

STATE OF ALABAMA                    )  
SHELBY COUNTY                        )

**MORTGAGE**

**THIS MORTGAGE** ("this Mortgage") is made and entered into this 1<sup>st</sup> day of February, 2006 by and between **REES 520, LLC**, a Georgia limited liability company (the "Borrower") and **HOWARD STOLZ HOWARD LIMITED PARTNERSHIP**, a Georgia limited partnership (the "Lender").

**Recitals**

A. The Lender has agreed to make a loan to the Borrower in the maximum principal amount of Two Million Five Hundred Twenty-Seven Thousand Thirty-One and 68/100 Dollars (\$2,527,031.68) (the "Loan"), which Loan shall be evidenced by a certain promissory note dated of even date herewith executed by the Borrower in favor of the Lender (the "Note").

B. To secure the Loan, and to induce the Lender to extend such credit to the Borrower, the Borrower agreed to grant a mortgage to the Lender covering certain real property located in Shelby County, Alabama.

**Agreement**

**NOW, THEREFORE**, in consideration of the premises, and to secure the payment of (a) the Loan and all indebtedness of the Borrower under the Note, or any extension or renewal thereof; (b) all interest and finance charges payable from time to time on the Loan and/or indebtedness, or any part thereof; (c) all other charges, costs and expenses now or hereafter owing by the Borrower to the Lender pursuant to any instrument executed in connection with the Note or the Loan; and (d) all advances by the Lender under the terms of this Mortgage (the aggregate amount of all such items described in (a) through (d) above being hereinafter collectively called "Debt") and the compliance with all the stipulations herein contained, the Borrower does hereby grant, bargain, sell and convey unto the Lender that certain real estate situated in Shelby County, Alabama and more particularly described on Exhibit A attached hereto and made a part hereof (said real estate being hereinafter called "Real Estate").

Together with all the rights, privileges, tenements, appurtenances and fixtures appertaining to the Real Estate, all of which shall be deemed Real Estate and conveyed by this Mortgage.

To have and to hold the Real Estate unto the Lender, its successors and assigns forever. The Borrower covenants with the Lender that the Borrower is lawfully seized in fee simple of the Real Estate and has a good right to sell and convey the Real Estate as aforesaid; that the Real Estate is free of all encumbrances, except the lien of current ad valorem taxes and the Borrower will warrant and

forever defend the title to the Real Estate unto the Lender, against the lawful claims of all persons, except as otherwise herein provided.

For the purpose of further securing the payment of the Debt, the Borrower agrees to: (1) pay all taxes, assessments, and other liens taking priority over this Mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, the Lender, at its option, may pay the same; (2) keep the Real Estate continuously insured, in such manner and with such companies as may be satisfactory to the Lender, against loss by fire, vandalism, malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable to the Lender, as its interest may appear; such insurance to be in an amount at least equal to the full insurable value of the improvements located on the Real Estate unless the Lender agrees in writing that such insurance may be in a lesser amount. Subject to the rights of the holder of the prior mortgage, if any, set forth above, the original insurance policy and all replacements therefor, shall be delivered to and held by the Lender until the Debt is paid in full. The insurance policy must provide that it may not be cancelled without the insurer giving at least fifteen days' prior written notice of such cancellation to the Lender. The Borrower hereby assigns and pledges to the Lender as further security for the payment of the Debt each and every policy of hazard insurance now or hereafter in effect which insures said improvements, or any part thereof, together with all the right, title and interest of the Borrower in and to each and every such policy, including but not limited to all of the Borrower's right, title and interest in and to any premiums paid on such hazard insurance, including all rights to return of premiums. If the Borrower fails to keep the Real Estate insured as specified above, then at the election of the Lender and without notice to any person, the Lender may declare the entire Debt due and payable and this Mortgage subject to foreclosure, and this Mortgage may be foreclosed as hereinafter provided; and, regardless of whether the Lender declares the entire Debt due and payable and this Mortgage subject to foreclosure, the Lender may, but shall not be obligated to, insure the Real Estate for its full insurable value (or for such less amount as the Lender may wish) against such risks of loss, for its own benefit, the proceeds from such insurance (less the costs of collecting same), if collected, to be credited against the Debt, or, at the election of the Lender, such proceeds may be used in repairing or reconstructing the improvements located on the Real Estate.

All amounts spent by the Lender for insurance or for the payment of Liens or for the payment of any amounts under any prior mortgages shall become a debt due by the Borrower and at once payable, without demand upon or notice to the Borrower, and shall be included in the Debt secured by the lien of this Mortgage, and shall bear interest from date of payment by the Lender until paid at the rate of interest payable from time to time under the Note, or such lesser rate as shall be the maximum permitted by law; and if any such amount is not paid in full immediately by the Borrower upon demand by the Lender, then at the option of the Lender, this Mortgage shall be in default and subject to immediate foreclosure in all respects as provided by law and by the provisions hereof.

Subject to the rights of the holder of the prior mortgage, if any, set forth above, the Borrower hereby assigns and pledges to the Lender the following property, rights, claims, rents, profits, issues and revenues:

1. All rents, profits, issues, and revenues of the Real Estate (collectively, the "Rents") from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to the Borrower, so long as the Borrower is not under default hereunder, the right to receive and retain the Rents;

2. All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Real Estate, or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets, and all payments made for the voluntary sale of the Real Estate, of any part thereof, in lieu of the exercise of the power of eminent domain. The Lender is hereby authorized on behalf of, and in the name of, the Borrower to execute and deliver an appeal from, any such judgments or awards. The Lender may apply all such sums so received, or any part thereof, after the payment of all the Lender's expenses, including court costs and attorney's fees, on the Debt in such manner as the Lender elects, or, at the Lender's option, the entire amount or any part thereof so received may be released or may be used to rebuild, repair or restore any or all of the improvements located on the Real Estate.

The Borrower agrees to take good care of the Real Estate and all improvements located thereon and not to commit or permit any waste thereon, and at all times to maintain such improvements in as good condition as they now are, reasonable wear and tear excepted.

The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The Borrower represents and warrants to the Lender that: (a) during the period of the Borrower's ownership of the Real Estate, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the Real Estate; (b) the Borrower has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by the Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Real Estate or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) except as previously disclosed to and acknowledged by the Lender in writing, (i) neither the Borrower nor any tenant, contractor, agent or other authorized user of the Real Estate shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Real Estate and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local

laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Any inspections or tests made by the Lender shall be for the Lender's purposes only and shall not be construed to create any responsibility of liability on the part of the Lender to the Borrower or to any other person. The representations and warranties contained herein are based on the Borrower's due diligence in investigating the Real Estate for hazardous waste. The Borrower hereby (a) releases and waives any future claims against the Lender for indemnity or contribution in the event the Borrower becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless the Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which the Lender may directly or indirectly sustain or suffer resulting from a breach of this section of this Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to the Borrower's ownership or interest in the Real Estate, whether or not the same was or should have been known to the Borrower. The provisions of this section of this Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by the Lender's acquisition of any interest in the Real Estate, whether by foreclosure or otherwise.

Notwithstanding any other provision of this Mortgage or the Note, the Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Estate, or any interest in the Real Estate. A "sale or transfer" means the conveyance of Real Estate or any right, title or interest therein; whether legal or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by any other method of conveyance of real estate interest. However, this option shall not be exercised by the Lender if such exercise is prohibited by federal law or by Alabama law.

The Lender may make or cause to be made reasonable entries upon and inspections of the Real Estate, provided that the Lender shall give the Borrower notice prior to any such inspection specifying reasonable cause therefor related to the Lender's interest in the Real Estate.

Except for any notice required under applicable law to be given in another manner, any notice under this Mortgage (a) may be given to the Borrower by delivering such notice to the Borrower (or any one of them if more than one) or by mailing such notice by first class mail addressed to the Borrower at the most recent address on the Lender's records or at such other address as the Borrower shall designate by notice to the Lender as provided herein and (b) shall be given to the Lender by first class mail to the Lender's address stated herein or to such other address as the Lender may designate by notice to the Borrower as provided herein. Any notice under this Mortgage shall be deemed to have been given to the Borrower or the Lender when given in the manner designated herein.

The Borrower agrees that no delay or failure of the Lender to exercise any option to declare the Debt due and payable shall be deemed a waiver of the Lender's right to exercise such option, either as to any past or present default, and it is agreed that no terms or conditions contained in this

Mortgage may be waived, altered or changed except by a written instrument signed by the Borrower and signed on behalf of the Lender by one of its partners.

As additional consideration to induce the Lender to make the Loan, the Borrower hereby agrees that in the event a bankruptcy proceeding, either voluntary or involuntary, is commenced by or against the Borrower, the Borrower will not oppose or object to the Lender's motion for relief from the automatic stay provided under 11 U.S.C. § 362.

Upon condition, however, that if: (a) the Debt is paid in full; (b) the Lender is reimbursed for any amounts the Lender has paid in payment of Liens or insurance premiums or any prior mortgages, and interest thereon; (c) the Borrower fulfills all of the Borrower's obligations under this Mortgage; (d) the Lender has no obligation to extend any further credit to the Borrower thereunder; and (e) the Lender has executed an appropriate written instrument in satisfaction of this Mortgage; this conveyance shall be null and void.

If, however, (1) the Borrower fails to make any payment on the Debt when due and said failure shall continue unremedied for a period of five (5) business days; (2) any warranty or representation made in this Mortgage or the Note is breached or proves false in any material respect; (3) default is made in the due performance of any covenant or agreement of the Borrower under this Mortgage, the Note or any other credit document executed in connection with the Note; (4) default is made in the payment to the Lender of any sum paid by the Lender under the authority of any provision of this Mortgage; (5) the Debt, or any part thereof, or any other indebtedness, obligation or liability of the Borrower, Borrower, or any of them, to the Lender remains unpaid at maturity; (6) the interest of the Lender in the Real Estate becomes endangered by reason of the enforcement of any prior Lien or encumbrance thereon; (7) any statement of lien is filed against the Real Estate, or any part thereof, under the statutes of Alabama relating to the liens of mechanics and materialmen (without regard to the existence or non-existence of the debt or the lien on which such statement is based); (8) any law is passed imposing or authorizing the imposition of any specific tax upon this Mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal or interest of the Debt, or by virtue of which any tax, lien or assessment upon the Real Estate shall be chargeable against the owner of this Mortgage; (9) the Borrower, any guarantor of the Debt or any of them (a) shall apply for or consent to the appointment of a receiver, trustee or liquidator thereof or of the Real Estate or of all or a substantial part of such Borrower's or Borrower's or guarantor's assets, (b) be adjudicated a bankrupt or insolvent or file a voluntary petition in bankruptcy, (c) fail, or admit in writing such Borrower's or guarantor's inability generally to pay such Borrower's or guarantor's debts as they come due, (d) make a general assignment for the benefit of creditors, (e) file a petition or an answer seeking reorganization or an arrangement with creditors on taking advantage of any insolvency law, or (f) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against any Borrower or guarantor in any bankruptcy, reorganization or insolvency proceedings; (10) an order for relief or other judgment or decree shall be entered by a court of competent jurisdiction, approving a petition seeking liquidation or reorganization of the Borrower, any guarantor or any of them, or appointing a receiver, trustee or liquidator of any Borrower or guarantor or of the Real Estate or of all or a substantial part of the assets of any

Borrower or guarantor; or (11) any other default occurs under the Note; then an event of default shall have occurred hereunder.

Upon the occurrence of an event of default hereunder, then, the Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law: (1) The Lender may declare the unpaid balance of the Debt immediately due and payable. (2) The Lender shall have the right to have a receiver appointed to take possession of all or any part of the Real Estate, with the power to protect and preserve the Real Estate, to operate the Real Estate preceding foreclosure or sale, and to collect the Rents from the Real Estate and apply the proceeds, over and above the cost of the receivership, against the Debt; the receiver may serve without bond if permitted by law and the Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Real Estate exceeds the indebtedness by a substantial amount. (3) The Lender may obtain a judicial decree foreclosing the Borrower's interest in all or any part of the Real Estate. (4) The Lender may take possession of the Real Estate and, with or without taking such possession, after giving notice of the time, place and terms of sale, together with a description of the Real Estate to be sold, by publication once a week for three (3) successive weeks in some newspaper published in the county or counties in which the Real Estate to be sold is located, to sell the Real Estate (or such part or parts thereof as the Lender may from time to time elect to sell) at the front or main door of the courthouse of the county in which the Real Estate to be sold, or a substantial and material part thereof, is located, at public outcry, to the highest bidder for cash. If there is Real Estate to be sold under this Mortgage in more than one county, publication shall be made in all counties where the Real Estate to be sold is located, and if no newspaper is published in any county in which any Real Estate to be sold is located, the notice shall be published in a newspaper published in an adjoining county for three (3) successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale under this Mortgage. The Lender may bid at any sale had under the terms of this Mortgage and may purchase the Real Estate if the highest bidder therefore. The proceeds of any such sale shall be applied as follows: *first*, to the expense of advertising, selling and conveying the Real Estate and foreclosing this Mortgage, including reasonable attorneys' fees; *second*, to the payment in full of the balance of the Debt in whatever order and amounts the Lender may elect, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; *third*, to the payment of any amounts that have been spent, or that it may then be necessary to spend, in paying insurance premiums, Liens, any prior mortgages or other encumbrances related to the Real Estate, with interest thereon; and, *fourth*, the balance, if any, to be paid to the party or parties appearing of record to be the owner of the Real Estate at the time of the sale, after deducting the costs of ascertaining who is such owner. The Borrower hereby waives any and all rights to have the property marshalled. In exercising its rights and remedies, the Lender shall be free to sell all or any part of the Real Estate together or separately, in one sale or by separate sales. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. In the event of a sale hereunder, the Lender, or the owner of the Debt and mortgage, or auctioneer, shall execute to the purchaser, for and in the name of the Borrower, a deed to the Real Estate. (6) The Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at

law or in equity. The Lender shall be entitled to bid at any public sale on all or any portion of the Real Estate or other property pledged hereunder.

Whether or not any court action is involved, all expenses incurred by the Lender that, in the Lender's opinion, are necessary at any time for the protection of the Lender's interest, required under applicable laws or regulations or necessary in the enforcement of its rights and remedies hereunder, shall become a part of the debt secured hereby, payable on demand and shall bear interest from the date of expenditure until repaid at the rate set forth in the Note. Expenses covered by this paragraph include, without limitation, the Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), foreclosure sales, appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisals, environmental site assessment reports and title insurance, all to the extent permitted by applicable law. The Borrower also will pay any court costs, in addition to all other sums provided by law.

Plural or singular words used herein to designate the Borrower(s) or the undersigned shall be construed to refer to the maker or makers of the Note and this Mortgage, respectively, whether one or more. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Real Estate at any time held by or for the benefit of the Lender in any capacity, without the written consent of the Lender. All obligations of the Borrower under this Mortgage shall be joint and several, and all references to the Borrower shall mean each and every the Borrower. This means that each of the persons signing below is responsible for all obligations in this Mortgage. If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable. Subject to the limitations stated in this Mortgage on transfer of the Borrower's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Real Estate becomes vested in a person other than the Borrower, the Lender, without notice to the Borrower, may deal with the Borrower's successors with reference to this Mortgage and the Debt by way of forbearance or extension without releasing the Borrower from the obligations of this Mortgage or liability under the Debt. Time is of the essence in the performance of this Mortgage. **THE BORROWER HEREBY RELEASES AND WAIVES ALL RIGHTS AND BENEFITS OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ALABAMA AS TO ALL DEBT SECURED BY THIS MORTGAGE.** No delay or omission on the part of the Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by the Lender, nor any course of dealing between the Lender and the Borrower, shall constitute a waiver of any of the Lender's rights or any of the Borrower's obligations as to any future transactions. Whenever



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Shelby Cnty Judge of Probate, AL  
02/06/2006 03:36:00PM FILED/CERT

consent by the Lender is required in this Mortgage, the granting of such consent by the Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

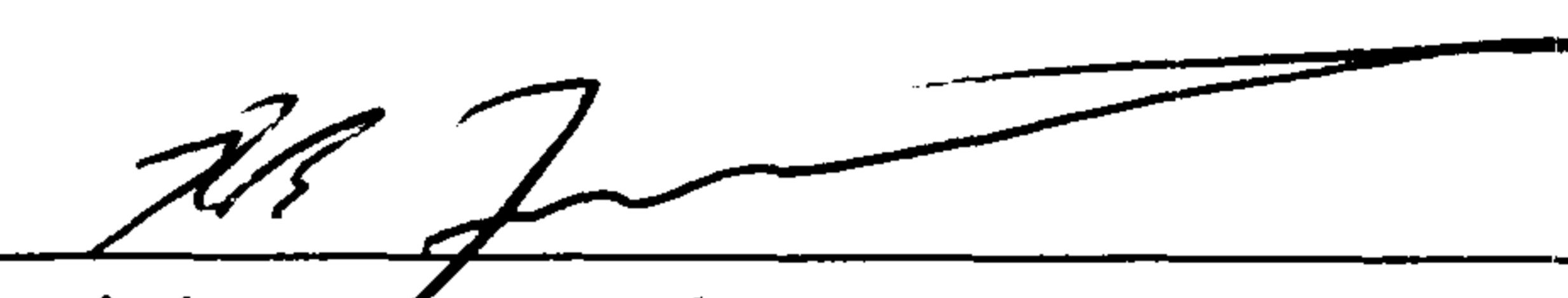
This Mortgage incorporates by reference those provisions set forth in Section 23 of that Promissory Note dated of even date herewith executed by the Borrower in favor of the Lender providing that the debt evidenced by said Promissory Note is non-recourse to the Borrower.

**[signature page to follow]**

**IN WITNESS WHEREOF**, the undersigned has executed this Mortgage on the date of the acknowledgment of the Borrower's signature below.

**REES 520, LLC**

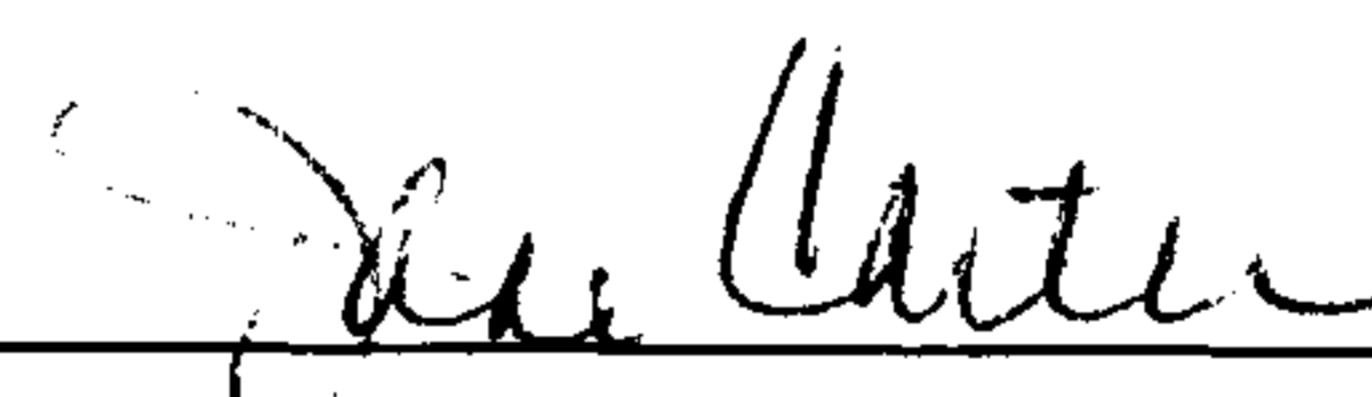
By REES Holdings, LLC  
Its Manager and Sole Member

By:   
Ricky B. Novak, Its Manager

STATE OF GEORGIA )  
COUNTY OF COBB )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Ricky B. Novak, whose name as Manager of REES Holdings, LLC, the Manager and Sole Member of REES 520, LLC, a Georgia limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

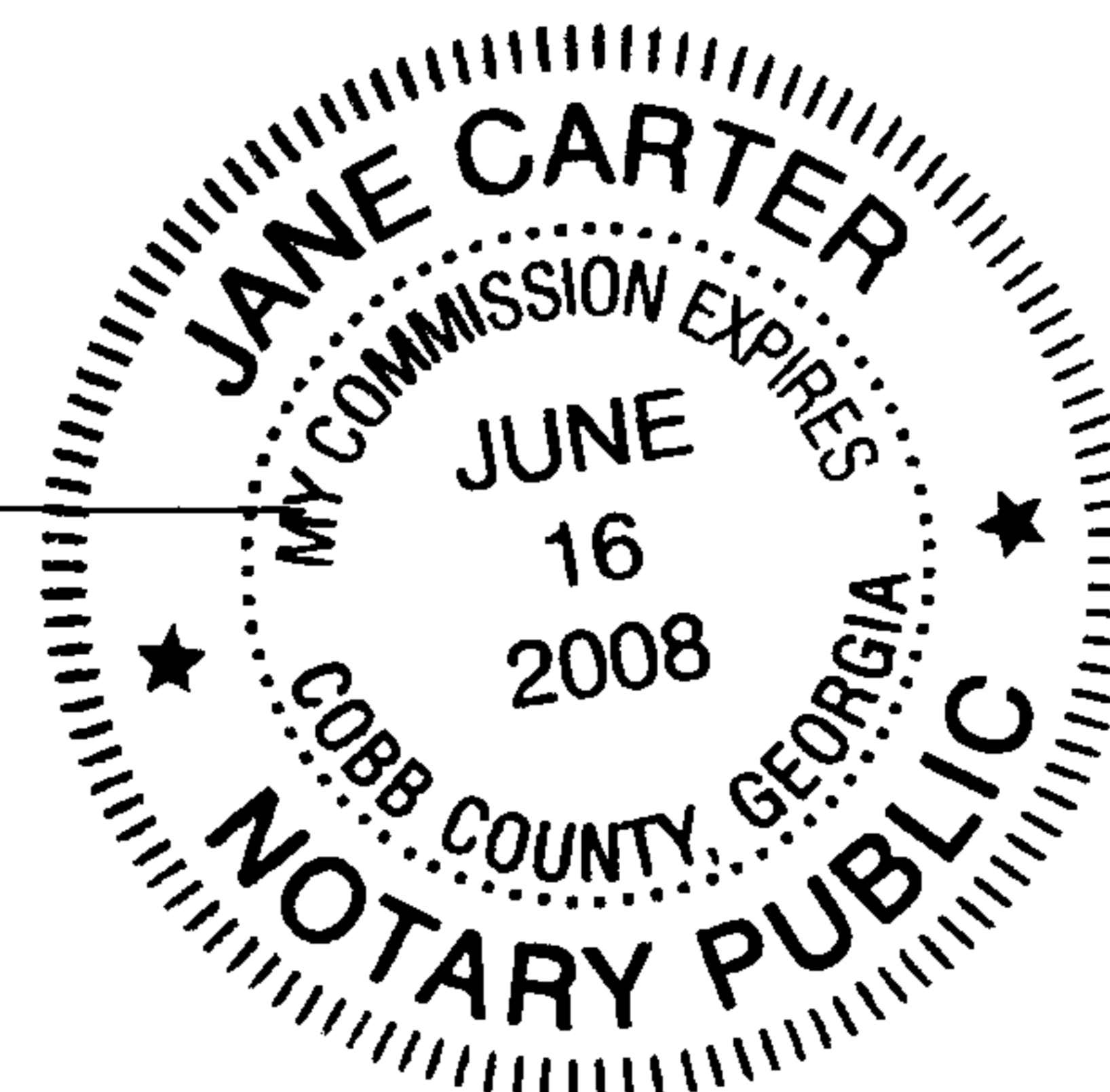
Given under my hand and official seal this the 30th day of January, 2006.


  
Notary Public

AFFIX SEAL

My commission expires: 6-16-08

This instrument prepared by:  
Matthew W. Grill, Esq.  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2618  
(205) 254-1000



  
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Shelby Cnty Judge of Probate, AL  
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**Exhibit A**

(Legal Description of Real Estate)

Site 5-A, Resurvey of Sites 5A and 7A, being a resurvey of part of sites 4, 5, 6A and 7, being a resurvey of Site 6 and Lot 1-A-1-A-1, Shelby West Corporate Park, as recorded in Map Book 29, page 111, in the Probate Office of Shelby County, Alabama