

THIS INSTRUMENT PREPARED BY AND
UPON RECORDING PLEASE RETURN TO:

Chad J. Post
Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC
420 20th Street North, Suite 1600
Birmingham, Alabama 35203

NOTE: THIS IS A THIRD MORTGAGE ON THE MORTGAGED PROPERTY.

MORTGAGE AND FIXTURE FILING

STATE OF ALABAMA)

SHELBY COUNTY)

THIS MORTGAGE (this "Mortgage") made and entered into as of the 19th ^{September} day of ~~November~~, 2007, between **ROBERT A. HULSEY** and **SHERIDAN W. HULSEY** (hereinafter called "Borrower" or "Mortgagor"), as mortgagors, and **DIANE L. MUNSON** (hereinafter, said mortgagee and any subsequent holder of the Mortgage are referred to as the "Lender" or "Mortgagee"), as mortgagee.

WITNESSETH:

WHEREAS, Borrower is justly indebted to Lender on a loan in the principal sum of up to FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) (the "Loan"), as evidenced by a Promissory Note (the "Note") dated as of the date hereof, payable to Lender; and

WHEREAS, the parties desire to secure the principal amount of the Note, whether absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions and modifications thereof, and whether incurred or given as maker, endorser, guarantor or otherwise (herein the "Indebtedness");

NOW, THEREFORE, the undersigned Mortgagor, in consideration of the Indebtedness above mentioned, and to secure the prompt payment of same, and any extension or renewals of same, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, has bargained and sold and does hereby GRANT, BARGAIN, SELL and CONVEY and ASSIGN unto Mortgagee, its successors and assigns, that certain tract or parcel or parcels of land and estates more particularly described on Exhibit A attached hereto and made a part hereof (the "Land"), together with all buildings, improvements, and fixtures located or hereafter constructed on the Land (hereinafter sometimes referred to as the "Mortgaged Property");

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns forever, subject, however, to the terms and conditions herein;

AND Mortgagor covenants and agrees with Mortgagee as follows:

ARTICLE I

1.01 **Warranty of Title.** Mortgagor is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid.

1.02 **Performance of Note and Mortgage.** Mortgagor will perform, observe and comply with all provisions hereof and of the Note secured hereby.

1.03 **Covenant to Pay Taxes, Etc.** Mortgagor, from time to time when the same shall become due, will pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, inspection and licenses fees, all water and sewer rents and charges, all charges for public utilities, and all other public charges whether of a like or different nature, ordinary or extraordinary, foreseen or unforeseen, imposed upon or assessed against them or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof being hereinafter sometimes collectively referred to as "taxes and other assessments".

1.04 **Insurance.** To further secure said indebtedness, the Mortgagor shall keep the Mortgaged Property and all improvement thereon insured against loss or damage by fire, lightning, hurricane and tornado for the fair and reasonable insurable value thereof.

1.05 **Care of the Property.** Mortgagor will not commit or suffer any waste on the Mortgaged Property or any part thereof.

1.06 **Performance by Mortgagee of Defaults by Mortgagor.** If Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; or in the performance or observance of any other covenant, condition or term of this Mortgage, and the period applicable thereto within which Mortgagor may correct the same has expired, then Mortgagee, at its option may perform or observe the same, and all payments made for costs or incurred by Mortgagee in connection therewith, shall be secured hereby and shall be upon demand, be repaid by Mortgagor to Mortgagee within thirty (30) days written notice from Mortgagee. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Mortgagor, or any person in possession holding under Mortgagor.

1.07 **Transfer of Mortgaged Property.** Mortgagor shall not sell, assign, encumber or otherwise convey the Mortgaged Property or any part thereof, without obtaining the prior written consent of Mortgagee except the leasing of the Mortgaged Property (or portions thereof) and those encumbrances, assignments and conveyance in connection with any development of the Mortgaged Property.

1.08 **Liens.** Any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged or bonded off by Mortgagor and shall not be permitted to take priority over the lien of this Mortgage, provided that Mortgagor, upon first furnishing to Mortgagee such security as shall be satisfactory to Mortgagee for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens.

ARTICLE II

2.01 Event of Default. The term "Event of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

- (a) Failure by Mortgagor to pay when due the principal under the Note;
- (b) Failure by Mortgagor to duly observe any other covenant, condition or agreement contained in this Mortgage, the Note, or in any other document executed by Mortgagor relating to the Loan;
- (c) The filing by Mortgagor of a voluntary petition in bankruptcy, or Mortgagor's adjudication as a bankrupt or insolvent, or the filing by Mortgagor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for themselves under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of all of any substantial part of the Mortgaged Property or of any or all the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of credits or the admission in writing of its inability to pay its debts generally as they become due; or
- (d) The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Mortgagor which appointment shall remain unvacated and unstayed for an aggregate for thirty (30) days (whether or not consecutive).

2.02 Acceleration of Maturity. If any Event of Default shall have occurred beyond applicable notice and/or cure periods, then the entire principal amount of the indebtedness secured hereby and all other obligations shall, at the option of Mortgagee, become due and payable without notice or demand, time being of the essence; and any omission on the part of Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.03 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term thereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law; and (c) to pursue any other remedy available to it, all as Mortgagee shall deem most effectual for such purposes. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Mortgagee may determine.

2.04 Power of Sale. If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Courthouse door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in a general circulation newspaper published in said county, and, upon payment of the purchase

money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect.

2.05 Application of Foreclosure Proceeds. The proceeds of any foreclosure sale pursuant to Article II shall be applied as follows:

(a) First, to the reasonable expenses of making the sale including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon, if applicable, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured; and

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

2.06 Mortgagee's Option on Foreclosure. At the option of Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose the Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.07 Suits to Protect the Mortgaged Property. Mortgagee shall have power: (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of the Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder.

2.08 Discontinuance of Proceedings - Position of Parties Restored. In case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.

2.09 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to Mortgagee by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE III

3.01 **Release.** This Mortgage is given upon the condition that if Mortgagor shall pay or cause to be paid to Mortgagee the principal under the Note and any renewal, extension or modification thereof, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease and be void, and Mortgagee shall execute, deliver and record a satisfaction and release.

3.02 **Successors and Assigns included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Mortgagor or by or on behalf of Mortgagee shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

3.03 **Captions.** The captions of the articles, section subparagraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.04 **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage or in the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note shall be in no way affected, prejudiced or disturbed thereby.

3.05 **Governing Law.** This Mortgage, and the right of the parties hereunder, shall be interpreted and governed in accordance with the laws of the State of Alabama.

3.06 **Notices.** All notices under this Mortgage shall be in writing, duly signed by the party giving such notice, and shall be deemed to have been given when deposited in the United States Mail, postage prepaid, by registered or certified mail, return receipt requested, or when deposited with a nationally recognized over night courier to the applicable address shown on the first page hereof, or to such other address as either party may from time to time provide by notice hereunder to the other.

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal on the day and year first above written.

MORTGAGOR:


Robert H. Hulsey


Sheridan W. Hulsey

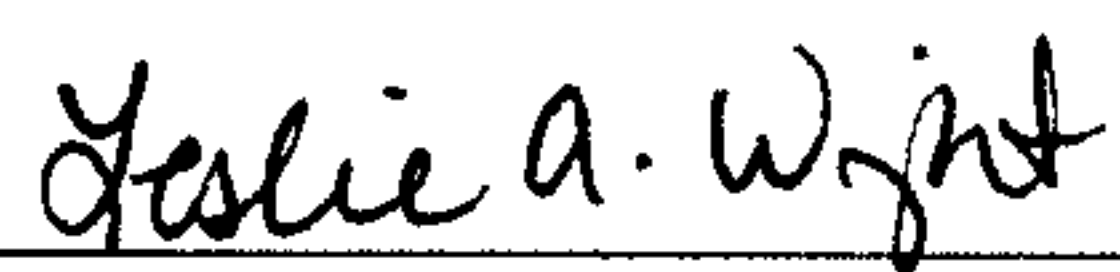
STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify **Robert A. Hulsey** and **Sheridan W. Hulsey**, whose names are signed to the foregoing Mortgage and who are known to me, acknowledged before me on this day that, being informed of the contents of the Mortgage, they, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this the 25th day of January, ~~2007~~ ²⁰⁰⁸.

[NOTARIAL SEAL]


Notary Public
My Commission Expires: April 30th 2008



20080201000041490 7/7 \$51.50
Shelby Cnty Judge of Probate, AL
02/01/2008 09:27:43AM FILED/CERT

EXHIBIT A

LEGAL DESCRIPTION

Lot 4, according to the Survey of Wilmington Place, as recorded in Map Book 30, Page 23 A&B, in the Probate Office of Shelby County, Alabama.