

This Instrument Prepared By  
And Should Be Returned To:  
William B. Hairston, III  
Engel, Hairston and Johanson, P.C.  
P.O. Box 11405, Birmingham AL 35202  
STATE OF ALABAMA  
COUNTY OF SHELBY

20100625000203520 1/8 \$782.00  
Shelby Cnty Judge of Probate, AL  
06/25/2010 03:06:31 PM FILED/CERT

**BB&T**

## MORTGAGE OF REAL ESTATE AND SECURITY AGREEMENT

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

THIS MORTGAGE, made this 23rd day of June, 2010, by  
BROOKLRE PROPERTIES LLC,

whose address is 3116 Hillcrest Trace, Adamsville, AL 35005-3009

(hereinafter referred to as "Mortgagor"), is granted and conveyed to BRANCH BANKING AND TRUST COMPANY (hereinafter referred to as "Mortgagee"), a corporation organized and existing under the laws of the State of North Carolina, whose address is:

2501 20TH PL S, BIRMINGHAM, AL 35223-1723.

☐ THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" AS PROVIDED IN SECTION 7-9A-334(h) OF THE CODE OF ALABAMA AND SECURES, AMONG OTHER OBLIGATIONS, AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.

WHEREAS, BROOKLRE PROPERTIES LLC

(the "Borrower", if not the Mortgagor) is indebted to Mortgagee, as evidenced by a certain promissory note dated the 23rd day of June, 2010

, executed in favor of Mortgagee in the principal sum of:  
FIVE HUNDRED THOUSAND DOLLARS & 00/100

Dollars (\$ 500,000.00 ), and any renewals, extensions, modifications or substitutions thereof, the terms of which are incorporated herein by reference. Where used herein, the term "Note" or "Notes" shall be deemed to include the note above described, along with any other notes, additional advance agreements, or other documents now or hereafter evidencing any debt whatsoever incurred by Mortgagor or Borrower and payable to Mortgagee, including without limitation all indebtedness and obligations of the Mortgagor or Borrower to Mortgagee (or an affiliate of Mortgagee) under any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in 11 U.S.C. § 101) or other similar transactions or agreements, including without limitation any ISDA Master Agreement executed by Mortgagor or Borrower and all Schedules and Confirmations entered into in connection therewith, hereinafter collectively referred to as a "Hedge Agreement", the terms of which are incorporated herein by reference. All indebtedness secured by this Mortgage shall be due and payable in full as follows: (chck if applicable) ☐ On \_\_\_\_\_, 20\_\_\_\_\_. If the box is not checked, then on demand or as otherwise provided in the Note.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof, and

1. All future advances and readvances that may subsequently be made to the Mortgagor or Borrower evidenced by the Note(s) and by all renewals and extensions thereof, or to pay drawings on any irrevocable standby or commercial letter of credit issued on the account of the Mortgagor or Borrower pursuant to an application therefor.

2. All other indebtedness of Mortgagor or Borrower to Mortgagee, now or hereafter existing, whether direct or indirect, absolute or contingent, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise of all plus interest thereon, all charges and expenses of collection incurred by Mortgagee including Court costs and reasonable attorneys' fees, has granted, bargained, sold, assigned, conveyed and does by these presents grant, bargain, sell, assign and convey unto the Mortgagee, its successors and assigns the following described property:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN.



Mortgagor(s) certify to Mortgagee that the Property ☐ is ☒ is not homestead property of the Mortgagor(s).

Any Mortgagor who has not also executed the Note is executing this Mortgage solely for the purpose of waiving his/her homestead rights, and also acknowledges receipt of good consideration for this waiver.

Together with all and singular improvements thereon and the rights, members, hereditaments and appurtenances to the same belonging or in any way appertaining; all the rents, issues, and profits thereof (provided, however that, unless otherwise agreed, the Mortgagor shall be entitled to collect and retain the said rents, issues, and profits until default hereunder); and including all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the real estate herein described and all proceeds therefrom whether cash, insurance, or otherwise (herein collectively the "Property").

Mortgagor does hereby grant to Mortgagee title to and a security interest in such portions of the Property the security interest in and disposition of which is governed by the Alabama Uniform Commercial Code (the "Collateral"). For the purpose of using this Mortgage as a fixture filing, Mortgagor is the Debtor, Mortgagee is the Secured Party, each is an individual or an entity of the type set forth on the first page of this Mortgage, the addresses of the Debtor (Mortgagor) and the Secured Party (Mortgagee) are set forth on the first page of this Mortgage, a statement indicating the types, or describing the items, of Collateral which are or will become fixtures is set forth in the granting clauses hereof, the Property to which the Collateral is or will be affixed is described on the first page of this Mortgage or an attachment hereto, and the Debtor (Mortgagor) is the record owner of the Property.

TO HAVE AND TO HOLD, all the said Property unto the Mortgagee, its successors and assigns forever.

PROVIDED, HOWEVER, that these presents are upon the condition that if (i) the Mortgagor shall fully pay or cause to be fully paid to the Mortgagee the principal and interest payable with respect of the indebtedness and the Note, and any extensions, renewals, modifications, substitutions or refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to, attorneys' fees, and shall pay any and all other indebtedness, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, and (ii) the Mortgagee shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Note, any other document (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

The Mortgagor covenants that he is lawfully seized of the premises herein above described in fee simple absolute (or such other estate; if any, as is stated hereinbefore), that he has good, right, and lawful authority to sell, convey, or encumber the same, and that the premises are free and clear of all liens and encumbrances whatsoever except as listed in the title opinion or title insurance policy which Mortgagee has obtained in the transaction in which Mortgagee obtained this Mortgage. The Mortgagor further covenants to warrant and forever defend title to the premises as herein conveyed unto the Mortgagee, from and against all persons whomsoever lawfully claiming the same or any part thereof.

The Mortgagor (and where more than one, each jointly and severally) agrees and consents to the following terms, covenants, and conditions set forth herein and in any Rider attached hereto and incorporated herein:

1. That if he is a maker or obligor on the Note(s), he will promptly pay the principal of and interest on the indebtedness evidenced by the said Note(s) and any subsequent note or agreement evidencing additional advances, at the time and in the manner therein provided. Mortgagor shall timely pay and perform any obligation, covenant or warranty contained not only in this mortgage but also any other mortgage, or writing which gives rise to, or which may constitute a lien upon any of the Property. Upon request of Mortgagee, Mortgagor promptly shall furnish satisfactory evidence of such payment or performance. Mortgagor shall not enter into, terminate, cancel or amend any material lease or contract affecting the Property or any part thereof without the prior written consent of the Mortgagee.

2. That this instrument shall remain in full force and effect during any postponement or extension of the time of payment of or any other modification relating to the indebtedness or any part thereof secured hereby.

3. That he will pay as they become due all mortgage loan insurance premiums, taxes, assessments, water rates, and other governmental or municipal charges, fines or imposition, assessed against the property hereby mortgaged. If the Mortgagor fails to make any payments provided for in this section or any other payments for taxes, assessments, or the like, the Mortgagee may pay the same, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby (from the date of such advance) and shall be secured by this mortgage.

4. That he will keep the Property in as good order and condition as it is now, reasonable wear and tear excepted, and will not commit or permit any waste thereof.

5 That he will continuously maintain fire, flood and such other hazard insurance as the Mortgagee may require on the improvements which form a part of the Property, now or hereafter constructed on the Property, and will pay promptly when due any premiums on the insurance. If it is determined at any time that any of the Property is located in a flood hazard area as defined in the Flood Disaster Protection Acts of 1973, the Mortgagor shall obtain and maintain flood insurance on Property at Mortgagor's expense for as long as this Mortgage is in effect. Flood insurance coverage shall be in an amount equal to the lesser of (i) the maximum amount secured as set forth herein or (ii) the maximum limit of coverage made available for the particular type of property under applicable law. If the Mortgagor shall fail to procure or maintain hazard or flood insurance coverage in the specified amount for the Property within a reasonable time of receiving notice from Mortgagee of either the requirement or of the lapse of an existing policy, Mortgagee may, but shall not be obligated to, expend for the account of Mortgagor any sums which may be necessary to purchase the required hazard or flood insurance, which shall be fully secured by this Mortgage and which shall accrue interest from the time expended until paid at the rate set forth in the Note(s). Mortgagor shall cause all policies and renewals thereof to be delivered to the Mortgagee. All insurance shall be carried with companies approved by Mortgagee and shall contain a loss payable clause (New York long form) in favor of and in a form acceptable to Mortgagee. In the event of loss, Mortgagor will give immediate written notice to Mortgagee, who may make proof of loss if such is not made promptly by the Mortgagor. Each insurer is hereby authorized and directed to make payment for such loss directly and solely to the Mortgagee, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration of the Property damaged, but Mortgagee shall not be obligated to see to the proper application of any amount paid over to Mortgagor.

6. That he hereby assigns all the rents, issues, and profits of the Property from and after any default hereunder, and should legal proceedings be instituted pursuant to this instrument, then the Mortgagee shall have the right to have appointed a receiver of the rents, issues, and profits, who, after deducting all charges and expenses attending such proceedings and the execution of his trust as receiver, shall apply the residue of the rents, issues, and profits toward the payment of the debt secured hereby. Mortgagor hereby appoints Mortgagee as Mortgagor's attorney-in-fact to collect any rents and profits, with or without suit, and to apply the same, less expenses of collection to any indebtedness owing under the Note(s) in any manner as Mortgagee may desire.

7. That he will pay as they become due the principal and interest on all notes, obligations, contracts or agreements, secured by any mortgage, lien, or security interest having priority over this mortgage as to the Property described herein. If the Mortgagor fails to make any of the payments as provided in this section, Mortgagee may pay the same and add any amounts so paid to the principal debt, and all sums so paid shall bear interest at the same rate as the principal debt secured hereby and shall be secured by this mortgage.





8. Mortgagor for itself, its successors and assigns represents, warrants and agrees that (a) neither Mortgagor nor any other person has generated, manufactured, stored, treated, processed, released, discharged or disposed of any Hazardous Materials on the Property or received any notice from any Governmental Authority (hereinafter defined) or other person with regard to a release of Hazardous Materials on, from or otherwise affecting the Property; (b) neither Mortgagor or any other person has violated any applicable Environmental Laws (hereinafter defined) relating to or affecting the Property; (c) the Property is presently being operated in compliance with all Environmental Laws; there are no circumstances presently existing upon or under the Property, or relating to the Property which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Mortgagor relating to the Property (or against any other party relating to the Property) seeking to enforce any right or remedy under any of the Environmental Laws; (d) except in strict compliance with Environmental Laws, the Property shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, transport, treat, store, handle, dispose, process or release Hazard Materials; (e) Mortgagor shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws and shall keep the Property free and clear of any liens imposed pursuant to any applicable Environmental Laws; (f) Mortgagor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and other directives from any Governmental Authority necessary to comply with Environmental Laws; Mortgagor is in full compliance with the terms and provisions of the Environmental Requirements (hereinafter defined) and will continue to comply with the terms and provisions of the Environmental Requirements; (g) Mortgagor shall immediately give Mortgagee oral and written notice in the event that Mortgagor receives any notice from any Governmental Authority or any other party with regard to any release or storage of Hazardous Materials on, from or affecting the Property and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary or required to clean up and remove all Hazardous Materials on, from or affecting the Property in accordance with all applicable Environmental Laws. Mortgagor hereby agrees to indemnify Mortgagee and hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, reasonable attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of (i) the presence on, or under, or the escape, spillage, emission or release on or from the Property of any Hazardous Material regardless of whether or not caused by or within the control of Mortgagor, (ii) the violation of any Environmental Laws or Environmental Requirements relating to or affecting the Property, whether or not caused by or within the control of Mortgagor, (iii) the failure by Mortgagor to comply fully with the terms and provisions of this paragraph, or (iv) any warranty or representation made by Mortgagor in this paragraph being false or untrue in any material respect. The obligations and liabilities of Mortgagor under this paragraph shall survive the foreclosure of the Mortgage, the delivery of a deed in lieu of foreclosure, the cancellation of the Note; or if otherwise expressly permitted in writing by the Bank, the sale or alienation of any part of the Property.

In the event that any of the Mortgagor's representations or warranties shall prove to be materially false or Mortgagor fails to satisfy any Environmental Requirement, Mortgagee, in its sole discretion, may (i) choose to assume compliance with governmental directives and the Mortgagor agrees to reimburse Mortgagee for all costs, expenses (including all reasonable attorneys' fees, whether in-house or independent), fines, penalties, judgments, suits, or liabilities whatsoever associated with such compliance; or (ii) seek all legal and equitable remedies available to it including, but not limited to, injunctive relief compelling Mortgagor to comply with all Environmental Requirements relating to the Property. Mortgagee's rights hereunder shall be in addition to all rights granted under the Note or other Document and payments by Mortgagor under this provision shall not reduce Mortgagor's obligations and liabilities thereunder. In the event Mortgagee undertakes compliance with Environmental Requirements which Mortgagor failed to perform or which Mortgagee determines is necessary to sell all or any part of the Property, Mortgagor authorizes Mortgagee and/or Mortgagee's agents to prepare and execute on Mortgagor's behalf, any manifest or other documentation relating to the removal and/or disposal of any Hazardous Materials, from, at or on the Property. Mortgagor acknowledges that Mortgagee does not own, or have a security interest in, any Hazardous Materials which exist on, originate from or affect the Property. All amounts expended by the Mortgagee in connection with the exercise of its rights hereunder (including reasonable attorneys' fees and the fees of any environmental consultants) shall become part of the indebtedness secured by this Mortgage.

For purposes of this Mortgage: "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, and any "Super Fund" or Super Lien" law, or any other federal, state or local law, regulation or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials. "Environmental Requirement" means any administrative orders, directives, judgments, consent orders, permits, licenses, authorizations, consents, settlements, agreements or other formal or informal directions or guidance issued by or entered into with any Governmental Authority or private party, including the provisions of any Environmental Law, which obligate or commit Mortgagor to investigate, remediate, treat, monitor, dispose or remove Hazardous Materials. "Governmental Authority" means any federal, state or local agency, department, court or other administrative, legislative or regulatory federal, state or local governmental body, or any private individual or entity acting in place of such entities. "Hazardous Materials" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in the Environmental Laws.

9. Mortgagor shall be in default under this Mortgage upon the occurrence of any of the following.

(a) Default in the payment or performance of any of the obligations, or of any covenant or warranty, in this mortgage, in the Note(s) or other document executed in connection herewith, or in any other note of Mortgagor or Borrower to Mortgagee or any contract between Mortgagor or Borrower and Mortgagee; or in any contract between any third party and Mortgagee made for the benefit of Mortgagor; or

(b) Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor or Borrower in connection with this transaction proving to have been false in any material respect when made or furnished; or

(c) Loss, theft, substantial damage, destruction to or of the Property, or the assertion or making of any levy, seizure, mechanic's or materialman's lien or attachment thereof or thereon; or

(d) Death, dissolution, termination of existence, insolvency, business failure, appointment of a Receiver for any part of the property of, assignment for the benefit of creditors by, filing of a bankruptcy petition by or against, or the inability to pay debts in the ordinary course of business of the Mortgagor or Borrower or any co-maker, endorser, guarantor or surety therefor; or

(e) Failure of a corporate Mortgagor or co-maker, endorser, guarantor or surety for Mortgagor to maintain its corporate existence in good standing; or

(f) Upon the entry of any monetary judgement of the assessment or filing of any tax lien against Mortgagor; or upon the issuance of any writ of garnishment or attachment against any property, debts due or rights of Mortgagor; or

(g) The sale (including sale by land contract upon delivery of possession), transfer or encumbrance of all or any part of the Property or any interest therein, or any change in the ownership or control of any corporate or partnership Mortgagor, without Mortgagee's prior written consent; or

(h) If Mortgagee should otherwise deem itself, its security interest, the Property or the indebtedness evidenced by the Note(s) unsafe or insecure; or should Mortgagee otherwise believe that the prospect of payment or other performance is impaired.





10. It is agreed that the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the Note(s) secured hereby. If there is a default in any of the terms, conditions or covenants of this mortgage or of any of the Note(s) secured hereby, then at the option of the Mortgagee, and without prior notice to the Mortgagor, all sums then owing by the Mortgagor or any other obligor on the Note(s) to the Mortgagee shall become immediately due and payable, the Mortgagee may in addition pursue all other rights and remedies available against any Mortgagor or any borrower or other obligor under the Note(s) under applicable provisions of Alabama Law and of any other law governing the Note(s). This Mortgage shall remain as security for full payment of all indebtedness evidenced by the Note(s) and for performance of any obligation evidenced by the Note(s) or any document executed in connection therewith, notwithstanding the sale or release of any or all of the Property, the assumption by another party of Mortgagor's obligations under the Note(s) or this mortgage, the forbearance or extension of time or payment of the indebtedness evidenced by the Note(s) or any one of same or the release of any party who has assumed or incurred any obligation for the repayment of any indebtedness evidenced by the Note(s) and secured by this mortgage. None of the foregoing shall in any way affect the full force and effect of this Mortgage or impair the Mortgagee's right to any other remedies against the Mortgagor or any other obligors under the Note(s). Any forbearance by the Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate maturity of the indebtedness evidenced by the Note(s) secured hereby. Time is of the essence in the payment or performance of any of the obligations, or of any covenant or warranty contained in this mortgage, or in any of the Note(s) or any other document related thereto.

11. Power of Sale. If an event of default shall have occurred, Mortgagee may sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, 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 Property so purchased. Mortgagee may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the 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 as Mortgagee may elect. The provisions of this paragraph shall apply with respect to Mortgagee's enforcement of rights or interests in personal property which constitutes Property hereunder.

12. Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant this paragraph, or any sale pursuant to Paragraph 13 (Rights of a Secured Party Paragraph), shall be applied as follows: (a) First, to the costs and expenses of advertising, selling and conveying the Collateral or the Property (as the case may be) including a reasonable attorneys' fee for such service as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage; (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, as applicable, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note, such repayment to be applied in the manner determined by Mortgagee; (c) Third, to the payment of the indebtedness secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Document, as applicable, whether or not all of such indebtedness is then due; (d) Fourth, the balance, if any, shall be paid as provided by law.

13. Rights of a Secured Party. Upon the occurrence of an event of default, the Mortgagee, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, the other Document, or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Alabama 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 purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Mortgagor 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, Mortgagee shall give to Mortgagor at least ten (10) days' prior written 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 Mortgagor agrees shall be reasonable notice of any sale or disposition of the Collateral; and (c) The right to require Mortgagor, upon request of Mortgagee, to assemble and make the Collateral available to Mortgagee at a place reasonably convenient to Mortgagor and Mortgagee; and To effectuate the rights and remedies of the Mortgagee upon default, Mortgagor does hereby irrevocably appoint Mortgagee attorney-in-fact for Mortgagor, 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 Mortgagor could do, and to sell, assign, and transfer the Collateral to Mortgagee or any other party. Such appointment shall constitute a power coupled with an interest and shall remain effective as long as any indebtedness or obligation secured by this Mortgage remains outstanding, and shall survive the Mortgagors' disability.

14. WAIVER OF EXEMPTION. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Property be set off against any part of the indebtedness secured hereby. Except to the extent prohibited by law, Mortgagor waives all appraisal rights relating to the Property.

15. The covenants contained herein and in any rider attached hereto and incorporated herein shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall be applicable to all genders and the term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The liability of the Mortgagor hereunder shall, if more than one, be joint and several. The designations "corporate", "corporation", and "partnership" include limited liability companies and limited liability partnerships.

**16 WAIVER OF TRIAL BY JURY.** UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS MORTGAGE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN SECURED BY THIS MORTGAGE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF MORTGAGEE, NOR MORTGAGEE'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.





This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

If Mortgagor is a Corporation:

NAME OF CORPORATION

By: (SEAL)

Title:

By: (SEAL)

Title:

If Mortgagor is a Partnership, Limited Liability Company, or Limited Liability Partnership:

BROOKLIERE PROPERTIES LLC

NAME OF PARTNERSHIP, LLC, OR LLP

By: (SEAL)

Title: Manager

By: (SEAL)

Title:

By: (SEAL)

Title:

By: (SEAL)

Title:

If Mortgagor is an Individual:

(SEAL)

(SEAL)

1

(SEAL)

**For Individual:**

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that \_\_\_\_\_, 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 the instrument, (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**For Partnership**

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that \_\_\_\_\_, whose name as General Partner of \_\_\_\_\_, a \_\_\_\_\_ [limited/general] partnership is signed to the foregoing instrument and who is known to me acknowledged before me to this day that, being informed of the contents of the instrument, (s)he, as such general partner and with full authority, executed the same voluntarily for and us the act of said partnership.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**For Corporations:**

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_, a corporation, 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 the instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**For Limited Liability Companies:**

STATE OF ALABAMA

COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Anthony J. Brooklere, whose name as [member/manager] of Brooklere Properties, LLC, an Alabama Limited Liability Co. 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 the instrument, (s)he, as such [member/manager] and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 23 day of June, 2010

[NOTARIAL SEAL]

[Signature]  
\_\_\_\_\_  
Notary Public

My commission expires: 6/7/11





## **EXHIBIT "A"**

A parcel of land in the E ½ of the SW ¼ of Section 11, Township 21 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the SW corner of Section 11, Township 21 South, Range 3 West, Shelby County, Alabama, and run thence South 89 degrees 48 minutes 58 seconds East along the said South line of said Section 11 a distance of 1312.15 feet to a point; thence run North 24 degrees 26 minutes 03 seconds East a distance of 1267.80 feet to a point; thence run North 66 degrees 12 minutes 41 seconds West a distance of 275.07 feet to a point; thence run North 23 degrees 47 minutes 19 seconds East a distance of 25.0 feet to a rebar corner and the point of beginning of the parcel being described; thence run North 23 degrees 47 minutes 19 seconds East a distance of 200.75 feet to a rebar corner; thence run South 68 degrees 18 minutes 53 seconds East a distance of 194.35 feet to a rebar corner on the Westerly line of a cul-de-sac circle having a central angle of 66 degrees 29 minutes 36 seconds and a radius of 50.0 feet; thence run Southeasterly along the arc of said cul-de-sac an arc distance of 58.03 feet to the PRC of a curve to the right having a central angle of 70 degrees 58 minutes 12 seconds and a radius of 25.0 feet; thence run along the arc of said cul-de-sac curve an arc distance of 30.97 feet to a rebar corner on the PC of a curve to the right having a central angle of 01 degree 27 minutes 39 seconds and a radius of 4610.00 feet; thence run South Southwesterly along the arc of said curve an arc distance of 117.53 feet to a rebar corner at the P.C. of a curve to the right having a central angle of 90 degrees 37 minutes 29 seconds and a radius of 25.00 feet; thence run Southwesterly along the arc of said curve an arc distance of 39.54 feet to the PT of said curve; thence run North 66 degrees 12 minutes 41 seconds West a distance of 224.80 feet to the point of beginning; being situated in Shelby County, Alabama.

### **BEING THE SAME PROPERTY AS DESCRIBED IN SURVEY OF ARTIS D. COGGINS, DATED 5-15-2010 AS FOLLOWS:**

A parcel of land in the E ½ of the SW ¼ of Section 11, Township 21 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:


Commence at the SW corner of Section 11, Township 21 South, Range 3 West, Shelby County, Alabama, and run thence South 89 degrees 48 minutes 58 seconds East along the said South line of said Section 11 a distance of 1312.15 feet to a point; thence run North 24 degrees 26 minutes 03 seconds East a distance of 1267.80 feet to a point; thence run North 66 degrees 12 minutes 41 seconds West a distance of 275.07 feet to a point; thence run North 23 degrees 47 minutes 19 seconds East a distance of 25.0 feet to a rebar found; said point being the point of beginning of the parcel being described; thence run North 23 degrees 47 minutes 19 seconds East a distance of 200.75 feet to an iron rod in pipe corner found; thence run South 68 degrees 18 minutes 53 seconds East a



distance of 194.35 feet to a rebar corner found, said point being on the Westerly line of a cul-de-sac circle having a central angle of 66 degrees 29 minutes 36 seconds and a radius of 50.0 feet, and a chord bearing of South 15 degrees, 59 minutes, 59 seconds East; thence run Southeasterly along the arc of said cul-de-sac an arc distance of 58.03 feet to a cross cut in top of inlet, said point being the Point of Reverse Curve of a curve to the right having a central angle of 70 degrees 58 minutes 12 seconds and a radius of 25.0 feet; thence run southeasterly along the arc of said cul-de-sac curve an arc distance of 30.97 feet to a rebar with a cap #9310 set, said point being the point of beginning of a curve to the right having a central angle of 01 degree 27 minutes 39 seconds and a radius of 4610.00 feet; thence run Southerly along the arc of said curve an arc distance of 117.53 feet to a rebar corner with cap found, said point being the point of beginning of a curve to the right having a central angle of 90 degrees 37 minutes 29 seconds and a radius of 25.00 feet; thence run Southwesterly along the arc of said curve an arc distance of 39.54 feet to a rebar found, said point being the end of said curve, thence run North 66 degrees 12 minutes 41 seconds West a distance of 224.80 feet to the point of beginning; being situated in Shelby County, Alabama.

**SUBJECT TO:**

- i) taxes and assessments for the year 2010, a lien but not yet payable;
- ii) coal, oil, gas and mineral and mining rights which are not owned by Mortgagor;
- iii) easement to Alabama Power Company as recorded in Instrument 20040102000000650; and
- iv) rights of others in and to the use of 50 foot non-exclusive easement as set out in Instrument 2002-12556 and as shown on Artis D. Coggins, Surveyor Notes, dated 6-21-2010.

  
20100625000203520 8/8 \$782.00  
Shelby Cnty Judge of Probate, AL  
06/25/2010 03:06:31 PM FILED/CERT