

**THIS INSTRUMENT WAS PREPARED BY:**

Gary A. Bryant, Esq.  
Mock, Schwabe, Waldo, Elder,  
Reeves & Bryant  
Two Leadership Square, 14th Floor  
211 North Robinson  
Oklahoma City, Oklahoma 73102

in consultation with Alabama counsel

**WHEN RECORDED MAIL TO:**

Gary A. Bryant, Esq.  
Mock, Schwabe, Waldo, Elder,  
Reeves & Bryant  
Two Leadership Square, 14th Floor  
211 North Robinson  
Oklahoma City, Oklahoma 73102

Space above for Recorder's Use

**ASSIGNMENT OF LEASES, RENTS AND PROFITS**

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS (the "Assignment") is made and entered into effective as of the 28<sup>th</sup> day of June, 2005, by and between **SPD PROPERTIES, LLC**, an Alabama limited liability company ("Assignor"), having its principal office c/o Inkana Properties, 2501 20th Place South, Suite 225, Birmingham, Alabama 35223, to and for the benefit of **MIDFIRST BANK**, a federally chartered savings association ("Assignee"), having its mailing address at P.O. Box 26750, Oklahoma City, OK 73126, with reference to the following:

(a) Assignor, as borrower, has signed and delivered to Assignee a certain \$4,080,000.00 Promissory Note of even date herewith (the "Note").

(b) The Note is secured, without limitation, by a certain Leasehold Mortgage, Security Agreement, Assignment of Rents & Profits and Fixture Filing of even date herewith (the "Mortgage"), signed by Assignor, as grantor, to Assignee, and covering, without limitation, the real property in Shelby County, Alabama, described on Exhibit "A" attached hereto and incorporated herein, together with all improvements and fixtures now or hereafter located on such real property and all appurtenances thereunto belonging (collectively, the "Mortgaged Property").

(c) By means of this Assignment, Assignor will provide a source for payment and performance of each of the covenants, liabilities, agreements, promises and obligations of Assignor contained in the Note, the Mortgage, this Assignment and all other documents executed in connection therewith (collectively, the "Loan Documents").



NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby absolutely and unconditionally assign, grant, transfer and set over unto Assignee (i) all right, title and interest of Assignor in and to all leases of the Mortgaged Property now existing or hereafter executed, (ii) all extensions, modifications or renewals of such leases, (iii) all guaranties of lessees' obligations under leases covering the Mortgaged Property, together with all modifications, amendments, extensions or renewals thereof, (iv) any and all security deposits received by Assignor or any agent of Assignor in connection with any such leases, and (v) all of the rents, issues and profits now due or to become due from the Mortgaged Property, now existing or which may come into being in the future in such Mortgaged Property or under the leases hereby assigned.

This Assignment is executed, acknowledged and delivered to secure payment and performance of the following described indebtedness and obligations of Assignor: (i) all principal, interest, after-default interest, prepayment premiums, charges and fees due under the Note, the original of which is maintained at the office of Assignee, and the terms and provisions of which are incorporated herein by reference as if fully set forth herein, together with any and all extensions, renewals, modifications, amendments, rearrangements, consolidations, substitutions and changes in form thereof; and (ii) any and all future advances which may be made to Assignor by Assignee, in connection with the Mortgaged Property; and (iii) any and all other indebtedness, of whatever kind or character, now owing or that may hereafter become owing by Assignor to Assignee; and (iv) any and all sums which Assignee may expend or become obligated to expend, at Assignee's option, to cure any breach or default of Assignor under this Assignment, together with interest on all sums from the respective dates which Assignee may expend or become obligated to expend at the after-default rate of interest set forth in the Note or the highest rate permitted by law, whichever is less; and (v) any and all amounts which Assignee may expend or become obligated to expend in collecting the Secured Indebtedness or the rents herein assigned, in foreclosing the lien of the Mortgage, in preserving or protecting the Mortgaged Property, or in pursuing or exercising any right or remedy hereunder, including, but not limited to, reasonable attorneys' fees, court costs, abstracting expenses, receivers' fees, appraisers' fees, watchmen's fees, storage fees and other expenses reasonably incurred to protect and preserve the Mortgaged Property or in maintaining the priority of this Assignment or in retaking, holding, preparing for sale or selling the Mortgaged Property, together with interest on all such sums which Assignee may expend, accrued from the respective dates of expenditure at the after-default rate of interest set forth in the Note or the highest rate permitted by law, whichever is less, and (vi) all of Borrower's covenants, agreements, promises and obligations in the Note, the Mortgage, this Assignment and/or any of the other Loan Documents (all of the above-described indebtedness and obligations are collectively referred to as the "Secured Indebtedness"). As used herein, an "Event of Default" or "default" means any one of the following events: (i) the existence of a default or Event of Default as defined under any of the other Loan Documents; or (ii) any failure by Assignor to perform any obligation hereunder, or the failure of any representation or warranty of Assignor herein to be true.

This Assignment is made subject to the following covenants, conditions and agreements:

1. LICENSE; REVOCATION OF LICENSE. Until the occurrence of an Event of Default under the Note, the Mortgage, this Assignment or any of the other Loan Documents, and



the continuance of such Event of Default after such notice of the Event of Default and such opportunity to cure the Event of Default as may be required by the Note, Assignor shall have the right under the license hereby granted (but limited as herein provided) to collect the rents, issues and profits from the Mortgaged Property. In the exercise of such license, Assignor agrees to collect such issues, rents and profits and hold the same as trust funds to be applied: first, to the payment of taxes and assessments against the Mortgaged Property; second, to the cost of insurance, maintenance and repairs required by the terms of the Mortgage; third, to the payment of the Secured Indebtedness as it becomes due, provided that all of the Secured Indebtedness shall become due on acceleration of the maturity of the Note; and fourth, to the payment of reasonable costs in operating and managing the Mortgaged Property. Upon the occurrence of an Event of Default under the Note, the Mortgage, this Assignment or any of the other Loan Documents and the continuance of such Event of Default after such notice of the Event of Default and such opportunity to cure the Event of Default as may be required by the Note, then Assignee, at its option and without further notice, shall have the immediate and continuing right to terminate the license hereby granted to Assignor to collect rents, issues and profits from the Mortgaged Property, and Assignee shall have the right and authority, at its option, to enter upon the Mortgaged Property either by Assignee's agents or employees, or by a receiver appointed by a court, who may be appointed upon *ex parte* application, and whether or not it enters upon or takes possession of the Mortgaged Property, to demand, collect, receive, sue for and recover, by its officers, agents, employees or the receiver, in the name of Assignor, or in its own name as assignee, directly from all tenants of the Mortgaged Property the rents, issues and profits thereof, whether accruing or past due, including, without limitation, all rents thereafter accruing and becoming payable during the period of said or any other default. Assignor hereby consents to the appointment of a receiver or receivers, *ex parte*, and waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Assignee. Assignor also authorizes Assignee upon such entry, at its option, to take over and assume the management, operation and maintenance of the Mortgaged Property, and in general to perform all actions necessary in connection therewith in the same manner and to the same extent as Assignor might so act. Upon electing to exercise the rights herein granted, Assignee may make reasonable effort to collect the rents, reserving, however, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, but it shall not be accountable for more money than it actually receives from the Mortgaged Property, and shall not be liable for failure to collect rents. A default by Assignor under this Assignment shall constitute a default under the Note, the Mortgage and all other Loan Documents. Assignor will execute any further instruments necessary or required by Assignee to evidence or to perfect the transfer to Assignee of the leases, rents and profits of the Mortgaged Property. Notwithstanding any language in this Assignment seemingly to the contrary, neither the acceptance by the Assignee of the assignment granted in this paragraph 1, nor the granting of any other right, power, privilege or authority in this Assignment, nor the exercise of any of the aforesaid shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by the Assignee be deemed to constitute the Assignee as a "mortgagee in possession"; or (b) bind the Assignee to the performance of any of the covenants, conditions or provisions contained in any such lease or other document or otherwise to impose any obligation on the Assignee (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease or in any law of any applicable state in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Assignment and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Mortgaged Property), or (c) at any time thereafter obligate the Assignee



(i) to appear in or defend any action or proceeding relating to the leases, the rents, issues or profits thereof so assigned or the remainder of the Mortgaged Property, (ii) to take any action hereunder, (iii) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any lease assigned hereunder, (iv) to assume any obligation or responsibility for any deposits which are not physically delivered to the Assignee, or (v) for any injury or damage to person or property sustained in or about the Mortgaged Property.

2. APPLICATION OF RENTS BY ASSIGNEE. All sums collected and received by Assignee out of the rents, issues and profits of such Mortgaged Property may be applied to the payment of the following, in such order and priority as Assignee may determine, in its sole subjective discretion:

- (a) The reasonable costs of collection of such rents, issues and profits;
- (b) The Secured Indebtedness, in such order and priority as Assignee may determine, in its sole subjective discretion;
- (c) The reasonable costs of management of the Mortgaged Property;
- (d) The repairs and upkeep of the Mortgaged Property deemed necessary by Assignee, including without limitation, the purchase of such additional furniture and equipment as Assignee in its sole subjective discretion may deem necessary for the maintenance of a proper rental value of the Mortgaged Property;
- (e) All taxes, assessments, premiums for public liability insurance and insurance premiums payable by Assignor as provided in the Mortgage; and
- (f) Any taxes imposed upon or collectible by Assignee under any federal or state law or any law or ordinance enacted by any political subdivision thereof or any supplements or amendments thereto, provided, however, that such tax shall be based upon the employment by Assignee of persons necessary to the operation of the Mortgaged Property.

3. NO CREDIT. Notwithstanding the provisions of paragraph 2 hereof, no credit shall be given by Assignee for any sum or sums received from the rents, issues and profits of the Mortgaged Property until the money collected is actually received by Assignee at its principal office or at such other place as Assignee shall designate in writing, and no credit shall be given for any uncollected rents or other uncollected amounts or bills, nor shall credit be given for any rents, issues and profits derived from the Mortgaged Property after Assignee obtains possession of the Mortgaged Property under order of court or by operation of law.

4. APPOINTMENT OF AGENTS. Upon occurrence of an Event of Default under the Note, the Mortgage, this Assignment or any of the other Loan Documents, and the continuance of such Event of Default after such notice of the Event of Default and such opportunity to cure the Event of Default as may be required by the Note, Assignee may appoint and dismiss such agents or employees as shall be necessary for the collection of the rents, issues and profits, and for



the proper care and operation of the Mortgaged Property, and Assignor hereby grants to such agents or employees so appointed full and irrevocable authority on Assignor's behalf to manage the Mortgaged Property and to do all acts relating to such management, including among others the making of new leases in the name of Assignor or otherwise, the alteration or amendment of existing leases, the authorization of repairs or replacements to maintain the building or buildings and chattels incidental thereto in good and tenantable condition and the making of such alterations or improvements as in the reasonable judgment of Assignee may be necessary to maintain or increase the income from the Mortgaged Property. Assignee shall have the sole control of such agents or employees whose remuneration shall be paid out of the rents, issues, and profits as hereinbefore provided, at the rate of compensation accepted in the community wherein the Mortgaged Property is situated unless otherwise specified, and Assignor hereby expressly releases Assignee from any liability to Assignor for the acts of such agents, and agrees that Assignee shall not be liable for their neglect or for monies that may come into the possession of such agents.

5. NO LIMITATION OF RIGHTS. Assignor agrees that nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted in the Note, the Mortgage and/or any of the other Loan Documents. The collection and application of the rents, issues and profits as above described shall not constitute waiver of any default which might at the time of application or thereafter exist under the Note, the Mortgage, this Assignment and/or any of the other Loan Documents, and the exercise by Assignee of the rights herein provided shall not prevent Assignee's exercise of any rights provided under any of the other Loan Documents.

6. ASSIGNOR'S WARRANTIES. In addition to all other representations and warranties by Assignor in this Assignment, Assignor hereby represents and warrants to Assignee that:

(a) Assignor is the sole owner of landlord's interest under the leases hereby assigned, is entitled to receive the rents, issues, profits and security deposits under the leases and from the Mortgaged Property, and has good right to sell, assign, transfer and set over the same and to grant to and confer upon Assignee the rights, interests, powers and authorities herein granted and conferred.

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

(c) Assignor has not done any acts nor omitted to do any act which might prevent Assignee, or limit Assignee in acting under any of the provisions of this Assignment.

(d) Assignor has not accepted rent under any of the leases hereby assigned more than sixty (60) days in advance of its due date.

(e) Except as expressly disclosed to Assignee by Assignor in writing on or before the date hereof, there is no default by any of the lessees under the terms of any of the leases.



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

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

7. PERFORMANCE BY ASSIGNOR. Assignor hereby covenants and agrees with Assignee as follows:

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

(b) Assignor, at Assignee's request, shall furnish Assignee with executed copies of all leases now existing or hereafter made of all or any part of the Mortgaged Property. Without the prior written consent of the Assignee, Assignor shall not: (i) execute or permit to exist any lease of all or a substantial part of the Mortgaged Property except for occupancy by the tenants thereof; (ii) discount any rents or collect the same for a period of more than one month in advance; (iii) execute any conditional bill of sale, chattel mortgage, security agreement or any other security instruments covering any furniture, furnishings, fixtures and equipment, intended to be incorporated in the Mortgaged Property or the appurtenances thereto, or covering articles of personal property placed in the Mortgaged Property, or purchase any of such furniture, furnishings, fixtures and equipment so that ownership of the same will not vest unconditionally in the Assignor, free from encumbrances on delivery to the Mortgaged Property; (iv) further assign the leases, rents and profits of or relating to the Mortgaged Property; or (v) enter into any new lease or cancel, extend or modify an existing lease for any space to be leased except in the normal course of prudent leasing activity intended to maximize income to the Mortgaged Property. The holder of any subordinate lien shall have no right to terminate any lease affecting the Mortgaged Property whether or not such lease be subordinate to the Mortgage and other Loan Documents. Nothing contained in this paragraph shall constitute or be construed as an approval by Assignee of any subordinate lien on the Mortgaged Property, or any part thereof.

(c) Assignor shall authorize and direct, and does hereby authorize and direct, each and every present and future lessee to pay rent directly to Assignee upon receipt of written notice from Assignee that an Event of Default has occurred under the Note, the Mortgage, this Assignment and/or any of the other Loan Documents and continues to exist



after such notice of the Event of Default and such opportunity to cure the Event of Default as may be required by the Note, and that Assignee demands payment of rent to Assignee. Further, upon request of Assignee, at any time, Assignor will deliver a written notice to each lessee of the Mortgaged Property, which notice shall inform such lessee of this Assignment and instruct it that, upon its receipt of notice from Assignee of the existence of an Event of Default under the Note, the Mortgage, this Assignment or any of the other Loan Documents, all rent due thereafter shall be paid to Assignee.

(d) Assignee shall not be obligated to perform or discharge any obligation under the leases hereby assigned or under or by reason of this Assignment, and Assignor hereby agrees to indemnify and hold harmless Assignee from and against any and all liability, loss or damage (including, without limitation, reasonable attorneys' fees and court costs) which Assignee may suffer or incur or become liable for under the leases or under or by reason of this Assignment and from and against all claims and demands whatsoever which may be asserted against Assignee by reason of any act of Assignee under this Assignment or under any of the leases or by reason of any alleged obligation or undertaking on Assignee's part to perform or discharge any of the terms of such leases.

8. REMEDIES CUMULATIVE. The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Assignee in the Note, the Mortgage, this Assignment, any of the other Loan Documents, or in law or equity, all of which rights and remedies are specifically reserved by Assignee. The remedies herein provided or otherwise available to Assignee shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. This paragraph shall be broadly construed so that all remedies herein provided or otherwise available to Assignee shall continue and be each and all available to Assignee until the indebtedness evidenced by the Note shall have been paid in full.

9. ADDITIONAL DOCUMENTS. At any time and from time to time, upon request by Assignee, Assignor will make, execute and deliver, or cause to be made, executed and delivered, to Assignee 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 Assignee, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Assignee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Assignor under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the leases and the rents, issues, profits and security deposits from the Mortgaged Property. Upon any failure by Assignor so to do, Assignee may make, execute, record, file, rerecord and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Assignor and Assignor hereby irrevocably appoints Assignee the agent and attorney-in-fact of Assignor so to do.





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10. INDULGENCES BY ASSIGNEE. Assignor hereby consents and agrees that Assignee may at any time and from time to time, without notice to or further consent from Assignor, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account securing the indebtedness evidenced by the Note; extend or renew the Note for any period; grant releases, compromises and indulgences with respect to the Note or any of the documents which secure payment of the Note to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note; or take or fail to take any action of any type whatsoever, and no such action which Assignee shall take or fail to take in connection with the Note or any of the other Loan Documents which secure payment of the Note, nor any course of dealing with Assignor or any other person, shall release Assignor's obligations hereunder, affect this Assignment in any way or afford Assignor any recourse against Assignee. The provisions of this Assignment shall extend and be applicable to all extensions, renewals, modifications, amendments, rearrangements, consolidations, substitutions and changes in form of the Note, the Mortgage, this Assignment or any of the Loan Documents which secure payment of the Note and the leases, and any and all references herein to the Note, the Mortgage, this Assignment or any of the other Loan Documents which secure payment of the Note or the leases shall be deemed to include any such extensions, renewals, modifications, amendments, rearrangements, consolidations, substitutions or changes in form thereof.

11. NO WAIVERS. Any failure by Assignee to insist upon the strict performance by Assignor of any of the terms and provisions of this Assignment shall not be deemed to be a waiver of any of the terms and provisions of this Assignment, and Assignee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Assignor of any and all of the terms and provisions of this Assignment to be performed by Assignor. Further, no delay by Assignee in exercising any of its rights or remedies hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

12. CHANGE OF OWNERSHIP. If ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than Assignor, Assignee may deal with such successor or successors in interest with reference to this Assignment and the Secured Indebtedness in the same manner as with Assignor, provided, however, nothing contained in this paragraph shall constitute or be construed as Assignee's consent to or approval of any change in ownership of the Mortgaged Property or any part thereof.

13. NOTICES. Notices and other communications shall be given under this Assignment in conformity with the notice paragraph in the Mortgage.

14. RELATIONSHIP OF THE PARTIES. This Assignment is given as an incident to a lending transaction between Assignee and Assignor, and in no event shall Assignee be construed or held to be a partner, joint venturer or associate of Assignor in the conduct of the business of Assignor, on or about the Mortgaged Property or otherwise, nor shall Assignee be liable for any debts or obligations incurred by Mortgagor in the conduct of such business, it being understood and agreed that the relationship of the parties is and at all times shall remain that of lender and borrower.





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15. CUMULATIVE REMEDIES. The rights of Assignee arising under the representations, warranties, covenants and agreements contained in this Assignment shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and no act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding.

16. CONSTRUCTION. The paragraph headings and captions contained in this Assignment are included for convenience only and shall not be construed or considered a part of this Assignment or affect in any manner the construction or interpretation of this Assignment. Whenever used in this Assignment, the singular will include the plural, the plural the singular, and the use of any gender will be applicable to all genders.

17. SEVERABILITY. If any covenant or agreement in this Assignment is invalid or void for any reason, such invalid or void covenant or agreement shall not affect the whole of this Assignment, and the balance of the covenants and agreements of this Assignment shall remain in full force and effect.

18. AMENDMENT. This Assignment cannot be changed, modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought and in recordable form.

19. BINDING EFFECT. All of the covenants, conditions and agreements contained in this Assignment shall run with the land and shall bind Assignor, and the respective successors and assigns of Assignor, and shall inure to the benefit of Assignee and its successors and assigns. Whenever a reference is made in this Assignment to "Assignor" or "Assignee", such reference shall be deemed to include a reference to its successors and assigns, but this shall not be construed as Assignee's consent to any conveyance, assignment or other transfer by Assignor of its interest in the Mortgaged Property.

20. NO THIRD-PARTY BENEFICIARY. This Assignment is made solely for the benefit of Assignee and its assigns. No lessee under any leases or any other person shall have standing to bring any action against Assignee as a result of this Assignment, or to assume that Assignee will exercise any remedies provided herein, and no person other than Assignee shall, under any circumstances, be deemed to be a beneficiary of any provision of this Assignment.

21. CHOICE OF LAW; JURISDICTION; VENUE. THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF OKLAHOMA FROM TIME TO TIME IN EFFECT, EXCEPT TO THE EXTENT PREEMPTED BY FEDERAL LAW. ALL ACTIONS OR PROCEEDINGS WITH RESPECT TO THIS ASSIGNMENT MAY BE INSTITUTED IN THE STATE DISTRICT COURT OR THE FEDERAL DISTRICT COURT IN THE COUNTY WHICH THE MORTGAGED PROPERTY IS SITUATED, AS THE ASSIGNEE MAY ELECT, AND BY EXECUTION AND DELIVERY OF THIS ASSIGNMENT, THE ASSIGNOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION (BOTH SUBJECT MATTER AND PERSON) OF EACH SUCH COURT AND IRREVOCABLY AND UNCONDITIONALLY WAIVES (I) ANY OBJECTION THAT ASSIGNOR MAY NOW OR



HEREAFTER HAVE TO THE LAYING OF VENUE IN EITHER OF SUCH COURTS, AND (II) ANY CLAIM THAT ANY ACTION OR PROCEEDING BROUGHT IN EITHER SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

22. WAIVER OF JURY TRIAL. THE ASSIGNOR WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY THE ASSIGNOR, AND THE ASSIGNOR ACKNOWLEDGES THAT NEITHER ASSIGNEE NOR ANY PERSON ACTING ON BEHALF OF THE ASSIGNEE HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE ASSIGNOR FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL. THE ASSIGNOR ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION. THIS ASSIGNMENT CONSTITUTES A WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY AND ANY PARTY IS AUTHORIZED AND EMPOWERED TO FILE THIS ASSIGNMENT WITH THE CLERK OR JUDGE OF ANY COURT OF COMPETENT JURISDICTION AS A STATUTORY WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY.

IN WITNESS WHEREOF, Assignor has duly executed this Assignment the day, month and year first above written.

"Assignor":

SPD PROPERTIES, LLC,  
an Alabama limited liability company

By Mark Slade Blackwell  
Name: Mark Slade Blackwell  
Title: Manager



STATE OF ALABAMA       )  
COUNTY OF Jefferson    ) ss:

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Mark Slade Blackwell, whose name as Manager of **SPD Properties, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 27<sup>th</sup> day of June, 2005.

Dana L. Campbell

Notary Public


My Commission Expires: May 10, 2009

No.: \_\_\_\_\_

[AFFIX SEAL]



## **EXHIBIT "A"**

  
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### **Mortgaged Property Description**

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said quarter-quarter section a distance of 316.16 feet to a point; thence deflect  $110^{\circ}43'12''$  to the right and run in a Southwesterly direction a distance of 326.07 feet to the Point of Beginning of the herein described parcel; thence deflect  $14^{\circ}47'43''$  to the left and run in a Southerly direction a distance of 221.40 feet to a point; thence turn an interior angle of  $89^{\circ}34'31''$  and run in a Westerly direction a distance of 78.28 feet to a point; thence turn an interior angle of  $270^{\circ}00'00''$  and run in a Southerly direction a distance of 15.30 feet to a point; thence turn an interior angle of  $90^{\circ}00'00''$  and run in an Easterly direction a distance of 113.90 feet to a point; thence turn an interior angle of  $90^{\circ}00'00''$  and run in a Northerly direction a distance of 236.70 feet to a point; thence turn an interior angle of  $90^{\circ}00'00''$  and run in a Westerly direction a distance of 190.54 feet to the Point of Beginning of said parcel.

### **ACCESS EASEMENT NO. 1**

Commence at the Northwest corner of the Southwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said 1/4-1/4 Section a distance of 217.82 feet to a point; thence deflect 276 degrees 26 minutes 50 seconds to the right and run in a Southwesterly direction a distance of 259.85 feet to the Point of Beginning of the herein described access easement; thence continue along the last described course a distance of 46.59 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Northwesterly direction a distance of 31.00 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in an Northeasterly direction a distance of 11.95 feet to a point; thence turn an interior angle of 266 degrees 07 minutes 21 seconds and run in a Southwesterly direction a distance of 93.21 feet to a point; thence turn an interior angle of 266 degrees 07 minutes 21 seconds and run in a Southeasterly direction a distance of 5.64 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Northwesterly direction a distance of 31.00 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Northeasterly direction a distance of 3.54 feet to a point; thence turn an interior angle of 273 degrees 52 minutes 39 seconds and run in a Northwesterly direction a distance of 37.08 feet to a point; thence turn an interior angle of 266 degrees 07 minutes 21 seconds and run in a Southwesterly direction a distance of 166.03 feet to a point; thence turn an interior angle of 270 degrees 00 minutes 00 seconds and run in a Southeasterly direction a distance of 19.5 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Northeasterly direction a distance of 25.00 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Northwesterly direction a distance of 19.50 feet to a point; thence turn an interior angle of 270 degrees 00 minutes 00 seconds and run in a Southwesterly direction a distance of 28.85 feet to a point; thence turn an interior angle of 183 degrees 53 minutes 37 seconds and run in a Southwesterly direction a distance of 126.93 feet to a point; thence turn an interior angle of 266 degrees 15 minutes 26 seconds and run in a Southeasterly direction a distance of 45.91 feet to a point; thence turn an interior angle of 269 degrees 33 minutes 10 seconds and run in a Northeasterly



direction a distance of 80.95 feet to a point on a curve to the left having a central angle of 30 degrees 17 minutes 53 seconds and a radius of 20.00 feet; thence continue along the arc of said curve in a Northwesterly direction a distance of 10.58 feet to a point; thence continue along the tangent of said curve in a Northwesterly direction a distance of 27.51 feet to a point; thence turn an interior angle of 59 degrees 59 minutes 54 seconds and run in a Northeasterly direction a distance of 30.42 feet to a point; thence turn an interior angle of 120 degrees 00 minutes 06 seconds and run in a Southeasterly direction a distance of 7.45 feet to a point on a curve to the right having a central angle of 30 degrees 17 minutes 53 seconds and a radius of 45.50 feet; thence run along the arc of said curve in a Southwesterly direction a distance of 24.06 feet to a point; thence continue along the tangent of said curve in a Southwesterly direction a distance of 112.38 feet to a point; thence turn an interior angle of 90 degrees 26 minutes 50 seconds and run in a Northwesterly direction a distance of 94.80 feet to a point; thence turn an interior angle of 93 degrees 44 minutes 34 seconds and run in a Northeasterly direction a distance of 173.35 feet to a point; thence turn an interior angle of 235 degrees 31 minutes 51 seconds and run in a Northwesterly direction a distance of 22.26 feet to a point on the Easterly right-of-way line of U.S. Highway 31; thence turn an interior angle of 121 degrees 14 minutes 03 seconds and run in a Northeasterly direction a distance of 28.85 feet to a point on said right-of-way; thence turn an interior angle of 134 degrees 44 minutes 34 seconds and leaving said right-of-way run in a Northeasterly direction a distance of 30.06 feet to a point; thence turn an interior angle of 224 degrees 35 minutes 46 seconds and run in a Northeasterly direction a distance of 115.65 feet to a point; thence turn an interior angle of 226 degrees 56 minutes 21 seconds and run in a Northwesterly direction a distance of 13.15 feet to a point; thence turn an interior angle of 226 degrees 56 minutes 17 seconds and run in a Southwesterly direction a distance of 11.87 feet to a point on said right-of-way; thence turn an interior angle of 85 degrees 23 minutes 37 seconds and run in a Northwesterly direction a distance of 24.19 feet to a point on said right-of-way; thence turn an interior angle of 95 degrees 13 minutes 19 seconds and leaving said right-of-way run in a Northeasterly direction a distance of 240.88 feet to the point of beginning of the herein described access easement.


#### ACCESS EASEMENT NO. 2

Commence at the Northwest corner of the Southwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said 1/4-1/4 Section a distance of 235.43 feet to a point; thence deflect 276 degrees 26 minutes 50 seconds to the right and run in a Southwesterly direction a distance of 430.42 feet to the point of beginning of the herein described access easement; thus continue along the last described course a distance of 15.00 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Southwesterly direction a distance of 1.0 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Northeasterly direction a distance of 15.0 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Southeasterly direction a distance of 1.0 feet to the end point of said access easement.

#### ACCESS EASEMENT NO. 3

Commence at the Northwest corner of the Southwest 1/4 of the Northwest 1/4 of Section 36, Township 20 South, Range 3 West, and run in an Easterly direction along the North line of said 1/4-1/4 line a distance of 148.43 feet to a point; thence deflect 276 degrees 26 minutes 50 seconds to the right and run in a Southwesterly direction a distance of 528.15 feet to the point of beginning; thence continue along the last described course in a Southwesterly direction a distance of 1.0 feet to a point;



  
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thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Northwesternly direction a distance of 15.0 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Northeasterly direction a distance of 1.0 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run in a Southeasterly direction a distance of 15.0 feet to the point of beginning of the herein described access easement.