


This instrument prepared by:
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Cross Reference:
Instrument No. 20060406000160340
Instrument No. 20070201000048070
Instrument No. 20080328000125260

STATE OF ALABAMA)
:
COUNTY OF SHELBY)

4,866,800
D.A.D


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Shelby Cnty Judge of Probate, AL
01/02/2009 12:12:32PM FILED/CERT

AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT, made effective as of the 30th day of December, 2008, between **WATERSTONE DEVELOPMENT LLC**, an Alabama limited liability company, Mortgagor (hereinafter called the "Borrower"), whose address is 9190 Shiptown Road, Empire, Alabama 35063 and **FRONTIER BANK**, a Georgia banking corporation (hereinafter called the "Lender"), Mortgagee, whose address is 16863 Highway 280, Chelsea, Alabama 35043-8311. *This Amended and Restated Mortgage and Security Agreement amends that certain Mortgage and Security Agreement with Future Advances dated March 31, 2006, as recorded in the Shelby County Judge of Probate at Instrument Number 20060406000160340, that certain Amendment to Mortgage and Security Agreement dated March 23, 2007, as recorded in the Shelby County Judge of Probate at Instrument Number 20070201000048070, that certain Mortgage and Security Agreement dated March 21, 2008, in the Shelby County Judge of Probate at Instrument Number 20080328000125260 (collectively, the "Mortgages"), as assumed by Borrower pursuant to that certain Assignment and Assumption Agreement dated as of even date herewith.*

WITNESSETH:

WHEREAS, Lender has made or has agreed to make a loan to Borrower in the principal sum of up to Four Million Eight Hundred Sixty-Six Thousand Eight Hundred and No/100 Dollars (\$4,866,800) (the "Loan"), to be evidenced by that certain Consolidated, Amended and Restated Promissory Note of even date herewith, payable to Lender with interest thereon from Borrower (as amended, modified, or restated, the "Note"). The terms and conditions of the Loan are more particularly set forth in the Note.

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, including future advances up to such principal sum outstanding from time to time, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements as set forth in the Loan Documents and as hereinafter set forth, have bargained and sold and do hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by the Borrower and subject to the lien of this mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All the tract(s) or parcel(s) of land particularly described in Exhibit A attached hereto and made a part hereof (the "Land").

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in Exhibit A, and all fixtures, machinery, equipment, furniture, furnishings, inventory and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in, on, or used or intended to be used in connection with or with the operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by Borrower for the purpose of being used or useful in connection with the Mortgaged Property located or to be located on the Land, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to the Land or not, and whether in storage or otherwise, where so ever the same might be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, washers, dryers, and in general all building materials and equipment of every kind and character used or useful in connection with said Improvements;

(d) All of Borrower's right, title and interest in and to those certain lease agreements between Borrower and any and all tenants and lessees of the Mortgaged Property (as so amended, the "Lease").

All of the foregoing shall be deemed real property and conveyed by this mortgage.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:

(a) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such

judgments or awards. Lender may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest and other indebtedness (including future advances) payable in respect to the Note, the Loan Documents and this mortgage, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall keep, perform, and observe all and singular the covenants and promises in the Note, the Loan Documents and this mortgage expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, and all rights to obtain additional advances pursuant to the Loan Documents shall terminate and not be reinstated, then Lender shall upon Borrower's request release this mortgage, and upon such release all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but otherwise this mortgage shall remain in full force and effect. The Borrower acknowledges that from time to time there may be no outstanding indebtedness secured hereby, but this mortgage shall nevertheless remain in effect.

AND the Borrower covenants and agrees with the Lender as follows:

ARTICLE I

1.1 **Performance of Note and Mortgage.** The Borrower will perform, observe and comply with all provisions hereof, of the Note secured hereby, the Loan Documents and all other documents from time to time executed by Borrower as security for the indebtedness secured hereby, and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this mortgage and such other documents, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.2 **Warranty of Title.** The Borrower is lawfully seized of an indefeasible estate in the land and real property hereby mortgaged and has good and absolute title to all existing personal 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; that, except as otherwise set forth on Exhibit B hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.3 **Monthly Tax Deposits.** If required by the Lender, following Lender's request, the Borrower will pay to the Lender on the first day of each month together with and in addition to the regular installment of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes,

assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges when due. Upon an Event of Default, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount under this Paragraph 1.3 of Article I remaining to the Borrower's credit.

1.4 **Other Taxes, Utilities and Liens.**

(a) The Borrower will pay promptly, when and as due, and will exhibit promptly to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.3 hereof), this mortgage or the Note, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property. Notwithstanding anything to the contrary herein, Borrower may dispute any of the foregoing and delay payment during the time such contest is pending provided (a) applicable law permits nonpayment during such contest, (b) Borrower notifies Lender in writing of such contest and conducts such contest with due diligence, (c) any attachment or other action against the Mortgaged Property is effectively stayed, and (d) Borrower provides a bond or other collateral satisfactory to Lender which, if Borrower is unsuccessful in such contest, would be sufficient to pay all amounts due, including any penalties and interest.

(b) The Borrower will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) The Borrower shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property, unless arrangements satisfactory to Lender are made with respect thereto.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the entire balance of the principal sum secured by this mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.5 **Insurance.** The Borrower will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this mortgage, insurance policies, in such amounts as the Lender shall require, insuring the Mortgaged Property against losses typically insured under policies of all-risk insurance, and against such other insurable hazards, casualties and contingencies as the Lender may require, including, but not limited to, loss or damage from wind, fire, ice, earthquake and subsidence. If the Mortgage Property is located in a flood zone then Borrower shall maintain flood insurance on the Mortgaged Property. Borrower will also

provide and maintain business income insurance in the amount of twelve (12) months anticipated expenses typically incurred during a period of business interruption, including debt service payments. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

So long as no Event of Default exists, Borrower shall be entitled to settle any claim relating to a single event causing loss if the total loss is \$25,000 or less, and shall have the right to retain such proceeds of insurance in that event to be applied to the extent necessary as required by Section 1.7. Except as so provided, the Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, 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, directly to the Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to repair such buildings or to build new buildings in its place or for any other purpose or object satisfactory to the Lender without affecting the lien of the mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If required by the Lender, following Lender's request, the Borrower will pay to the Lender on the first day of each month, together with and in addition to the regular installment of principal and interest and monthly tax deposit (as required by Section 1.3 hereof) until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums when due. Upon the occurrence of an Event of Default the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Borrower's credit.

1.6 **Condemnation.** If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently (other than an insubstantial taking of unimproved portions of the Mortgaged Property which does not in Lender's reasonable judgment materially affect access to or use of the Mortgaged Property as it is presently being used), the entire indebtedness secured

hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings 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 the Borrower to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, whether then matured or to mature in the future, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.7 Care of the Property.

(a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Borrower will give immediate written notice of the same to the Lender.

(c) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(d) The Borrower will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters, and with all present and future restrictive covenants affecting the Mortgaged Property.

(e) If a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrower will restore promptly, repair or alter the remaining property in a manner satisfactory to the Lender.

1.8 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this mortgage, and the lien of this mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do.

The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.9 **Leases Affecting Mortgaged Property.** Except for the leases entered into in the ordinary course of business, the Borrower will not enter into any lease (as lessor) or management agreement affecting the Mortgaged Property or any part thereof without Lender's prior written consent. Each such lease or management agreement must be subordinate to Lender's interest in the Mortgaged Property, and Borrower will upon request cause such manager or lessee to execute and deliver to Lender a subordination agreement acceptable to Lender.

1.10 **Appraisals.** At the Lender's request, Borrower will permit the Lender, or its agents, employees or independent contractors, to enter upon and appraise the Mortgaged Property at any time and from time to time, and Borrower will cooperate with and provide any information requested in connection with such appraisals. Borrower will reimburse Lender for the cost of the first of any such reappraisals.

1.11 **Expenses.** The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Note, this mortgage, Borrower, or the Mortgaged Property, including but not limited to the foreclosure of this mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall be payable on demand, shall bear interest from and after Lender's written demand for payment at a rate equal to two percent (2%) in excess of the interest rate then borne by the Note, unless such amounts are paid within thirty (30) days from such written demand, and shall be secured by the lien of this mortgage.

1.12 **Performance by Lender of Defaults by Borrower.** If the Borrower 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; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at a rate equal to two percent (2%) in excess of the rate then borne by the Note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender 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 the Borrower or any person in possession holding under the Borrower.

ARTICLE II

2.1 **Event of Default.** The term Event of Default, wherever used in the mortgage, shall mean any one or more of the following events:

(a) Failure by the Borrower to pay as and when due and payable under the Note, the Loan Documents or this mortgage executed in connection herewith any principal, interest or other sums due; or

(b) Failure by the Borrower duly to observe any other covenant, condition, or agreement of the Note, this mortgage, the Loan Documents or any other document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby, which failure continues for thirty (30) days or more after written notice to Borrower in the manner set forth herein; or

(c) Except as permitted herein, the sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein; or

(d) The creation or suffering to exist by the Borrower of any lien or encumbrance on the Mortgaged Property, other than the lien of this mortgage, the lien for ad valorem taxes not then delinquent, the permitted encumbrances set forth in the Loan Documents and matters set forth on Exhibit B, if any, unless the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

(e) The sale or other transfer by any member of any interest in Borrower, unless the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

(f) Any representation or warranty provided herein, in any document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby or in any document, instrument, financial statement or other material given or provided by or on behalf of Borrower or any guarantor of the Note in connection with the loan secured hereby, is false or materially misleading at the time given or provided or thereafter becomes untrue in any material respect; or

(g) Any "Event of Default" occurs pursuant to the Note, the Loan Documents or any other documents from time to time evidencing or securing the indebtedness secured by this mortgage, or any part thereof; or

(h) Death or incompetence of any guarantor.

Notwithstanding anything herein, any requirement of notice specified above shall be deemed deleted if Lender is prevented from giving notice by bankruptcy or other applicable law, and the cure period shall be measured from the date of the event or failure rather than from the date of notice. Nothing herein shall require notice except where expressly set forth.

2.2 **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.3 **Right of Lender to Enter and Take Possession.**

(a) If an Event of Default shall exist, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and if and to the extent

permitted by law, the Lender may enter and take possession, of all the Mortgaged Property, and may exclude the Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage, and control the Mortgaged Property 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, personality, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in Borrower's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.3 and 1.5 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

(c) If an Event of Default shall exist, Lender may require that Borrower cause all of its accounts to be paid to one or more deposit accounts with Lender, or at Lender's option, with another financial institution approved by Lender. Borrower assigns and grants to Lender a security interest in, pledge of and right of setoff against all moneys from time to time held in such deposit accounts. Borrower agrees to promptly notify all of its account debtors to make payments to one or more such deposit accounts upon Lender's request and as designated by Lender, and Borrower agrees to provide any necessary endorsements to checks, drafts and other forms of payment so that such payments will be properly deposited in such accounts. Lender may cause moneys to be withdrawn from such deposit accounts and applied to the indebtedness secured hereby in such order as Lender may elect, whether or not then due. Borrower appoints Lender as Borrower's attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to provide any notice, endorse any check, draft or other payment for deposit, or take any other action which Borrower agrees to take in this Section.

(d) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.4 Receiver.

(a) If an Event of Default shall exist, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its

payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Borrower will pay to the Lender upon demand all expenses, including receiver's fees, attorney's fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section 2.4; and all such expenses shall be secured by this mortgage.

2.5 **Lender's Power of Enforcement.** If an Event of Default shall exist, the Lender 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 the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

2.6 **Power of Sale.** If an Event of Default shall exist, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House 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 some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed (or assignment of the Lease) to the Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property maybe 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 Lender may elect.

2.7 **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.6 shall be applied as follows:

(a) First, to the 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 at a rate equal to two percent (2%) in excess of the rate borne by the Note, which Lender 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 or as may be necessary to cure any defaults pursuant to the Lease or pay amounts due thereunder (including accelerated amounts) and exercise the option to purchase;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the person entitled to such proceeds under applicable law after deducting any expense of ascertaining who is so entitled.



2.8 **Lender's Option on Foreclosure.** At the option of the Lender, 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 expense, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the mortgage in equity, Lender 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 proceeding and to foreclose its rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.9 **Waiver of Exemption.** Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

2.10 **Suits to Protect the Mortgaged Property.** The Lender 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 this 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 or be prejudicial to the interest of the Lender.

2.11 **Borrower to Pay the Note on Any Default in Payment; Application of Moneys by Lender.** If an Event of Default exists, then, upon demand of the Lender, the Borrower will pay to the Lender the whole amount due and payable under the Note; and in case the Borrower shall fail to pay the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses, and disbursements of the Lender's agents and attorneys.

2.12 **Delay or Omission No Waiver.** No delay or omission of the Lender or of any holder of the Note to exercise any right, power, or remedy accruing upon any default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power, and remedy given by this mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

2.13 **No Waiver of One Default to Affect Another, etc.** No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers, or remedies consequent thereon. If the Lender:

(a) grants forbearance or an extension of time for the payment of any sums secured hereby;

(b) takes other or additional security for the payment thereof;

(c) waives or does not exercise any right granted herein or in the Note, the Loan Documents or other documents;

(d) releases any part of the Mortgaged Property from the lien of this mortgage or otherwise changes any of the terms of the Note, the Loan Documents, other documents or this mortgage;

(e) consents to the filing of any map, plat, or replat thereof;

(f) consents to the granting of any easement thereon; or

(g) makes or consents to any agreement subordinating the lien or change hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this mortgage be altered thereby.

In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions 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 of the liabilities or undertakings hereunder.

2.14 **Discontinuance of Proceedings - Position of Parties, Restored.** In case the Lender shall have proceeded to enforce any right or remedy under this mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of the Lender shall continue as if no such proceeding has been taken.

2.15 **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Lender 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

3.1 **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 the Borrower or by or on behalf of Lender shall bind and inure to the benefit of its respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

3.2 **Headings, etc.** The headings of the articles, sections, paragraphs, 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.

3.3 **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, and provisions contained herein and in the Note shall in no way be affected, prejudiced, or disturbed thereby.

3.4 **Lien on Personal Property.** This mortgage creates a lien on and grants a security interest in the personal property of the Borrower described herein which constitutes part of the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. This mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code with Borrower as the "debtor" and Lender as the "secured party," and their respective addresses are set forth in the heading to this instrument. If an Event of Default occurs, the Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

3.5 **Representations and Warranties.** Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan to Borrower, that:

(a) All utility and sanitary sewage services necessary for the use of the Mortgaged Property and all roads necessary for the use of the Mortgaged Property are available pursuant to permanent private or public easements which are not subject to the rights of any other persons which could interfere with Borrower's use thereof.

(b) To the best of Borrower's knowledge, the Mortgaged Property complies with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters.

3.6 **Notices.** Any and all notices, elections or demands permitted or required to be made under this mortgage, the Note, or any other agreement executed in connection with or relating to the Note or this Mortgage, or by applicable law, shall be given and be deemed effective upon being (a) delivered in person, (b) deposited with the U.S. Mail, certified or registered, postage prepaid, return receipt requested, or (c) sent by Federal Express or overnight U.S. Mail or other national overnight carrier, and addressed in each such case to the parties at their respective addresses set forth in the heading of this Mortgage or such other single address as either party may designate in a written notice given as herein provided (except that a change of address notice shall not be effective until actual receipt).

3.7 **Waiver of Jury Trial.** **BORROWER HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE LOAN EVIDENCED HEREBY, THE NOTE, OR ANY OF THE LOAN DOCUMENTS. BORROWER CERTIFIES THAT NO**

REPRESENTATIVE OR AGENT OF LENDER OR LENDER'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF THE JURY TRIAL PROVISION. BORROWER ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO MAKE THE LOAN IN PART BY THE PROVISIONS OF THIS PARAGRAPH.

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IN WITNESS WHEREOF, the Borrower has caused this mortgage to be executed as of the 30th day of December, 2008, but to be effective as of the day and year first above written.

BORROWER:

WATERSTONE DEVELOPMENT LLC,
an Alabama limited liability company

By: Tobi Gilkey
Tobi Gilkey
Its Member/Manager

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Sharlyn Dunagan Cannon, a Notary Public in and for said County in said State, hereby certify that Tobi Gilkey, whose names as the Member/Manager of Waterstone Development LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, they, as such managing member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 30th day of December, 2008.

Sharlyn Dunagan Cannon
NOTARY PUBLIC

[SEAL]

My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**
MY COMMISSION EXPIRES: Aug 1, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS



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EXHIBIT A

LEGAL DESCRIPTION

PARCEL I:

The following described property situated in Shelby County, Alabama, to-wit:

Commence at the NW corner of the SW 1/4 of the NE 1/4 of Section 6, Township 22 South, Range 2 West; thence turn Eastwardly along the North line for a distance of 853.88 feet for the point of beginning; thence continue along last described course for a distance of 271.30 feet; thence turn an angle to the right of 84°42'14" for a distance of 1347.12 feet to the South line of said 1/4 1/4; thence turn an angle to the right of 95°27'20" along said South line for a distance of 277.50 feet; thence turn an angle to the right of 84°48'15" for a distance of 1345.81 feet to the point of beginning.

Less and except any part of subject property lying within a road right of way.

PARCEL II:

A parcel of land situated in the SW 1/4 of the NE 1/4 of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the NE corner of the SE 1/4 of the NE 1/4 of said Section 6; thence North 87°20'08" West a distance of 1319.15 feet to the Point of Beginning; thence South 01°39'30" East a distance of 742.37 feet; thence North 87°12'15" West a distance of 275.23 feet; thence North 01°17'04" West a distance of 741.39 feet; thence South 87°20'08" East a distance of 270.33 feet to the Point of Beginning.

Less and except any part of subject property lying within a road right of way.

PARCEL III:

A parcel of land situated in the SE 1/4 of the NE 1/4 of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at the NE corner of the SE 1/4 of the NE 1/4 of said Section 6; thence North 87°20'08" West a distance of 1319.15 feet; thence South 01°39'30" East a distance of 742.37 feet; thence South 01°58'59" East a distance of 586.36 feet; thence South 87°38'13" East a distance of 1216.85 feet; thence North 01°49'04" West a distance of 150.00 feet; thence South 87°38'13" East a distance of 100.00 feet; thence North 01°43'22" West a distance of 201.27 feet; thence North 01°48'38" West a distance of 166.11 feet; thence North 01°42'08" West a distance of 804.26 feet to the Point of Beginning.

Less and except any part of subject property lying within a road right of way.



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PARCEL IV:

Part of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

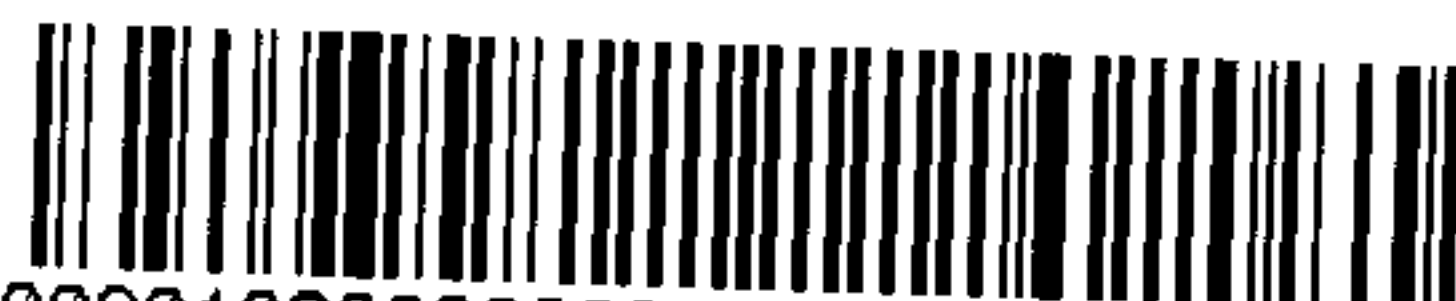
From an existing 3 inch open top iron pipe found to be the most Southerly corner of Lot 4, the round table, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 7, page 38, and looking in a Northerly direction along the West line of said Lot 4 at the NW corner of said Lot 4, turn an angle to the left of $85^{\circ}54'13''$ and run in a Westerly direction for a distance of 1316.72 feet to a point on the North right of way line of Shelby County Highway No. 22 (being 40 feet from the center of said road) and being marked by an existing iron rebar set by Weygand and being the point of beginning; thence run in a Westerly direction along the North right of way line of said Shelby County Highway No. 22 for a distance of 279.01 feet to an existing iron rebar set by Wheeler; thence turn an angle to the right of $85^{\circ}30'27''$ and run in a Northerly direction for a distance of 585.62 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of $94^{\circ}26'12''$ and run in an Easterly direction for a distance of 275.19 feet to an existing iron rebar set by Weygand and being 1.6 feet West of an existing fence; thence turn an angle to the right of $85^{\circ}11'36''$ and run in a Southerly direction for a distance of 586.20 feet, more or less, to the Point of Beginning.

LESS AND EXCEPT:

A parcel of land located in the South $1/2$ of the NE $1/4$ of Section 6, Township 22 South, Range 2 West, being more particularly described as follows:


Commence at the NW corner of the SW $1/4$ of the NE $1/4$ of Section 6, Township 22 South, Range 2 West; thence in an Easterly direction along the North line of said $1/4 - 1/4$ section a distance of 853.88 feet to the Northeast corner of Lot 2 of Heavenly Family Subdivision as recorded in Map Book 29, page 90, in the Office of the Judge of Probate in Shelby County, Alabama; thence a deflection angle right from the last described course of $86^{\circ}07'59''$ in a Southerly direction along the Easterly lines of Lots 1 and 2 of said Heavenly Family Subdivision a distance of 1325.98 feet to a point on the North right of way line of Shelby County Highway Number 22; thence an angle to the right from the last described course of $94^{\circ}03'23''$ in an Easterly direction and along said right of way line a distance of 278.19 feet; thence an angle to the right from the last described course of $85^{\circ}30'21''$ in a Northerly direction a distance of 372.26 feet; thence an interior angle to the left from the last described course of $89^{\circ}33'44''$ in an Easterly direction a distance of 5.35 feet to the Point of Beginning; thence an exterior angle to the right from the last described course of $90^{\circ}00'00''$ in a Northerly direction a distance of 90.45 feet; thence an interior angle to the left from the last described course of $105^{\circ}06'44''$ in a Northeasterly direction a distance of 190.34 feet; thence an interior angle to the left from the last described course of $90^{\circ}00'00''$ in a Southeasterly direction a distance of 47.65 feet to the beginning of a curve to the left having a radius of 50.00 feet and a central angle of $35^{\circ}55'38''$; thence in a Southeasterly direction along said curve and tangent to last described course an arc distance of 31.35 feet; thence an interior angle to the left from the chord of last described curve of $107^{\circ}57'49''$ in a Southwesterly direction a distance of 142.98 feet; thence an interior angle to the left from the last described course of $109^{\circ}43'26''$ in a Northwesterly direction a distance of 130.39 feet to the Point of Beginning.

Less and except any portion of subject property lying within a road right of way.



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EXHIBIT B
PERMITTED ENCUMBRANCES


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1. All taxes for the year 2008 and subsequent years, not yet due and payable.
2. Agreement as recorded in Instrument 20060223000068610, in the Probate Office of Shelby County, Alabama.
3. Easement to BellSouth Telecommunications, as recorded in Instrument 20060815000396430, in the Probate Office of Shelby County, Alabama.
4. Easement recorded in Instrument 20040106000009970, in the Probate Office of Shelby County, Alabama.