

STATE OF ALABAMA)
)
SHELBY COUNTY)

Prepared by:
NEAL & HARWELL, PLC
2000 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219

ALABAMA MORTGAGE
SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES

THIS Instrument (hereinafter with amendments thereto being referred to as the "Mortgage") made and entered into as of the 1st day of April, 2008, by and between **Calera Partners, LLC**, 446 Metroplex Drive, Suite 120, Nashville, TN 37211 ("Mortgagor") and **First Bank d/b/a First Bank of Tennessee**, 200 Fourth Avenue North, Suite 100, Nashville, Tennessee 37219 ("Mortgagee");

W I T N E S S E T H:

Recitals

A. The Mortgagor is or hereinafter shall be justly indebted to the Mortgagee in the amount of Seven Hundred Seventy Five Thousand and No/100 Dollars (\$775,000.00), as evidenced by a certain Promissory Note of the Mortgagor to the Mortgagee in said amount dated April 1, 2008, payable in accordance with its term and having a final maturity date of March 15, 2014 (the "Note").

B. The Mortgagor, in order to secure the Note, and in order to induce the Mortgagee to extend credit to Mortgagor on the strength of the security provided by this Mortgage, has agreed to execute and deliver this Mortgage and convey the property described herein to the Mortgagee as hereinafter set forth.

Agreement

NOW, THEREFORE, in consideration of the premises and in order to induce the Mortgagee to extend credit to the Mortgagor, the Mortgagor hereby agrees with the Mortgagee as follows:

ARTICLE I

Section 1.01A. Secured Indebtedness. This Mortgage is given to secure and shall secure the following (hereinafter sometimes referred to collectively as the "Secured Indebtedness"):

(a) To secure the payment of indebtedness for borrowed money in the aggregate principal amount of Seven Hundred Seventy Five Thousand and No/100 Dollars (\$775,000.00), such indebtedness being evidenced by a Promissory Note of even date herewith made by Mortgagor, payable to the order of the Mortgagee together with interest thereon, and any extensions, modifications and/or renewals thereof and any and all other obligations of mortgagor (or either of them) to Mortgagee whether direct or indirect, matured or contingent, including any overdraft on any deposit account of Mortgagor or either of them maintained with Mortgagee.

(b) To secure the obligations of Mortgagor to Mortgagee including, but not limited to, the obligations arising under that certain Loan Agreement dated the same day hereof by and between Mortgagor and Mortgagee (the "Loan Agreement"; capitalized terms not defined herein shall have the meaning set forth in the Loan Agreement).

(c) To secure all sums expended by Mortgagee for Mortgagor's account or benefit pursuant to the terms of this Mortgage with interest at the highest rate permitted by applicable law, and the faithful performance of all terms and conditions contained herein.

(d) To secure the payment of all court costs, expenses, and costs incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien of this conveyance, including reasonable attorneys' fees, and including without limitation costs under Sections 1.10, 2.04(b) and 2.05.

(e) To secure the payment of any and all other obligations now or hereafter owed by Mortgagor pursuant to this Mortgage.

Section 1.01B. Granting Clauses. As security for the Secured Indebtedness, the Mortgagor does hereby grant, bargain, sell, assign and convey to the Mortgagee, its successors and assigns, the property and interests in the property described in the following Granting Clauses (a) through (e), both inclusive, and does hereby grant to the Mortgagee, its successors and assigns, a security interest in said property and interests in property, including without limitation all estates, easements, rights, and improvements relating to, arising from, or now or hereafter located on such land, together with a security interest in Mortgagor's fee ownership and leasehold rights in and to all personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto as hereinafter provided and all sewer taps and prepaid impact fees applicable thereto (hereinafter referred to collectively as the "Premises"):

(a) All right, title and interest of Mortgagor in, under, and to all those certain tracts, pieces, or parcels of land located in Montgomery County, Alabama, more particularly described in Exhibit A attached hereto and incorporated herein by reference as if set forth verbatim (hereinafter referred to as the "Land").

(b) All buildings, structures, and improvements of every nature whatsoever now or hereinafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and

machinery, boilers, ranges, lifts, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to said buildings, structures or improvements and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Mortgagor and located in, on or about, or used or intended to be used with or in connection with the use, operation or enjoyment of the Premises, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land, all of which are hereby declared and shall be deemed, to the extent allowable under applicable law, to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described (hereinafter referred to as the "Improvements") and to be secured by this Mortgage.

(c) All right, title and interest of Mortgagor in, under, and to all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber, and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, title, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating, or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate, or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor.

(d) All leases, rents, issues, profits, and revenues of the Premises from time to time accruing (including without limitation all payments under the Lease (as such term is defined in Exhibit B), leases or tenancies, proceeds of insurance, condemnation payments, the purchase payment due under the Option (as such term is defined in Exhibit B), tenant security deposits, and escrow funds), and all of the estate, right, title interest, property, possession, claim, and demand whatsoever at law, as well as in equity, of Mortgagor of, in, and to the same.

(e) All right, title and interest of Mortgagor in, under and to all sewer taps and prepaid impact fees applicable to the Premises, whether now owned or hereafter acquired by Mortgagor.

TO HAVE AND TO HOLD the Premises and all parts, rights, members, and appurtenances thereof, unto Mortgagee, its successors, successors-in-title, and assigns, forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Premises as aforesaid and has good right to convey the same, that the same are unencumbered except for those matters expressly set forth in Exhibit B attached hereto and by this reference made a part hereof, and that Mortgagor does warrant and will forever defend the title thereto against the claims of all person whomsoever, except as to those matters set forth in said Exhibit B attached hereto.

Mortgagor hereby warrants and represents unto Mortgagee that Mortgagor is lawfully seized and possessed of fee simple ownership of the Land subject only to those matters set forth in attached Exhibit B.

Section 1.02. Taxes, Liens, and Other Charges.

(a) Mortgagor shall pay, or cause to be paid, on or before the due date thereof, all levies, license fees, permit fees, and other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or that may be a lien upon the Premises, or any part thereof, or any estate, right, or interest therein, or upon the rents, issues, income, or profits thereof, and shall submit to Mortgagee such evidence of the due and punctual payment of all such taxes, assessments, and other fees and charges as Mortgagee may require.

(b) Mortgagor shall pay, or cause to be paid, on or before the due date thereof, all taxes, assessments, charges, expenses, costs, and fees that now or hereafter may be levied upon, or assessed or charged against, or incurred in connection with, the Note, the Secured Indebtedness, this Mortgage, or any other instrument now or hereafter evidencing, securing, or otherwise relating to the Secured Indebtedness.

(c) Mortgagor shall pay, or cause to be paid, on or before the due date thereof, (i) all premiums on policies of insurance covering, affecting, or relating to the Premises, as required pursuant to paragraph 1.03 below; and (ii) all ground rentals, other lease rentals, and other sums, if any, owing by Mortgagor and becoming due under any lease or rental contract affecting the Premises. Mortgagor shall submit to Mortgagee such evidence of the due and punctual payment of all such premiums, rentals, and other sums as Mortgagee may require.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulations, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of deeds of trust or security agreements or debts secured thereby or the manner of collecting such taxes as adversely to affect Mortgagee, Mortgagor will pay any such tax on or before the due date thereof. If Mortgagor fails to make such prompt payment or if, in the opinion of Mortgagee reasonably exercised, any such state, federal, municipal, or other governmental law, order, rule, or regulation prohibits Mortgagor from making such payment or would penalize Mortgagor if Mortgagor makes such payment, or if, in the opinion of Mortgagee, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Secured Indebtedness and all interest accrued thereon, at the option of Mortgagee, shall become immediately due and payable.

(e) Mortgagor shall not suffer or permit any mechanics', materialmen's, laborers', statutory, or other liens to be created against the Premises.

Section 1.03. Insurance.

(a) Mortgagor shall procure for, deliver to, and maintain for the benefit of Mortgagee during the term of this Mortgage, original paid-up insurance policies of such insurance companies, in such amounts, in form and substance, and with such expiration dates as are reasonably acceptable to Mortgagee and containing non-contributory standard mortgagee clauses, their equivalent, or a satisfactory mortgagee loss payable endorsement in favor of Mortgagee; and all such policies shall provide for thirty (30) days written notice to Mortgagee prior to cancellation. The following types of insurance covering the Premises and the interest and liabilities incident to the ownership, possession and operation thereof shall be provided if requested by Mortgagee;

(i) All Risks' Premises Insurance on the Premises and its contents against loss or damage to the Improvements in amounts not less than the greater of (1) one hundred percent (100%) of the Full Replacement Cost of the Improvements without deduction for depreciation; or (2) an amount sufficient to prevent Mortgagee or the Mortgagor from becoming a co-insurer within the terms of the applicable policies. Full Replacement Cost, as used herein, means the cost of replacing the Improvements, exclusive of the cost of excavations, foundations and footings below the lowest basement floor. Any loss under such All Risk property insurance shall be valued on a replacement cost basis. Mortgagor may insure the Premises as well as other properties of Mortgagor under a blanket policy.

(ii) Comprehensive General Liability Insurance for the Premises for personal injury liability, including, without limitation, bodily injury, death or property damage liability and also products liability, elevator liability and contractual liability in an amount not less than One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The policy or policies shall be written on an occurrence basis unless the premium cost differential exceeds thirty-three percent (33%), in which event the Mortgagor may elect to insure on a claims made basis.

(iii) Flood Insurance for the Premises (other than farm land) in an amount reasonably satisfactory to Mortgagee and which otherwise complies with the national flood insurance program as set forth in the "Flood Disaster Protection Act of 1973", as well as subsequent amendments thereto, provided the Premises is included in a Federal Emergency Management Agency designated flood prone area. Prior to Mortgagee's disbursement of the Note, the Mortgagor shall furnish evidence, reasonably satisfactory to Mortgagee, indicating whether or not the Premises is included in a Federal Emergency Management Agency designated flood prone area and if the Premises is so included, the Mortgagor shall furnish the required flood insurance. Mortgagor may elect to provide coverage either by the policy or policies required under subparagraph (i) or by separate policy or policies.

(iv) Such other insurance on the Premises, and the other property covered by the Loan Documents, or any part of parts thereof, or any replacements or substitutions therefor, or additions thereto, and in such amounts as may from time to time be reasonably required by Mortgagee against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the Improvements, and other property and their construction, location, use and occupancy.

(v) Such other insurance on the Premises or any replacements or substitutions therefor and in such amounts as may from time to time be reasonably required by Mortgagee against other insurable casualties that at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor.

(b) As between Mortgagor and Mortgagee, Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies maintained pursuant to this paragraph 1.03, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses (excluding general liability claims) directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly. In the event any insurance company fails to disburse directly and solely to Mortgagee but disburses instead either solely to Mortgagor or to Mortgagor and Mortgagee jointly, Mortgagor agrees immediately to endorse and transfer such proceeds to Mortgagee. Upon the failure of Mortgagor to endorse and transfer such proceeds as aforesaid, Mortgagee may execute such endorsements or transfers for and in the name of Mortgagor and Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact so to do, which appointment is coupled with an interest. After deducting from said insurance proceeds all of its expenses incurred in collection and administration of such sums, including attorney's fees. All proceeds of insurance carried or required to be carried under all subparagraphs of subsection (a) of this Section 1.03, except subparagraph (ii) and except as otherwise provided in subparagraph (v), and all proceeds in the event of a condemnation or other taking, shall be paid to Mortgagee and applied towards the reduction of the principal balance of the Note in such manner as Mortgagee shall require (without imposition of a prepayment fee), except that, in the event that any portion or portions of the Improvements are damaged or destroyed by a casualty loss or condemnation and such damage or destruction results in the need for repair, rebuilding or restoration work to be performed on the Improvements (such repair, rebuilding or restoration being herein referred to as the "Work"), then Mortgagee shall permit Mortgagor, to use the amount by which the proceeds of all insurance policies, judgments, settlements or awards exceed the cost, if any, to Mortgagee for the recovery thereof (said net amount being hereinafter referred to as the "Proceeds") for the Work, provided that:

(i) there are no existing defaults continuing beyond the expiration of any applicable notice and cure period under any of the Loan Documents which can be cured by the payment of money;

(ii) there are no existing events or conditions which would give Mortgagee the right to accelerate maturity of the Note;

(iii) Mortgagee has determined that its security will not be impaired following restoration; and

(iv) the insurer does not deny liability to any named insured, or Mortgagor has provided any funds necessary for restoration in excess of those funds paid by the insurer.

(c) At least fifteen (15) days prior to the expiration date of each policy maintained pursuant to this paragraph 1.03, a renewal or replacement thereof reasonably satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Secured Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies then in force shall pass to the purchaser or Mortgagee, and Mortgagee is hereby irrevocably appointed by Mortgagor as attorney-in-fact for Mortgagor to assign any such policy to said purchaser or to Mortgagee without accounting to Mortgagor for any unearned premiums thereon.

Section 1.04. Monthly Deposits. To secure the payment of the taxes and assessments referred to in paragraph 1.02 and the premiums on the insurance referred to in paragraph 1.03, Mortgagor, after the occurrence of a default under this Mortgage which is continuing beyond the expiration of any applicable notice and cure period, if requested by Mortgagee, shall deposit with Mortgagee on or before the 10th day of each month, such amounts as, in the reasonable estimation of Mortgagee, shall be necessary to pay such charges as they become due; said deposits to be held by Mortgagee in a non-interest bearing account with Mortgagee. The funds in said account shall be used by Mortgagee to pay current taxes and assessments and insurance premiums on the Premises as the same accrue and are payable. Payment from said sums for said purposes shall be made by Mortgagee at its discretion and may be made even though such payments will benefit subsequent owners of the Premises. Said deposits shall not be, nor be deemed to be, trust funds, but may be, to the extent permitted by applicable law, commingled with the general funds of Mortgagee. If said deposits are insufficient to pay the taxes and assessments and insurance premiums in full as the same become payable, Mortgagor will deposit with Mortgagee such additional sum or sums as may be required in order for Mortgagee to pay such taxes and assessments and insurance premiums in full. Upon any default in the provisions of the Mortgage or the Note, or any instrument evidencing, securing, or in any way related to the Secured Indebtedness which is continuing beyond any applicable notice and cure period, Mortgagee may, at its option, apply any money in the fund resulting from said deposits to the payment of the Secured Indebtedness in such manner as it may elect. Mortgagee agrees not to require such deposits unless and until an event or condition occurs which with the giving of notice or passage of time, or both, would give Mortgagee the option to accelerate the maturity of the Note and/or declare a default thereunder.

Section 1.05. Condemnation. If all or any portion of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or quasi-governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, then the entire Secured Indebtedness shall, at the option of Mortgagee immediately become due and payable. Mortgagor, immediately upon obtaining knowledge of the institution, or the proposed, contemplated, or threatened institution, of any action or proceeding for the taking through condemnation of the Premises or any part thereof will notify Mortgagee, and, as between Mortgagor and Mortgagee, Mortgagee is hereby

authorized, at its option, to commence, appear in, and prosecute, through counsel selected by Mortgagee, in its own or in Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Mortgagor to Mortgagee, and Mortgagee is authorized, at its option, to collect and receive all such compensation, awards, or damages and to give proper receipts and acquittance therefor without any obligation to question the amount of any such compensation, award or damages. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, Mortgagee may apply the net proceeds or any part thereof, at its option, (a) in accordance with the terms of the Note, whether or not the Secured Indebtedness is in default, (b) to the repair and/or restoration of the Premises, or (c) for any other purposes or objects for which Mortgagee is entitled to advance funds under this Mortgage, all without affecting the security interest created by this Mortgage, and without extending or postponing the due date of any installments of the Secured Indebtedness, or changing the amount of any such installments, and any balance of such monies then remaining shall be paid to Mortgagor or any other person or entity lawfully entitled thereto. Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action, and proceeds as Mortgagee may require. If, prior to the receipt by Mortgagee of such award or proceeds, the Premises shall have been sold on foreclosure of this Mortgage, or under the power herein granted, Mortgagee shall have the right to receive such award or proceeds to the extent of any unpaid Secured Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment in respect of the Secured Indebtedness shall have been sought or recovered, and to the extent of reasonable counsel fees, costs, and disbursements incurred by Mortgagee in connection with the collection of such award or proceeds. Nothing hereinabove shall prevent Mortgagor from seeking to recover damages to its beneficial interests in the Premises from the condemning authority, provided that no such recovery shall in any way diminish the award otherwise payable to Mortgagee, and provided, further, that all proceeds of any such recovery by Mortgagor shall be payable to Mortgagee for application against the Secured Indebtedness.

Section 1.06. Care of Premises.

(a) Mortgagor will keep the buildings, parking areas, roads and walkways, landscaping, and all other improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, normal wear and tear excepted, will not commit or suffer any waste, and will not do or suffer to be done anything that would or could increase the risk of fire or other hazard to the Premises or any other part thereto or that would or could result in the cancellation of any insurance policy carried with respect to the Premises.

(b) Mortgagor will not remove, demolish, or alter the structural character of any improvement located on the Land without the written consent of Mortgagee.

(c) If the Premises or any part thereof is damaged by fire or any other cause, Mortgagor will give immediate written notice thereof to Mortgagee.

(d) Mortgagee and/or its representatives are hereby authorized to enter upon and inspect the Premises at any time during normal business hours upon advanced written notice.

(e) Mortgagor will promptly comply with all present and future laws, ordinances, rules, and regulations of any governmental authority affecting the Premises or any part thereof.

Section 1.07. Leases, Contracts, Etc.

(a) As additional collateral and further security for the Secured Indebtedness, Mortgagor does hereby assign to Mortgagee its interest whether now existing or hereafter arising in any and all leases and subleases, tenant contracts, rental agreements, franchise agreements, management contracts, construction contracts, and other contracts, licenses, and permits now or hereafter affecting the Premises, or any part thereof, including, without limitation, the Option and the Lease, and Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be reasonably requested by Mortgagee further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Mortgagee to any lease, tenant contract, rental agreement, franchise agreement, management contract, construction contract, or other contract, license or permit, or to impose upon Mortgagee any obligation with respect thereto. Without first obtaining on each occasion the written approval of Mortgagee, which consent shall not be unreasonably withheld, Mortgagor shall not cancel or permit the cancellation of any such lease, tenant contract, rental agreement, franchise agreement, management contract, construction contract, or other contract, license or permit, or materially modify any of said instruments, or accept, or permit to be made, any prepayment of any installment of rent or fees thereunder (except the usual prepayment of rent that results from the acceptance by a landlord on the first day of each month of the rent for the ensuing month). Mortgagor shall faithfully keep and perform, or cause to be kept and performed, all of the material covenants, conditions, and agreements contained in each of said instruments, now or hereafter existing, on the part of Mortgagor to be kept and performed and shall at all times do all things necessary to compel performance by each other party to said instruments of all material obligations, covenants, and agreements by such other party to be performed thereunder.

(b) Mortgagor shall not execute an assignment of the rents, issues, or profits, or any part thereof, from the Premises unless Mortgagee shall first consent to such assignment and unless such assignment shall expressly provide that it is subordinate to the assignment contained in this Mortgage and any assignment executed pursuant hereto.

(c) Each lease, tenant contract, or rental agreement pertaining to the Premises, or any part thereof, shall provide that in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee or tenant thereunder will, upon request of Mortgagee or any other person or entity succeeding to the interest of Mortgagee as a result of such enforcement, automatically become the lessee or tenant of Mortgagee or said successor in interest, without change in the terms or other provisions of said lease, tenant contract, or rental agreement; provided, however, that said successor in interest shall not be bound by (i) any payment of rental or additional rental for more than one (1) month in advance, except

prepayments in the nature of security for the performance by said lessee or tenant of its obligations under said lease, tenant contract, or rental agreement, or (ii) any amendment or modification of said lease, tenant contract, or rental agreement made without the express written consent of Mortgagee or said successor in interest. Each lease, tenant contract, and rental agreement pertaining to the Premises shall also provide that, upon request by said successor in interest, the lessee or tenant thereunder shall deliver an instrument or instruments confirming such attornment.

(d) Notwithstanding any other provisions of this Mortgage, Mortgagor shall not enter into any lease, tenant contract, rental agreement, franchise agreement, management contract, or other contract, license, or permit affecting the Premises, or any part thereof, without the prior written consent of Mortgagee and except upon the following conditions: (i) each such instrument shall contain a provision that the rights of the parties thereunder are expressly subordinate to all of the rights and title of Mortgagee under this Mortgage; (ii) any such instrument shall contain a provision whereby the parties thereunder expressly recognize and agree that, notwithstanding such subordination, Mortgagee, its successors or assigns, or any other holder of this Mortgage and the Note may sell the Premises in the manner provided in Article II, below, and thereby, at the option of Mortgagee, its successors or assigns, or such other holder of this Mortgage and the Note, sell the same subject to such instrument; and (iii) at or prior to the time of execution of any such instrument, Mortgagor shall, as a condition to such execution, procure from the other party or parties thereto an agreement in favor of Mortgagee, or other holder of this Mortgage and the Note, in form and substance satisfactory to Mortgagee or such holder, under which such party or parties agree to be bound by the provisions of Article II, below regarding the manner in which Mortgagee or such holder may foreclose or exercise the power of the sale under this Mortgage.

Section 1.08. Security Agreement. With respect to the apparatus, fittings, fixtures, and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Premises, and with respect to the monies and instruments held by or on account of the Mortgagor, this Mortgage is hereby made and declared to be a security agreement pursuant to which Mortgagor grants to Mortgagee a security interest in each and every item of personal property now or hereafter included herein as part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Alabama. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be executed by Mortgagor and appropriately filed. The remedies for any violation of the covenants, terms, and conditions of the security agreement contained in this Mortgage shall be (i) as prescribed herein, (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory provisions now or hereafter enacted and specified in said Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such financing statement[s] in the records normally having to do with personal property shall not in any way affect the agreement of Mortgagor and Mortgagee that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of

being thus identified in an Exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement[s] so filed at any time. Similarly, the mention in any such financing statement[s] of the rights in and to (aa) the proceeds of the fire and/or hazard insurance policy or (bb) any award in eminent domain proceedings for a taking or for loss of value, or (cc) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Mortgagee as determined by this instrument or affect the priority of Mortgagee's security interest granted hereby or by any other recorded documents, it being understood and agreed that such mention in such financing statement[s] is solely for the protection of Mortgagee in the event any court shall at any time hold with respect to the foregoing items (aa), (bb), or (cc), that notice of Mortgagee's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

Section 1.09. Further Assurances; After-Acquired Premises. At any time, and from time to time, upon request by Mortgagee, Mortgagor will make, execute, and deliver or cause to be made, executed and delivered, to Mortgagee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed reasonably desirable by Mortgagee, any and all such other and further deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as, in the opinion of Mortgagee, may be reasonably necessary or desirable in or to effectuate, complete, or perfect, or to continue and preserve (a) the obligation of Mortgagor under the Note and under this Mortgage and, (b) the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Premises, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor so to do, Mortgagee may make, execute, record, file, rerecord, and/or refile any and all such deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee and agent and attorney-in-fact of Mortgagor coupled with an interest so to do. The security title of this Mortgage will be automatically attached, without further act, to all after-acquired property attached to and/or used in the operation of the Premises or any part thereof. Mortgagor further agrees upon the request of Mortgagee to execute and deliver such other deeds of trust and instruments of further assurance as may be reasonably necessary to effectuate and continue the terms and provisions hereof.

Section 1.10. Expenses. Mortgagor will pay or reimburse Mortgagee, upon demand therefor, for all reasonable attorneys' fees, and other costs and expenses incurred by Mortgagee in any suit, action, legal proceeding or dispute of any kind in which Mortgagee is made a party or appears as party plaintiff or defendant, affecting the Secured Indebtedness, this Mortgage or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Premises, or any action to protect the security hereof, and any such amounts paid by Mortgagee shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

Section 1.11. Estoppel Affidavits. Mortgagor, upon ten (10) days' prior written notice, shall furnish Mortgagee a written statement, duly acknowledge, setting forth the unpaid principal

of, and interest on, the Secured Indebtedness, stating whether or not any offsets or defenses exist against the Secured Indebtedness, or any portion thereof, and, if such offsets or defenses exist, stating in detail the specific facts relating to each such offset or defense.

Section 1.12. Subrogation. To the full extent of the Secured Indebtedness, Mortgagee is hereby subrogated to the liens, claims, and demands, and to the rights of the owners and holders of each and every lien, claim, demand, and other encumbrance on the Premises that is paid or satisfied, in whole or in part, out of the proceeds of the Secured Indebtedness, and the respective liens, claims, demands, and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Mortgagee as additional collateral and further security for the Secured Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Mortgagee had they been duly and legally assigned, transferred, set over, and delivered unto Mortgagee by assignment, notwithstanding the fact that the same may be satisfied and cancelled of record.

Section 1.13. Books, Records, and Accounts. Mortgagor shall keep and maintain or cause to be kept and maintained, at its cost and expense, and in accordance with generally accepted accounting principles consistently applied, proper and accurate books, records, and accounts reflecting all items of income and expense in connection with the construction and operation of the Premises and in connection with any services, equipment or furnishings provided in connection with the construction and operation of the Premises. Mortgagee, by Mortgagee's agents, accountants, and attorneys, shall have the right from time to time to examine such books, records and accounts at the offices where such books, records, and accounts are maintained, to make such copies or extracts thereof, as Mortgagee shall desire (but no more than once per every twelve (12) months except in the event of default which is continuing beyond any applicable notice and cure period), and to discuss Mortgagor's affairs, finances, and accounts with Mortgagor, at such reasonable times as may be requested by Mortgagee.

Section 1.14. Limit of Validity. If from any circumstances whatsoever, fulfillment of any provision of this Mortgage or of the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, the ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this paragraph 1.14 shall control every other provision of this Mortgage and of the Note.

Section 1.15. Fixture Filing. This Mortgage constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code in the official records of the county in which the Premises are located with respect to any and all fixtures included with the term "Premises."

Section 1.16. Use and Management of Premises. Mortgagor shall not be permitted to alter or change the use of the Premises without the prior written consent of Mortgagee, not to be unreasonably withheld.

Section 1.17. Conveyance of Premises. Mortgagor shall not sell, encumber, convey in trust, pledge, convey, lease, transfer, or assign or otherwise transfer, voluntarily or involuntarily, any or all of its interest in the Premises or of any interest in Mortgagor, whether legal, or equitable, without the prior written consent of Mortgagee, and any attempt to do so in violation of this provision shall be null and void.

Section 1.18. Acquisition of Collateral. Mortgagor shall not acquire any portion of the personal property covered by this Mortgage subject to any security interest, conditional sales contract, title retention arrangement, or other charge or lien taking precedence over the security, title, and lien of this Mortgage.

Section 1.19. Financial Statements. Mortgagor covenants and agrees to furnish to Mortgagee annual financial statements of Mortgagor within thirty days after the anniversary date of the most recent financial statement provided to Mortgagee prior to the date of this Mortgage, which financial statements must be in form and substance reasonably satisfactory to Mortgagee, and include without limitation, a listing of all assets and liabilities, a listing of all sources of income, a listing of the uses of income, the amount and sources of contingent liabilities, identification of joint owners as to listed assets, and an annual projection of sources and uses of income. Furthermore, Mortgagor covenants and agrees to provide to Mortgagee copies of Mortgagor's federal income tax returns (with all forms K-1 attached), within 15 days of filing, and if requested by Mortgagee, copies of any extensions of the filing date.

Section 1.20. Notice Regarding Option and Lease. Mortgagor covenants and agrees to furnish promptly to Mortgagee written notice of any event of default under the Lease, any early termination of the Lease, any exercise of Waffle House, Inc.'s rights under the Lease, and any exercise of Waffle House, Inc.'s rights under the Option.

ARTICLE II

Section 2.01. Defeasance. If the Mortgagor shall: (a) pay in full (i) all of the Secured Indebtedness (as defined herein), including but not limited to all sums (principal, interest and charges) payable under the Note and any and all extensions and renewals of the same; and (ii) all sums becoming due and payable by the Mortgagor under the terms of this Mortgage, including but not limited to advancements made by the Mortgagee pursuant to the terms and conditions of this Mortgage; and (b) have kept and performed each and every obligation, covenant, duty, condition and agreement herein imposed on or agreed to by the Mortgagor; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Premises shall revert to the Mortgagor, and the entire estate, right, title and interest of the Mortgagee will thereupon cease; and the Mortgagee in such case shall, upon the request of the Mortgagor and at the Mortgagor's cost and expense, deliver to the Mortgagor proper instruments acknowledging satisfaction of this instrument; otherwise, this Mortgage shall remain in full force and effect.

Section 2.02. Events of Default. The terms "default," "Event of Default," or "Events of Default," wherever used in this Mortgage, shall mean the happening of any one or more of the following events:

(a) Failure by Mortgagor to pay as and when due and payable any portion of the Secured Indebtedness, such failure continuing for more than five (5) days after written notice of such failure from Mortgagee to Mortgagor; or

(b) Failure by Mortgagor duly to observe or perform any other term, covenant, condition, or agreement of this Mortgage which continues for more than thirty (30) days, or any warranty, representation or statement made by Mortgagor herein or in connection herewith proving to have been false when made or furnished; or

(c) The occurrence of an Event of Default under any agreement now or hereafter evidencing, securing, or otherwise relating to the Note or the Secured Indebtedness which continues beyond the expiration of any applicable notice and cure period; or

(d) If the Mortgagor shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking consenting to, or shall file any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief, under any present or future statute, law or regulation, or shall file an answer admitting or failing to deny the material allegations of a petition against it for any such relief or shall admit in writing its inability to pay its debts as they mature, or if any proceedings against Mortgagor seeking such relief shall not have been dismissed or stayed within ninety (90) days after the commencement thereof; or

(e) If Mortgagor directly or indirectly transfers, sells, conveys, encumbers, or mortgages all or any portion of the Premises or any interest therein without the prior written consent of Mortgagee as required in Section 1.17 above, such nonpermitted transfers shall include, without limitation, any and all transfers whether by operation of law or otherwise, including but not limited to transfer of beneficial interest in trust, transfer, sale, or assignment, execution by Mortgagor of any contract to sell the Premises, or execution of any lease or other document containing as a part of it, or as a part of the transaction, any option to purchase the Premises or any part thereof, or any interest therein.

Section 2.03. Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Secured Indebtedness shall, at the option of Mortgagee, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 2.04. Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred and is continuing beyond the expiration of any applicable notice and cure period but the Premises have as yet not been foreclosed, Mortgagor, upon demand of Mortgagee, forthwith shall surrender to Mortgagee the actual possession of the Premises and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all the Premises without the appointment of a receiver or an application therefore, and may exclude Mortgagor and its agents and employees wholly therefrom, and have joint access with Mortgagor to the books, papers, and accounts of Mortgagor;

(b) If Mortgagor shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree confirming upon Mortgagee the right to immediate possession of the Premises to Mortgagee, and Mortgagor hereby specifically consents to the entry of such judgment or decree. Mortgagor will pay to Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Mortgagee and its attorneys and agents, and all such expenses and compensation, until paid, shall become part of the Secured Indebtedness and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage, and control the Premises and conduct the business thereof and from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure and keep the Premises insured (iii) manage and operate the Premises and exercise all of the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine to be in its best interest. Mortgagee may collect and receive all the rents, issues, profits, and revenues from the Premises, including those past due as well as those accruing thereafter, and after deducting (aa) all reasonable expenses of taking, holding, managing, and operating the Premises (including compensation for the services of all persons employed for such purposes); (bb) the reasonable costs of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (cc) the reasonable cost of such insurance; (dd) such taxes, assessments, and other similar charges as Mortgagee at its option may pay; (ee) other proper charges upon the premises or any part thereof; and (ff) the reasonable compensation, expenses, and disbursements of the attorneys and agents of Mortgagee, Mortgagee shall apply the remainder of the moneys and proceeds so received by Mortgagee, in accordance with the provisions of the Note. Mortgagee shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Mortgagee of its rights under this Mortgage, and Mortgagee shall be liable to account only for the rents, incomes, issues, and profits actually received by Mortgagee.

Section 2.05. Performance by Mortgagee. If Mortgagor shall default in the payment, performance, or observance of any term, covenant, or condition of this Mortgage beyond the expiration of any applicable notice and cure period, Mortgagee, at its option, may pay, perform,

or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith shall be secured hereby and, immediately shall be repaid by highest rate permitted by law. Mortgagee shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

Section 2.06. Receiver. Upon the occurrence of an Event of Default which is continuing beyond any applicable notice and cure period, the Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Premises, to sue the Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to the Mortgagor or any other party, of a receiver of the rents, issues and profits of the Premises, with power to lease and control the Premises and with such other powers as may be deemed necessary.

Section 2.07. Foreclosure Sale. Upon the occurrence of any Event of Default which is continuing beyond any applicable notice and cure period, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the premises is taken, after giving 21 days' notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Premises (or any portion thereof to be sold) is located, to sell the Premises (or such portion thereof as the Mortgagee may from time to time elect to sell) in front of the courthouse door of any county in which the Premises (or any portion thereof to be sold) is located, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Premises, or any portion thereof, if the highest bidder therefor by credit bid. The purchaser at any such sale or sales shall be under no obligation to see to the proper application for the purchase money. At any foreclosure sale, any portion or all of the Premises, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Premises in portions or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Premises not previously sold shall have been sold or all the Secured Indebtedness secured hereby shall have been paid in full.

Section 2.08. Personal Premises. On the happening of any Event of Default which is continuing beyond any applicable notice and cure period or at any time thereafter, the Mortgagee shall have and may exercise with respect to the Personal Premises and fixtures included in the

Premises (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including sale or sales or otherwise dispose of, lease or utilize the collateral and any part or parts thereof, in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. The Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossession of the same without being guilty of trespass and without liability for damage occasioned thereby and to take any action deemed appropriate or desirable by the Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At the Mortgagee's request, the Mortgagor shall assemble the Collateral and make the Collateral available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of the Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of the Mortgagee existing after default. To the extent that such notice is required and cannot be waived, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of Section 3.06 below, at least five days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

The Mortgagor agrees that the Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Premises in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. The Mortgagor hereby granted the Mortgagee the right, at its option after default hereunder which is continuing beyond any applicable notice and cure period, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Secured Indebtedness in such order and amounts and manner as the Mortgagee may elect. The Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

Section 2.09. Rents and Leases. Upon the occurrence of an Event of Default which is continuing beyond any applicable notice and cure period, or at any time thereafter:

(i) The Mortgagee at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(A) to terminate the license granted to the Mortgagor to collect the Rents, and, without taking possession, in the Mortgagee's own name to demand, collect, receive, sue

for, attach and levy the Rents, to give proper receipts, releases and acquittances therefore, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Secured Indebtedness in such order and amounts as the Mortgagee may choose (or hold the same in a cash collateral reserve as security for the Secured Indebtedness);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Premises or any part thereof for the account of the Mortgagor, make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses the Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the Mortgagor could do if in possession, and in such even to apply any funds so collected to the operation and management of the Premises (including payment of reasonable management, brokerage and attorneys' fees) and payment of any Secured Indebtedness in such order and amounts as the Mortgagee may choose (or hold the same in a cash collateral reserve as security for the Secured Indebtedness);

(C) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Mortgagor under this Mortgage.

(ii) the collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Premises or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Mortgagee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

Section 2.10. Foreclosure Deeds. The Mortgagor hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Premises sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

Section 2.11. Order of Application of Proceeds. All payments received by the Mortgagee as proceeds of the Premises, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein, and in the other Loan Documents, appraisal fees, title search fees and foreclosure notice costs, (ii) to the payment of all sums advanced or expended by the Mortgagee under the terms of this Mortgage and the other

Loan Documents, together with interest thereon to the extent provided herein or therein, (iii) to the payment in full of any of the other Secured Indebtedness that is then due and payable (including without limitation principal, accrued interest and all other sums secured hereby), all in such order as the Mortgagee may elect in its sole discretion, (iv) to a cash collateral reserve fund to be held by the Mortgagee in an amount equal to, and as security for, any of the other Secured Indebtedness that is not then due and payable, and (v) the remainder, if any, shall be paid to the Mortgagor or such other person or persons appearing of record to be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

Section 2.12. Multiple Sales. Upon the occurrence of any Event of Default which is continuing beyond any applicable notice and cure period or at any time thereafter, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Secured Indebtedness due. Any such sale may be made subject to the unmatured part of the Secured Indebtedness secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Secured Indebtedness secured by this Mortgage, but as to such unmatured part of the Secured Indebtedness this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Secured Indebtedness whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Premises for any matured part of the Secured Indebtedness without exhausting any power of foreclosure and the power to sell the Premises for any other part of the Secured Indebtedness, whether matured at the time or subsequently maturing.

Section 2.13. Waiver of Appraisement Laws. The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Premises (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Secured Indebtedness or any creation or extension of a period of redemption from any sale made in collecting the Secured Indebtedness (commonly known as stay laws and redemption laws).

Section 2.14. Prerequisites of Sales. In case of any sale of the Premises as authorized by this Section 2.14, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Secured Indebtedness or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or things, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

Section 2.15. Remedies Cumulative. No right, power, or remedy conferred upon or reserved to Mortgagee by this Mortgage is intended to be exclusive or any other 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, in equity, or by statute.

Section 2.16. Waiver and Election.

(a) The exercise by the Mortgagee of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suite to foreclose the lien, security interest and assignment granted by this Mortgage, either on any matured portion of the Secured Indebtedness or for the whole of the Secured Indebtedness, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee is exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the other Loan Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the Loan Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances. The Mortgagor hereby waives the right to trial by jury in any action arising out of or related to the Secured Indebtedness, this Mortgage, any of the other Loan Documents, or any of the transactions contemplated thereby.

(b) No act or omission by Mortgagee shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Mortgage or any other obligation of Mortgagor, any Related Entity, or any subsequent purchaser of the Premises or any part thereof, or any maker, cosigner, endorser, surety, or guarantor, preclude Mortgage from exercising any right, power, or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default, or alter this Mortgage except as expressly provided in an instrument or instruments executed by Mortgagee. Without limiting the generality of the foregoing, Mortgagee may (subject to the authority granted Mortgagee under the Note) (i) grant forbearance or an extension of time for the payment of all or any portion of the Secured Indebtedness, (ii) take other or additional security for the payment of any of the Secured Indebtedness, (iii) waive or fail to exercise any right granted herein or in the Note, (iv) release any part of the Premises from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions, or agreements of the Note or this Mortgage, (v) consent to the filing of any map, plat, or replat affecting the Premises, (vi) consent to the granting of any easement or other right affecting the Premises, (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Premises, or any document of instrument evidencing, securing or in any way related to the Secured Indebtedness, all without releasing, discharging, modifying, changing, or affecting and liability of Mortgagor or precluding Mortgagee from exercising any such right, power, or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or

transferee with reference to any of the terms, covenants, conditions, or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations, or undertakings.

Section 2.17. Tenant Holding Over. In the event of any such foreclosure sale or sale under the power herein granted, Mortgagor (if Mortgagor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchase or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

Section 2.18. Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other proceeding affecting Mortgagor, its creditors, or its property, Mortgagee to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claim of Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount that may become due and payable by Mortgagor hereunder after such date.

ARTICLE III

Section 3.01. Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon Mortgagor, and Mortgagee and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Mortgagor shall have personal liability for the full performance of all covenants to be performed by it. Whenever a reference is made in this Mortgage to "Mortgagor" or "Mortgagee," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successor, successors-in-title, and assigns of Mortgagor or Mortgagee, as the case may be.

Section 3.02. Terminology. All personal pronouns used in this Mortgage, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein are to Articles, Sections, paragraphs, or subparagraphs of this Mortgage unless specific reference is made to Articles, Section, paragraphs, or subparagraphs of another document or instrument.

Section 3.03. Severability. If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage 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.

Section 3.04. Construction of Mortgage. This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

Section 3.05. Applicable Law. This Mortgage shall be interpreted, construed, and enforced according to the laws of the State of Alabama.

Section 3.06. Notices. Any and all notices, elections, or demands permitted or required under this Mortgage shall be in writing, signed by the party giving such notice, election, or demand, and shall be delivered personally, or sent by registered or certified mail, to the other party at the address set forth below, or at such other address as hereafter may be supplied in writing. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice, election, or demand. For the purposes of this Mortgage:

The address of Mortgagor is:

Calera Partners, LLC
446 Metroplex Drive
Suite 210
Nashville, TN 37211

The address of Mortgagee is:

First Bank
d/b/a First Bank of Tennessee
200 Fourth Avenue North
Suite 100
Nashville, TN 37219

Section 3.07. Assignment. This Mortgage is assignable by Mortgagee, and any assignment hereof by Mortgagee shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Mortgagee.

Section 3.08. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement, and obligation of Mortgagor under this Mortgage, the Note, and any and all other instruments now or hereafter evidencing, securing, or otherwise relating to the Secured Indebtedness.

Section 3.09. No Obligation of Mortgagee; Indemnification. The Mortgagee shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to Leases, the Improvements, the Personal Premises, the Land or any of the other Premises (unless expressly assumed by the Mortgagee under a separate agreement in writing), and this Mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any persons' negligent, reckless or willful conduct. The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action, judgments and other loss, cost and expense (collectively called "claims and losses") relating to or arising out of any default in the Mortgagor's performance of its representations, warranties, covenants, agreements, duties, responsibilities and

obligations under this Mortgage or under the Leases and with respect to the Land, the Improvements, the Personal Premises, or any of the other Premises. The provisions of this Section 3.09 shall survive the payment of the Secured Indebtedness in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Mortgage with respect to claims and losses asserted against or suffered by the Mortgagee. Without limiting the generality of the foregoing, the Mortgagor agrees that the Mortgagor's obligation to defend, indemnify and save harmless the Mortgagee set forth in this Section shall specifically include all claims and losses asserted against or suffered by the Mortgagee that are related to or arise out of (i) any representations or warranty set forth in Section 3.11 hereof that shall prove to be false or untrue in any material respect, (ii) any default in the performance or nonperformance of the Mortgagor's covenants and agreements set forth in Section 3.11 hereof, and (iii) any clean up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Premises, or any part thereof, that may be required by any Environmental Law or governmental authority.

Section 3.10. Collection Costs. The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in collecting or securing, or attempting to collect or secure, the Secured Indebtedness, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any Lien on the Premises, unless this Mortgage is herein expressly made subject to any such Lien; and/or all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Secured Indebtedness and shall be secured by this Mortgage.

Section 3.11. Environmental Matters. Mortgagor and Mortgagee have set forth their agreement as to environmental matters that affect the Premises, including, but not limited to, notices and indemnification, in that certain Environmental Indemnity Agreement dated the same day hereof.

Section 3.12. Application of Payments. If the lien, assignment or security interest created by this Mortgage is invalid or unenforceable as to any part of the Secured Indebtedness or is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the Secured Indebtedness shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Secured Indebtedness, and all payments made on the Secured Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Indebtedness that is not secured or not fully secured by said lien, assignment or security interest created hereby.

Section 3.13. Other Mortgages Encumbering the Premises. The Mortgagor hereby authorizes the holder of any other mortgage encumbering the Premises to disclose to the Mortgagee from time to time and at any time the following information: (a) the amount of indebtedness secured by such mortgage; (b) the amount of such indebtedness that is unpaid; (c) whether such indebtedness is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the indebtedness secured thereby; and (e) any other information

regarding such mortgage or the indebtedness secured thereby that the Mortgagee may request from time to time.

Section 3.14. Release or Extension by Mortgagee. The Mortgagee, without notice to the Mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Premises not expressly released, may release any part of the Premises or any person liable for any of the Secured Indebtedness and may agree with any party with an interest in the Premises to extend the time for payment of all or any part of the Secured Indebtedness or to waive the prompt and full performance of any term, condition or covenant of the Note or any of the other Loan Documents.

Section 3.15. Partial Payments. Acceptance by the Mortgagee of any payment of less than the full amount due on the Secured Indebtedness shall be deemed acceptance on account only, and the failure of the Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default if not cured with any applicable notice and cure period, and at any time thereafter and until the entire amount due on the Secured Indebtedness has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

Section 3.16. WAIVER OF JURY TRIAL. **THE PARTIES HERETO IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING FROM THE TRANSACTIONS CONTEMPLATED BY THIS MORTGAGE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE TO MAKE LOANS TO MORTGAGOR.**

Section 3.17. Subordination of Mortgage. Notwithstanding anything to the contrary contained in this Mortgage, the Mortgagee hereby acknowledges and agrees that this Mortgage and the rights of the Mortgagee hereunder shall be subordinate to the rights of Waffle House, Inc., a Georgia corporation ("Waffle House"), under the Option (as such term is defined in Exhibit B) and under the Lease (as such term is defined in Exhibit B). Mortgagee further agrees to execute a release of all its interest in the Premises under this Mortgage or otherwise simultaneously with its receipt of the proceeds from any sale of the Premises pursuant to the Option. The excess of any such proceeds over amounts then owed to Mortgagee by Mortgagor under this Mortgage and the Note shall be paid by Mortgagee to Mortgagor. Mortgagor and Mortgagee agree that Waffle House is an express third party beneficiary of the terms of this Section 3.17 and that they will not amend, modify or render void the terms of said Section 3.17 and the related terms of Exhibit B without the express written consent of Waffle House, which consent may be withheld by Waffle House in its sole discretion.

(signature page follows)

IN WITNESS WHEREOF, this Mortgage has been executed by Mortgagor as of the day and year first above written.

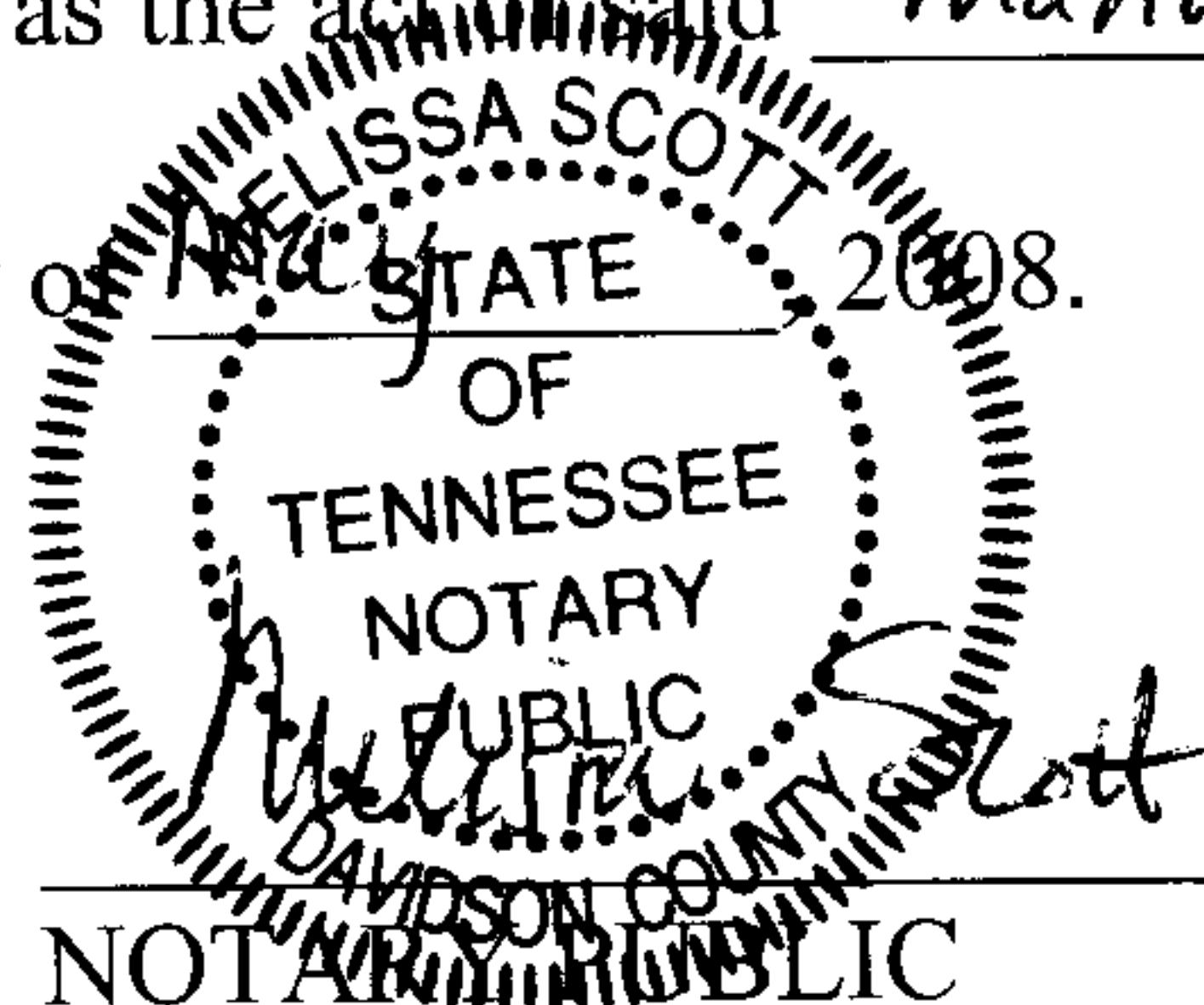
CALERA PARTNERS, LLC

By: Juliana M. Snau
Its: manager

STATE OF TN
COUNTY OF Davidson

I, the undersigned authority in and for the County and State aforesaid, hereby certify that Juliana M. Snau, whose name as manager of Calera Partners, a LLC, and whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such manager, and with full authority, executed the same voluntarily for and as the act of said manager.

Given under my hand and official seal this 13th day of May, 2008.



My Commission Expires:

MY COMMISSION EXPIRES:
July 5, 2011

20080522000208530 25/27 \$1251.50
Shelby Cnty Judge of Probate, AL
05/22/2008 10:27:13AM FILED/CERT

EXHIBIT A

LEGAL DESCRIPTION

Lot 1A according to the Map and Survey of Wadsworth Subdivision, a commercial subdivision, as recorded in Map Book 28, page 2 in the Office of the Judge of Probate of Shelby County, Alabama and also described by metes and bounds as follows:

A parcel of land situated in the Northeast Quarter of Section 4, Township 22 South, Range 2 West, Shelby County, Alabama, as more particularly described as follows: COMMENCE at the Southeast corner of the Southeast Quarter of the Northeast Quarter of Section 4, Township 22 South, Range 2 West, Shelby County, Alabama, and run North along the East line of said quarter-quarter line for 113.74 feet; thence left $88^{\circ}25'30''$ and run Westerly for 619.11 feet; thence left $1^{\circ}02'30''$ and continue Westerly for 30.01 feet; thence right $91^{\circ}23'20''$ and run North for 30.01 feet; thence left $91^{\circ}36'25''$ and run Westerly for 567.45 feet to a point, said point being on the North right of way line of an unnamed street; thence right $1^{\circ}21'08''$ and continue Westerly along the said North right of way line for 310.74 feet; thence right $51^{\circ}17'03''$ and continue along the said North right of way line of 3.09 feet to a point on the East right of way line of U.S. Highway 31; thence right $21^{\circ}45'27''$ and run Northwesterly along said East right of way line of 234.25 feet to the point of parcel herein described; thence continue along said right of way line for 113.87 feet; thence right $105^{\circ}00'00''$ and leaving said right of way line and run Easterly for 252.00 feet; thence right $90^{\circ}00'00''$ and run Southerly for 110.00 feet; thence right $90^{\circ}00'00''$ and run Westerly for 222.53 feet back to the point of beginning.



20080522000208530 26/27 \$1251.50
Shelby Cnty Judge of Probate, AL
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EXHIBIT B

20080522000208530 27/27 \$1251.50
Shelby Cnty Judge of Probate, AL
05/22/2008 10:27:13AM FILED/CERT

PERMITTED EXCEPTIONS

1. All taxes for the year 2008 and subsequent years not yet due and payable.
2. That certain Option to Purchase Land and Improvements dated as of May 13, 2008 (the "Option"), by and between Mortgagor, as "Owner" thereunder, and Waffle House, as evidenced by that certain Memorandum of Option dated as of May 13, 2008, and recorded immediately prior hereto in the Office of the Probate Judge of Shelby County, Alabama.
3. That certain Lease Agreement (Land and Building) dated as of May 13, 2008 (the "Lease"), by and between Mortgagor, as "Lessor" thereunder, and SouthEast Waffles, LLC, a Tennessee limited liability company, as "Lessee" thereunder, as evidenced by that certain Memorandum of Lease dated as of May 13, 2008, and recorded immediately prior hereto in said Probate Judge's Office.
4. 35-foot building restriction line from U.S. Highway 31 and 15-foot building restriction lines on the northern, southern, and eastern lot lines as shown on map recorded in Map Book 28, page 2 in said Probate Judge's Office.
5. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges, and immunities relating thereto.
6. Terms and conditions set out in Statutory Warranty Deed dated June 28, 2001, recorded as Instrument No. 2001-27284 in said Probate Judge's Office.
7. All matters set forth in Easement and Agreement for Construction, Installation and Shared Maintenance of a Grinder Lift Station by and between Waffle House, Inc. and James D. Wadsworth recorded as Instrument No. 2001-30696 in said Probate Judge's Office.
8. All matters set forth in Agreement of Cross-Easement by and between James D. Wadsworth and Waffle House, Inc., recorded as Instrument No. 2001-30697 in said Probate Judge's Office.