Borrowers should become aware of (1) any spill, release or disposal of any Hazardous Substances, or imminent threat thereof, at the Property, in connection with the operations on the Property, or at any adjacent Property that could migrate to, through or under the Property, (2) any violation of Environmental Laws regarding the Property or operations on the Property, and (3) any investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving the Borrowers or the Property; and (g) deliver to the Lender, at the Lender's request, copies of any and all documents in the Borrowers' possession or to which the Borrowers have access relating to Hazardous Substances or Environmental Laws and the Property, and the operations on the Property, including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports. If the Lender at any time reasonably believes that the Borrowers are not complying with all applicable Environmental Laws or the requirements of this Mortgage regarding the same, or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, or if any other Event of Default exists, the Lender may

require the Borrowers to furnish to the Lender an environmental audit or site assessment reasonably satisfactory to the Lender with respect to the matters of concern to the Lender. Such audit or assessment shall be performed at the Borrowers' expense by a qualified consultant approved by the Lender.

4.11 Maintenance of Lien Priority. The Borrowers shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property purported to be created by this Mortgage. The Borrowers shall execute, acknowledge, deliver, file and record such additional instruments as the Lender may deem necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as second priority Liens on the Property, subject to Permitted Encumbrances, or to subject after-acquired property or proceeds or proceeds to such Liens. If the Liens, validity or priority of this Mortgage, or if title to any of the rights of the Borrowers or the Lender in or to the Property shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against the Borrowers or the Lender with respect thereto, the Borrowers shall promptly notify the Lender thereof and shall diligently endeavor to cure any defect that may be claimed, and shall take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of the litigation, and subject to the Lender's approval, the compromise, release or discharge of any and all adverse claims other than Permitted Encumbrances. The Lender (whether or not named as a party to such actions or proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the Liens, validity or priority of this Mortgage, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of adverse claims, and the removal of prior Liens. The Borrowers shall, on demand, reimburse the Lender for all expenses (including attorney's fees and disbursements) reasonably incurred by the Lender in connection with any of the foregoing matters.

4.12 Permitted Encumbrances. The Borrowers shall not permit any default or violation to occur with respect to any agreement, covenant or restriction included in Permitted Encumbrances.

ARTICLE V DEFEASANCE, DEFAULT AND REMEDIES

5.1 Defeasance. This Mortgage is made upon the condition that if: (a) all of the Obligations (as defined in Section 1.2(o), including all future advances and other future indebtednesses, obligations and liabilities included therein) are paid in full; and (b) the Borrowers reimburse the Lender for any amounts the Lender has paid in respect of Liens, Impositions, prior mortgages, insurance premiums, repairing or maintaining the Property, performing the Borrowers' obligations under any lease related to the Real Property, performing the Borrowers' obligations under Section 4.10 with respect to environmental matters, and any other advancements hereunder, and interest thereon; and (c) the Borrowers fulfill all of the Borrowers' other obligations under this Mortgage; and (d) the Lender has no obligation to extend any further Loan to or for the account of the Borrowers and there is in existence no contingent

liability of the Borrowers that is secured by this Mortgage; and (e) any other conditions set forth in Section 6.16 are fulfilled, this conveyance shall be null and void upon the filing by the Lender of the written instrument of termination described in Section 6.16.

5.2 Events of Default. The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Mortgage (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, order, rule or regulation of any Governmental Authority):

(a) If an Event of Default (as defined therein) shall occur under the Loan Agreement;

(b) Except for Permitted Encumbrances, if any Lien, statement of Lien or suit to enforce a Lien is filed against any of the Property and the Borrowers fail to have such Lien satisfied or suit dismissed or to secure the payment of the amount claimed by such Lien, statement of Lien or suit by a bond, letter of credit or other security satisfactory to the Lender within ten days of the day such Lien, statement of Lien or suit is filed; or

(c) If the Borrowers breach or fail to comply with or perform any covenant or condition contained in this Mortgage.

5.3 Rights and Remedies of Lender Upon Default.

(a) Acceleration of Obligations. Upon the occurrence of an Event of Default, the Lender shall have the right without further notice to the Borrowers (except any such notice as may be specifically required under the other Loan Documents) to declare all of the Obligations immediately due and payable.

(b) Possession and Operation of Property. If an Event of Default exists, in addition to all other rights herein conferred on the Lender, the Lender (or any person designated by the Lender) may, but will not be obligated to: (1) enter upon the Real Property and take possession of any or all of the Property without being guilty of trespass or conversion, exclude the Borrowers therefrom, and hold, use, administer, manage and operate the same to the extent that the Borrowers could do so, without any liability to the Borrowers resulting therefrom; (2) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (3) make repairs and purchase needed additional property; (4) insure or reinsure the Property; (5) maintain and restore the Property; (6) prepare the Property for resale, lease or other disposition; (7) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (8) exercise every power, right and privilege of the Borrower with respect to the Property.

(c) Foreclosure. If an Event of Default exists, the Lender shall have the right to enter upon and take possession of the Property and after, or without, taking such possession of the same, sell the Property at public outcry, in front of the courthouse door of the county wherein said Property is located, to the highest bidder for cash, either in person or by auctioneer, after

first giving notice of the time, place and terms of such sale by publication once a week for three (3) consecutive weeks in some newspaper published in said county, and upon the payment of the purchase money, the Lender or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Property so purchased in the name and on behalf of Borrowers, and the certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises; or the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages, with or without a receiver to be appointed by such court. The Lender, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of said Property if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been, necessary in any one or more of the foreclosures of this Mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Borrowers, or anyone liable for said indebtedness, or interested in the Property, to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this Lender; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this Mortgage, together with interest thereon; (c) to the payment and satisfaction of the Obligations not paid; subject, however to the limitation contained in Section 2.2 hereof; and (d) the balance, if any, shall be paid over to Borrowers, or Borrowers' successors or assigns; and Borrowers further agree to pay reasonable attorney's fees and costs of court to Lender in the event Lender elects, at its option, to file foreclosure proceedings with respect to this Mortgage in equity or any other court of competent jurisdiction, said attorney's fees and costs of court to be a part of the debt secured hereby. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

(d) Fixtures. If an Event of Default exists, the Lender shall have with respect to the Fixtures all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the UCC Property or its value and without the necessity of a court order. At the Lender's request, the Borrowers shall assemble the UCC Property and make it available to the Lender at any place designated by the Lender. To the extent permitted by law, the Borrowers expressly waive notice and any other formalities prescribed by law with respect to any sale or other disposition of the UCC Property or exercise of any other right or remedy upon default. The Borrowers agree that the Lender may sell or dispose of both the Real Property and the UCC Property in accordance with the rights and remedies granted under this Mortgage with respect to Real Property.

5.4 Default Rate. If an Event of Default exists, the Obligations shall bear interest at the Default Rate, until the earlier of (a) such time as all of the Obligations are paid in full or (b) no such Event of Default exists.

5.5 Remedies Cumulative. The rights, powers and remedies of the Lender under this Mortgage are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.

ARTICLE VI MISCELLANEOUS

6.1 Notices.

(a) Methods. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Mortgage to be made upon, given or furnished to, or filed with, the Borrowers or the Lender must (except as otherwise expressly provided in this Mortgage) be in writing and be delivered by first-class, registered or certified mail, postage prepaid, addressed as specified below.

(b) Addresses. The mailing address for receipt of notice or other documents by such parties are as follows:

(i) Borrowers:

John H. Crilly
Pamela J. Crilly
Aquapure Water Systems, LLC
140 North Yeager Court
Pelham, Alabama 35124

(ii) Lender:

BancPartners Leasing, Inc., f/k/a First Commerce Leasing Corp.
100 Centreview Drive
Suite 240
Birmingham, Alabama 35216

Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Section 6.1.

(c) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, director, partner or other legal representative of the party) at the address or number specified pursuant to Section 6.1(b), or, if sent by mail, three Business Days after such notice or document is deposited in the United States mail, addressed as provided above.

(d) Five Business Days' written notice to the Borrowers as provided above shall constitute reasonable notification to the Borrowers when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five

Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

6.2 Expenses. The Borrowers shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to the Lender, incurred by the Lender in connection with: (a) the negotiation, preparation and review of this Mortgage (whether or not the transactions contemplated by this Mortgage shall be consummated); (b) the enforcement of this Mortgage; (c) the custody and preservation of the Property; (d) the protection or perfection of the Lender's rights and interests under this Mortgage in the Property; (e) the exercise by or on behalf of the Lender of any of its rights, powers or remedies under this Mortgage; and (f) the prosecution or defense of any action or proceeding by or against the Lender, the Borrowers, any other Obligor, or any one or more of them, concerning any matter related to this Mortgage, any of the Property, or any of the Obligations. All such amounts shall bear interest from the date demand is made at the Default Rate and shall be included in the Obligations secured hereby. The Borrowers' obligations under this Section 6.2 shall survive the payment in full of the Obligations and the termination of this Mortgage.

6.3 Heirs, Successors and Assigns. Whenever in this Mortgage any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party, except that the Borrowers may not assign or transfer this Mortgage without the prior written consent of the Lender; and all covenants and agreements of the Borrowers contained in this Mortgage shall bind the Borrowers' heirs, successors and assigns and shall inure to the benefit of the successors and assigns of the Lender.

6.4 Joint and Several Liability. All of the Borrowers' representations, warranties, covenants and agreements under this Mortgage shall be joint and several and shall be binding on and enforceable against either, any or all persons comprising the Borrowers. If any one or more of the Borrowers is in default, the Lender may exercise its remedies on default against any or all of the persons comprising the Borrower.

6.5 Independent Obligations. The Borrowers agree that each of the obligations of the Borrowers to the Lender under this Mortgage may be enforced against the Borrowers without the necessity of joining any other Obligor, any other holders of Liens in any Property or any other person, as a party.

6.6 Governing Law. This Mortgage shall be construed in accordance with and governed by the internal laws of the State of Alabama.

6.7 Date of Mortgage. The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.

6.8 Severability Clause. If any provision of the Loan Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

6.9 Waiver and Election. The exercise by the Lender of any option given under this Mortgage shall not constitute a waiver of the right to exercise any other option. The filing of a suit to foreclose the Liens granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later or simultaneous suit to collect the Obligations or foreclose by judicial foreclosure the Liens granted by this Mortgage. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Loan Documents, nor consent to any departure by the Borrowers therefrom, shall be effective unless in writing and signed by an authorized officer of the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrowers in any case shall entitle the Borrowers to any other or further notice or demand in similar or other circumstances.

6.10 No Obligations of Lender; Indemnification. The Lender does not by virtue of this Mortgage or any of the transactions contemplated by the Loan Documents assume any duties, liabilities or obligations with respect to any of the Property unless expressly assumed by the Lender under a separate Mortgage in writing, and this Mortgage shall not be deemed to confer on the Lender any duties or obligations that would make the Lender directly or derivatively liable for any person's negligent, reckless or willful conduct. The Borrowers agree to indemnify and hold the Lender harmless against and with respect to any damage, claim, actions, loss, cost, expense, liability, penalty or interest (including attorney's fees) and all cost and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments (collectively, "claims and losses") directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the Borrowers or any Obligor in this Mortgage or any other Loan Document; (b) any breach of any of the warranties or obligations of the Borrowers or any Obligor under this Mortgage or any other Loan Document; and (c) the Property, or the Liens of the Lender thereon. Without limiting the generality of the foregoing, the Borrowers agree that the Borrowers' obligation to defend, indemnify and save harmless the Lender set forth in this Section 6.10 shall specifically include all claims and losses asserted against or suffered by the Lender that are related to or arise out of (1) any representations or warranties in Section 3.2 that prove to be false or untrue in any material respect, (2) any default in the performance or non performance of the Borrowers' covenants and agreements in Section 4.11, and (3) any clean up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Property, that may be required by any Environmental Law or Governmental Authority. The provisions of this Section 6.10 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Mortgage.

6.11 Advances by the Lender. If the Borrowers shall fail to comply with any of the provisions of this Mortgage, the Lender may (but shall not be required to) make advances to

perform the same, and where necessary enter the Property for the purpose of performing the Borrowers' obligations under any such provision. The Borrowers agree to repay all such sums advanced upon demand, with interest from the date such advances are made at the Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Lender of any Event of Default resulting from the Borrowers' failure to pay such amounts.

6.12 Rights, Liens and Obligations Absolute. All rights of the Lender hereunder, all Liens granted to the Lender hereunder, and all obligations of the Borrowers hereunder, shall be absolute and unconditional and shall not be affected by: (a) any lack of validity or enforceability as to any other person of any of the Loan Documents; (b) any change in the time, manner or place of payment of, or any other term of the Obligations; (c) any amendment or waiver of any of the provisions of the Loan Documents as to any other person; and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

6.13 Construction of Mortgage. This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security deed, pledge, financing statement, fixture filing, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and Mortgages herein set forth.

6.14 Fixture Filing. This Mortgage shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Real Property. The Borrowers are the debtor, and the Lender is the secured party. The names of the debtors (Borrowers) and the secured party (Lender) are given in the first paragraph of this Mortgage. This Mortgage is signed by the debtors (Borrowers) as a fixture filing. The mailing address of the Lender set out in Section 6.1(b) is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Borrowers set out in Section 6.1(b) is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section 6.14 and in Section 2.1. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Borrowers are record owners of the real estate.

6.15 Other Mortgages Encumbering the Real Property.

(a) Authorization to Disclose. The Borrowers hereby authorize the holder of any other mortgage encumbering any of the Real Property to disclose to the Lender at any time the following information: (1) the amount of debt secured by such mortgage; (2) the amount of such debt that is unpaid; (3) whether such debt is or has been in arrears; (4) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (5) any other information regarding such mortgage or the debt secured thereby that the Lender may request from time to time.

(b) No Amendments; Default, etc. The Borrowers agree to comply with the terms of any other mortgage encumbering any of the Real Property and agree not to consent to or permit any amendment or modification thereof without the prior written consent of the Lender. The Borrowers further agree not to permit any default to occur under any other mortgage encumbering any of the Real Property, but that if any default should be made in the payment of principal, interest or any other sum secured by any such mortgage, the Lender may (but shall not be required to) pay all or any part of such amount in default, without notice to the Borrowers. Any such action by the Lender shall not cure any Event of Default created under this Mortgage by virtue of the default in the other mortgage.

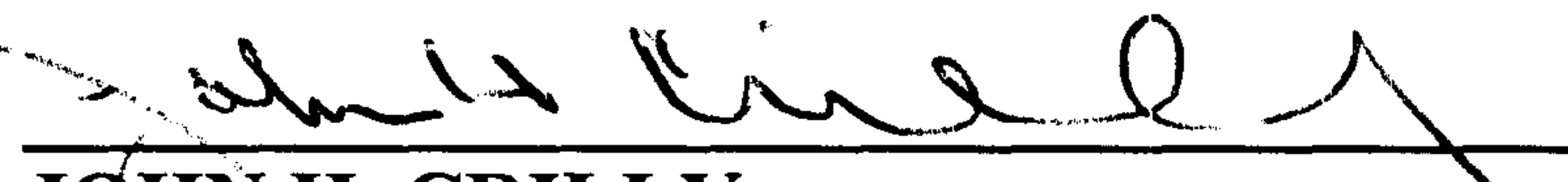
6.16 Termination. This Mortgage and the Lender's Liens under this Mortgage in the Property will not be terminated until a written mortgage satisfaction instrument executed by one of the Lender's duly authorized representatives is filed for record in the county in which the Land is located. Except as otherwise expressly provided in this Mortgage, no satisfaction of this Mortgage shall in any way affect or impair the representation, warranties, Mortgages or other obligations of the Borrowers or the powers, rights and remedies of the Lender under this Mortgage with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction. Even if all of the Obligations owing to the Lender at any one time should be paid in full, this Mortgage will continue to secure any Obligations that might later be owed to the Lender until such mortgage satisfaction instrument has been executed and recorded. In no event shall the Lender be obligated to satisfy its Liens under this Mortgage or return or release any of the Property to the Borrowers: (a) until the payment in full of all Obligations then outstanding; (b) if the Lender is obligated to extend Loan to the Borrowers; (c) if any contingent obligation of the Borrowers to the Lender remains outstanding; or (d) until the expiration of any period for avoiding or setting aside any payment to Lender under bankruptcy or insolvency laws.

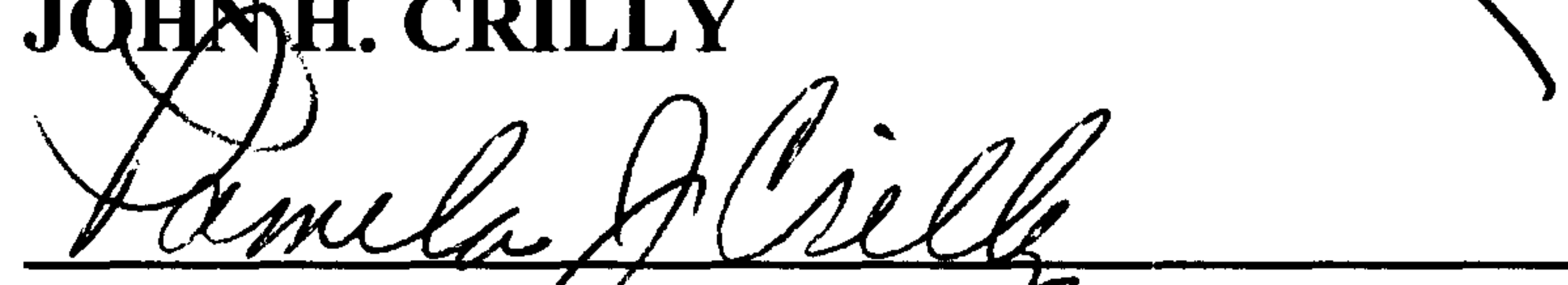
6.17 Reinstatement. This Mortgage, the obligations of the Borrowers hereunder, and the Liens, rights, powers and remedies of the Lender hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to the Borrowers, any Obligor, or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrowers, any Obligor or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

6.18 Waiver of Homestead Exemption. Borrowers hereby release and waive all rights and benefits of the homestead exemption laws of the State of Alabama as to all Obligations secured by this Mortgage.

IN WITNESS WHEREOF, Borrowers have executed this Mortgage as of the date first set forth above.

BORROWERS:



JOHN H. CRILLY


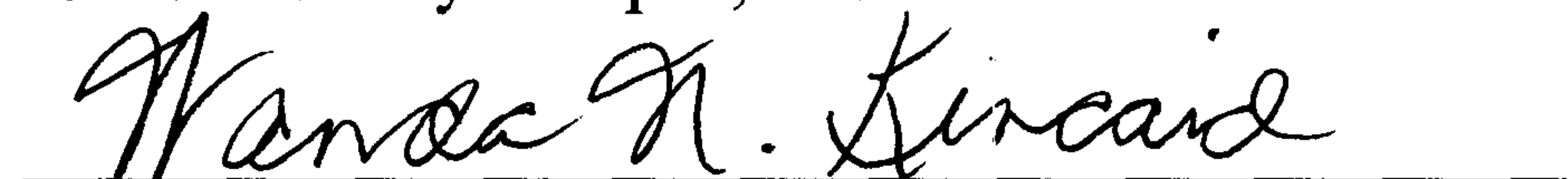
PAMELA J. CRILLY

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **JOHN H. CRILLY**, whose name 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 executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal on this the 15th day of April, 2005.

[SEAL]



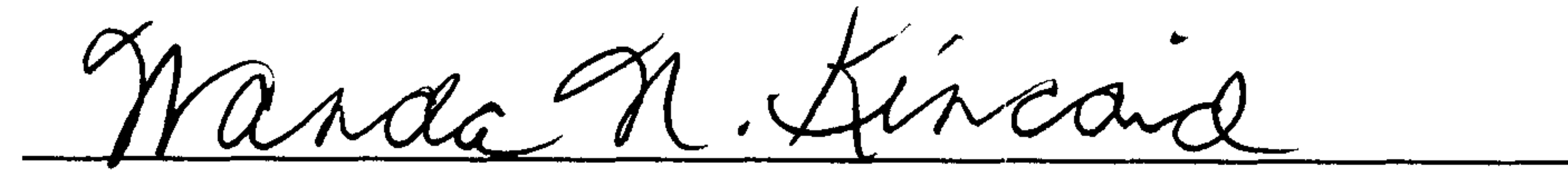
NOTARY PUBLIC
My Commission Expires: 2/19/09

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **PAMELA J. CRILLY**, whose name 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, she executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal on this the 15th day of April, 2005.

[SEAL]



NOTARY PUBLIC
My Commission Expires: 2/19/09

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Shelby Cnty Judge of Probate, AL
04/20/2005 11:04:35AM FILED/CERT

EXHIBIT A

DESCRIPTION OF PROPERTY

Lot 34, together with an undivided 1/43rd interest in Lot 44 (common Area) according to the Survey of The Oaks, as recorded in Map Book 10, Page 89 in the Office of the Judge of Probate of Shelby County, Alabama.