

*This instrument prepared by and
after recording return to:*

Dwight L. Mixson, Jr.
Burr & Forman LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203
(205) 251-3000

20090317000098650 1/10 \$39.00
Shelby Cnty Judge of Probate, AL
03/17/2009 03:05:19PM FILED/CERT

MORTGAGE, ASSIGNMENT
OF RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "Mortgage"), made as of the 10th day of March, 2009, between **G&S PROPERTIES, LLC**, an Alabama limited liability company (hereinafter called the "Mortgagor"), whose address is 35 Emerald Lake Drive, P.O. Box 1652, Pelham, Alabama 35124, Attention: Mr. Greg Metcalf, and **LP LEASING, LLC**, an Alabama limited liability company (hereinafter called the "Mortgagee"), whose address is 1808 McCain Parkway, Pelham, Alabama 35124, Attention: Mr. Charles Bellsnyder.

WITNESSETH:

WHEREAS, Mortgagor and Mortgagee have entered into a Lease and Purchase Option of even date herewith (the "Primary Agreement"). The Primary Agreement contains a purchase option from Mortgagor in favor of Mortgagee and provides for certain damages in the event of Mortgagor's failure, refusal or inability to comply with its obligations to Mortgagee in connection with the purchase option, and Mortgagor has agreed to secure its obligations with this Mortgage.

NOW, THEREFORE, the undersigned, in consideration of the obligations above mentioned, and to secure the prompt payment of same, including all damages, liquidated or unliquidated, that may from time to time be owing to Mortgagee by Mortgagor pursuant to the purchase option as set forth in the Primary Agreement, and any amendments or modifications of same, and further to secure the performance of the covenants, conditions, and agreements as hereinafter set forth, have bargained and sold and do hereby grant, bargain, sell, alien, and convey unto the Mortgagee, 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 Mortgagor 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.

THIS MORTGAGE SECURES A CONTINGENT OBLIGATION. NO PRINCIPAL INDEBTEDNESS IS OUTSTANDING AS OF THE DATE OF THIS MORTGAGE. THEREFORE, NO MORTGAGE RECORDING PRIVILEGE TAX IS PRESENTLY DUE.

(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 Mortgagor 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 the Mortgagor for the purpose of being used or useful in connection with the improvements located or to be located on the property described in Exhibit A, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said property or not, and whether in storage or otherwise, wheresoever the same may 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 gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements.

(d) All licenses, permits, general intangibles, accounts, contract rights, and other intangible property, now owned or hereafter acquired, relating to the foregoing real property.

(e) Proceeds and products of all of the foregoing real and personal property.

To the fullest extent permitted by applicable law, all of the foregoing shall be deemed a part of the real property and may be foreclosed upon and sold upon an Event of Default in accordance with the laws relating to mortgages of real estate.

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 Mortgagor, 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 Mortgagor 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, subleases or tenancies now existing or hereafter created, reserving to Mortgagor, however, so long as Mortgagor 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.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Mortgagee, 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 Mortgagor shall perform its obligations under the purchase option contained in the Primary Agreement or shall pay or cause to be paid to the Mortgagee the damages set forth in the Primary Agreement resulting from its failure, refusal or inability to do so, all at the times and in the manner stipulated therein, all without fraud or delay, or if the Primary Agreement is terminated in accordance with its terms without the purchase option having been exercised, and provided Mortgagor timely performs and observes all other obligations in this Mortgage at the times and in the manner set forth herein, all without fraud or delay, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

AND the Mortgagor covenants and agrees with the Mortgagee as follows:

ARTICLE I

Section 1.01 **Payment and Performance of Primary Agreement and Mortgage.** The Mortgagor will perform, observe and comply with all provisions hereof and of the purchase option contained in the Primary Agreement, and duly and punctually will pay to the Mortgagee any damages due in the event of its failure, refusal or inability to observe the terms of the purchase option contained in the Primary Agreement.

Section 1.02 **Warranty of Title.** The Mortgagor is lawfully seized of an indefeasible estate in fee simple 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 for the Primary Agreement and matters described in Exhibit to the Primary Agreement (the "Permitted Exceptions"), 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 Mortgagor shall and will warrant and forever defend the title thereto unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

Section 1.03 **Further Assurances; After Acquired Property.** At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Mortgagee 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 Mortgagee any and all

such other and further mortgages, instruments of further assurance, certificates, financing statements and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligations of the Mortgagor to Mortgagee herein or secured hereby, and the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor so to do, the Mortgagee may make, execute, and record any and all such mortgages, instruments, certificates, financing statements and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and attorney-in-fact of the Mortgagor 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.

ARTICLE II

Section 2.01 **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, refusal or inability of the Mortgagor to timely comply with its obligations under the purchase option contained in the Primary Agreement; or
- (b) Failure by the Mortgagor duly to observe any other covenant, condition, or agreement of this Mortgage; or
- (c) The creation or suffering to exist by the Mortgagor of any lien or encumbrance on its interest in the Mortgaged Property, other than the lien of this Mortgage, the Permitted Exceptions, and matters created by Mortgagee; or
- (d) The filing by Mortgagor of a voluntary petition in bankruptcy or Mortgagor's adjudication as a bankrupt or insolvent, or the filing by Mortgagor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Mortgagor or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or
- (e) The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Mortgagor or of a substantial part of its property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Mortgagor which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

Section 2.02 **Mortgagee's Power of Enforcement.** If an Event of Default shall have occurred, the Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce the Primary Agreement and this Mortgage 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 Mortgagee shall deem most effectual for such purposes. The Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Mortgagee may determine.

Section 2.03 **Power of Sale.** If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the 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, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Mortgagee may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor, and apply all or any part of the obligations of Mortgagor to Mortgagee secured hereby as a credit against the purchase price. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect.

Section 2.04 **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.05 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 or enforcement of any obligations or the foreclosure of this Mortgage;

(b) Second, to the payment of any prior lien or encumbrance upon the Mortgaged Property that Mortgagee may in its discretion elect to pay or any expenses incurred or amounts paid by Mortgagee in its discretion in order to clear title to the Mortgaged Property;

(c) Third, to the payment and satisfaction of the obligations of Mortgagor to Mortgagee secured hereby (provided that if no obligations are then due but the Primary Agreement remains in effect, Mortgagee may hold any such proceeds as cash collateral for the obligations, whether fixed or contingent, secured hereby); and

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

Section 2.05 **Mortgagee's Option on Foreclosure.** At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity,

Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants or subtenants of the Mortgaged Property, and the failure to make any such tenants or subtenants parties defendants to any such foreclosure proceeding and to foreclose its rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee.

Section 2.06 **Waiver of Exemption.** Mortgagor waives all rights of exemption pertaining to real or personal property as to any obligations secured by or that may be secured by this Mortgage, and Mortgagor 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 obligations secured hereby.

Section 2.07 **Suits to Protect the Mortgaged Property.** The Mortgagee shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of 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 Mortgagee.

Section 2.08 **Delay or Omission No Waiver.** No delay or omission of the Mortgagee to exercise any right, power, or remedy accruing upon any default or Event of Default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default or Event of Default, or acquiescence therein; and every right, power, and remedy given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

Section 2.09 **No Waiver of One Default to Affect Another, etc.** No waiver of any default or Event of Default hereunder shall extend to or shall affect any subsequent or any other then existing default or Event of Default or shall impair any rights, powers, or remedies consequent thereon.

If the Mortgagee (a) grants forbearance or an extension of time for the payment or performance of any obligations secured hereby; (b) takes other or additional security for the payment or performance thereof; (c) waives or does not exercise any right granted herein or in the Primary Agreement; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Primary Agreement 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 charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Primary Agreement, this Mortgage or otherwise of the Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any obligor, surety, or guarantor; nor shall any such act or omission preclude the Mortgagee 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 Mortgagee, 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 Mortgagee, 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 obligations 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.

Section 2.10 **Discontinuance of Proceedings - Position of Parties, Restored.** In case the Mortgagee 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 Mortgagee, then and in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of the Mortgagee shall continue as if no such proceeding has been taken.

Section 2.11 **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE III

Section 3.01 **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 Mortgagor or by or on behalf of Mortgagee shall bind and inure to the benefit of its respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

Section 3.02 **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.

Section 3.03 **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms, or provisions contained in this Mortgage shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein shall in no way be affected, prejudiced, or disturbed thereby.

Section 3.04 **Lien on Personal Property.** This Mortgage creates a lien on and grants a security interest in the personal property of the Mortgagor 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 upon and security interests in personal property. Mortgagor covenants and agrees that Mortgagee may file and refile such financing statements, continuation statements or other documents as Mortgagee 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 Mortgagor as the "debtor" and Mortgagee as the "secured party," and their respective addresses are set forth in the heading to this instrument. If an Event of Default occurs, the Mortgagee shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code or other law applicable to liens upon and security interests in personal property.

Section 3.05 **Notices.** Any and all notices, elections or demands permitted or required to be made under this Mortgage or by applicable law shall be given and be deemed effective when sent in accordance with the Primary Agreement.

Section 3.06 **Representations and Warranties.** Mortgagor represents and warrants to Mortgagee, knowing that Mortgagee will rely on such representations and warranties as incentive to enter into the Primary Agreement, that:

(a) Mortgagor is a duly organized and existing Alabama limited liability company having full power and authority to consummate the transactions contemplated by this Mortgage, and the execution, delivery and performance of this Mortgage and the documents executed in connection herewith have been duly authorized by all necessary limited liability company action.

(b) Neither the execution and performance of this Mortgage or any other document executed in connection herewith by Mortgagor will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Mortgagor.

Section 3.07 **Prior Mortgage.** This Mortgage is expressly made subject and subordinate to the existing Landlord's Mortgage (as such term is defined in the Primary Agreement), provided that Mortgagor agrees that (a) the outstanding principal balance of the Primary Mortgage does not exceed and at no time will exceed \$350,000, (b) the outstanding principal balance of the Primary Mortgage will at no time be increased, (c) Mortgagor will timely pay, perform and observe all of its obligations set forth in the Primary Mortgage and any indebtedness or other obligations secured thereby, and (d) Mortgagor will timely comply with all obligations set forth in the Primary Agreement of or relating to the Landlord's Mortgage.

* * *

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage, or has caused this Mortgage to be executed, as of the day and year first above written.

MORTGAGOR:

G&S PROPERTIES, LLC,
an Alabama limited liability company

BY: Gregory B. Metcalf
Its Owner/Member

[SEAL]

STATE OF ALABAMA)
COUNTY OF Shelby

I, the undersigned Notary Public in and for said County in said State, hereby certify that Gregory B. Metcalf, whose name as Owner/Member of G&S Properties, 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, he, as such 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 10th day of March, 2009.

[NOTARY SEAL]

[Signature]
NOTARY PUBLIC
My Commission Expires: 6-5-2011

EXHIBIT A
Legal Description

20090317000098650 10/10 \$39.00
Shelby Cnty Judge of Probate, AL
03/17/2009 03:05:19PM FILED/CERT

Commence at the Northeast corner of the Northeast $\frac{1}{4}$ of said Section 25; thence South 00 degree(s) 00 minute(s) 00 second(s) East along East line of said section a distance of 552.42 feet to the POINT OF BEGINNING; thence continue along the last described course a distance of 190.52 feet to the centerline of an existing ditch; thence South 85 degree(s) 27 minute(s) 00 second(s) West along said centerline of ditch, a distance of 143.75 feet; thence North 87 degree(s) 39 minute(s) 26 second(s) West along said centerline of ditch, a distance of 80.89 feet; thence leaving said centerline North 00 degree(s) 53 minute(s) 17 second(s) East, a distance of 28.36 feet; thence North 88 degree(s) 47 minute(s) 01 second(s) West, a distance of 244.93 feet to the Easterly Right-Of-Way line of McCain Parkway (50' ROW); thence North 01 degree(s) 32 minute(s) 11 second(s) East along said Right-Of-Way, a distance of 50.00 feet; thence South 88 degree(s) 47 minute(s) 01 second(s) East and leaving said Right-Of-Way, a distance of 243.59 feet; thence North 00 degree(s) 00 minute(s) 00 second(s) East, a distance of 54.27 feet; thence North 45 degree(s) 00 minute(s) 00 second(s) East, a distance of 97.93 feet; thence South 88 degree(s) 47 minute(s) 10 second(s) East, a distance of 154.47 feet to a point on the East line of said Section 25, said point also being the POINT OF BEGINNING.

Together with a Perpetual Easement for On-Site Sanitary Sewer Pump Station and Absorption Field between G&S Properties, LLC and James R. Elliott and Betty H. Elliott as recorded in the Probate Office of Shelby County, Alabama.

All being situated in Shelby County, Alabama.