

STATE OF ALABAMA
COUNTY OF SHELBY

**MORTGAGE,
ASSIGNMENT OF RENTS AND LEASES,
AND SECURITY AGREEMENT**

THIS INDENTURE, (hereinafter "Mortgage") made this ___ day of December, 2009, between **John Howard Holcombe, also known as Johnny H. Holcombe**, a married person, (hereinafter referred to as the or the "Lessee") and **CapitalPartners Leasing, LLC**, a corporation, whose address is 2112 First Avenue North, Birmingham, AL 35203 (hereinafter referred to as the "Lessor").

[THIS MORTGAGE IS FILED AS, AND SHALL CONSTITUTE BOTH A MORTGAGE AND A
FIXTURE FILING IN ACCORDANCE WITH THE UNIFORM COMMERCIAL CODE]

W I T N E S S E T H

WHEREAS, the said Lessee, is and will be indebted to Lessor by the terms of a Master Lease of even date (hereinafter along with all renewals, extensions and modifications, "Master Lease") in the principal sum of Seventy Eight Thousand and No/100 Dollars (\$78,000.00), payable in accordance with the terms of such Master Lease, and all renewals, modifications, extensions and amendments thereto.

NOW THEREFORE, the undersigned Lessee in consideration of the premises and to secure the payment of the obligations and liabilities due and to become due pursuant to the terms of such Master Lease of even date, this Mortgage, and any other agreement between Lessee and Lessor, or any other indebtedness (whether now existing or hereafter created) owed to Lessor by Lessee either directly or indirectly, absolutely or conditionally (hereinafter, collectively with the indebtedness evidenced by the Master Lease and this Mortgage, "Debt"), and in compliance with all the stipulations herein contained, does hereby grant, bargain, sell, and convey unto Lessor, their successors, and assigns the following (hereinafter "Mortgaged Property"):

- a) The Land situated in Shelby County, Alabama and described on Exhibit "A" attached hereto and incorporated herein by this reference;
- b) Together with all buildings, structures, equipment, machinery, furniture, furnishings, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, buildings materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Lessee and used or intended to be used in connection with or with the operation of the Mortgaged Property, and the buildings, structures or other improvements located thereon, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property are actually located on or adjacent to the Land or not and whether in storage or otherwise wheresoever the same may be located;
- c) 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, licenses, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Mortgaged Property, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Lessee, 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 Lessee of, in and to the same, including but not limited to: i) all rents, royalties, profits, issues and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created; and ii) 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 the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets. Lessor is hereby authorized on behalf of and in the name of Lessee to execute and deliver valid acquittance for, and appeal from, any such judgments or awards. Lessor may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's

fees, on any of 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;

d) Together with all leases, written or oral, and all agreements for use or occupancy of any portion of the Mortgaged Property with respect to which the Lessee is the lessor, including but not limited to the existing lease (if any) currently pertaining to the Mortgaged Property (the "Existing Leases"), any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Mortgaged Property (all such leases, subleases, agreements and tenancies heretofore mentioned, including but not limited to, the Existing Leases being hereinafter collectively referred to as the "Leases");

e) Together with any and all guaranties of the lessees' and any sublessees' performance under any of the Leases;

f) Together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which the Lessee may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Mortgaged Property or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Mortgaged Property, together with any and all rights and claims of any kind that the Lessee may have against any such lessee under the Leases or against any subtenants or occupants of the Mortgaged Property (all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"); provided, however, so long as no Event of Default has occurred, the Lessee shall have the right under a license granted hereby to collect, receive and retain the Rents (but not prior to accrual thereof);

g) Together with any award, dividend or other payment made hereafter to the Lessee in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. Lessee hereby appoints the Lessor as the Lessee's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend, or other payment;

h) Together with any awards hereafter made for any taking of or injury to said Mortgaged Property through eminent domain or otherwise, including awards or damages for change of grade, and also any return premiums or other payments upon any insurance at any time provided for the benefit of Lessee, all of which awards, damages, premiums, and payments are hereby assigned to Lessor and may be at any time collected by it; and

i) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described above, including, but not limited to, all insurance, contract and tort proceeds and claims.

[THE MORTGAGED PROPERTY IS NOT THE HOMESTEAD OF THE LESSEE OR THE LESSEE'S SPOUSE(S).]

TO HAVE AND TO HOLD the said Mortgaged Property, and every part thereof, unto Lessor, its successors, and assigns, forever, subject, however, to the terms and conditions herein.

PROVIDED HOWEVER, if the indebtedness secured by this Mortgage is paid, and Lessor, its successors, and assigns is reimbursed for any amounts it may have expended pursuant to the authorization of this Mortgage, including without limitation, sums spent in payment of taxes, assessments, insurance, or other liens and interest thereon, and Lessee shall have done and performed all other acts and things herein agreed to be done, then this conveyance shall be null and void; otherwise it shall remain in full force and effect.

GENERAL PROVISIONS

Lessee further represents, warrants, covenants and agrees with Lessor as follows:

1. **Performance of Mortgage, Master Lease and Loan Documents.** Lessee shall perform and comply with all provisions hereof, of the Master Lease, and of the documents executed in connection herewith (hereinafter "Loan Documents"), and shall duly

and punctually pay all indebtedness secured hereby, whether presently existing or hereafter incurred, with interest thereon, and any and every extension, renewal and modification thereof, or of any part thereof, and all interest on all such extensions, renewals, and modifications.

2. **Warranties of Title.** Lessee covenants with Lessor that it is lawfully seized in fee simple of the Mortgaged Property and has full power and right to sell and convey the same as aforesaid, that the said Mortgaged Property is free of all encumbrances except as set out in Exhibit "A", that the Lessor hereunder and its successors and assigns shall quietly enjoy and possess the same; and Lessee will warrant and forever defend the title to said Mortgaged Property unto Lessor, its successors, and assigns, against lawful claims of all persons.

3. **Future Advances and Other Debts.** It is the Lessee's expressed intention that the continuing grant of the Mortgaged Property by this Mortgage shall secure the payment and performance of all of the indebtedness of Lessee to Lessor, whether now existing or hereinafter incurred by future advances; whether such indebtedness be absolute, direct, contingent or otherwise; and whether such indebtedness was contemplated by the parties at the time of the executing of this Mortgage.

4. **After-Acquired Property.** Without limitation to the generality of the other provisions of this Mortgage, it is hereby expressly covenanted, agreed and acknowledged that the lien and rights herein automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by the Lessee by whatsoever means, including that in the event that the Lessee is the owner of an estate or interest in the Mortgaged Property or any part thereof (such, as for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage the Lessee obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of the Lessee or the Lessor or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lessor making the loan as evidenced by the Master Lease, and to secure the Debt, Lessee hereby grants, bargains, sells and conveys to Lessor, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

5. **Taxes, Utilities, and Liens.** The Lessee shall pay promptly, when and as due, and, if requested, will exhibit promptly to the Lessor receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, 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 revenues, rents, issues and profits of the Mortgaged Property or arising in respect to the occupancy, use or possession thereof, or upon the interest of the Lessor in the Mortgaged Property, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property. Such taxes, assessments and other charges shall not be permitted to become delinquent or to take priority over the lien of this Mortgage.

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, then Lessee shall immediately pay any increased taxes if allowed by law, and if Lessee fails to pay such additional taxes, or if Lessee is prohibited from paying such taxes, or if Lessor in any way is adversely affected by such law, order, rule, or regulation, then in any such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lessor.

6. **Monthly Tax Deposit.** If Lessor requires, Lessee shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, as estimated by Lessor, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with Lessor's general funds. Lessee agrees to pay Lessor the amount of any deficiency necessary to enable Lessor to pay such taxes when due. If an Event of Default shall occur under this Mortgage or under the Master Lease, any of the Loan Documents, or any of the other indebtedness instruments, such amount may be applied by Lessor to the reduction of the indebtedness secured hereby in any manner selected by Lessor. However, unless otherwise agreed by Lessor in writing, no application of tax deposits to the Master Lease, to other indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Master Lease, the other indebtedness, or any such other obligations.

7. **Failure to Insure; Nonpayment of Liens or Assessments.** If Lessee shall fail to insure said property as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued, or assessed upon or against interest of Lessor or



Lessee, or fails to pay immediately and discharge any and all liens, debts, and/or charges which might become liens superior to the lien of this Mortgage, then Lessor may, at its option, insure said property and/or pay said taxes, assessments, debts, liens, and/or charges. Any money which Lessor shall have so paid or become obligated to pay shall constitute a debt to Lessor additional to the debt hereby specifically secured, shall be secured by this Mortgage, shall bear the highest legal interest from date paid or incurred at the rate set forth in the Master Lease plus two percentage points (2%), and, at the option of the Lessor, shall be immediately due and payable.

8. **Hazard Insurance.** For the benefit of Lessor, Lessee will constantly keep in force fire and extended coverage insurance policies with respect to any and all buildings or equipment on said Mortgaged Property. Such insurance will be provided in such a manner by such companies and for such amounts as may be required by Lessor, with Lessor shown as Lessor and Loss Payee under a standard New York non-contributory Lessor/Loss Payee endorsement making losses payable to Lessor.

Lessee covenants to pay the premium on such policy or policies when due, to deliver to the Lessor upon its request the official receipts for such premium payments, and upon issuance of such policies to promptly deposit them with the Lessor as collateral security for the payment of the indebtedness hereby secured.

Lessor 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 Lessor instead of to the Lessee and Lessor jointly. After deducting from said insurance proceeds any expenses incurred by Lessor in the collection or handling of said funds, Lessor may apply the net proceeds, at its option, either toward repairing or restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Lessee's Debt selected by Lessor, whether then matured or to mature in the future, or at the option of the Lessor, such sums either wholly or in part may be used to repair such improvements, or to build new improvements in their place or for any other purpose and in a manner satisfactory to the Lessor, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lessor shall not be liable to Lessee or otherwise responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

Lessee further covenants that all insurance policies will contain a clause that prohibits them from being cancelled upon less than twenty (20) days' notice to Lessor, and to deliver to the Lessor at least twenty (20) days before the expiration of all such insurance policies a renewal of such policy or policies, together with official receipts for the payment of the premium thereon.

Lessee hereby transfers, assigns, sets over, and delivers to Lessor the fire and other insurance policies covering said property and any and all renewals thereof, the premiums on which have been or shall be paid by Lessee, and further agrees that all such insurance and insurance policies shall be held by Lessor as a part of the security for said indebtedness, and shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder, without the necessity of specifically describing said insurance or insurance policies in the foreclosure notice, sale, deed, or other proceedings in consummation of such foreclosure.

If the Lessee fails to keep said property insured as above specified, then Lessor may, at its option, insure said property for its insurable value against loss by fire and other hazards, casualties, and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien of this mortgage and bear interest from the date of payment by Lessor at the rate set forth in the Master Lease plus two percentage points (2%).

If Lessor requires, Lessee shall pay on the first day of each month one-twelfth (1/12) of the yearly insurance premium on the Mortgaged Property, as estimated by Lessor, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with Lessor's general funds. Lessee agrees to pay Lessor the amount of any deficiency necessary to enable Lessor to pay such insurance premiums when due. If an Event of Default shall occur under this Mortgage or under the Master Lease, any of the Loan Documents, or any of the other indebtedness instruments, such amount may be applied by Lessor to the reduction of the indebtedness secured hereby in any manner selected by Lessor. However, unless otherwise agreed by Lessor in writing, no application of insurance premiums to the Master Lease, to other indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Master Lease, the other indebtedness, or any such other obligations.

Lessee agrees to give Lessor notice in writing of any damage to the Mortgaged Property caused by fire or other casualty within ten (10) days after the occurrence of any such damage.



9. **Covenant Against Waste; Care of the Property.** The Mortgaged Property and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, reasonable natural wear and tear excepted. No building or other improvement on the Mortgaged Property shall be structurally altered, removed or demolished, without the Lessor's prior written consent, nor shall any fixture or chattel covered by the Mortgage and adapted to the proper use and enjoyment of the Mortgaged Property be removed at any time without like consent. In the event of any breach of this covenant the Lessor may, in addition to any other rights or remedies, at any time thereafter, declare the whole of the indebtedness secured by this Mortgage immediately due and payable.

Lessor is hereby authorized to enter upon and inspect the Mortgaged Property, and to inspect the Lessee's or Lessee's agent's records with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours.

10. **Mechanics' and Materialmen's Liens Prohibited.** Any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Lessee and shall not be permitted to take priority over the lien of this Mortgage, provided that Lessee, upon first furnishing to Lessor reasonable security for the payment of all liability, costs, and expenses of the litigation, may in good faith contest, at Lessee's expense, the validity of any such lien or liens. In those instances where Lessor's title policy protects it against such lien or liens such title policy shall be deemed to be sufficient security. Determination of whether said title policy protects Lessor shall be made solely by Lessor and shall be binding upon Lessee.

11. **Assignment of Condemnation Proceeds.** Notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be self-executing, Lessee, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute, at Lessor's request, and forthwith deliver to Lessor, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Lessor, but not in excess of an amount sufficient to pay, satisfy, and discharge the principal sum of this Mortgage and any advances made by Lessor as herein provided then remaining unpaid, with interest thereon at the rate specified in the Master Lease which this Mortgage secures, to the date of payment, whether such remaining principal sum is then due or not by the terms of said Master Lease or of this Mortgage.

12. **Waiver of Exemption.** Lessee waives all rights of exemption pertaining to real or personal property as to any Debt secured by or that may be secured by this Mortgage, and Lessee 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 Debt secured hereby.

13. **Governmental Compliance.** Lessee shall comply with all laws, governmental standards, and regulations applicable to Lessee or the Mortgaged Property with regards to occupational safety, hazardous waste and materials, and environmental matters. Lessee shall promptly notify the Lessor of its receipt of any nature of a violation by Lessee or the Mortgaged Property of any such law, standard, or regulation. Lessee represent and warrant to Lessor that there is not now, or will there be in the future, any asbestos or other harmful or regulated substances in the Mortgaged Property or on the Mortgaged Property or pending claims relating thereto. Lessee shall indemnify and hold Lessor harmless for any and all loss incurred by Lessor as a result of Lessee's breach of this warranty and representation. This indemnification shall survive the payment of the Master Lease, the exercise of any right or remedy under the Master Lease or any Loan Document, any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences.

ASSIGNMENT OF LEASES AND RENTS

14. **Assignment of Rents and Leases.** In consideration of Lessor's making the loan evidenced by the Master Lease and for other good and valuable consideration, and to secure the prompt payment of the Debt, with the interest thereon, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Loan Documents, Lessee does hereby sell, assign and transfer unto the Lessor all Leases and subleases of all or part of the Mortgaged Property, including without limitation the Existing Leases (if any), and all Rents. It is the intention of the parties that this assignment of rents and leases shall be a present assignment, and to hereby establish an absolute transfer and assignment (but not a delegation of duties) of all the said leases, subleases and agreements, and all that avails thereof, to the Lessor.



15. **Representations and Warranties Related to Existing Leases.** (a) Lessee has good title to the Existing Leases and Rents hereby assigned and good right to assign the same, and no other person, corporation or entity has any right, title or interest therein. (b) The Lessee has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Existing Leases on the Lessee's part to be kept, observed and performed. (c) The Lessee has not previously sold, assigned, transferred, mortgaged or pledged the Existing Leases or the Rents, whether now due or hereafter to become due. (d) No Rents due for any period subsequent to the month next succeeding the date of this Mortgage have been collected on the Existing Leases, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised. (e) The Lessee has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents. (f) Lessee shall not renew or otherwise extend the term of the Existing Leases; provided, however, that nothing herein contained shall prevent the Lessee, upon expiration of the now-current term (or other expiration or termination) of the Existing Leases, from leasing the property covered thereby to the lessee thereunder by a lease or leases expressly subject and fully subordinate to the lien, assignment and security interest of this mortgage. (g) To the best of the Lessee's knowledge, the lessees under the Existing Leases are not in default under any of the terms hereof.

16. **Covenants Relating to Rents and Leases.** The Lessee covenants and agrees that the Lessee shall: (a) observe, perform and discharge all obligations, covenants, and warranties provided for under the terms of the Leases to be kept, observed and performed by the Lessee, and shall give prompt notice to the Lessor in the event the Lessee fails to observe, perform, and discharge the same; (b) enforce or secure in the name of the Lessor the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the Leases; (c) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the Lessee and any lessee thereunder, and, upon request by the Lessor to do so in the name and on behalf of the Lessor but at the expense of the Lessee, and to pay all costs and expenses of the Lessor, including reasonable attorneys' fees, in any action or proceeding in which the Lessor may appear; (d) not receive or collect any Rents from any present or future lessee of the Mortgaged Property or any of the Improvements, or any part thereof, for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents; (e) not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any lessee of the Mortgaged Property of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Lease; (f) not cancel, terminate or consent to any surrender of any Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of the Lessor; (g) upon Lessor's request, furnish the Lessor with the name and address of all lessees under the Leases, the term of such Leases, a description of the premises covered thereby, and a copy of such Lease; and (h) execute all such further assignments of such Lease and the Rents therefrom as the Lessor may require.

17. **Lessor Shall Have No Obligations with Respect to Leases.** The Lessor shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and the Lessee shall and does hereby agree to indemnify and hold the Lessor harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, sublease or agreements. Should the Lessor incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Lessor in connection with any one or more said leases, subleases or agreements, the Lessee agrees to reimburse the Lessor for the amount thereof, including costs, expenses and reasonable attorneys' fees, all of which shall be secured by the assignment hereunder and by this Mortgage.

Nothing herein contained shall be construed as constituting Lessor as "Lessor in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Lessor pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted to Lessor, no liability shall be asserted or enforced against the Lessor, all such liability being expressly waived and released by Lessee.


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SECURITY AGREEMENT

18. **Grant of Security Interest.** Lessee (the "Debtor" for Uniform Commercial Code purposes), in consideration of Lessor (the "Secured Party" for Uniform Commercial Code purposes) making the loan evidenced by the Master Lease, and for other good and valuable consideration, and to secure the prompt payment of the Debt, with interest thereon, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Master Lease and in the Loan Documents, does hereby grant to Lessor title to and a security interest in such portions of the Mortgaged Property (the "Collateral"), the security interest in and disposition of which is governed by the Alabama Uniform Commercial Code (the "UCC").

19. **Financing Statements.** Lessee warrants that no financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on Exhibit "A" attached hereto, and except for the financing statements executed by Lessee and Lessor. This Mortgage shall constitute a financing statement under the UCC. Further, Lessee authorizes Lessor to file financing statements pursuant to the UCC in form satisfactory to Lessor as to the Mortgaged Property, and Lessee will pay the cost of filing the same in all public offices wherever filing is deemed by the Lessor to be necessary or desirable. Lessee authorizes Lessor to prepare and to file financing statements covering the Collateral and the Mortgaged Property and where applicable to sign the Lessee's signature to such financing statements in jurisdictions where Lessee's signature is required. Lessee promises to pay the Lessor the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

20. **Representations of Lessee.** Lessee represents that the Collateral is used or bought primarily for business purposes and will be kept at the Lessee's address stated herein. Lessee will promptly notify Lessor of any change in the location of the Collateral. Except for transactions in the ordinary course of Lessee's business, Lessee, its agents or employees will not remove the Collateral from said location without Lessor's prior written approval. Lessee further represents that its name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to Lessor. Lessee shall promptly advise Lessor in writing of any change in Lessee's name.

LESSOR'S RIGHTS AND REMEDIES UPON DEFAULT

21. **Events of Default.** The Lessee shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"): (a) if Lessee shall fail to pay, or cause to be paid, the whole or any portion of the principal sum, or any installment of interest thereon, or any other sum the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein contained; (b) if the Lessee defaults in the payment of any mechanic's lien, materialmen's lien, insurance premiums, taxes, or assessments now, or which may hereafter be levied against, or which may become a lien on, said property, (c) if the Lessee defaults in any of the covenants, conditions, and agreements herein contained; (d) if Lessee or any of Lessee's guarantors become insolvent or bankrupt; (e) if a receiver of Lessee's or any of Lessee's guarantors' property be appointed; (f) if Lessee intentionally damages or attempts to remove any improvement upon said Mortgaged Property; (g) if all or any part of the Mortgaged Property is condemned; (h) if it is discovered after the execution and delivery of this instrument that there is a defect in the title to or a lien or encumbrance of any nature on said property prior to the lien hereof, or if there is an error or defect to any agreement between Lessee and Lessor for which this Mortgage is security or this instrument or in the execution or the acknowledgement thereof, or if a homestead claim is set up to said property or any part thereof adverse to this Mortgage, and if the said Lessee shall fail for thirty (30) days after demand by the Lessor, or other holder or holders of said indebtedness, to correct such defects in the title or to remove any such lien or encumbrance or homestead claim, or to correct any error in said agreements or this instrument or its execution; or (i) any law is passed imposing, or authorizing the imposition of, any specific tax upon this mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Debt, or by virtue of which any tax, lien or assessment upon the Mortgaged Property shall be chargeable against the owner of this Mortgage.

22. **Acceleration of Debt.** Upon the occurrence of an Event of Default or at any time thereafter, the Lessor, or other holder or holders of the indebtedness secured by this Mortgage, or any part thereof, shall have the option or right, without notice or demand, to declare all of said indebtedness then remaining unpaid immediately due and payable, and may immediately or at any time thereafter foreclose this Mortgage by the power of sale hereunder described or by suit, as such Lessor, or other holder or holders of said indebtedness, may elect. Upon such acceleration of the Debt, the Lessee covenants to pay, in addition to all other amounts due,



interest on the Debt until paid at the rate set forth in said Master Lease.

23. **Access to Property; Foreclosure Sale.** Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on the Lessor, the holder of the debt hereby secured shall have the right to enter upon and take possession of the Mortgaged Property and either after or without taking such possession of the same, sell the Mortgaged Property at public outcry, in front of the courthouse door of the county wherein said Mortgaged Property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving twenty-one (21) days' notice of the time, place, and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Lessor or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the property so purchased in the name and on behalf of Lessee. The certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. Alternatively, the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages. The Lessor, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of said property if the highest bidder therefor.

The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale, preparing the Mortgaged Property for sale, and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been necessary in any one or more of the foreclosure of this Mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Lessee or anyone liable for said indebtedness or interest in the Mortgaged Property to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this Mortgage; (b) to the payment of whatever sum or sums Lessor may have paid out or become liable to pay, in carrying out the provisions of this Mortgage, together with interest thereon; (c) to the payment and satisfaction of said principal indebtedness and interest secured by this Mortgage thereon to the day of sale; and (d) the balance, if any, shall be paid over to Lessee, or Lessee's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

24. **Rents and Leases.** Upon the occurrence of an Event of Default or at any time thereafter, the Lessor, 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 the Rents and Leases: (a) to terminate automatically, without the necessity of taking any action, the license granted to the Lessee herein to collect the Rents; (b) to without taking possession, in the Lessor's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorneys' fees, to apply the net proceeds thereof to the Debt in such order and amounts as the Lessor may choose, or to hold the same in a reserve as security for the Debt; (c) 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 Mortgaged Property or any part thereof for the account of the Lessee, to 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, perform remediation and otherwise do any act or incur any cost or expenses the Lessor shall deem proper to protect the security hereof, as fully and to the same extent as the Lessee could do if in possession, and in such event to apply any funds so collected to the operation and management of the Mortgaged Property (including payment of reasonable management, brokerage and attorneys' fees) and payment of the Debt in such order and amounts as the Lessor may choose (or hold the same in reserve as security for the Debt); and (d) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Lessee under this mortgage.

The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property 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 Lessor, once exercised, shall continue for so long as the Lessor shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Lessor 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.

25. **No Waiver of Event of Default.** The collection of the rents and application thereof as aforesaid or the entry upon and taking possession of the Mortgaged Property 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 Lessor, once exercised, shall continue for so long as the Lessor shall elect, notwithstanding that the collection and application of the rents may have cured the original default. If the Lessor 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.

26. **Judicial Proceedings; Right to Receiver.** Upon the occurrence of an Event of Default or at any time thereafter, the Lessor, in lieu of, or in addition to, exercising the power of sale described above, may proceed by suit to foreclose its lien on, security interest in, and assignment of the Mortgaged Property, to sue the Lessee 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. In the event of default, the Lessee agrees that the Lessor shall be entitled without the necessity of a hearing or notice to Lessee to the appointment of a receiver to take care of the Mortgaged Property, to collect the rents, issues, and profits, and to keep the Mortgaged Property in good repair, and to apply the rents, issues and profits to the payment of the debts secured hereby.

27. **Rights of a Secured Party.** Upon the occurrence of an Event of Default, the Lessor, in addition to any and all remedies it may have or exercise under this Mortgage, the Master Lease, the Loan Documents, the other Debt instruments or under applicable law, may immediately and without demand, exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation: (a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Lessee and without any liability for rent, storage, utilities, or other sums; (b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lessor shall give to Lessee at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Lessee agrees shall be reasonable notice of any sale or disposition of the Collateral; (c) The right to require Lessee, upon request of Lessor, to assemble and make the Collateral available to Lessor at a place reasonably convenient to Lessee and Lessor; and (d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Lessor upon default, Lessee does hereby irrevocably appoint Lessor attorney-in-fact for Lessee, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Lessee could do, and to sell, assign, and transfer any collateral to Lessor or any other party.

28. **Access to Property; Operation of Property by Lessor.** Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on the Lessor, the Lessor (or any person, firm or corporation designated by the Lessor) may, but will not be obligated to, enter upon and, without taking possession thereof, inspect or cause to be inspected, the Mortgaged Property, including testing for hazardous substances, and/or to take possession of any or all of the Mortgaged Property, exclude the Lessee therefrom, and hold, use, administer, manage and operate the same to the extent that the Lessee could do so, without any liability to the Lessee resulting therefrom; and the Lessor may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of the Lessee with respect to the Mortgaged Property.

29. **Waiver of Automatic Stay.** Lessee further agrees that in the event it or its shareholders or creditors (if applicable) shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition for relief under Title 11 of the United States Code, as amended; (ii) be the subject of any order for relief issued under such Title 11 of the United States Code, as amended; (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors; (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator; or (v) be the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Lessor shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the United States Code, as amended or otherwise, on or against the exercise of the rights and remedies otherwise available to Lessor as provided in this Mortgage or any other agreement, and as otherwise provided by law, and Lessee hereby waives the benefits of such automatic stay and consents and agrees to raise no objection to such relief.



30. **Waiver and Election**. No failure or delay of Lessor to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its right to exercise such option or to declare such on the part of Lessee. The procurement of insurance or the payment of taxes or other liens, debts, or charges by Lessor shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of Lessee to procure such insurance or to pay such taxes, debts, liens, or charges.

MISCELLANEOUS PROVISIONS

31. **Lessee to Pay Attorneys' Fees and Costs**. Lessee agrees to pay all costs, including reasonable attorneys' fees, incurred or paid by Lessor in collecting or securing, or attempting to collect or secure, the indebtedness secured hereby, the Master Lease, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any lien on the Mortgaged Property, 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 stated herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred or paid by Lessor shall be a part of the debt secured by the Mortgage, in addition to the indebtedness specially secured hereby; it shall bear interest from the date it is paid or incurred at the rate set forth in the Master Lease plus two percentage points (2%); and it shall be at once due and payable. All expenses incurred by Lessor, including attorneys' fees, in compromising, adjusting, or defending against lien claims or encumbrances sought to be fixed upon the property hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the debt hereby secured.

If Lessor shall be made a party to any suit involving the title to the property hereby conveyed and employs an attorney to represent it therein, or if Lessor employs an attorney to assist in settling or removing any cloud on the title to the property hereby conveyed that purports to be superior to the lien of this Mortgage in any respect, Lessee will pay to Lessor, when the same becomes due, such attorney's fee as may be reasonable for such services, and if such fee is paid or incurred by Lessor, the same shall be secured by the lien of this Mortgage in addition to the indebtedness specially secured hereby, and shall bear interest from the date it is paid or incurred at the rate set forth in the Master Lease plus two percentage points (2%), and shall be at once due and payable.

32. **Modifications or Extensions Not Affecting Security**. The parties expressly agree that: (a) any indebtedness at any time secured hereby may be extended, rearranged or renewed, and that any part of the security herein described may be waived or released without in any way altering, varying, or diminishing the force, effect, or lien of this instrument; (b) this instrument shall continue as a first lien on all of said lands and Mortgaged Property and other property and rights covered hereby and will not be expressly released until all sums with interest and charges hereby secured are fully paid; (c) no other security now existing or hereafter taken to secure the payment of said indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this instrument; (d) no security subsequently taken by Lessor or other holder or holders of said indebtedness shall in any manner impair or affect the security given by this instrument; and (e) all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

33. **Covenant Against Sale, Lease or Transfer**. In the event of any change in the present ownership of all or any part of the Mortgaged Property or any interest therein, either by affirmative action, by operation of law or otherwise, or in the event any further encumbrance of the Mortgaged Property is created without Lessor's prior written approval, Lessor may, at its option, declare the indebtedness due and payable in full.

34. **Books and Records**. Lessee shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of Lessor, Lessee shall furnish to Lessor (i) within ninety (90) days after the end of Lessee's fiscal year a balance sheet and statement of income and expenses, both in reasonable detail and form satisfactory to Lessor and certified by an independent certified public accountant, and (ii) within ten (10) days after request therefor from Lessor, a rent schedule of the Mortgaged Property, certified by the Lessee, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date and the rent paid.

35. **Liquidation of other Collateral**. If the indebtedness secured hereby, or any other debt owed by Lessee to Lessor, is now or hereafter further secured by security interest or mortgages, pledges, contracts of guaranty, assignments of leases or other securities, the Lessor may, at its option, exhaust any one or more of said securities and the security hereunder, either concurrently or independently, and in such order as the Lessor may determine.

36. **Estoppel Affidavits.** Within ten (10) days after written request from the Lessor, Lessee shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Master Lease and other Debt and whether or not any offsets or defenses exist against any principal and interest.

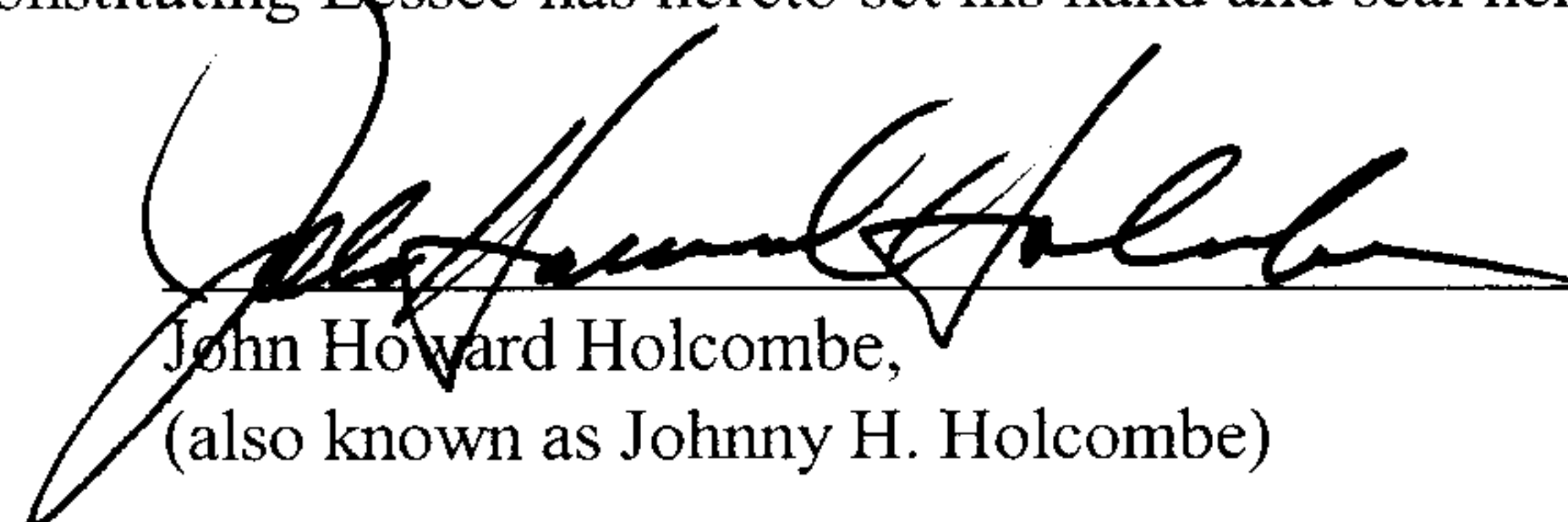
37. **Notices.** Wherever and whenever in this Mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be given or served, and shall not be deemed to have been given or served unless in writing and forwarded by registered or certified mail, return receipt requested, or by overnight professional courier, addressed to the addresses of the parties indicated at the beginning of this Mortgage, or to such other address as either party may have given to the other by notice as hereinabove provided. Such notice shall be deemed given and shall be effective upon deposit in the United States Mail postage prepaid or into the hands of an overnight professional courier, all charges prepaid, addressed to the above addresses or to such other address as either party may have given to the other by notice as hereinabove provided. Actual notice to Lessees or Lessor shall always be effective no matter how given or received.

38. **Assignment of Liabilities.** If at any time or times by sale, assignment, negotiation, pledge, or otherwise, Lessor transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Lessor's rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Lessor retains any of such indebtedness or instruments, Lessor shall continue to have the rights and remedies herein set forth with respect thereto.

39. **Meaning of Particular Terms.** Singular or plural words used herein to designate the Lessee shall be construed to refer to the maker or makers of this Mortgage, whether one or more persons or a corporation, and all covenants and agreements herein contained shall bind the successors and assigns of the Lessee, and every option, right, and privilege herein reserved or secured to Lessor shall inure to the benefit of its successors and assigns. The headings of the sections hereof are for convenience or reference only, and are not to be considered a part hereof, and shall not limit or affect any of the terms hereof.

40. **Enforceability; Remedies Cumulative.** The unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Lessor hereunder are cumulative and not alternative, and are in addition to those provided by law.

IN WITNESS WHEREOF, the party constituting Lessee has hereto set his hand and seal hereto effective as of the date first above written.


John Howard Holcombe, L.S.
(also known as Johnny H. Holcombe) (Individually)

STATE OF ALABAMA
COUNTY OF SHELBY


20091229000474470 11/13 \$164.00
Shelby Cnty Judge of Probate, AL
12/29/2009 03:38:35 PM FILED/CERT

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John Howard Holcombe, also known as Johnny H. Holcombe, 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 this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 23 day of December, 2009.


NOTARY PUBLIC
My Commission Expires June 3, 2010
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
COMMISSION EXPIRES: June 3, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

THIS INSTRUMENT PREPARED BY AND AFTER
RECORDATION SHOULD BE RETURNED TO:

Wendy N. Hardegree

ENGEL, HAIRSTON & JOHANSON, P.C.

109 North 20th Street, Fourth Floor

P.O. Box 11405

Birmingham, Alabama 35202

(205) 328-4600



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Shelby Cnty Judge of Probate, AL
12/29/2009 03:38:35 PM FILED/CERT

EXHIBIT "A"

A part of the Northwest ¼ of Section 2, Township 20 South, Range 2 East, lying in Shelby County, Alabama, more particularly described as follows:

Commence at the Northwest corner of the Northeast ¼ of the Southeast ¼ of Section 2, Township 20 South, Range 2 East and run North 115 feet to the West right-of-way line of U.S. Highway 280, formerly known as Birmingham-Sylacauga Highway; thence run Northwest along said right-of-way a distance of 2,134 feet to the point of beginning of the lot hereby conveyed, from this point, turn Southwest at right angles and run 420 feet to a corner; thence turn 90 degrees and run Northwest 210 feet to a corner; thence turn a 90 degree angle and run Northeast 420 feet to a concrete post on the West side of said highway; thence run Southeast along said highway 210 feet to the point of beginning.

SUBJECT TO:

- i) taxes and assessments for the year 2010, a lien but not yet payable;
- ii) less and except any part of subject property which lies within a roadway;
- iii) right of way in favor of State of Alabama in Volume 339, page 978;
- iv) right of way to South Central Bell in Volume 335, page 2;
- v) oil, gas, and mineral rights not owned by lessees.


20091229000474470 13/13 \$164.00
Shelby Cnty Judge of Probate, AL
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