

**NOTE:** This Absolute Assignment of Rents and Leases is given as additional collateral for the indebtedness secured by the Mortgage, Assignment of Leases, Rents, and Profits, Security Agreement and Fixture Financing Statement granted by the Assignor in favor of the Assignee and recorded in 200703, page 11537 of the records. No tax is due.

**COPY**

20070215000258870 1/15  
Bk: LR200703 Pg: 11571  
Jefferson County, Alabama  
I certify this instrument filed on:  
02/15/2007 12:42:27 PM XFRL  
Judge of Probate- Alan L. King

## ALABAMA

This Instrument Was Prepared By:

Nicholas G. Barca  
Stites & Harbison PLLC  
Suite 1800, 424 Church Street  
Nashville, Tennessee 37219  
(615) 244-5200

After Recording, This Instrument Should Be Returned To The Preparer At The Address Shown Above.

### ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

THIS ABSOLUTE ASSIGNMENT OF RENTS AND LEASES (the "Assignment") is made as of this 27th day of December, 2006, by EZELL HOLDINGS LLC, a Tennessee limited liability company ("Assignor"), to and for the benefit of NATIONAL CITY BANK, a national bank ("Assignee").

### WITNESSETH:

WHEREAS, Assignor owns an undivided interest in the real property (the "Property") described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Assignor is obligated to Assignee pursuant to that certain Promissory Note of even date herewith issued by Assignor (as Borrower) paid to the order of Assignee (as Lender) in the principal amount of \$5,500,000.00, and all modifications and extensions thereto (the "Note"), and (ii) the instruments, agreements, and loan documents described on Exhibit B hereto (collectively, the "Loan Documents"); and

WHEREAS, the Assignee requires that the Assignor secure the indebtedness owed by Assignor to Assignee as described in the Loan Documents by the execution of this Assignment.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Assignee and Assignor hereby agree as follows:



1. Assignment. Assignor, intending to be legally bound, does hereby sell, assign, transfer and set over unto Assignee all right, title and interest of Assignor in and to all rents, issues, income and profits of the Property, and all right, title, and interest of Assignor in and to the Leases described on Exhibit C hereto, and all other lease(s) of all or of portions of the Property and made a part hereof, and any leases which may be hereafter entered into for all or any portion of the Property (hereinafter referred to as the "Leases"), and any and all amendments, modifications, extensions, replacements and renewals thereof, including all security deposits or interests therein now or hereafter held by Assignor and the benefit of all guarantees executed in connection with any of the Leases. This Assignment is absolute and is effective immediately; provided, however, until notice is sent by Assignee to Assignor in writing that an Event of Default or Default Condition has occurred under that certain Credit Agreement of even date herewith by and between Assignor and Assignee (the "Credit Agreement") (each such notice is hereinafter referred to as the "Notice"), Assignor may receive, collect and enjoy the rents, issues, income and profits accruing from the Property.

2. Representations. Assignor represents and warrants to Assignee that: (a) it has made no prior assignment or pledge of the rents assigned hereby or of the Assignor's interest in any of the Leases; (b) no default exists in any of the Leases and there exists no state of facts which, with the giving of notice or passage of time, or both, would constitute a default under any of the Leases; and (c) Assignor is the sole owner of the lessor's interest in the Leases.

3. Negative Covenants of Assignor. Assignor shall not, without Assignee's prior written consent, which consent shall not be unreasonably withheld, execute an assignment or pledge of the rents from the Property or any part thereof, or of the Assignor's interest in any of the Leases, except to Assignee. Furthermore, Assignor shall not, without Assignee's prior written consent, reduce the rent payable by any tenants under the Leases, nor otherwise materially modify or amend the Leases, nor waive any obligations of, or release any of the tenants under the Leases.

4. Affirmative Covenants of Assignor. Assignor will at its sole cost and expense (a) at all times promptly and faithfully abide by, discharge or perform all of the covenants, conditions and agreements contained in the Leases; (b) transfer and assign to Assignee any and all Leases subsequently entered into, upon the same terms and conditions as are herein contained, and make, execute and deliver to Assignee upon demand any and all instruments required to effectuate such agreement; (c) furnish to Assignee, within ten (10) days after a request by Assignee to do so, a written statement containing the names of all tenants of the Property or any part thereof, the terms of their respective Leases, the spaces occupied, and the rents payable thereunder; (d) furnish Assignee promptly with copies of any notices of default which Assignor may at any time give to any tenant of the Property or any part thereof; and (e) pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the highest rate permitted by applicable law.



5. Agreements of Assignor.

(a) Should Assignor fail to make any payment or to do any act as herein provided for and upon thirty (30) days written notice to Assignor, then Assignee, but without obligation so to do, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as Assignee may deem necessary to protect the Property and the Leases, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the Property or the Leases or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Assignor in the Leases contained, and in exercising any such powers to incur and pay reasonably necessary costs and expenses, including reasonable attorneys' fees, all at the expense of Assignor.

(b) This Assignment shall not operate to place responsibility for the control, management, care or repair of the Property upon Assignee, and Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except such claims or demands resulting from the gross negligence or willful misconduct of Assignee, with respect to the Leases, after Assignee exercises its remedies hereunder; provided, however, Assignee's election not to act or take other remedial action pursuant to this Assignment or the Loan Documents, shall not constitute gross negligence or willful misconduct. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, then Assignor shall, upon Assignee's demand, reimburse Assignee in the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest at the highest rate permitted by applicable law.

(c) Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

(d) A demand on any tenant by Assignee for the payment of the rent on any default of Assignor claimed by Assignee shall be sufficient warrant to the tenant to make future payment of rents to Assignee without the necessity for further consent by Assignor.



(e) Assignor does further specifically authorize and instruct each and every present and future tenant of the whole or any part of the Property to pay all unpaid rent agreed upon in any Leases to Assignee upon receipt of demand from Assignee to pay the same, and Assignor hereby waives all right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of rent to Assignee or compliance with other requirements of Assignee pursuant to this Assignment.

(f) Assignor hereby irrevocably appoints Assignee as Assignor's true and lawful attorney in fact, which appointment is coupled with an interest, with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor, from and after the service of the Notice of any default not having been cured, to demand, collect, receive and give complete acquittances for any and all rents, issues, income and profits accruing from the Property and the Leases, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims in its own name or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, issues, income and profits. Tenants of the Property are hereby expressly authorized and directed to pay any and all amounts due Assignor pursuant to the Leases directly to Assignee or such nominee as Assignee may designate in writing delivered to and received by such tenants, who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

6. Default. At any time after the occurrence of an Event of Default under the Credit Agreement, Assignee may, at its option, from and after the Notice and expiration of any applicable period of grace, if any, and without regard to the value of the Property or the adequacy of the security for the indebtedness, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Property or any part thereof, do any acts which Assignee deems proper to protect the Property and the Leases, and either with or without taking possession of the Property in the name of Assignor or in its own name, sue for or otherwise collect and receive such rents, issues, income and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, but not being limited to, reasonable attorneys' fees, management fees and brokers' commissions, upon any indebtedness of Assignor to Assignee described in the Loan Documents, and in such order as Assignee may determine. Assignee reserves, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, and shall not be accountable for more money than it actually receives from the Property. The entering upon and taking possession of the Property or the collection of such rents, issues, income and profits and the application thereof, as aforesaid, shall not cure or waive any default under the Loan Documents. Assignor agrees that it will facilitate in all reasonable ways Assignee's collection of such rents and will, upon request by Assignee, promptly execute a written notice to each tenant directing the tenant to pay rent to Assignee.

7. Assignee's Right to Exercise Remedies. No remedy conferred upon or reserved to Assignee herein or in the Loan Documents is intended to be exclusive of any other remedy or remedies, and each and every such remedy herein or in the Loan Documents contained shall be



cumulative and concurrent and shall be in addition to every other remedy given hereunder and thereunder or now or hereafter existing at law or in equity or by statute. The remedies may be pursued singly, in succession or together against Assignor or the Property at the sole discretion of Assignee. No delay or omission of Assignee to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein, and every power and remedy given by this Assignment to Assignee may be exercised from time to time as often as may be deemed expedient by Assignee.

8. Defeasance. As long as Assignor shall not have defaulted in the performance of any obligation, covenant or agreement herein or in the Loan Documents, Assignor shall have the right to collect upon, but not prior to accrual, all rents, issues, income and profits from the Property and to retain, use and enjoy the same. Upon the performance of all obligations, covenants and agreements herein and in the Loan Documents, this Assignment shall become and be void and of no effect, but the affidavit of any officer or agent of Assignee showing any part of such indebtedness remaining unpaid or showing nonperformance of any such obligations, covenants or agreements shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

9. Notices. All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing. All such notices, demands and requests shall be deemed to have been properly given if served in person or if sent by United States registered or certified mail, postage prepaid, addressed as follows:

Ezell Holdings, LLC  
63 S. Royal St., Suite 1300  
Mobile, Alabama 36602  
Attn: Jay Watkins

and to Assignee at:

National City Bank  
810 Crescent Center Drive, Suite 160  
Four Corporate Center  
Franklin, Tennessee 37067-6257  
Attn: Thomas W. Powell, Jr.

or to such other address as Assignor or Assignee may from time to time designate by written notice to Assignee or Assignor and given as herein required. Notices, demands and requests given in the manner aforesaid shall be deemed sufficiently served for all purposes hereunder upon the earlier of dispatch or personal service.



10. Miscellaneous.

(a) This Assignment may not be modified, amended, discharged or waived orally, but only by an agreement in writing and signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

(b) The covenants of this Assignment shall bind Assignor, the successors and assigns of Assignor, all present and subsequent encumbrances, tenants and subtenants of the Property or any part thereof, and shall inure to the benefit of Assignee, its successors and assigns; provided, however, Assignor shall make no assignment of its rights or obligations hereunder without the prior written consent of Assignee.

(c) The captions in this Assignment are used for convenience in finding the subject matters, and are not to be taken as part of this Assignment or used in determining the intent of the parties or otherwise in interpreting this Assignment.

(d) In the event any one or more of the provisions contained in this Assignment or in the Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Assignee, not affect any other provision of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

(e) This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama.

(f) The terms "Assignor" and "Assignee" shall be construed to include the heirs, personal representative, successors and assigns thereof. The gender and number used in this Assignment are used as reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, or corporate or other form.

(g) The rights of Assignee hereunder shall be separate, distinct and cumulative of other powers and rights which Assignee may have under any other Loan Documents or at equity, none of them shall be in exclusion of any others, and all of them shall be cumulative to the remedies provided Assignee for collection of indebtedness, enforcement of rights under security deeds, and preservation of security as provided at law, contract or equity. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of other remedies provided in contract, law or equity.

*[Signatures on following page]*



IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first hereinabove written.

GRANTOR:

EZELL HOLDINGS, LLC

By: Elissa G. Watkins

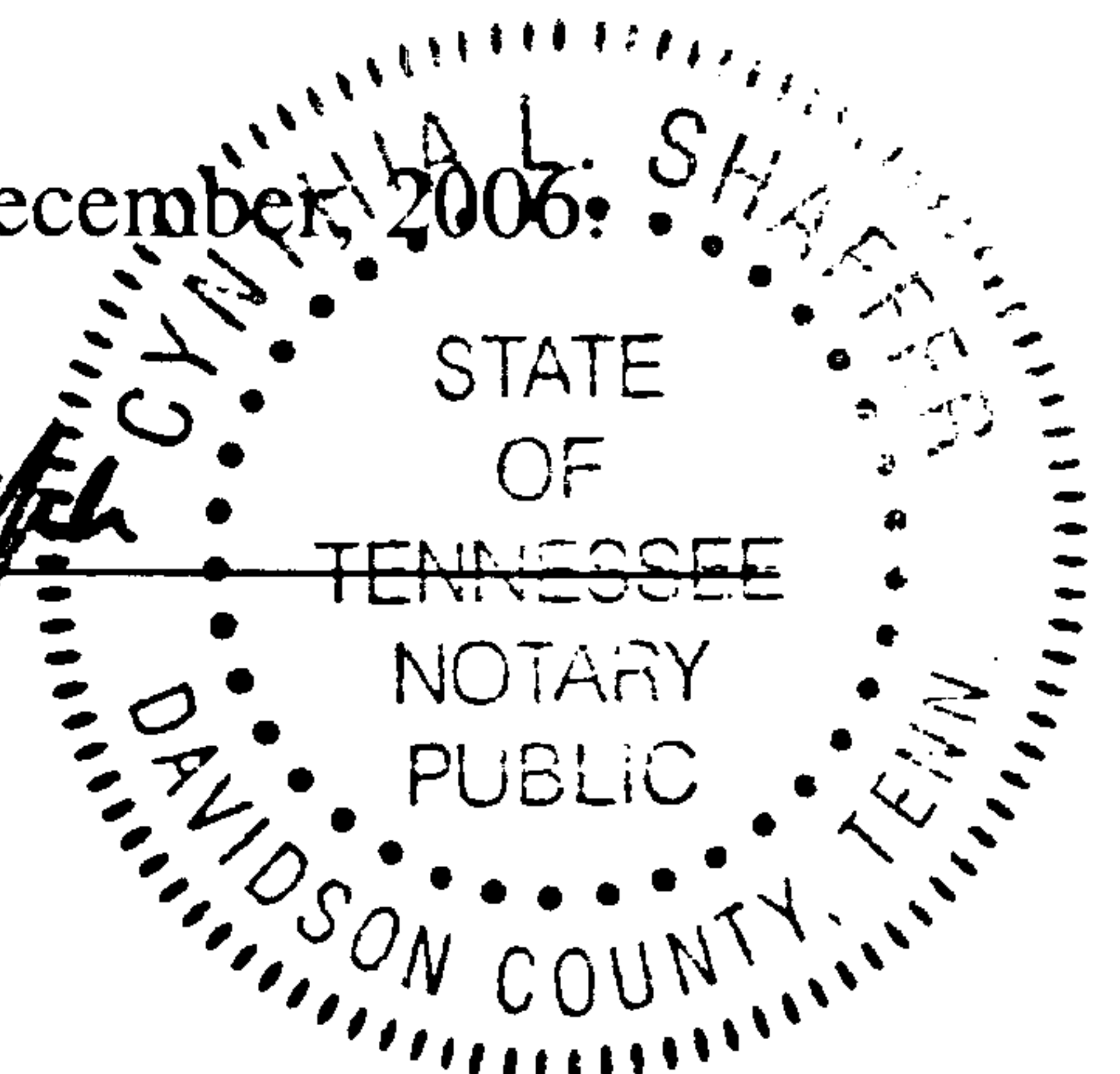
Title: AUTHORIZED MEMBER

STATE OF Tennessee )  
COUNTY OF Davidson )

Before me, Cynthia L. Shaffer, a Notary Public of said County and State, personally appeared Elissa G. Watkins, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Authorized Member (or other officer authorized to execute the instrument) of EZELL HOLDINGS, LLC, the within named bargainor, an Alabama limited liability company, and that she as such Authorized Member executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as its Authorized Member.

Witness my hand and seal, at Office in Nashville, this 27<sup>th</sup> day of December, 2006.

Cynthia L. Shaffer  
Notary Public



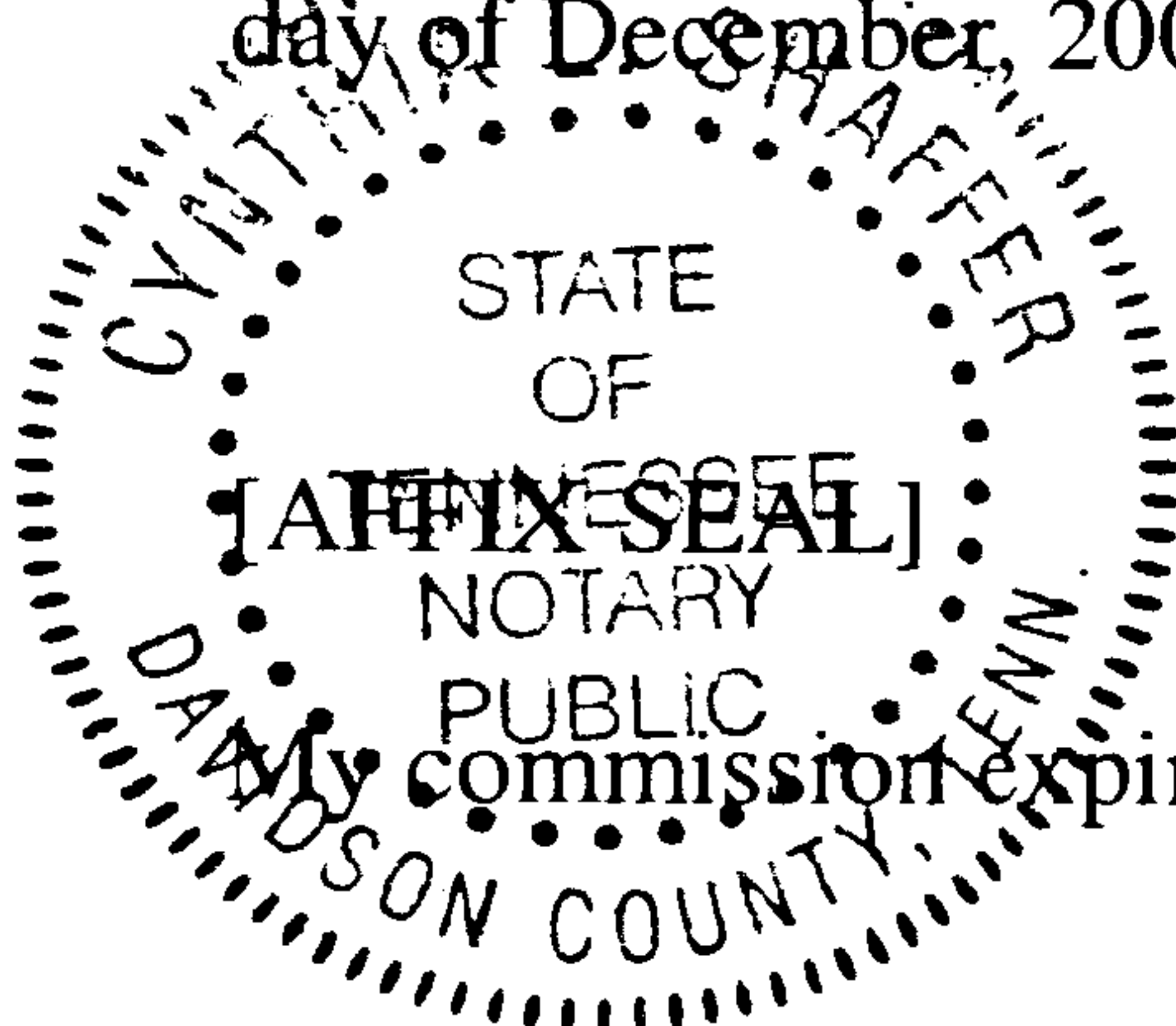
My Commission Expires: 5/23/09

STATE OF Tennessee )  
COUNTY OF Davidson )

My Commission Expires MAY 23, 2009

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Elissa G. Watkins, whose name as Authorized Member of EZELL HOLDINGS, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company. Given under my hand and official seal this the 27<sup>th</sup> day of December, 2006.

Cynthia L. Shaffer  
Notary Public



My Commission Expires: 5/23/09



**ACCEPTED BY:**

NATIONAL CITY BANK

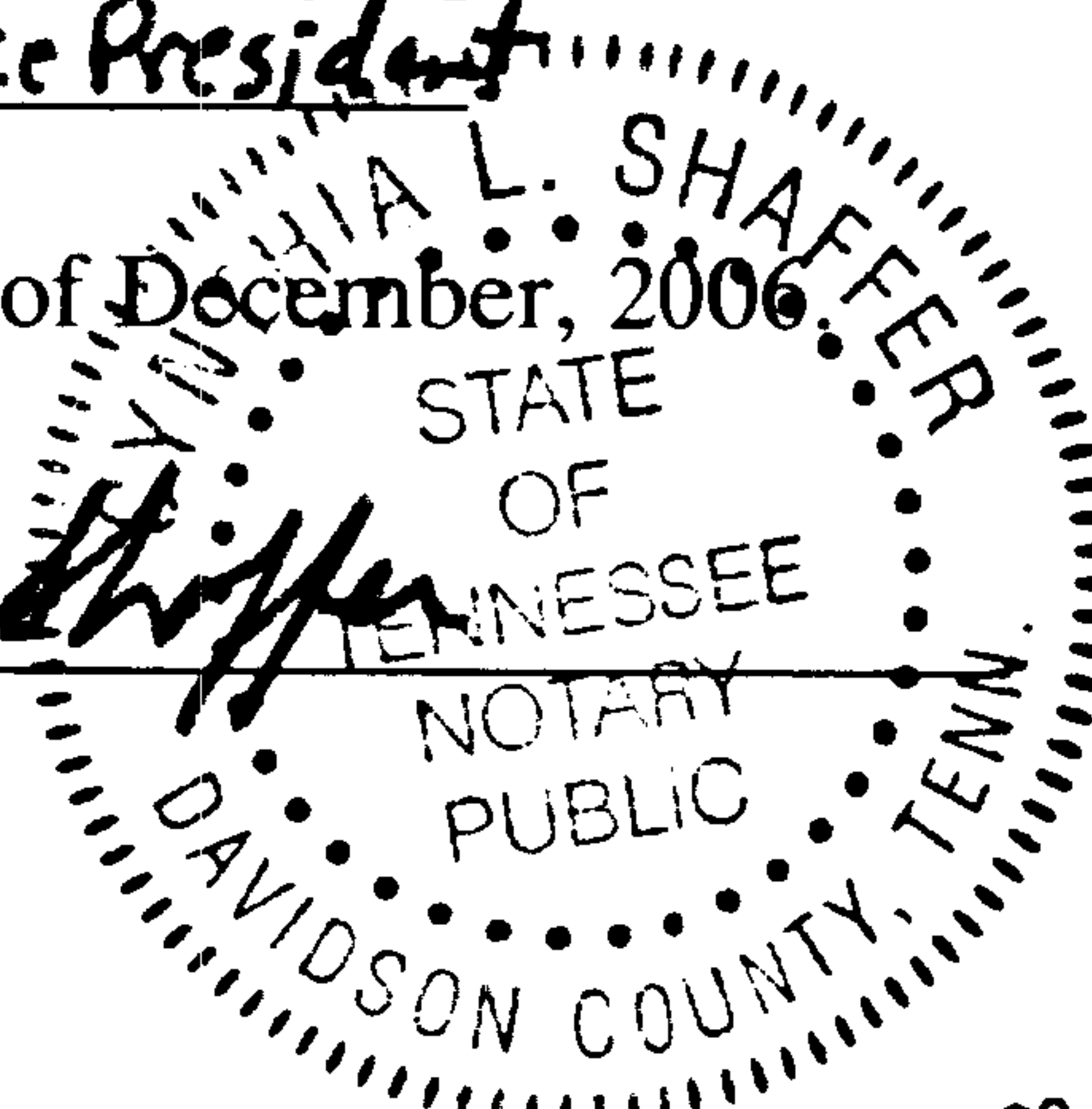
By: Thomas W. Powell, Jr.  
Title: Senior Vice President

STATE OF Tennessee )  
COUNTY OF Davidson )

Before me, Cynthia L. Shaffer, a Notary Public of said County and State, personally appeared Thomas W. Powell, Jr., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Senior Vice President (or other officer authorized to execute the instrument) of NATIONAL CITY BANK, the within named bargainor, a national bank, and that he as such Senior Vice President executed the foregoing instrument for the purposes therein contained, by signing the name of the state bank by himself as Senior Vice President.

Witness my hand and seal, at Office in Nashville, this 27<sup>th</sup> day of December, 2006.

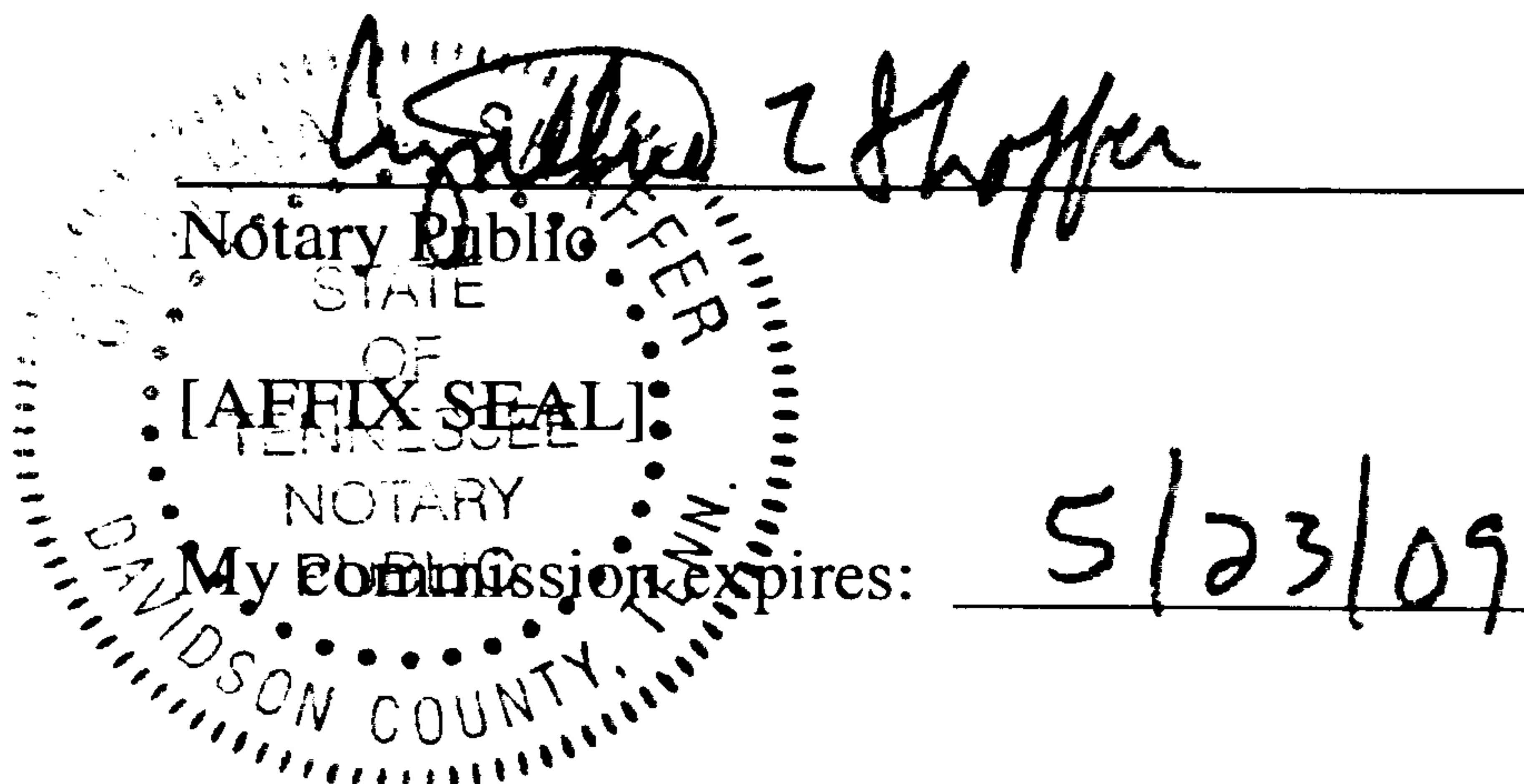
Cynthia L. Shaffer  
Notary Public




My Commission Expires: 5/23/09

STATE OF Tennessee )  
COUNTY OF Davidson )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Thomas W. Powell, Jr., whose name as Senior Vice President of National City Bank, a national bank, 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 officer and with full authority, executed the same voluntarily for and as the act of said state bank. Given under my hand and official seal this the 27<sup>th</sup> day of December, 2006.





  
20070306000099730 9/16 \$56.00  
Shelby Cnty Judge of Probate, AL  
03/06/2007 09:03:59AM FILED/CERT

THIS INSTRUMENT PREPARED BY:

Nicholas G. Barca  
STITES & HARBISON  
424 Church Street, Suite 1800  
Nashville, Tennessee 37219

Telephone: (615) 244-5200



**EXHIBIT A**

**Legal Description**

**Unit #287**

Lot 2, according to the plat of a Resubdivision of Lot 15, Block 2, FANNING HEIGHTS & OTHER LANDS (Sections 33 and 34, Township 3 South, Range I West), Huntsville, Alabama, as recorded in Plat Book 40, Page 32, in the Office of the Judge of Probate of Madison County, Alabama.

Subject to a restriction against leasing the premises for use as a home-style cooking restaurant set forth in a Memorandum of Lease appearing in Deed Book 829, Page 1011, Probate Records of Madison County, Alabama.

Subject to the terms of that certain Reciprocal Easement Agreement with Covenants, Conditions and Restrictions recorded in Deed Book 971, Page 239 and conditions, easements and set-back requirements as shown on the above referenced plat.

**Unit #1033**

Lot 1 A of Resurvey of Lots 1 and 3 Cole Commercial Subdivision, as recorded in Map Book 180, page 30, in the Probate Office of Jefferson County, Alabama, less and except the southeast 20.0 feet, being more particularly described as follows:

Begin at the Northeast corner of said Lot 1A; thence run South 04°51'29" East for 192.68 feet to a point on the Northeasterly right of way line of U.S. Highway 11 and a curve to the Southwest, said curve having a central angle of 01°04'16", a radius of 6,278.41 feet and a chord of 117.37 feet, South 82°55'05" West, thence turn an angle to the right of 88°18'41" to tangent and run Southwesterly along the arc of said curve and along said right of way for 117.37 feet to a point; thence turn an angle from tangent of 105°09'08" right and run North 07°32'04" East along the Southwesterly line of said Lot 1A for 281.04 feet to a point on the Southerly right of way line of Morrow Road; thence 61°21'38" right and run North 68°53'42" East along said fight of way line for 38.00 feet; thence turn 90°00'00" right to become tangent to a curve to the right, said curve having a radius of 56.96 feet and subtending a central angle of 30°44'49"; thence run Southeasterly along the arc of said curve for 30.57 feet; thence at tangent to said curve run South 09°38'31" West for 59.59 feet to a point; thence 104°30'00" left and run North 85°08'31" East for 34.94 feet to the point of beginning.

Together with a 25 foot wide access easement described as follows:

Part of Lot 1A and 3A of Resurvey of Lots 1 and Lot 3 Cole Commercial Subdivision, as recorded in Map Book 180, page 30, in the Office of the Judge of Probate of Jefferson County,



Alabama situated in Section 33, Township 16 South, Range 1 West, more particularly described as:

Commence at the most Northeast corner of Lot 1A of said Resurvey of Lots 1 and 3 of Cole Commercial Subdivision as recorded in Map Book 180, page 30, is said Office of the Judge of Probate, said corner being the point of beginning of the centerline of a 25 foot wide easement herein described said point being on the East right of way line of Morrow Road and said point being the beginning of a curve to the right, said curve subtending a central angle of  $30^{\circ}44'49''$  and having a radius of 56.96 feet; thence run Southeasterly along the arc of said curve and said centerline of 25 foot wide easement for 30.57 feet; thence at tangent to said curve run South  $09^{\circ}38'31''$  West along the centerline of said 25 foot easement for 59.59 feet to a point at the Southwest corner of said Lot 3A of said Resurvey of Lots 1 and 3 of Cole Commercial Subdivision, thence continue South  $09^{\circ}38'31''$  West along the last stated course and the centerline of said 25 foot easement for 50.16 feet to an angle point, thence  $14^{\circ}30'00''$  left and run South  $04^{\circ}51'29''$  East along the centerline of said 25 foot wide easement for 145.69 feet to a point on the Northerly right of way line of US. Highway Number 11, said point also being the end of the centerline of said 25 foot easement.

#### **Unit #1283**

That tract or Lot of land lying in the City of Florence, County of Lauderdale, State of Alabama known and described as follows, to wit:

Part of Lots 36 thru 40, in Block B, Second Addition to Weeden Heights, as same is recorded in the Office of the Judge of Probate of Lauderdale County, Alabama in Map Book 2, Page 20, and being more particularly described as follows: Begin at an existing iron pin at the Northwest corner of Lot 40 in said Second Addition to Weeden Heights, said point lying at the intersection of the South right of way line of Section Avenue and the East right of way line of Jefferson Street (formerly Detroit Street); thence along the North line of said Lot 40 and along the South right of way line of Section Avenue South  $88^{\circ}21'14''$  East 158.00 feet to a spike set; thence South  $8^{\circ}37'03''$  East 71.72 feet to an iron pin found on the Northern most right of way line of U.S. Highway No. 72 (180 foot right of way); thence along said right of way line South  $74^{\circ}35'16''$  West 178.22 feet to an iron pin found on the Easternmost right of way of Jefferson Street (formerly Detroit Street, 50 foot right of way); thence along said right of way line North  $1^{\circ}27'34''$  East 122.53 feet to the point of beginning of the tract of land hereby described, said tract of land contains 0.37 acres, more or less, or 16,026.2041 square feet.

ALSO: That portion of Section Avenue vacated and abandoned to the abutting property owners, as evidenced by Declaration of Vacation recorded on Fiche 98-411, Frames 1-8.

#### **Unit #1295**

A parcel of land located in the Southwest quarter of the Southwest quarter of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, said parcel being more particularly described as follows:.



Commence at the Northeast corner of the Northwest quarter of the Southwest quarter of said Section 30, run thence Westwardly and along the quarter line 949.78 feet; thence, with a deflection angle left of  $90^{\circ} 00' 00''$ , run Southwardly 1513.847 feet to a 5/8 inch capped rebar found at the Point of Beginning, said Point lying on the West right-of-way of Southpark Drive, said Point also being the Northeast corner of Lot 1 of Southpark as recorded in the Probate Office of Shelby County, Alabama in Map Book 20 at page 100; thence with a deflection angle right of  $87^{\circ} 54' 29''$ , run Westwardly 55.80 feet to a 5/8 inch capped rebar round at the Northwest corner of said Lot 1, said corner lying on the East right-of-way line of U.S. Highway No. 31, said right-of-way 200 feet wide; thence with an interior angle right of  $97^{\circ} 13' 55''$  run Southwestwardly and along said east right-of-way and the west Boundary of said Lot 1, said right-of-way curving to the right and having a radius of 5881.31 feet, a delta angle of  $02^{\circ} 09' 34''$  an arc length of 221.66 feet and a chord length of 221.64 feet to a 5/8 inch capped rebar found at the Southwest corner of said Lot 1; thence, with an interior angle of right of  $82^{\circ} 47' 07''$ , run Eastwardly and along the South boundary of said Lot 139.52 feet to a 5/8 inch capped rebar found at the Southeast corner of said Lot 1, said corner lying on the West right-of-way of South Park Drive, said right-of-way being 50 feet wide; thence with an interior angle of  $77^{\circ} 29' 52''$ , run Northwestwardly and along said West right-of-way, said right-of-way curving to the left and having a radius of 425.99 feet, a delta angle of  $25^{\circ} 00' 16''$ , an arc length of 185.91 feet and a chord length of 184.43 feet, to a 1/2 inch capped rebar set; thence, with an interior angle right of  $170^{\circ} 33' 28''$ , continue Northwestwardly along said right-of-way, said right-of-way curving to the right having a radius of 428.39 feet, a delta angle of  $5^{\circ} 44' 53''$  an arc length 42.98 feet and a chord length of 42.96 feet to the Point of beginning, thus making a closing interior angle right of  $11^{\circ} 55' 39''$ .

#### **Unit #835**

Begin at a stone marker known as the Southeast Corner of the NW 1/4 of Section 35, T-16-N, R-17-E, Montgomery County, Alabama; thence South  $89^{\circ} 03' 28''$  West 833.64 feet to an iron pin located in a curve on the East Right-of-Way of Interstate Highway No. 65; thence northeasterly along said curve (Chord bearing North  $09^{\circ} 56' 13''$  East, Chord 875.88 feet, Radius 17,038.73 feet) to a concrete marker and end of curve; thence continue along said Right-of-Way North  $21^{\circ} 24' 58''$  East 165.50 feet to an iron pin; thence leaving said Right-of-Way South  $79^{\circ} 19' 20''$  East 563.15 feet to an iron pin; thence North  $01^{\circ} 50' 03''$  West 421.35 feet to an iron pin; thence North  $00^{\circ} 21' 04''$  East 147.76 feet to an iron pin; thence North  $79^{\circ} 19' 09''$  West 150.60 feet to an iron pin; thence North  $10^{\circ} 40' 51''$  East 197.00 feet to a nail in concrete located-on the South Right-of-Way of South Boulevard; thence along said South Right-of-Way South  $79^{\circ} 19' 09''$  East 155.30 feet to an iron pin; thence leaving said Right-of-Way South  $00^{\circ} 21' 10''$  West 339.52 feet to an iron pin; thence South  $01^{\circ} 49' 32''$  East 1321.53 feet to the point of beginning, lying in and being a part of the NE 1/4-of the NW 1/4 and the SE 1/4 of the NW 1/4 all in Section 35, T-16-N, R-17-E, Montgomery County, Alabama.

#### **Unit #908**

A 0.54 acre tract or parcel of land situated in the East one half of the N.W. 1/4 of the S.W. 1/4 of Section 12, Township 6 South, Range 4 West, Morgan County, Alabama, more particularly described as follows:



Beginning at the intersection of the West line of the East one-half of the N.W. 1/4 of the S.W. 1/4 of Section 12, Township 6 South, Range 4 West, Morgan County, Alabama, and the South right of way line of Alabama Highway No. 67 and run South 49°44'01" East along the said South right of way line of Alabama Highway No. 67 a distance of 126.59 feet to a point; thence run: South 01°58'12" East a distance of 201.57 feet record (201.92 feet measure) to a point; thence run South 89°17'05" West a distance of 99.98 feet to a point on the West line of the said East 1/2 of the N.W. 1/4 of the S.W. 1/4 of said Section 12, Township 6 South, Range 4 West, Morgan County, Alabama; thence run North 00°42'55" West along the West line of the said East 1/2 of the N.W. 1/4 of the S.W. 1/4 of said Section 12, Township 6 South, Range 4 West, Morgan County, Alabama, a distance of 284.55 feet record (284.90 feet measure) to the Point of Beginning of the-herein described tract.

TOGETHER WITH an Easement over and across a parcel of property described as follows:

Begin at the Southwest corner of the above described property, said point also being on the West line of the East 1/2 of the N.W. 1/4 of the S.W. 1/4 of said Section 12, Township 6 South, Range 4 West, 284.90 feet measured, 284.95 feet deed, from the intersection of said West line and South right of way line of Alabama Highway No. 67; thence run South 00°42'55" East along said 1/4 1/4 Section line for 200 feet; thence turn an angle to the left of 90°00'00" and run 200 feet to a point; thence turn an angle to the left of 90°00'00" and run North 00°42'55" West for 113.83 feet to a point; thence turn an angle to the left of 49°15'17" and run North 89°17'05" West along the South line of the above described property for 99.98 feet to the point of beginning (said easement contains 35,690.81 sq. ft. Or 0.82 acres, more or less); said easement being for the purpose of accommodating septic tank field lines from the described premises and which easement shall terminate 180 days from the date that a sewer line is extended to within 10 feet of the demised premises and is available for tap and use and the cost to tap on does not exceed \$5,000.00.



**EXHIBIT B**

**Loan Documents**

1. Promissory Note of even date in the principal sum of \$5,500,000.00 issued by Ezell Holdings, LLC paid to the order of National City Bank.
2. Tennessee Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filings of even date herewith executed by Borrower for the use and benefit of National City Bank.
3. Credit Agreement entered into by and between Ezell Holdings, LLC and National City Bank of even date herewith (the "Credit Agreement").
4. Mortgage, Assignment of Leases, Rents, and Profits, Security Agreement and Fixture Financing Statement of even date herewith executed by Ezell Holdings, LLC to and in favor of National City Bank.
5. Assignment and Security Agreement executed by Ezell Holdings, LLC and National City Bank of even date herewith.
6. All other documents as may be required under or related to the Credit Agreement and the indebtedness and obligations evidenced in the Loan Documents.





20070306000099730 15/16 \$56.00  
Shelby Cnty Judge of Probate, AL  
03/06/2007 09:03:59AM FILED/CERT

## EXHIBIT C

### Leases

1. Lease Agreement dated November 5, 1976 between Guy J. Spencer, Jr., M.O. Sims and Donald Spencer, Trustees of the Trust for Guy J. Spencer, Jr. and Treetop Enterprises, Inc. (Unit #287).
2. Lease Agreement dated June 1, 1992 between Treetop Enterprises, Inc. and Harris & Ezell Equipment Company (Unit #835).
3. Lease Agreement dated June 24, 1993 between Harris & Ezell Equipment Company and Waffle House, Inc. (Unit #908).
4. Lease Agreement dated May 24, 1995 between Treetop Enterprises, Inc. and Waffle House, Inc. (Unit #1033).
5. Lease Agreement dated December 7, 1998 between Ezell Children's Trust and Waffle House, Inc. (Unit #1283).
6. Lease Agreement dated March 8, 1999 between Ezell Children's Trust and Waffle House, Inc. (Unit #1295).

20070215000258870 15/15  
Bk: LR200703 Pg:11571  
Jefferson County, Alabama  
02/15/2007 12:42:27 PM XFRL  
Fee - \$39.50

Total of Fees and Taxes--\$39.50  
TONIR



20070306000099730 16/16 \$56.00  
Shelby Cnty Judge of Probate, AL  
03/06/2007 09:03:59AM FILED/CERT

**JUDGES ALAN L KING & SHERRI C FRIDAY**  
**JUDGE OF PROBATE**  
**JEFFERSON COUNTY, AL**

ALABAMA  
JEFFERSON

I do hereby certify this to be a true copy of the attached document filed and recorded in the  
aforesaid county as evidence by Instrument Number  
20070215000258870 in Book No. LR 200703 Page No. 11571 and consists of 15.00 page/s.

Witness my hand and Official seal this 15 th day of February 2007.

Judges Alan L King & Sherri C Friday  
Judge of Probate

By : Alan L. King Deputy

SEAL

**JUDGE OF PROBATE**  
**716 Richard Arrington Jr. Blvd. North**  
**Birmingham, AL, 35203**  
**Recordings (205) 325-5411**