

**PREPARED BY:**

Name: GARY A. KORN, ESQ.  
LEOPOLD KORN LEOPOLD & SNYDER,  
Address: 20801 Biscayne Boulevard, Suite 501  
Aventura, Florida 3180

WHEN RECORDED RETURN TO:  
OLD REPUBLIC TITLE  
ATTN: POST CLOSING  
530 SOUTH MAIN STREET  
SUITE 1031  
AKRON, OH 44311

20100330000094640 1/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
03/30/2010 11:18:05 AM FILED/CERT

**RECORD**

THIRD

[Space above line reserved for recording office use]

**ASSIGNMENT OF LEASES, RENTS AND LICENSES**

**HOOVER AA, LLC**, an Alabama limited liability company ("Assignor"), the owner of the property situated in the County of Shelby, State of Alabama, more particularly described in Exhibit "A" attached hereto (the "Property", which term shall include any improvements now or hereafter thereon) for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby assign, transfer and set over to **CITY NATIONAL BANK OF FLORIDA**, a national banking corporation, its successors and assigns ("Lender"):

1. All of the Assignor's right, title and interest in and to any leases, whether presently in existence or hereafter executed or acquired, which in any manner affect or deal with the Property or any portion thereof (the "Leases"); and
2. All rents, income, revenues, issues and profits due or received presently or hereafter under the terms of any of the Leases (the "Rents").
3. All licenses, permits and other documents, if any, necessary to conduct business at the property (the "Licenses").

This Assignment is made as additional security for the payment of the indebtedness evidenced by that certain Promissory Note of even date herewith, executed by the Assignor in favor of the Lender in the original principal amount of ONE MILLION TWO HUNDRED FORTY SIX THOUSAND FIVE HUNDRED AND NO/100 (\$1,246,500.00) DOLLARS (the "Note") and for the performance by the Assignor of its duties and obligations under the terms and provisions of that certain Mortgage and Security Agreement, of even date herewith (the "Mortgage"), which Mortgage secures the Note and encumbers the Property, and under the terms and provisions of such other documents executed and delivered by the Assignor in favor of the Lender and given as security for the Note (all of said documents collectively referred to herein as the "Loan Documents").

The Assignor warrants, covenants and agrees:

1. That the Lender shall immediately be entitled to the possession of all of the Leases, may immediately collect all Rents of and from the Leases as the same become due, apply the same, less the costs and expenses of collection thereof (including reasonable attorney's fees) toward the payment of the indebtedness evidenced by the Note then remaining unpaid and, furthermore, the Lender shall have the right to:
  - (a) manage and operate the Property or any part thereof;
  - (b) lease any part or parts thereof for such periods of time and upon such terms and conditions as the Lender may, in its reasonable discretion deem proper;
  - (c) enforce, cancel or modify any such Leases covering the Property or any part thereof;
  - (d) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all Rents that may then be or may thereafter become due, owing or payable with respect to the Leases or any part thereof from any present or future lessees;

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thereafter become due, owing or payable with respect to the Leases or any part thereof from any present or future lessees;

- (e) institute, prosecute to completion or compromise and settle, all summary proceedings, actions for rent or for removing any and all lessees, tenants, subtenants or occupants of the Property or any part or parts thereof;
- (f) enforce, or enjoin or restrain the violation of any of the terms, provisions and conditions of any lease or leases, now or hereafter affecting the property or any part thereof;
- (g) make such repairs and alterations to the Property as Lender may, in its reasonable discretion, deem proper;
- (h) pay, from and out of rents collected in respect of the Property or any part thereof, or from or out of any other funds, the rent and all other charges required to be paid under any ground lease on which the Mortgage may constitute a lien, any taxes, assessments, water rates, sewer rates, or other government charges levied, assessed or imposed against the property, or any portion thereof, and also any and all other charges, costs and expenses which it may be necessary or advisable for the Lender to pay in the management or operation of the property, including (without limiting the generality of any rights, powers, privileges and authority hereinbefore or hereinafter conferred) the costs of such repairs and alterations, commissions for renting the property or any portions thereof and legal expenses in enforcing claims, preparing papers or for any other services that may be required;
- (i) generally do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Leases, as fully as the Assignor might do.

Provided however, that so long as the Assignor is not in default beyond the expiration of all applicable notice and/or cure periods in the payment of any installment of principal or interest or other charges due under the terms of the Note or under any of the terms and conditions or covenants contained in the Loan Documents, or in default beyond the expiration of all applicable notice and/or cure periods of any of the terms, conditions or covenants contained in the Note or in the other Loan Documents or in this Assignment, the Assignor shall be entitled to collect the Rents under any Lease.

2. So long as the indebtedness evidenced by the Note, or any portion thereof, remains unpaid, the Assignor shall not materially alter, modify, change, surrender or cancel any Lease or make any other assignment, pledge or other disposition of any Lease without first having obtained the prior written consent of the Lender.

3. That a demand by the Lender for the payment of any Rent due under any Lease shall be sufficient authority for any lessee thereunder to make future payments of rent to the Lender without the necessity of said lessee's obtaining the consent or approval of the Assignor.

4. The Assignor hereby agrees to indemnify and hold the Lender harmless against and from any and all liability, loss, damage, and expense, including reasonable attorney's fees, which it may or shall incur under any of said Leases, or by reason of this Assignment, or by reason of any action taken by the Lender hereunder, and against and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants and conditions contained in any of the said Leases. Should the Lender incur any such liability, loss, damage or expense, the amount thereof, together with interest thereon at the maximum rate permitted by law, shall be payable by the Assignor to the Lender immediately upon demand, or at the option of the Lender, the Lender may reimburse itself therefor out of any Rents collected by the Lender. Nothing



or conditions contained in any Lease or otherwise to impose any obligation upon the Lender with respect to any of said Leases.

5. The Assignor represents and warrants that the Assignor shall duly and punctually perform all and singular the material terms, conditions and covenants of the Leases on Assignor's part to be kept, observed and performed, that the Assignor has not sold, assigned, transferred, mortgaged nor pledged any of the Rents of and from the Leases or any part thereof, whether now due or hereafter to become due, and that the Assignor shall not sell, assign, transfer, mortgage or pledge any of the Rents of and from the Leases or any part thereof, whether now due or hereafter to become due, to any person, firm or corporation other than the Lender, without the prior written consent of the Lender. The Assignor agrees that so long as no default shall exist under the Note or this Assignment, the Assignor will enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by each lessee under each Lease, not now or hereafter affecting the property.

6. The Assignor agrees to execute and deliver to the Lender, at any time or times during which this Assignment shall be in effect, such further instruments as the Lender may deem necessary to make effective this Assignment and the several covenants of the Assignor herein contained.

7. Failure of the Lender to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time, or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Lender under this instrument are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Lender shall have under or by virtue of the Mortgage. The rights and remedies of the Lender hereunder may be exercised from time to time and as often as such exercise is deemed expedient by Lender.

8. The Lender shall have the right to assign to any subsequent holder of the Mortgage, or to any person acquiring title to the Property, the Assignor's right, title and interest in any lease hereby or hereafter assigned, subject, however, to the terms and provisions of this Assignment. After the Assignor shall have been barred and foreclosed of all right, title, interest and equity of redemption in the Property, no assignee of the Assignor's interest in the Leases shall be liable to account to the Assignor for any Rents.

9. Upon payment in full of all the indebtedness secured by the Mortgage, as evidenced by a recorded satisfaction or release of the Mortgage as well as payment in full of any sums which may be payable hereunder, this Assignment shall become and be void and of no effect and, in that event, upon the request of the Assignor, the Lender covenants to execute and deliver to the Assignor instruments effective to evidence the termination of this Assignment and/or reassignment to the Assignor of the rights, power and authority granted herein, provided, however, that as to any lessee, any affidavit, certificate or other written statement of any officer of the Lender, stating that any part of said indebtedness remains unpaid, shall be and constitute conclusive evidence of the then validity, effectiveness and continuing force of such Affidavit, certificate or statement may and is hereby authorized to, rely thereon. As against the Lender, at all times during which this Assignment shall be in effect, there shall be no merger of the Leases assigned hereunder or the leasehold estates created thereby with the fee estate in the Property by reason of the account of any person, firm, or corporation which may be or become the owner of said fee estate, unless the Assignee shall consent in writing to said merger.

10. In connection with any litigation arising out of this Assignment, the prevailing party in such litigation shall be entitled to recover all costs incurred, including reasonable attorneys' fees and attorneys' fees and costs incurred on appeal.

11. Any waiver or modification of the terms of this Assignment by the Lender shall be in writing and signed by a duly authorized officer or agent of the Lender.

12. In the event any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall, at the option of Lender, not affect any other provision hereof, and shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. No delay or omission on the part of Lender in exercising any right hereunder shall operate as a waiver of that right or of any other right hereunder or under the Note and/or under the Mortgage and/or under the other Loan Documents.



15. In the event there shall be any conflict between the terms and provisions of the Note, the Mortgage, the Loan Documents and the terms and provisions of this Assignment, the terms and provisions of this Assignment shall prevail.

16. The terms "Assignor" and "Lender" as used herein shall in every instance include said parties' heirs, executors, administrators, successors, legal representatives and assigns and shall denote the singular and/or plural, and the masculine and/or feminine and natural and/or artificial persons, whenever and wherever the context so requires or admits.

17. Any default under the terms, conditions and provisions of this Assignment shall constitute and be a default under the terms, conditions and provisions of each and every other Loan Document.

18. WAIVER OF RIGHT TO JURY TRIAL. ASSIGNOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION (INCLUDING BUT NOT LIMITED TO, ANY CLAIMS, CROSS CLAIMS OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ASSIGNMENT, THE NOTE, THE MORTGAGE, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREIN. ASSIGNOR HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE LENDER NOR THE LENDER'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. ASSIGNOR ACKNOWLEDGES THAT THE LENDER HAS BEEN INDUCED TO ENTER INTO THE LOAN, INCLUDING THIS ASSIGNMENT, BY, INTER ALIA, THE PROVISIONS OF THIS PARAGRAPH.

IN WITNESS WHEREOF, this Assignment has been executed this 12<sup>th</sup> day of February, 2010.

HOOVER AA, LLC, an Alabama limited liability company

By: [Signature]

HAROLD W. HAMLIN, as Attorney-in-Fact on behalf of ALAN J. GOLDSTEIN, the sole member of the Company

ACKNOWLEDGMENT

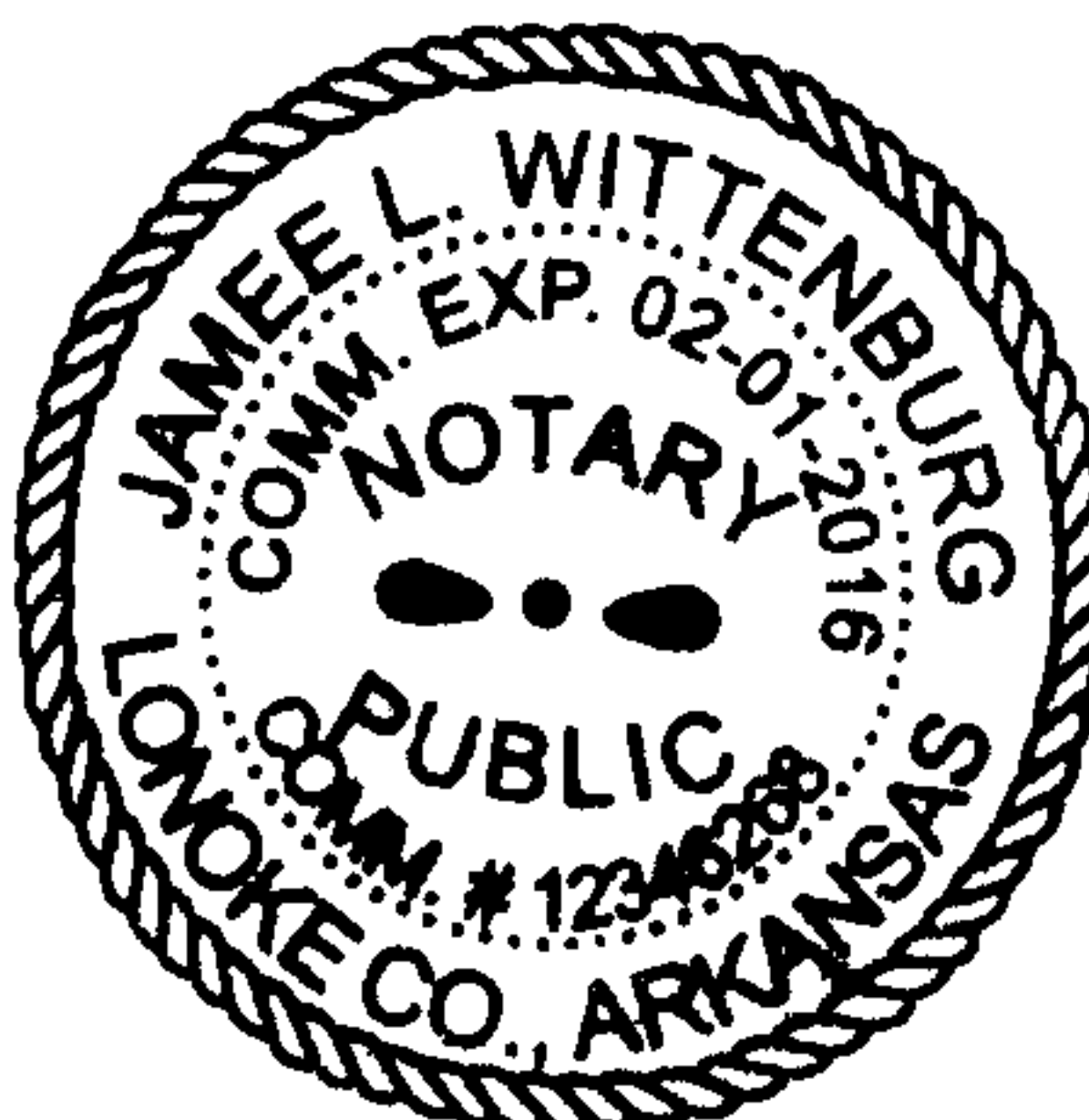
STATE OF ARKANSAS }  
COUNTY OF Pulaski } SS.:

On this day personally appeared before the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified, commissioned and acting, the within named HAROLD W. HAMLIN, as Attorney-in-Fact on behalf of ALAN J. GOLDSTEIN, the sole member of HOOVER AA, LLC, an Alabama limited liability company, to me personally well known, and he stated he was duly authorized in his capacity to execute the foregoing instrument for and in the name of said company, and further stated and acknowledged he had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 12<sup>th</sup> day of February, 2010.


My commission expires:

February 1, 2016  
(SEAL)



Jamee L. Wittenburg  
Notary Public  
Print Name: Jamee Wittenburg

**EXHIBIT A**

  
20100330000094640 5/5 \$23.00  
Shelby Cnty Judge of Probate, AL  
03/30/2010 11:18:05 AM FILED/CERT

SITUATE IN THE COUNTY OF SHELBY, STATE OF ALABAMA:

LOT 2A ACCORDING TO THE RESURVEY OF LOT 2, LAKEVIEW COMMERCIAL PARC, AS RECORDED IN MAP BOOK 40, PAGE 23 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

PARCEL II:

THOSE CERTAIN INTERESTS AND EASEMENT RIGHTS DESCRIBED IN COVENANTS, CONDITIONS AND RESTRICTIONS OF LAKEVIEW COMMERCIAL PARC, DATED JUNE 8, 2006, RECORDED JUNE 22, 2006 IN DOCUMENT NUMBER 20060622000300400 OF SHELBY COUNTY RECORDS AND SHOWN ON THE PLAT OF LAKEVIEW COMMERCIAL PARC, AS RECORDED IN PLAT BOOK 35, PAGE 149 OF SHELBY COUNTY RECORDS.