

PREPARED BY: Damon P. Denney  
420 North 20th Street  
Suite 3100  
Birmingham, Alabama 35203

## MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

This **MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT** (hereafter referred to as "Mortgage") made January 27, 2006, by and between, **MICHAEL R. SUMMERS**, whose address is 7341 Cahaba Valley Road, Birmingham, Alabama 35242 ("Mortgagor") and **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association, whose address is 420 North 20th Street, 8th Floor, Birmingham, Alabama 35203 ("Bank").

### WITNESSETH:

To secure payment and performance of obligations under a Promissory Note (the "Note") dated of even date herewith in the amount of \$2,600,000.00, made by Mortgagor payable to Bank, this Mortgage, any present or future Letters of Credit issued by Bank for the account of Mortgagor, other loan documents as defined in the Note (the "Loan Documents"), and swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Bank or any of its affiliates and Mortgagor, all other indebtedness of Mortgagor to Bank whenever borrowed or incurred, whether or not reasonably contemplated by the parties hereto as of the date hereof, and any renewals, extensions, novations, or modifications of the foregoing (collectively the "Obligations"), and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant, bargain, sell and convey, with power of sale unto Bank (for itself and its affiliates), its successors and assigns, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"):

(i) all those certain tracts of land in the County of Shelby, State of Alabama described in EXHIBIT A attached hereto and made part hereof (the "Land");

(ii) all buildings and improvements now or hereafter erected on the Land;

(iii) all fixtures, machinery, equipment and other articles of real, personal or mixed property attached to, situated or installed in or upon, or used in the operation or maintenance of, the Land or any buildings or improvements situated thereon, whether or not such real, personal or mixed property is or shall be affixed to the Land;

(iv) all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with, any construction, repair or renovation of the buildings and improvements situated or to be situated thereon;

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(v) all leases, licenses or occupancy agreements of all or any part of the Land and all extensions, renewals, and modifications thereof, and any options, rights of first refusal or guarantees relating thereto; all rents, income, revenues, security deposits, issues, profits, awards and payments of any kind payable under the leases or otherwise arising from the Land;

(vi) all contract rights, accounts receivable and general intangibles relating to the Land or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies;

(vii) all estates, rights, tenements, hereditaments, privileges, easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights; and

(viii) all "Proceeds" of any of the above-described property, which term shall have the meaning given to it in the Uniform Commercial Code of the jurisdiction where this Mortgage is recorded (the "UCC"), whether cash or non-cash, and including insurance proceeds and condemnation awards; and all replacements, substitutions and accessions thereof.

In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Property and Mortgagor obtains a fee estate in such portions of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of the Mortgagor, be and become subject to the security title and lien of this Agreement.

**TO HAVE AND TO HOLD** the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

Mortgagor **WARRANTS AND REPRESENTS** that Mortgagor is lawfully seized of the Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances. Mortgagor further warrants and will forever defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

**PROVIDED ALWAYS** that if (i) all the Obligations (including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder) are paid in full, (ii) each and every representation, warranty, agreement, covenant and condition of this Mortgage, and the other Loan Documents, are complied with and abided by, and (iii) any and all swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record.

To protect the security of this Mortgage, Mortgagor further represents and agrees with Bank as follows:

1. **Payment of Obligations.** That the Obligations shall be timely paid and performed.
2. **Future Advances.** This Mortgage is given to secure not only existing Obligations, but also future advances, including obligations under swap agreements to the same extent as if such future advances and obligations under swap agreements are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed \$2,600,000.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage.



3. **Grant of Security Interest in Personal Property.**

(a) This Mortgage constitutes a security agreement under the UCC and shall be deemed to constitute a fixture financing statement. Mortgagor hereby grants a security interest in any personal property included in the Property. On request of Bank, Mortgagor will execute one or more Financing Statements in form satisfactory to Bank and will pay all costs and expenses of filing the same in all public filing offices, where filing is deemed desirable by Bank. Bank is authorized to file Financing Statements relating to the Property without Mortgagor's signature where permitted by law. Mortgagor appoints Bank as its attorney-in-fact to execute such documents necessary to perfect Bank's security interest on Mortgagor's behalf. The appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain outstanding.

(b) Nothing herein obligates Bank to provide credit in excess of the Obligations.

4. **Leases, Subleases and Easements.** Mortgagor shall maintain, enforce and cause to be performed all of the terms and conditions under any lease, sublease or easement which may constitute a portion of the Property. Mortgagor shall not, without the consent of Bank (which consent shall not be unreasonably withheld or delayed), enter into any new lease of all or any portion of the Property, agree to the cancellation or surrender under any lease of all or any portion of the Property, agree to prepayment of rents, issues or profits (other than rent paid at the signing of a lease or sublease), modify any such lease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported new lease, cancellation, surrender, prepayment or modification made without the consent of Bank shall be void as against Bank.

5. **Required Insurance.**

(a) Mortgagor shall maintain with respect to the Property:

(i) during construction of any improvements on the Property, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the completed replacement value of the improvements under construction, naming Bank as mortgagee and loss payee;

(ii) upon completion of construction, upon occupancy of any improvements, and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risks" basis, including malicious mischief coverage, in an amount not less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Bank as loss payee and mortgagee;

(iii) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance is required in the amount equal to the lesser of the loan amount or maximum available under the National Flood Insurance Program, but in no event should the amount of coverage be less than the value of the improved structure, naming Bank as mortgagee and loss payee. If, after closing, the Property (or any part thereof) is remapped and if the vertical improvements are determined to be located in a special flood hazard area, Mortgagor must obtain and maintain a flood insurance policy. If, within forty-five (45) days of receipt of notification from Bank that the Property has been reclassified by FEMA as being located in a special flood hazard area, Mortgagor has not provided sufficient evidence of flood insurance, Bank is mandated under federal law to purchase flood insurance on behalf of Mortgagor, and Bank will add the associated costs to the principal balance of the Note. If the land or any portion thereof is located in a special flood hazard area, this Agreement may be terminated by Bank at its sole option;

(iv) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and



(v) liability insurance providing coverage in such amount as Bank may require but in no event less than \$1,000,000.00 combined single limit, naming Bank as an additional insured; and

(vi) such other insurance as Bank may require from time to time.

(b) All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Bank that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Bank, and rights of set-off, counterclaim or deductions against Mortgagor.

(c) All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Bank. At least 30 days prior to the expiration of each such policy, Mortgagor shall furnish Bank with evidence satisfactory to Bank that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least 30 days prior written notice to Bank. In the event Mortgagor fails to provide, maintain, keep in force, and furnish to Bank the policies of insurance required by this paragraph, Bank may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Bank chooses, at Mortgagor's expense; provided however, Bank shall have no responsibility to obtain any insurance, but if Bank does obtain insurance, Bank shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Mortgagor.

#### 6. **Insurance Proceeds.**

(a) After occurrence of any loss to any of the Property, Mortgagor shall give prompt written notice thereof to Bank.

(b) In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Bank, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Bank and not to Bank and Mortgagor jointly. Bank is hereby authorized by Mortgagor to make proof of loss if not promptly made by Mortgagor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Mortgagor appoints Bank as its attorney-in-fact to receive and endorse any insurance proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied. Mortgagor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Bank as security for payment of the Obligations.

(c) In the event of any damage to or destruction of the Property, Bank shall have the option of applying or paying all or part of the insurance proceeds to (i) the Obligations in such order as Bank may determine, (ii) restoration, replacement or repair of the Property in accordance with Bank's standard construction loan disbursement conditions and requirements, or (iii) Mortgagor. Nothing herein shall be deemed to excuse Mortgagor from restoring, repairing and maintaining the Property as required herein.

7. **Minimum Standards.** In addition to the requirements set forth in the Loan Documents, all surveys, insurance, title policies, construction documents, environmental reports, payment and performance bonds, and any other due diligence or additional documents required in connection with this Loan, shall comply with Bank's minimum standards in place from time to time for such documents, which shall be provided in writing by Bank to Borrower upon request.

8. **Impositions; Escrow Deposit.** Mortgagor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "Impositions") before they become delinquent and in any event in the



same calendar year in which they first become due. Upon request of Bank, Mortgagor shall add to each periodic payment required under the Note the amount estimated by Bank to be sufficient to enable Bank to pay, as they come due, all Impositions and insurance premiums which Mortgagor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by Bank from time to time. Such funds may be commingled with the general funds of Bank and shall not earn interest. Upon the occurrence of a Default, Bank may apply such funds to pay any of the Obligations.

9. **Use of Property.** Mortgagor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act and the Fair Housing Act) and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property. Mortgagor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Mortgagor shall not allow changes in the stated use of Property from that disclosed to Bank at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Bank.

10. **Maintenance, Repairs and Alterations.** Mortgagor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Bank. Mortgagor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Bank. Mortgagor shall promptly notify Bank in writing of any material loss, damage or adverse condition affecting the Property.

11. **Eminent Domain.** Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Mortgagor receive any notice or other information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Bank. Bank shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Bank shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Mortgagor related to any Condemnation (the "Proceeds") are hereby assigned to Bank and Mortgagor agrees to execute such further assignments of the Proceeds as Bank may require. Bank shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Mortgagor appoints Bank as its attorney-in-fact to receive and endorse the Proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

12. **Environmental Condition of Property and Indemnity.**

(a) Mortgagor warrants and represents to Bank, except as reported by Mortgagor to Bank in writing, that:

(i) Mortgagor has inspected and is familiar with the environmental condition of the Property;

(ii) the Property and Mortgagor, and any occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws");

(iii) the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws;



(iv) no Hazardous Materials (including asbestos, mold or lead paint in any form) are located on or under the Property or emanate from the Property;

(v) there are no unregistered underground storage tanks on the Property that are subject to any underground storage tank registration laws or regulations;

(vi) no notice has been received with regard to any Hazardous Material on the Property;

(vii) no action, investigation or proceeding is pending or to Mortgagor's knowledge threatened which seeks to enforce any right or remedy against Mortgagor or the Property under any Environmental Law; and

(viii) all licenses, permits and other governmental or regulatory actions necessary for the Property to comply with Environmental Laws shall be obtained and maintained and Mortgagor shall assure compliance therewith.

(b) Further, Mortgagor represents to Bank that no portion of the Property is a protected wetland. Mortgagor agrees to notify Bank immediately upon receipt of any citations, warnings, orders, notices, consent agreements, process or claims alleging or relating to violations of any Environmental Laws or to the environmental condition of the Property and shall conduct and complete all investigations and all cleanup actions necessary to comply with the Environmental Laws and to remove, in accordance with Environmental Laws, any Hazardous Material from the Property.

(c) Mortgagor shall indemnify, hold harmless, and defend Bank from and against any and all damages, penalties, fines, claims, suits, liabilities, costs, judgments and expenses, including attorneys', consultants' or experts' fees of every kind and nature incurred, suffered by or asserted against Bank as a direct or indirect result of: (i) representations made by Mortgagor in this Section being or becoming untrue in any material respect; (ii) Mortgagor's violation of or failure to meet the requirements of any Environmental Laws; or (iii) Hazardous Materials which, while the Property is subject to this Mortgage, exist on the Property. Bank shall have the right to arrange for or conduct environmental inspections of the Property from time to time (including the taking of soil, water, air or material samples). The cost of such inspections made after Default or which are required by laws or regulations applicable to Bank shall be borne by Mortgagor. However, Mortgagor's indemnity shall not apply to any negligent or intentional act of Bank which takes place after foreclosure or satisfaction of this Mortgage. These indemnification obligations are in addition to General Indemnification provisions set forth hereafter. Mortgagor's Obligations under this section shall continue, survive and remain in full force and effect notwithstanding the repayment of the Obligations, a foreclosure of or exercise of power of sale under this instrument, a delivery of a deed in lieu of foreclosure, a cancellation or termination of record of this instrument and the transfer of the Property.

13. **Appraisals.** Mortgagor agrees that Bank may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency, or any other regulatory agency or at such other times as Bank may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Bank. The cost of such appraisals shall be borne by Mortgagor. If requested by Bank, Mortgagor shall execute an engagement letter addressed to the appraiser selected by Bank. Mortgagor's failure or refusal to sign such an engagement letter, however, shall not impair Bank's right to obtain such an appraisal. Mortgagor agrees to pay the cost of such appraisal within 10 days after receiving an invoice for such appraisal.

14. **Inspections.** Bank, or its representatives or agents, are authorized to enter at any reasonable time upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

15. **Liens and Subrogation.**



(a) Mortgagor shall pay and promptly discharge all liens, claims and encumbrances upon the Property. Mortgagor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided:

(i) such contest suspends the collection thereof or there is no danger of the Property being sold or forfeited while such contest is pending;

(ii) Mortgagor first deposits with Bank a bond or other security satisfactory to Bank in such amounts as Bank shall reasonably require; and

(iii) Mortgagor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

Bank shall be subrogated to any liens, claims and encumbrances against Mortgagor or the Property that are paid or discharged through payment by Bank or with loan proceeds, notwithstanding the record cancellation or satisfaction thereof.

**16. Waiver of Mortgagor's Rights.**

(a) To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for:

(i) any appraisalment before sale of any portion of the Property,

(ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations, and any rights to hearing prior to the exercise by Bank of any right, power, or remedy herein provided to Bank.

(b) To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisalment, valuation, stay, extension or redemption, and Mortgagor for themselves and their respective heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisalment, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Mortgagor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

**17. Payments by Bank.** In the event of default in the timely payment or performance of any of the Obligations, Bank, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Mortgagor is obligated. Further, Bank may pay such sums as Bank deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay Impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Mortgage or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including Bankruptcy or arbitration. Any amounts so paid shall bear interest at the default rate stated in the Note and shall be secured by this Mortgage.

**18. Indemnification.**

(a) Mortgagor shall protect, indemnify and save harmless Bank from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs and expenses (including,



without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted or assessed against Bank on account of or in connection with:

(i) the Loan Documents or any failure or alleged failure of Mortgagor to comply with any of the terms of, or the inaccuracy or breach of any representation in, the Loan Documents;

(ii) the Collateral or any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof,

(iii) any failure or alleged failure of Mortgagor to comply with any law, rule or regulation applicable to it or to the Property or the use, occupancy or operation of the Property (including, without limitation, the failure to pay any taxes, fees or other charges), provided that such indemnity shall be effective only to the extent of any Damages that may be sustained by Bank in excess of any net proceeds received by it from any insurance of Mortgagor (other than self-insurance) with respect to such Damages,

(iv) any Damages whatsoever by reason of any alleged action, obligation or undertaking of Bank relating in any way to or any matter contemplated by the Loan Documents,

(v) any claim for brokerage fees or such other commissions relating to the Property or any other Obligations, or

(vi) any and all liability arising from any leases related to the Property.

(b) Nothing contained herein shall require Mortgagor to indemnify Bank for any Damages resulting from Bank's gross negligence or its willful and wrongful acts. The indemnity provided for herein shall survive payment of the Obligations and shall extend to the officers, directors, employees and duly authorized agents of Bank. In the event the Bank incurs any Damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such Damages shall be added to the Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Obligations from the date incurred until paid and shall be payable on demand.

#### 19. Assignment of Rents.

(a) Mortgagor hereby absolutely assigns and transfers to Bank all of Assignor's right, title and interest in and to:

(i) All present and future leases, subleases, licenses, or occupancy agreements of all or any portion of the Property, together with any renewals, modifications or replacements thereof, and any options, rights of first refusal or guarantees of any lease now or hereafter in effect (collectively, the "Leases");

(ii) all rents, income, receipts, revenues, reserves, issues and profits arising under any Lease (together with the items described in 3, 4 and 5, below, the "Rents");

(iii) all security deposits and escrow accounts made by any tenant or subtenant under any Lease;

(iv) all awards and payments of any kind derived from or relating to any Lease including, without limitation, claims for the recovery of damages to the Property by proceeds of any insurance policy or otherwise, claims for damages resulting from acts of insolvency or bankruptcy, lump sum payments for the cancellation or termination of any Lease, awards payable by reason of condemnation action or the exercise of any right of first refusal or option to purchase, payments made by



tenants in lieu of rent, and the return of any insurance premiums or ad valorem tax payments made in advance and subsequently refunded; and

(v) the proceeds of any rental insurance carried by Assignor on the Property. Mortgagor appoints Bank as its irrevocable attorney in fact to appear in any actions and to collect any awards or payments.

(b) Prior to an event of default hereunder or under the Note or under any other Obligations and demand by Bank for delivery of the security deposits to Bank or Bank's designee, Mortgagor shall maintain the security deposits in a separate, identifiable account in a bank acceptable to Bank. After default and upon demand by Bank, Mortgagor shall deliver the security deposits to Bank or Bank's designee. Upon delivery of the security deposits to Bank, the Bank will hold the security deposits pursuant to the terms of the Leases in respect of which such security deposits were obtained by Mortgagor. Provided, however, in no event shall Bank be liable under any Lease of any part of the Property for the return of any security deposit in any amount in excess of the amount delivered to the Bank by Mortgagor.

(c) This assignment is intended to be and constitutes an unconditional, absolute and present assignment from Mortgagor to Bank of all of Mortgagor's right, title and interest in and to the Leases and Rents (subject to the terms and conditions hereof), and not an assignment in the nature of a pledge of such Leases and Rents or the mere grant of a security interest therein. Notwithstanding that this Assignment is effective immediately, so long as there shall exist no default by Mortgagor in the payment and performance of the Obligations or in the performance of any obligation or agreement in any Lease (each, a "Default"), Mortgagor shall have the privilege under a revocable license to collect as they become due, but not prior to accrual, all Rents from the Property and to receive and hold the same. Mortgagor shall receive and hold such Rents in trust as a fund to be applied to the payment of real estate taxes, insurance, maintenance, repair and Lease obligations with respect to the Property and to the payment of interest and principal and other sums becoming due under the Obligations, before retaining and/or disbursing any part of the Rents for any other purpose.

(d) Mortgagor represents and warrants to Bank as follows:

(i) Mortgagor is the sole owner of the entire lessor's interest in the Leases and the Rents thereunder and such interest is free and clear of all liens and encumbrances;

(ii) no other assignment of any interest in any of the Leases or Rents has been made;

(iii) the Leases submitted to Bank are true and complete copies of all of the Leases now existing, and there have been no written or oral modifications thereto;

(iv) the Leases are in full force and effect and there is no existing default by Mortgagor or, to the best of Mortgagor's knowledge, by any tenant under any of the Leases; (v) Mortgagor has not accepted Rent under any Lease more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised;

(v) Mortgagor has not received any funds or deposits from any tenant except as expressly provided for in a Lease; and

(vi) no tenant has used or placed on the Property any Hazardous Materials in violation of any Environmental Laws.

(e) Mortgagor agrees that from the date of this Assignment and until final payment of all of the Obligations, unless Bank shall otherwise consent in writing, Mortgagor will:



- (i) perform all of the obligations imposed upon Mortgagor under the Leases;
- (ii) not collect any of the Rents in advance of the time when the same become due;
- (iii) not discount any future accruing Rents;
- (iv) not execute any other assignment of Leases or Rents;
- (v) not change the terms of or terminate the Leases;
- (vi) not subordinate the Leases to any mortgage or other encumbrance;
- (vii) not consent to any assignment of or subletting under the Leases; and

(viii) not enter into any Lease subsequent to the date hereof. Any attempted amendment, cancellation or other modification of any Lease without the prior written consent of Bank shall be null and void. Assignor further covenants and agrees to furnish to Bank, on demand, certified true copies and/or originals of all existing Leases and any subsequent Leases, and any modifications or amendments thereto.

(f) Notwithstanding the automatic applicability of this assignment to all future Leases, Mortgagor agrees to assign to Bank all future Leases and to execute and/or deliver to Bank all such Leases and, if requested by Bank, assignments thereof in form acceptable to Bank.

(g) Notwithstanding any legal presumption to the contrary, Bank shall not be obligated by reason of its acceptance of this assignment to perform any obligation of Mortgagor under any of the Leases, and Bank shall not, prior to entry upon and actually taking physical possession of the Property, be deemed a mortgagee in possession. This assignment shall not operate to place responsibility upon Bank for the control, care, management or repair of the Property or for the carrying out of any of the terms and conditions of the Leases or to make Bank responsible or liable for any waste committed on the Property by any lessee or any other party, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Bank assumes no liability for any security deposited or rent prepaid by any lessee with assignor, unless and until such deposits or prepaid rents are delivered to Bank.

(h) Mortgagor shall, and does hereby agree, to indemnify Bank for, and to hold Bank harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this assignment and from any and all claims and demands whatsoever which may be asserted against Bank by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Mortgagor hereby agrees to defend, at its own cost and expense, any action brought against itself or Bank relative to the Leases or this Assignment.

(i) Notwithstanding anything to the contrary set forth in the Note, or any other document executed in connection therewith, there shall be no cure or grace period with respect to Assignor's default which must expire prior to Bank's right to collect the rents, issues, income and profits and there shall be no condition precedent other than Assignor's default to Bank's right to collect such rents, issues, income and profits. Upon any occurrence of default, the license granted to Mortgagor herein shall be immediately and automatically revoked without further notice to or demand upon Mortgagor, and Bank shall have the right, in its discretion, without notice, by agent or by a receiver appointed by the court, and without regard to the adequacy of any security for the Obligations, to:

- (i) enter upon and take possession of the Property,



(ii) notify tenants, subtenants and any property manager to pay Rents to Bank or its designee, and upon receipt or such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Mortgagor,

(iii) sue in its own name for or otherwise collect the Rents, including those past due,  
(iv) have, hold, manage, lease and operate the Property,

(iv) collect and receive all Rents,

(v) make from time to time all alterations, renovations, repairs or replacements to the Property as Bank may deem proper.

(j) Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases, upon receipt of written notice from Bank, to pay all Rents due under the Leases to Bank without the necessity of any inquiry to Mortgagor and without any liability respecting the determination of the actual existence of any default claimed by Bank or any claim by Mortgagor to the contrary. Bank may apply such Rents to the payment of:

(i) the Obligations, together with all costs and attorneys' fees,

(ii) all taxes, charges, claims, assessments, water rents, sewer rents and any other liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items, and

(iii) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine.

(k) Bank may:

(i) endorse as Mortgagor's attorney-in-fact the name of Mortgagor or any subsequent owner of the Property on any checks, drafts or other instruments received in payment of the Rents, and deposit the same in bank accounts, which power of attorney is coupled with an interest and shall be irrevocable;

(ii) give proper receipts, releases and acquittances in relation thereto in the name of Mortgagor,

(iii) institute, prosecute, settle or compromise any summary or legal proceedings in the name of Assignor for the recovery of the Rents, or for damage to the Property, or for the abatement of any nuisance thereon, and

(iv) defend any legal proceedings brought against Mortgagor arising out of the operation of the Property.

(l) Any charges, expenses or fees, including reasonable attorneys' fees and costs, incurred by Bank in connection with any of the foregoing shall be included in the Obligations, and shall be due and payable on demand, together with interest at the default rate set forth in the Note, such interest to be calculated from the date of such advance to the date of repayment thereof.

(m) Mortgagor shall, from time to time, without charge and within 10 days after requested by Bank, execute, acknowledge and deliver, and cause each tenant under the Leases to execute, acknowledge and deliver to Bank a written statement, in form and substance satisfactory to Bank, certifying to certain matters relating to the Leases, including without limitation:



(i) the commencement and expiration dates of the Leases and the dates when any rents, charges and other sums commenced to be payable thereunder,

(ii) that the Leases are unmodified and in full force and effect (or, if modified, stating the nature of such modifications and that the Leases as so modified are in full force and effect),

(iii) the amount of Rents (including a breakdown thereof) payable under the Leases and the dates to which the Rents and other charges under the Leases have been paid in advance, and

(iv) whether there are any uncured defaults by Mortgagor or tenant or any setoffs or defenses against enforcement of any terms or conditions under any Lease.

(n) Notwithstanding the privilege and license granted by Bank herein, Bank, and not Mortgagor, shall be deemed to be the creditor of each tenant in respect of any assignment for the benefit of creditors, bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant. Bank shall have the option to have any money received by Bank as such creditor applied to reduce the Obligations or paid over to Mortgagor. Bank shall have the right to file claims in any such proceedings and to otherwise pursue creditor's rights therein. If Mortgagor learns that any tenant has become the subject of such a proceeding, Mortgagor shall give Bank prompt notice thereof.

**20. Due on Sale or Further Encumbrance or Transfer of an Interest in Mortgagor.**

(a) Without the prior written consent of Bank in each instance, Mortgagor shall not

(i) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable,

(ii) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or

(iii) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property.

Notwithstanding the foregoing, a transfer resulting from the death of Mortgagor shall not result in a Default hereunder so long as (i) the estate of the deceased Mortgagor assumes the obligations under this Mortgage within thirty (30) days of the death of such Mortgagor and (ii) an "Acceptable Assumptor" (as hereinafter defined) assumes all obligations of the deceased Mortgagor under the Loan Documents pursuant to an "Approved Distribution" (as hereinafter defined) of the property encumbered by this Mortgage. As used herein, "Approved Distribution" shall mean a distribution through the ordinary course of administration of the estate of the deceased Mortgagor made within one hundred eighty (180) days of the death of the deceased Mortgagor; provided, however, Approved Distribution shall NOT include a purchaser in connection with any sale by the estate. As used herein, "Acceptable Assumptor" shall mean a beneficiary of the estate of the deceased Mortgagor acceptable to Lender in Lender's sole discretion, which acceptance may be conditioned in whole or part on such person's financial creditworthiness or such other factors as may be determined by Lender in Lender's sole discretion.

(b) A "transfer" of the Property includes:

(i) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein;

(ii) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property;



(iii) if Mortgagor or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company, trust or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity including, without limitation, changes in stockholders, partners, members, managers, trustees, beneficiaries, or their respective interests;

(iv) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and

(v) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

(c) Bank's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in the Note (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of the Note or this instrument.

## **21. Remedies of Bank on Default.**

(a) Failure of Mortgagor or any other person liable to timely pay or perform any of the Obligations is a default ("Default") under this Mortgage.

(b) Upon the occurrence of Default the following remedies are available, without limitation, to Bank:

(i) Bank may exercise any or all of Bank's remedies under this Mortgage or other Loan Documents including, without limitation, acceleration of the maturity of all payments and Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or any of its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements;

(ii) Bank may take immediate possession of the Property or any part thereof (which Mortgagor agrees to surrender to Bank) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of:

(1) the Obligations, together with all costs and attorneys' fees;

(2) all Impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and

(3) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine.

(4) The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property;

(iii) Bank may apply to any court of competent jurisdiction for the appointment of a receiver for all purposes including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Mortgagor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has committed waste or permitted



deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations;

(iv) Bank may sell all or part of the Property (referred to as "Sale") pursuant to power of sale (which is hereby granted) by public sale conducted at the courthouse door in the county in which any part of the Property is located after publishing once a week for three successive weeks in some newspaper published in such county notice of such sale providing the time of such Sale, and republish and conduct in the same manner additional Sales as may be required until all of the Property is sold or the Obligations are satisfied;

(v) With respect to any portion of the Property governed by the UCC, Bank shall have all of the rights and remedies of a secured party thereunder. Bank may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property;

(vi) Bank may bid at Sale and may accept, as successful bidder, credit of the bid amount against the Obligations as payment of any portion of the purchase price; and (vii) Bank shall apply the proceeds of Sale, first to any fees or attorney fees permitted Bank by law in connection with Sale, second to expenses of foreclosure, publication, and sale permitted Bank by law in connection with Sale, third to the Obligations, and any remaining proceeds as required by law.

**22. Miscellaneous Provisions.** Mortgagor agrees to the following:

(a) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Bank or acceptance by Bank of any partial payment shall not constitute a waiver by Bank of any Default;

(b) Mortgagor represents that Mortgagor (a) is (1) an adult individual and is sui juris, or (2) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Mortgage and any other Loan Document to which it is a party.

(c) The provisions hereof shall be binding upon and inure to the benefit of Mortgagor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Bank, its successors and assigns and any future holder of the Note or other Obligations;

(d) Any notices, demands or requests shall be sufficiently given Mortgagor if in writing and mailed or delivered to the address of Mortgagor shown above or to another address as provided herein and to Bank if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011, or such other address as Bank may specify from time to time and in the event that Mortgagor changes Mortgagor's address at any time prior to the date the Obligations are paid in full, that party shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all charges prepaid. Notices to Bank must include the mail code.



(e) This Mortgage may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto;

(f) All references to "Bank" shall mean to "Bank (for itself and its affiliate)";

(g) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage;

(h) If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Mortgage shall be construed and enforced as if such clause, provision or obligation had not been contained herein;


(i) This Mortgage shall be governed by and construed under the laws of the jurisdiction where this Mortgage is recorded;

(j) Mortgagor by execution and Bank by acceptance of this Mortgage agree to be bound by the terms and provisions hereof).

23. **FINAL AGREEMENT.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**IN WITNESS WHEREOF,** Mortgagor has signed and sealed this instrument as of the day and year first above written.

**Mortgagor**

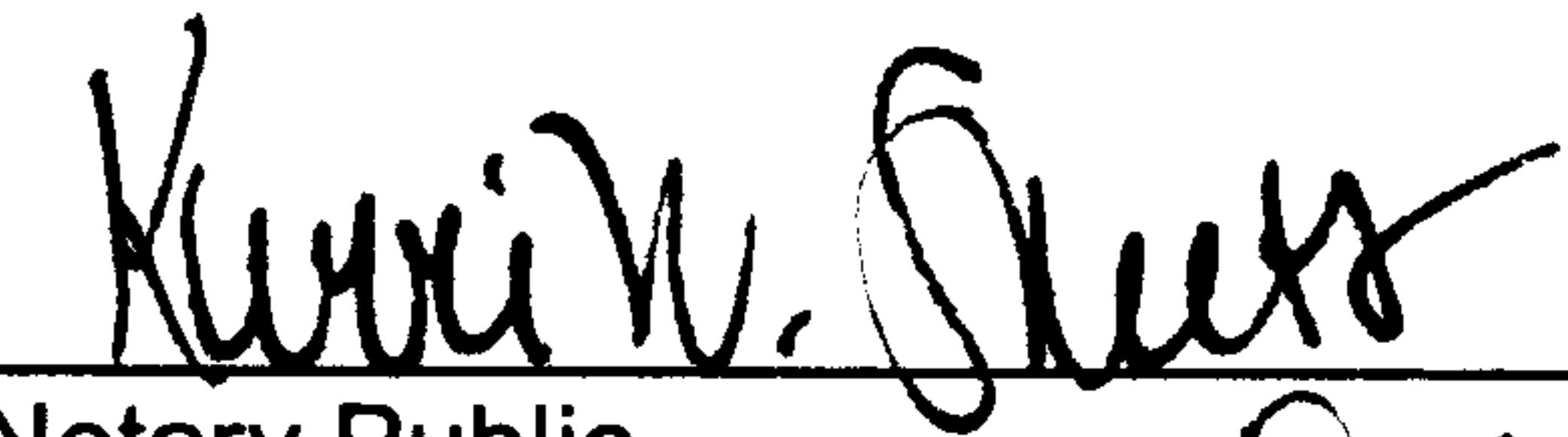
  
Michael R. Summers (SEAL)

**STATE OF ALABAMA** )

**COUNTY OF JEFFERSON** )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Michael R. Summers, an individual, 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 such instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 27 day of January, 2006.

  
Notary Public  
My Commission Expires: Oct 25, 2008



**EXHIBIT A**

A parcel of land situated in the SE 1/4 of Section 29 and the SW 1/4 of Section 28, Township 18 South, Range 1 West, Shelby County, Alabama, being a part of Lot 3 and a part of Lot 2 in Bigler's Resurvey as recorded in Map Book 8 on Page 106 in the Office of the Judge of Probate, Shelby County, Alabama, being more particularly described as follows:

Commence at the SW corner of said SE 1/4 section; thence run North along the West line of said SE 1/4 section for a distance 1,460 feet to a point; thence turn an angle to the right of 123 deg. 00 min. 00 sec. and run in a Southeasterly direction for a distance of 581.68 feet to a point on the Southeast line of an 80 foot wide right of way for Alabama Highway No. 119; thence turn an angle to the left of 98 deg. 31 min. 00 sec. and run in a Northeasterly direction along said Southeast line for a distance of 23.23 feet to the intersection of the Southeast right of way line of Alabama Highway No. 119 and the Northeast line of a 60 feet right of way for a county road; thence continue along last stated course for a distance of 549.91 feet to an iron pin found; thence continue along last stated course for a distance of 211.29 feet to an iron pin found at the Southwest corner of Harris Cemetery, thence turn an angle to the right of 90 deg. 23 min. 57 sec. and run in a Southeasterly direction along the South line of said Harris Cemetery for a distance of 116.54 feet to an iron pin found at the Southeast corner of Harris Cemetery; thence turn an angle to the left of 89 deg. 35 min. 56 sec. and run in a Northeasterly direction along the East side of said Harris Cemetery for a distance of 62.00 feet to an iron pin found at the point of beginning; thence turn an angle to the right 0 deg. 26 min. 34 sec. and run in an Northeasterly direction along the East side of said Harris Cemetery for a distance of 72.17 feet to an iron pin found at the Northeast corner of said Harris Cemetery; thence turn an angle to the left of 86 deg. 20 min. 19 sec. and run in a Northwesterly direction along the North side of said Harris Cemetery for a distance of 112.79 feet to an iron pin found, said found, said iron pin found being on the Southeast right of way line of Alabama Highway No. 119 also known as Cahaba Valley Road, said iron pin found also being on a curve to the right having a central angle of 1 deg. 09 min. 26 sec. and a radius of 10,373.33 feet; thence turn an angle to the right of 88 deg. 20 min. and 18 sec. to the chord of said curve and run in a Northeasterly direction along the arc of said curve and also along said Southeasterly right of way line of Alabama Highway No. 119 for a distance of 209.51 feet to an iron pin found; thence run tangent to last stated curve in an Northeasterly direction along said Southeast right of way line of Alabama Highway No. 119 for a distance of 207.07 feet to an iron pin found; thence turn an angle to the left of 00 deg. 03 min. 43 sec. and run in a Northeasterly direction along said Southeast right of way line of Alabama Highway No. 119 for a distance of 60.05 feet to an iron pin found; thence turn an angle to the right of 92 deg. 32 min. 42 sec. and run in an Southeasterly direction for a distance of 2,221.26 feet to an iron pin found; thence turn an angle to the right of 102 deg. 44 min. 09 sec. and run in a Southwesterly direction for a distance of 61.44 feet to an iron pin found; thence turn an angle to the right of 00 deg. 01 min. 34 sec. and run in a Southwesterly direction for distance of 138.24 feet to an iron pin found; thence turn an angle to the left of 00 deg. 00 min. 45 sec. and run in a Southwesterly direction for a distance of 154.96 feet to an iron pin found; thence turn an angle to the left of 1 deg. 00 min. 33 sec. and run in a Southwesterly direction for a distance of 203.08 feet to an iron pin found; thence turn an angle to the right of 78 deg. 11 min. 27 sec. and run in a Northwesterly direction for a distance of 1,040.19 feet to an iron pin set; thence turn an angle to the right 81 deg. 54 min. 07 sec. and run in a Northeasterly direction for a distance of 115.00 feet to an iron pin set; thence turn an angle to the left of 79 deg. 38 min. 49 sec. and run in a Northwesterly direction for a distance of 294.24 feet to an iron pin set; thence turn an angle to the left of 95 deg. 21 min. 43 sec. and run in a Southwesterly direction for a distance of 115.00 feet to an iron pin set; thence turn an angle to the right of 92 deg. 17 min. 41 sec. and run in a Northwesterly direction for a distance of 615.60 feet to the point of beginning. Also less and except a 60 feet by 60 tower sight located in the Northeast corner of same parcel of land.