

PREPARED BY, ~~AND AFTER RECORDING~~
RETURN TO:

20050915000480750 1/8 \$35.00
Shelby Cnty Judge of Probate, AL
09/15/2005 02:09:51PM FILED/CERT

TELESIS COMMUNITY CREDIT UNION
c/o Business Partners, LLC
9301 Winnetka Avenue
Chatsworth, CA 91311
Attn: Servicing Department

Tax Parcel Number: 093050001030.013

Space Above for Recorder's Use

ASSIGNMENT OF LEASES AND RENTS

(ALABAMA)

THIS ASSIGNMENT OF LEASES AND RENTS (the "Assignment") dated as of **August 31, 2005**, is made by **LES BARRAN**, whose address is **12357 Avenida Consentido, San Diego, CA 92128**, as assignor ("Borrower"), to and for the benefit of **TELESIS COMMUNITY CREDIT UNION**, a California state chartered credit union, whose address is **c/o Business Partners, LLC, 9301 Winnetka Avenue, Chatsworth, CA 91311, Attn: Commercial Loan Department**, as assignee ("Lender").

THIS ASSIGNMENT IS GIVEN TO LENDER in connection with the Indebtedness evidenced by Borrower's Promissory Note payable to Lender, dated as of the date of this Assignment, and maturing on **October 1, 2015**, in the principal amount of **ONE MILLION EIGHT HUNDRED FORTY THOUSAND AND 00/100 DOLLARS (US \$1,840,000.00)**, and all renewals, extensions and modifications of the Indebtedness, the payment of all sums advanced by or on behalf of Lender to protect the security of the Security Instrument (as hereinafter defined) under Section 12 of the Security Instrument, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower is the owner of the Mortgaged Property, including the Land located in **Jefferson County, State of Alabama** and described in Exhibit A attached to this Assignment. Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to give this Assignment, and that there are no other outstanding assignments of the Leases and Rents described herein.

Covenants. Borrower and Lender covenant and agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Assignment (including when used in the above recitals), shall have the following meanings:

(a) **"Borrower"** means all persons or entities identified as "Borrower" in the first paragraph of this Assignment, together with their successors and assigns.

(b) **"Borrower Certificate"** means that certain Borrower Certificate dated the same date as this Assignment, executed by Borrower in favor of Lender.

(c) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(d) **"Environmental Indemnity"** means that certain Environmental Indemnity Agreement dated the same date as this Assignment, executed by Borrower, as Indemnitor, in favor of Lender, as Indemnitee.

(e) **"Event of Default"** means the occurrence of any event listed in Section 22 of the Security Instrument.

(f) **"Imposition Deposits"** are defined in Section 7(a) of the Security Instrument.

(g) **"Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(h) **"Indebtedness"** means the principal of, interest at the fixed or variable rate set forth in the Note on, and all other amounts due at any time under, the Note, the Security Instrument, this Assignment or any other Loan Document, including

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LandAmerica National Commercial Services
450 S. Orange Avenue, Suite 170
Orlando, FL 32801
Attention: **Christi Pawlak**

05-1556

late charges, default interest, and advances as provided in Section 12 of the Security Instrument to protect the security of the Security Instrument.

(i) **"Land"** means the land described in Exhibit A.

(j) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property, and all modifications, extensions or renewals.

(k) **"Lender"** means the entity identified as "Lender" in the first paragraph of this Assignment, or any subsequent holder of the Note.

(l) **"Loan Documents"** means the Note, the Security Agreement, this Assignment, the Borrower Certificate, the Environmental Indemnity, all guaranties, all indemnity agreements, all Collateral Agreements, all O&M Programs (as defined in the Environmental Indemnity), and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(m) **"Mortgaged Property"** shall have the meaning set forth in the Security Instrument and includes all of Borrower's present and future right, title and interest in and to the Land, Improvements, Rents and Leases.

(n) **"Note"** means the Promissory Note described on page 1 of this Assignment, including all schedules, riders, allonges and addenda, as such Promissory Note may be amended from time to time.

(o) **"Property Jurisdiction"** is defined in Section 9(a).

(p) **"Rents"** means all rents, revenues and other income of the Land or the Improvements, including parking fees and vending machine income and fees and charges for other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(q) **"Security Instrument"** means that certain mortgage, deed of trust, or deed to secure debt of even date herewith, executed by Borrower in favor of Lender as security for the Indebtedness and constituting a first lien on the Mortgaged Property. The Security Instrument is to be recorded substantially concurrently herewith. The terms and provisions of the Security Instrument are incorporated herein by reference. Any capitalized terms not otherwise defined herein shall have the meaning defined in the Security Instrument.

(r) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

2. WARRANTIES OF BORROWER.

(a) Borrower warrants to Lender that (i) Borrower is the sole owner of the entire lessor's interest in the Leases; (ii) the Leases are valid, enforceable and in full force and effect and have not been altered, modified or amended in any manner whatsoever except as disclosed to Lender; (iii) neither the Leases nor the Rents have been assigned or otherwise pledged or hypothecated; (iv) none of the Rents have been collected for more than one (1) month in advance; (v) Borrower has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Mortgaged Property; (vi) the premises demised under the Leases have been completed and Lessees under the Leases have accepted the same and have taken possession of the same on a rent-paying basis except as explicitly identified on the certified rent roll delivered by Borrower to Lender; and (vii) there exist no offsets or defenses to the payment of any portion of the Rents.

(b) Borrower covenants with Lender that Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send to Lender copies of all notices of default which Borrower shall receive under the Leases; (iii) shall not collect any Rents more than one (1) month in advance; (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (v) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Lender shall from time to time require; (vi) shall not enter into any new lease of the Mortgaged Property without the prior written consent of Lender, and in any event, any new Lease shall be on a form of lease approved by Lender; (vii) shall deliver to Lender, upon request, a tenant estoppel certificate and subordination, attornment and non-disturbance agreement ("SNDA") from each Lessee at the Mortgaged Property in form and substance satisfactory to Lender (provided, however, that Borrower shall not be required to deliver such certificates more frequently than two [2] times in any calendar year); and (viii) shall deliver to Lender, at Lender's request, executed copies of all Leases now existing or hereafter arising.

(c) Borrower further covenants with Lender that, except to the extent that Borrower is acting in the ordinary course of business as a prudent operator of property similar to the Mortgaged Property, Borrower (i) shall promptly send to Lender copies of all notices of default which Borrower shall send to Lessees under the Leases or which Borrower shall receive from any Lessee under the Leases; (ii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the Lessees thereunder to be observed or performed, short of termination thereof; (iii) shall not alter, modify or change the

terms of the Leases without the prior written consent of Lender, or cancel or terminate the Leases or accept a surrender thereof or take any other action which would effect a merger of the estates and rights of, or a termination or diminution of the obligations of, Lessees thereunder; (iv) shall not alter, modify or change the terms of any guaranty of any of the Leases or cancel or terminate any such guaranty without the prior written consent of Lender; (v) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Lender; and (vi) shall not waive, release, reduce, discount or otherwise discharge or compromise the payment of any of the Rents to accrue under the Leases.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in the Security Instrument. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Assignment and the comparable Security Instrument provisions create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Assignment. Lender may, at its option and discretion, elect to enforce this Assignment, or the comparable Security Instrument provisions, or both, and such election shall not diminish or affect Lender's available remedies under any other Loan Document provisions.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Assignment. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Assignment there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than one (1) month prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Assignment, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior

notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Assignment, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including computer files and other records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12 of the Security Instrument.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Assignment shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Assignment or any other Loan Document.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in the Security Instrument. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Assignment and the comparable Security Instrument provisions create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Assignment. Lender may, at its option and discretion, elect to enforce this Assignment, or the comparable Security Instrument provisions, or both, and such election shall not diminish or affect Lender's available remedies under any other Loan Document provisions.

(b) Until Lender gives notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Assignment), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Assignment or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the

Mortgaged Property. The execution of this Assignment by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each Lease then in effect.

(f) Borrower further covenants with Lender that (i) all Leases shall be written on a standard form of lease that has been or will be approved in writing in advance by Lender; (ii) upon request, Borrower shall furnish Lender with executed copies of all Leases and all amendments thereto; (iii) no material changes may be made to the Lender-approved standard lease without the prior written consent of Lender; (iv) all renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates and shall be arm's-length transactions; (v) all Leases shall provide that (A) they are subordinate to the Security Instrument and this Assignment and any other indebtedness now or hereafter secured by the Mortgaged Property, (B) Lessees agree to attorn to Lender (such attornment to be effective upon Lender's acquisition of title to the Mortgaged Property), (C) Lessees agree to execute such further evidences of attornment as Lender may from time to time request, (D) the attornment of Lessees shall not be terminated by foreclosure, (E) Lender may, at Lender's option, accept or reject such attornment, and (F) Lessees agree to execute and acknowledge a subordination, attornment and non-disturbance agreement in form and content acceptable to Lender, and, two times in any calendar year, as Lender may request, a certificate signed by Lessee confirming and containing such factual certifications and representations deemed appropriate by Lender; (vi) Borrower shall not grant any purchase options without the prior written approval of Lender, and (vii) all new Leases shall be subject to the prior written approval of Lender.

(g) Borrower shall not receive or accept Rent under any Lease for more than one (1) month in advance.

5. REMEDIES CUMULATIVE. Each right and remedy provided in this Assignment is distinct from all other rights or remedies under this Assignment or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

6. FORBEARANCE.

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Assignment, the Note, the Security Instrument or any other Loan Document; release anyone liable for the payment of any amounts under this Assignment, the Note, the Security Instrument, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Assignment, the Note, the Security Instrument, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Assignment, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 of the Security Instrument shall not operate to cure or waive any Event of Default.

7. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Assignment or to any action brought to enforce any Loan Document.

8. FURTHER ASSURANCES. Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Assignment and the Loan Documents.

9. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Assignment, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "Property Jurisdiction").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Assignment, the Security Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

10. SUCCESSORS AND ASSIGNS BOUND. This Assignment shall bind, and the rights granted by this Assignment shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 21 of the Security Instrument shall be an Event of Default.

11. JOINT AND SEVERAL LIABILITY. If more than one person or entity signs this Assignment as Borrower, the obligations of such persons and entities shall be joint and several.

12. SEVERABILITY; AMENDMENTS. The invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Assignment and the comparable provisions of the Security Instrument contain the entire agreement among the parties as to the rights granted and the obligations assumed in this Assignment and in the comparable provisions of the Security Instrument. This Assignment may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

13. CONSTRUCTION. The captions and headings of the sections of this Assignment are for convenience only and shall be disregarded in construing this Assignment. Any reference in this Assignment to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Assignment or to a Section of this Assignment. All Exhibits attached to or referred to in this Assignment are incorporated by reference into this Assignment. Any reference in this Assignment to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Assignment, the term "including" means "including, but not limited to."

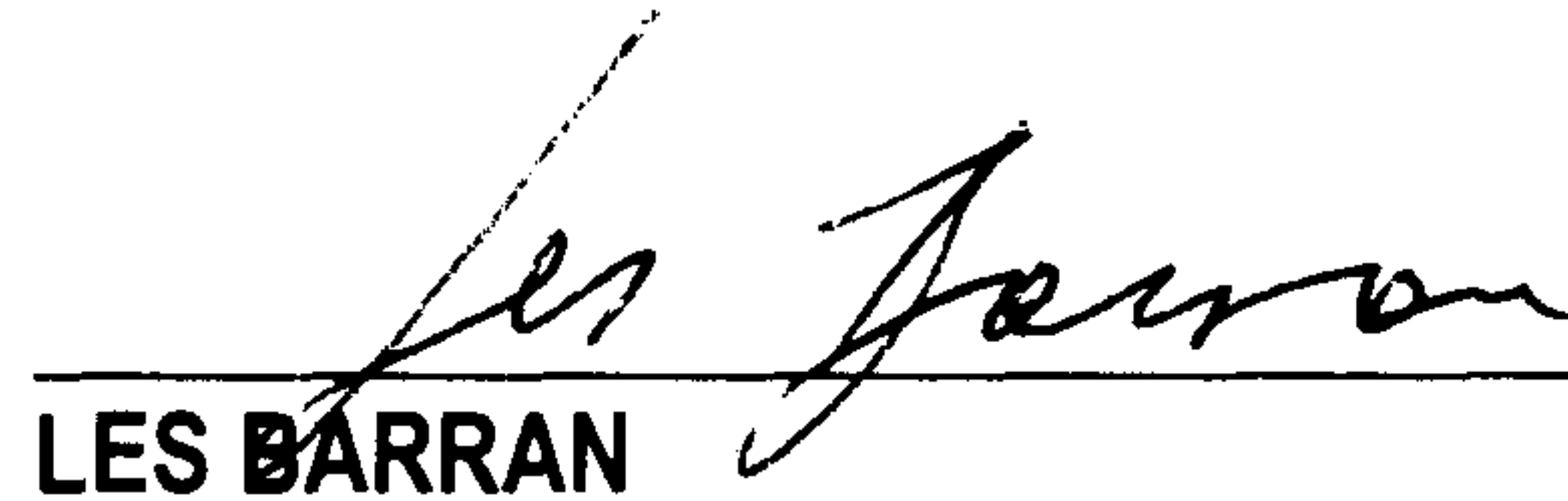
14. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS ASSIGNMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

ATTACHED EXHIBIT. The following Exhibit is attached to this Assignment:

Exhibit A Description of the Land

IN WITNESS WHEREOF, Borrower has signed and delivered this Assignment or has caused this Assignment to be signed and delivered by its duly authorized representative.

BORROWER:


LES BARRAN

[Seals]

EXHIBIT "A"

DESCRIPTION OF THE LAND

THE LAND REFERRED TO HEREIN IS SITUATED IN JEFFERSON COUNTY, STATE OF ALABAMA, AND IS DESCRIBED AS FOLLOWS:

PARCEL I: Lot 3 of The Village at Lee Branch Sector 1 - Phase 2, as recorded in Map Book 33, page 58, being a re-subdivision of Lot 5A of The Village at Lee Branch Sector 1 - Revision 1 as recorded in Map Book 31, pages 130A & 130B, in the Probate Office of Shelby County, Alabama, being more particularly described as follows:

Commence at an iron pin found at the Northeast corner of the Northeast quarter of the Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed South 88° 49' 06" West along the North line of said Northeast quarter of Southwest quarter for 66.55 feet to the Southwest corner of Lot 2 of "THE VILLAGE AT LEE BRANCH, SECTOR 1, REVISION 1" as recorded in Map Book 31, pages 43A and 43B in the Office of The Probate Judge, Shelby County, Alabama; thence proceed North 01° 10' 54" West along the West line of said Lot 2 for 119.95 feet to the Southeast corner of Lot 3A of "A RESUBDIVISION OF THE VILLAGE AT LEE BRANCH" as recorded in Map Book 31, pages 130A and 130B in the Office of the Judge of Probate, Shelby County, Alabama; thence proceed South 89° 04' 30" West along the South line of said Lot 3A for 180.9 feet to a point; thence proceed North 56° 26' 42" West along the Southwest line of said Lot 3A for 93.23 feet to a point on the Southerly right of way margin of Doug Baker Boulevard; thence proceed South 33° 33' 18" West along said Southerly right of way margin for 84.38 feet to a point at the beginning of a curve to the right, said curve being tangent to the last described course and having a central angle of 26° 21' 14", a radius of 537.50 feet and a chord which bears South 46° 43' 54" West for 245.06 feet; thence proceed Southwesterly along said Southerly right of way margin and along the arc of said curve for 247.23 feet to the POINT OF BEGINNING of the herein described parcel; thence leaving said Southerly right of way margin of Doug Baker Boulevard, proceed South 31° 05' 10" East for 30.50 feet to a point; thence proceed South 38° 02' 48" East for 32.43 feet to a point; thence proceed South 40° 50' 32" East for 119.19 feet to a point; thence proceed North 49° 09' 28" East for 66.50 feet to a point at the beginning of a curve to the right, said curve being tangent to the last described course and having a central angle of 90° 00' 00", a radius of 4.50 feet and a chord which bears South 85° 50' 32" East for 6.36 feet; thence proceed Easterly along the arc of said curve for 7.07 feet to the end of said curve; thence proceed South 40° 50' 32" East and tangent to the last described curve for 16.00 feet to a point; thence proceed North 49° 09' 28" East for 124.46 feet to a point at the beginning of a curve to the right, said curve being non-tangent to the last described course and having a central angle of 04° 24' 48", a radius of 560.10 feet and a chord which bears North 32° 11' 48" East for 43.13 feet; thence proceed Northeasterly along the arc of said curve for 43.14 feet to a point at the beginning of a curve to the left, said curve being non-tangent to the last described curve and having a central angle of 78° 01' 30", a radius of 99.53 feet and a chord which bears North 05° 13' 13" West for 125.30 feet; thence proceed Northerly along the arc of said curve for 135.53 feet to the end of said curve; thence proceed North 46° 33' 26" West and non-tangent to the last described curve for 15.10 feet to a point at the beginning of a curve to the left, said curve being non-tangent to the last described course and having a central angle of 08° 13' 03", a radius of 211.21 feet and a chord which bears North 52° 19' 56" West for 30.27 feet; thence proceed Northwesterly along the arc of said curve for 30.29 feet to the end of said curve; thence proceed North 56° 26' 42" West and tangent to the last described curve for 25.04 feet to a point; thence proceed South 33° 30' 26" West for 28.37 feet to a point; thence proceed North 56° 29' 34" West for 10.03 feet to a point; thence proceed North 70° 31' 43" West for 20.62 feet to a point on a curve to the right, said curve being non-tangent to the last described course and having a central angle of 15° 36' 23", a radius of 547.50 feet and a chord which bears South 41° 15' 30" West for 148.67 feet; thence proceed Southwesterly along the arc of said curve for 149.13 feet to a point; thence proceed North 42° 24' 14" West for 10.00 feet to a point on the Southerly right of way margin of Doug Baker Boulevard, said Southerly right of way margin being in a curve to the right, said curve being non-tangent to the last described course and having a central angle of 10° 49' 11", a radius of 537.50 feet, and a chord which bears South 54° 29' 55" West for 101.35 feet; thence proceed Southwesterly along the arc of said curve and along said Southerly right of way margin for 101.50 feet to the POINT OF BEGINNING.

PARCEL II: Together with those certain non-exclusive easements for the benefit of Parcel I for the purpose of ingress, egress, parking, utilities and drainage, as created by that certain agreement of covenants, conditions and restrictions and grant of easements, dated June 21, 2004, recorded under Instrument Number 20040624000345530 over, under and across the property described therein.

PROPERTY ADDRESS: 201 Doug Baker Boulevard, Birmingham, Alabama 35242

STATE OF ~~ALABAMA~~ Cal. for
COUNTY OF San Diego

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Les Ballard 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 said instrument, he, with full authority, executed the same voluntarily for and as the act of himself.

Given under my hand and official seal, this the 1st day of September, 2005.

M. R. Mitchell
Notary Public

My Commission Expires:

12/14/06



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Shelby Cnty Judge of Probate, AL
09/15/2005 02:09:51PM FILED/CERT