

This Instrument prepared by:
William C. Byrd, II
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Telephone: (205) 521-8000

20071214001888850 1/10
Bk: LR200717 Pg:27406
Jefferson County, Alabama
I certify this instrument filed on:
12/14/2007 03:40:48 PM XFRL
Judge of Probate- Alan L. King

ASSIGNMENT OF RENTS AND LEASES

17 **THIS ASSIGNMENT OF RENTS AND LEASES** (this "Assignment") made as of the 17 day of December 2007, by **HIGHWAY 11/31 LLC**, a Delaware limited liability company (the "Borrower"), to **REGIONS BANK**, an Alabama banking corporation (the "Lender").

RECITALS:

This Assignment is made as additional security for the payment of indebtedness due by Borrower to Lender in the principal amount of Forty Million and No/100 Dollars (\$40,000,000.00) (the "Loan") to be disbursed by Lender to Borrower subject to the provisions of an Loan Agreement between Borrower and Lender, as the same may hereafter be amended (as so amended, the "Loan Agreement"; capitalized terms used herein without definition shall have the meanings assigned to them in the Loan Agreement), with interest thereon, as evidenced by a Promissory Note of even date herewith executed and delivered by Borrower to Lender in said amount, as the same may hereafter be extended, renewed, modified or amended (as so extended, renewed, modified or amended, the "Note"), and as additional security for the full and faithful performance by Borrower of all the terms, covenants and conditions of the Loan Agreement, the Note, a certain Deed of Trust and Security Agreement of even date herewith, as the same may hereafter be amended (as so amended, the "Mortgage") executed and delivered by Borrower for the benefit of Lender encumbering the property described in Exhibit A, and all other Loan Documents.

WITNESSETH:

FOR VALUE RECEIVED, Borrower hereby grants, transfers, and assigns to Lender and its successors and assigns all right, title and interest of Borrower in and to all those certain leases, including those leases more particularly described on Exhibit B attached hereto and by this reference made a part hereof, which are now or hereafter in effect with respect to occupancy of the improvements, located or to be located on the land more particularly described on Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property"), together with (i) any extensions, modifications or renewals thereof, (ii) any guarantees of the lessees' obligations thereunder (all of said leases, together with all such guarantees, modifications, extensions or renewals thereof, being hereinafter collectively referred to as the "Leases"), and (iii) any and all security deposits received by Borrower or any agent of Borrower in connection therewith, for the purpose of securing

(a) payment of all sums now or at any time hereafter due Lender pursuant the Note, as the same may hereafter be renewed, extended, modified, or amended, and

(b) performance and discharge of each obligation, covenant and agreement of Borrower contained herein or contained in the other Loan Documents (as such term is defined in that certain Construction Loan Agreement between Borrower and Lender of even date herewith, as the same may hereafter be modified or amended, the "Loan Agreement"). *Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.* This Assignment is intended to be an absolute, present assignment from Borrower to Lender. The rents, issues and profits of the Property are hereby assigned absolutely by Borrower to Lender, contingent only upon the occurrence of an Event of Default as defined hereinbelow.

ARTICLE 1

WARRANTIES AND COVENANTS

1.1 **Warranties of Borrower.** Borrower hereby warrants and represents to Lender that:

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

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

(c) Borrower has not done any act or omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment.

(d) Borrower has not accepted rent more than thirty (30) days in advance of its due date except as approved in writing by Lender.

(e) There is no default of which Borrower has knowledge by any of the lessees under the terms of any of the Leases.

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

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

(h) The Leases have not been modified or amended (except for modifications and amendments approved in writing by Lender), and the Leases are in full force and effect.

1.2 **Covenants of Borrower.** Borrower hereby covenants and agrees with Lender as follows:

(a) Borrower shall:

(i) fulfill, perform and observe each and every condition and covenant of Borrower contained in the Leases;

(ii) at the sole cost and expense of Borrower, diligently seek to enforce the performance and observance of each and every covenant and condition of the Leases to be performed or observed by the lessees thereunder; and

(iii) appear in and defend any action growing out of, or in any manner connected with, any of the Leases or the obligations or liabilities of Borrower, as lessor thereunder, or of any of the lessees or guarantors thereunder.

(b) Borrower shall not without the prior written consent of Lender, not to be unreasonably withheld or delayed:

(i) except for leases of less than 10,000 square feet make any modifications or amendments to the Leases;

(ii) except for leases of less than 10,000 square feet terminate the term or accept the surrender of any of the Leases;

(iii) except for leases of less than 10,000 square feet waive, or release the lessees from, the performance or observance by the lessees of any obligation or condition of the Leases;

(iv) permit the prepayment of any rents for more than thirty (30) days prior to the accrual;

(v) except for leases of less than 10,000 square feet give any consent to any assignment by any of the lessees of any of the Leases of any sublease of any part or portion of the Property; or

(vi) further assign any interest in the Leases or the Property.

(c) Upon the occurrence of an Event of Default hereunder, Borrower shall authorize and direct, and does hereby authorize and direct each and every present and future tenant under the Leases to pay rental directly to Lender upon receipt of written demand from Lender to pay the same.

(d) Lender shall not be obligated to perform or discharge any obligation of Borrower under any of the Leases, and Borrower agrees to indemnify and hold Lender harmless from and against any and all liability, loss or damage which Lender may incur under any of the Leases or under or by reason of this Assignment and from and against all claims and demands

whatsoever which may be asserted against it by reason of an act of Lender under this Assignment or under any of the Leases unless Lender has voluntarily taken actions with respect to the Leases.

1.3 **Covenants of Lender.** Lender, by acceptance hereof, covenants and agrees with Borrower that:

(a) Although this Assignment constitutes a present and current assignment of all rents, issues and profits of the Property, so long as there shall exist no Event of Default as hereinafter defined Borrower shall have the right (i) to collect, but not more than thirty (30) days prior to accrual (except as approved in writing by Lender), all such rents, issues and profits from the Property and to retain, use and enjoy the same, and (ii) to maintain the security deposits in a separate, identifiable account in a bank in which funds are federally insured acceptable to Lender.

(b) Upon the payment in full of all indebtedness secured hereby, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Mortgage without the recording of another mortgage in favor of Lender affecting the Property, this Assignment shall become and be void and of no further effect.

ARTICLE 2 **DEFAULT**

2.1 **Event of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) The failure by Borrower to perform or observe any covenant of Borrower contained in this Assignment after the expiration of any applicable notice and cure periods set forth in the Loan Agreement;

(b) The failure by Borrower to cause to be true and not misleading any warranty of Borrower contained herein; or

(c) The occurrence of a default or "Event of Default" under any of the Loan Documents (it being understood and agreed that the term "Event of Default" includes the expiration of any grace or cure periods permitted the Borrower under the applicable Loan Documents).

2.2 **Remedies.** Upon the occurrence of any Event of Default, Lender may at its option, with or without notice or demand of any kind (except as may be provided in any of the Loan Documents), exercise any or all of the following remedies:

(a) Declare any part or all of the indebtedness evidenced by the Loan Documents to be due and payable, whereupon the same shall become immediately due and payable;

(b) Perform any and all obligations of Borrower under any or all of the Leases or this Assignment and exercise any and all rights of Borrower herein or therein as fully as Borrower itself could do, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the Leases; collecting, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new leases on the Property on any terms and conditions deemed desirable by Lender, and, to the extent Lender shall incur any costs in connection with the performance of any such obligations of Borrower, including costs of litigation, then all such costs shall become a part of the indebtedness secured by the Loan Documents, shall bear interest from the incurrence thereof at the Default Rate, and shall be due and payable on demand;

(c) In Borrower's or Lender's name, institute any legal or equitable action which Lender in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein; or

(d) Collect the rents, issues and profits and any other sums due under the Leases with respect to the Property, and apply the same in such order as Lender in its sole discretion may elect to pay:

(i) all costs and expenses, including reasonable attorneys' fees, in connection with the operation of the Property, the performance of Borrower's obligations under the Leases and collection of the rents thereunder;

(ii) all costs and expenses, including reasonable attorneys' fees, in the collection of any or all of the indebtedness secured by the Loan Documents, including all costs, expenses and reasonable attorneys' fees in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the indebtedness secured by the Loan Documents; and

(iii) any or all unpaid principal, interest or other charges due under or secured by the Loan Documents. Any amounts remaining after such application shall be applied to the payment of the indebtedness secured by the Loan Documents or to monthly payments thereof, and upon the payment in full of the indebtedness secured by the Loan Documents; then this Assignment and all rights of Lender hereunder shall cease and terminate.

The exercise of any remedies by Lender and the collection of the rents and the application thereof as aforesaid, shall in no way operate to cure or waive any Default or Event of Default hereunder or under any other of the Loan Documents, or prohibit the taking of any other action by Lender under any of the Loan Documents or at law or in equity to enforce the payment of such indebtedness or to realize on any other security. Lender shall have the full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the indebtedness, and to the extent permitted by applicable law, with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and to the extent permitted by applicable law, shall have the full right to enter upon, take possession of, use and operate all or any portion of the Property which Lender in its sole discretion deems

desirable to effectuate any or all of the foregoing remedies. In no event shall Lender be liable to any lessee under any of the Leases for the return of any security deposit in any amount in excess of the amount delivered to Lender by Borrower.

ARTICLE 3 **GENERAL PROVISIONS**

3.1 **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Lender.

3.2 **Terminology.** All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Assignment.

3.3 **Severability.** If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.4 **Applicable Law.** This Assignment shall be interpreted, construed and enforced according to the laws of the State of Tennessee.

3.5 **No Third Party Beneficiaries.** This Assignment is made solely for the benefit of Lender and its assigns. No tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.6 **No Oral Modifications.** Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.7 **Cumulative Remedies.** The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in any of the Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender

shall continue and be each and all available to Lender until the indebtedness evidenced by the Loan Documents shall have been paid in full.

3.8 **Cross-Default.** An Event of Default by Borrower under this Assignment shall constitute an Event of Default under all other Loan Documents.

3.9 **Further Assurances.** At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases and the rents, issues, profits and security deposits from the Property. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

3.10 **Notices.** Any and all notices, elections or demands permitted or required to be made under this Assignment shall be made in accordance with the provisions relating to notice set forth in the Loan Agreement.

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

3.12 WAIVER OF JURY TRIAL. BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Borrower has caused this Assignment to be properly executed and delivered as of the day and year first above written.

BORROWER:

HIGHWAY 11/31 LLC,
a Delaware limited liability company

By: _____

John Moss
Its Manager

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, Jane T. Epperson, a Notary Public in and for said County in said State, certify that John Moss, whose name as Manager of Highway 11/31 LLC, a Delaware limited liability company, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 13 day of December 2007.

[SEAL]

Jane T. Epperson
NOTARY PUBLIC
Print Name: Jane T. Epperson

MY COMMISSION EXPIRES
JANUARY 15, 2008

My Commission Expires: _____

EXHIBIT "A"

20071218000569460 10/10 \$38.00
Shelby Cnty Judge of Probate, AL
12/18/2007 03:30:03PM FILED/CERT

LEGAL DESCRIPTION

Parcel I (As Conveyed by Highway 31 Alabaster LLC):

Lots 4, 5, and 6 according to the survey of Colonial Promenade Alabaster South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

Parcel II (As Conveyed by Highway 31 Alabaster TWO LLC):

Lots 2, 8, and 19 according to the survey of Colonial Promenade Alabaster South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

Parcel III (Assignment of Ground Lease by Highway 31 Alabaster TWO LLC):

Lots 9, 10, 11, 12, 13, 14, and 15 according to the survey of Colonial Promenade Alabaster South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

Parcel IV (As Conveyed by CRLP):

Lot 12B and 12D according to the survey of Tutwiler Farm - Phase II Resurvey No. 4 as recorded in Map Book 227, Page 53, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

20071214001888850 10/10
Bk: LR200717 Pg:27406
Jefferson County, Alabama
12/14/2007 03:40:48 PM XFRL
Fee - \$27.00

Total of Fees and Taxes-\$27.00
TINSLEY