

This instrument prepared by
and record and return to:
David R. Kinman, Esq.
Johnston Barton Proctor & Rose LLP
Colonial Brookwood Center
569 Brookwood Village, Suite 901
Birmingham, Alabama 35209
(205) 458-9400

STATE OF ALABAMA

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COUNTY OF SHELBY

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ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this “Assignment”), effective as of the 16th day of November, 2010, is made by **VALLEYDALE OFFICE PLAZA, LLC**, an Alabama limited liability company, whose address is 2200 Valleydale Road, Suite 200, Birmingham, Alabama 35244 (the “Assignor”), and in favor of **OAKWORTH CAPITAL BANK**, an Alabama state banking corporation, whose address 2100A Southbridge Parkway, Suite 445, Birmingham, Alabama 35209 (together with its successors or assigns, the “Bank”).

I. RECITALS:

This Assignment is made as additional security for a loan by Bank to Assignor in the principal amount of up to Two Million One Hundred Thousand and No/100 Dollars (\$2,100,000.00) (as the same may hereafter be extended, renewed, modified, or amended, as so extended, renewed, modified, or amended, the “Loan”) made pursuant to that certain Construction Loan Agreement by and between Assignor and Bank of even date herewith (as the same may hereafter be amended or supplemented, as so amended or supplemented, the “Loan Agreement”; capitalized terms used and not otherwise defined herein shall have the meanings ascribed in the Loan Agreement) and as security for the Loan Obligations. The Loan is evidenced by a Promissory Note as of even date herewith executed and delivered by Assignor to Bank in said amount (as the same may hereafter be extended, renewed, modified, or amended, as so extended, renewed, modified, or amended, the “Note”). The Loan is secured in part by Assignor’s right, title and interest in and to the real property more particularly described on Exhibit “A” attached hereto (the “Land”), and the improvements located thereon together with all other Mortgaged Property described in the Loan Agreement and other Loan Documents.

II. GRANTING CLAUSES:

In consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure the Loan Obligations, Assignor hereby assigns to Bank (to the fullest extent assignable), Assignor’s right, title, and interest (if any) in:


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2.1 Any and all oral or written leases and other agreements for the use or occupancy of the Mortgaged Property, made or agreed to by any person or entity (including, without limitation of the foregoing, Assignor and Bank under the powers granted herein) and any and all amendments, extensions, renewals, modifications, replacements, and guaranties thereof pertaining to all or any part of the Mortgaged Property, whether such leases or other agreements have been heretofore or are hereafter made or agreed to, including, without limitation, the Facility Leases (as defined in the Loan Agreement) (such leases and other use and occupancy agreements, and any and all amendments, extensions, renewals, modifications, replacements, and guaranties, collectively, the **"Leases"**);

2.2 The rents, issues, and profits and any other payments by any and all lessees under the Leases in addition to rent (collectively the **"Rents"**) which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Mortgaged Property;

2.3 Any and all moneys, awards, or other payments made or payable by any and all lessees under the Leases in lieu of Rent, including but not limited to any damages (all such moneys, awards, or payments, including but not limited to damages, are collectively referred to herein as the **"Damages"**) which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Mortgaged Property; and

2.4 All rights, powers, privileges, options, and other benefits (collectively the **"Rights"**) of Assignor under the Leases, including without limitation of the foregoing:

(a) the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys, and security deposits or the like pursuant to any of the provisions thereof, whether as Rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

(b) the right to make all waivers and agreements, including waivers of obligations of lessees;

(c) the right to give all notices, permissions, consents, and releases, including consent to the subordination of the interest of a lessee;

(d) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct, and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(e) the right to do any and all other things whatsoever which Assignor is or may become entitled to under the Leases; and

(f) the right to exercise any option required or permitted.

AND ASSIGNOR AUTHORIZES BANK AS FOLLOWS:

(i) to manage the Mortgaged Property and let and relet the Mortgaged Property, or any part thereof according to Bank's own discretion;



(ii) to prosecute or defend any suits in connection with the Mortgaged Property in the name of any or all of Bank or Assignor as it may consider desirable;

(iii) to enforce or take any other action in connection with the Leases in the name of any or all of Bank or Assignor;

(iv) to make such repairs to the Mortgaged Property as Bank may deem reasonably advisable; and

(v) to do anything in or about the Mortgaged Property that Bank may deem reasonably advisable or that the Assignor has the right or power to do.

TO HAVE AND TO HOLD unto Bank, its successors and assigns, forever, subject to and upon the terms set forth herein.

Although this Assignment constitutes a present assignment of the foregoing Leases, Rents, Damages, Rights, interests, and privileges, Assignor shall have the right and license to collect and use all Rents, Damages and all other sums due under the Leases, and, subject to the covenants and restrictions on Assignor contained in Section III and the other paragraphs of this Assignment, to exercise the Rights and privileges herein; provided, however, that such license shall be automatically revoked without any notice or further action whatsoever upon the occurrence and during the continuation of an Event of Default as defined in the Loan Agreement.

III. COVENANTS:

3.1 No Other Assignment. Assignor warrants, represents, and covenants that it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the Rents due or to become due thereunder, that there has been no previous and, without Bank's prior express written consent as to form and substance, Assignor will permit no future assignment (as collateral or otherwise) of Assignor's right, title, and interest in any of the Leases, that the Leases are in full force and effect in accordance with their terms and have not been altered, modified, or amended in any manner whatsoever, except as otherwise disclosed to Bank, that the lessees are not in default under the Leases and have no defenses, setoffs, or counterclaims against the lessor under the Leases, that no Rents reserved in the Leases has been assigned or anticipated, and that no Rents for any period subsequent to the date hereof has been collected for more than one (1) month in advance of the time when the said Rents become or would become due under the terms of the Leases except for security deposits and except as otherwise disclosed in writing to Bank by Assignor.

3.2 Management. At all times until this Assignment is released, or until the assignment granted hereby is exercised by Bank, and at all times thereafter during which Bank is not in actual or constructive possession of the Mortgaged Property, Assignor shall cause the Mortgaged Property to be managed in accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Assignor shall not permit any of the Rents to be collected in advance, except that monthly Rent due and payable under the Leases may be collected for each current month in advance. Assignor shall not (a) terminate, alter, modify,

amend, or change any of the terms of any of the Leases or (b) give any material consent, concession, or waiver under any of the Leases or (c) exercise any option available to the lessor under the Leases in the event of casualty damage or condemnation affecting the Mortgaged Property, except as otherwise permitted under the Loan Documents or (d) accept the surrender thereof or (e) consent to any assignment or subletting under any of the Leases or (f) convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any or all of the Leases or of any interest therein, so as, in any such case, to effect directly or indirectly, promptly or remotely, a merger of the estates and rights of, or a termination or elimination of, the obligations of lessees thereunder, without the prior express written consent of the Bank. Assignor shall not make any other assignment of any interest in the Leases or the Rents accruing from such Leases or from the Mortgaged Property, or subordinate any of the Leases to any deed of trust, mortgage, or other encumbrance, or permit, consent, or agree to such subordination without the prior express written consent of the Bank. Assignor shall cause prompt action, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder to be commenced against any delinquent or defaulting lessee to protect such lessor's interest or immediately upon written request from Bank, and in the event Bank requests that such a specific action be taken, to use all reasonable efforts to cause such action to be taken promptly. Assignor shall, but only at the reasonable discretion of Bank, give any consent of lessor under any of the Leases, or exercise any option available to lessor under any of the Leases in the event of casualty or condemnation affecting the Mortgaged Property. Assignor shall execute and deliver, at the written request of Bank, all such further assurances and assignments as Bank from time to time shall reasonably require.

3.3 Execution of Leases. Assignor shall not permit any Leases to be made hereafter of all or any portion of the Mortgaged Property except with Bank's prior express written consent.

3.4 Notice of Lessor's Default. Assignor shall cause notice to be given to Bank of any notice of default by the lessee under any of the Leases, which default is of a nature which would permit such lessee to terminate such lessee's lease, promptly upon the receipt of notice of such default, but in all events in sufficient time to afford to Bank an opportunity to cure any such default prior to the lessee under the subject lease having any right to terminate the lease by reason of such default.

3.5 Bank to be Creditor of Lessee. To the extent permitted by law, Bank shall be deemed to be the creditor of each lessee in the Leases in respect of any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such lessee (without obligation on the part of Bank, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein). Assignor hereby assigns to Bank any and all Damages and any and all money received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings, with Bank to receive such Damages and monies and hold them in escrow for the purposes of applying Damages or any money received by Bank as such creditor in payment of the principal and interest installments secured by or to be paid under the Loan next falling due. To the extent permitted by law, Assignor hereby appoints Bank as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award, or payment.

IV. DEFAULTS AND REMEDIES:

4.1 Defaults. The occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents shall constitute an Event of Default hereunder.

4.2 Exercise of this Assignment of Leases and Rents.

(a) Bank may exercise the assignment hereby granted upon the occurrence and during the continuation of any Event of Default and pursue its rights to collect the Rents or manage the Mortgaged Property, or both, and otherwise exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Bank and without waiving such Event of Default.

(b) In the event Bank elects to invoke any of its rights hereunder, and thereafter for any reason relinquishes to the Assignor such rights, this Assignment shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Bank, from time to time upon the occurrence of any Event of Default under this Assignment, which Event of Default is continuing, shall have all the rights granted hereby.

4.3 Nature of Remedies. No delay or omission on the part of Bank in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Bank under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the other Loan Documents. The said remedies shall be cumulative and concurrent, may be pursued separately, successively, or together against Assignor or the Mortgaged Property, or either of them, at the sole discretion of Bank and may be exercised as often as occasion therefor shall arise.

4.4 Application of Rents. Bank shall, subject to the terms of the Loan Documents, have the power to apply the Rents and Damages, in such order as Bank may determine, to the payment of the indebtedness represented by the Note and the other Loan Documents, including, without limitation, the payment of all advances and expenses incurred by Bank under the Mortgage and all expenses for the care and management of the Mortgaged Property, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate, and collecting Rents, and the expenses and fees of all attorneys, agents, and servants, which expenses Bank may deem to be necessary to exercise the powers granted to the Bank hereunder. The receipt by Bank of any Rents pursuant to this Assignment following an Event of Default and the exercise of any remedies provided for in the Note or the other Loan Documents shall not cure such Event of Default or affect or prejudice the exercise of such remedies.

4.5 Limitation of Bank's Obligations. Bank's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment. Bank shall not be liable for uncollected Rents or for any claim for damages or set-offs arising out of Bank's management of the Mortgaged Property other than for damages arising from Bank's gross negligence or willful misconduct. Bank shall not be liable to any lessee under the Leases for the return of any security deposit made under any lease of any portion of the

Mortgaged Property unless Bank shall have received such security deposit from the lessor or such lessee. Bank shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor under any of the Leases, nor shall Bank be responsible for any act committed by the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Bank a mortgagee in possession of the Mortgaged Property or any part thereof.

4.6 Reimbursement. Assignor shall reimburse, indemnify, and hold Bank harmless for and from any and all expenses, losses, damages, and liabilities which Bank may incur (except for any such expenses, losses, damages, and liabilities caused by Bank's gross negligence or willful misconduct) by reason of this Assignment, or by reason of any of the Leases, or incurred in connection with exercising any of the rights granted in this Assignment. Any and all amounts due to Bank under this Section 4.6 shall be immediately due and payable following written notice to Assignor and shall be added to the principal amount of the Note and secured by this Assignment and the other Loan Documents.

4.7 Authorization to Lessees. Each present and future lessee under any of the Leases is hereby authorized and directed to pay the Rents payable thereunder to Bank upon written demand from Bank stating that an Event of Default has occurred and is continuing under this Assignment without inquiry as to whether any such Event of Default has occurred or whether Bank is rightfully entitled to such Rent.

V. MISCELLANEOUS

5.1 Modification of Loan Terms. If the time of payment of all indebtedness secured hereby or any part thereof is extended at any time or times, or if the Loan is renewed, modified, or replaced, or if any security for the Loan is released, Assignor and any other parties now or hereafter liable therefor or interested in the Mortgaged Property shall be held to consent to such extensions, renewals, modifications, replacements, and releases, and their liability and the lien hereof and of the other Loan Documents shall not be released and the rights created hereby and thereby shall continue in full force and effect, the right of recourse against all such parties being reserved by Bank.

5.2 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon the respective successors and assigns of Assignor and Bank and all persons and entities (including owners and lessees) which may hereafter obtain any interest in the Mortgaged Property.

5.3 Notices. Whenever notice may appropriately be given under this Assignment, such notice shall be given in accordance with the provisions for notice as set forth in the Loan Agreement.

5.4 Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama. The parties submit to exclusive personal jurisdiction in the State of Alabama for the enforcement of any and all obligations under the Loan Documents, or arising out of or related to the transactions contemplated thereby, except

that if any such action or proceeding arises under the constitution, laws, or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the Northern District of Alabama or any successor federal court having original jurisdiction.

5.5 Severability. If any term, restriction, or covenant of this Assignment is deemed illegal or unenforceable, all other terms, restrictions, and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction, or covenant to any other persons or circumstances shall remain unaffected to the extent permitted by law.

5.6 Termination. The recording of a satisfaction of the Mortgage executed by Assignor to Bank as security for the Loan by Bank shall terminate this Assignment.

5.7 Waiver of Jury Trial. **ASSIGNOR WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF BANK AND/OR ASSIGNOR WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS ASSIGNMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS ASSIGNMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ASSIGNOR AGREES THAT BANK MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF ASSIGNOR IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF BANK TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN ASSIGNOR AND BANK SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

5.8 Waiver of Automatic Stay. **TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ASSIGNOR HEREBY AGREES THAT, IN CONSIDERATION OF BANK'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR BANK TO MAKE THE LOAN, IN THE EVENT THAT ASSIGNOR SHALL (A) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF TITLE 11 OF THE UNITED STATES CODE, AS AMENDED ("BANKRUPTCY CODE"), OR SIMILAR LAW OR STATUTE, (B) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE, (C) 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, (D) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR, OR (E) BE THE SUBJECT OF AN ORDER, JUDGMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST ASSIGNOR 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, THEN, SUBJECT TO COURT APPROVAL, BANK SHALL THEREUPON BE ENTITLED AND ASSIGNOR HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO BANK AS PROVIDED IN THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND ASSIGNOR HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO OBJECT TO SUCH RELIEF.

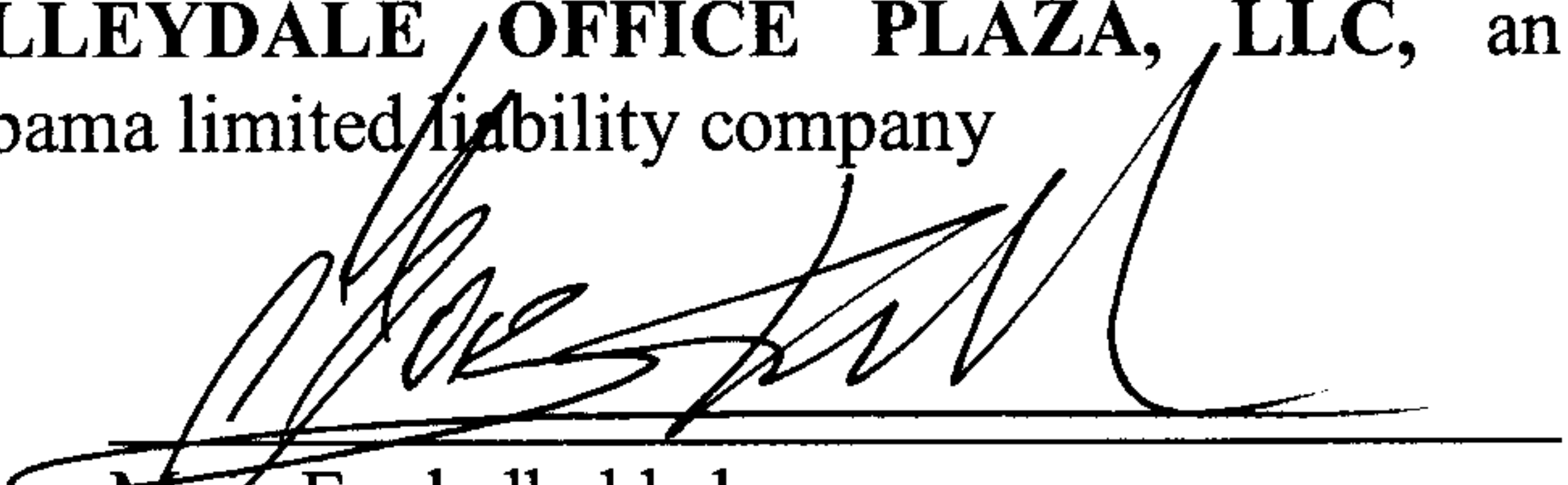
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has caused this Assignment to be executed by its duly authorized representative on the day and year first above written.

ASSIGNOR:

VALLEYDALE OFFICE PLAZA, LLC, an
Alabama limited liability company

By:


Moiz Fouladbakhsh

Its:

Sole Member

STATE OF ALABAMA

)

COUNTY OF Jefferson

)

I, Dana L. Campbell, a Notary Public in and for said County in said State, hereby certify that Moiz Fouladbakhsh, whose name as the duly authorized Sole Member of Valleydale Office Plaza, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that being informed of the contents of said instrument, he, as such Sole Member, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 16th day of November, 2010.

Dana L. Campbell

Notary Public

[AFFIX SEAL]

My commission expires: May 10, 2013



EXHIBIT "A"

LEGAL DESCRIPTION

A parcel of land situated in the Northeast one-quarter of the Southeast one-quarter of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, known as Lot 1 Valleydale Office Plaza as recorded in Map Book 42, Page 19 in the Office of the Judge of Probate, Shelby County, Alabama and being more particularly described as follows:

Commence at the Southwest corner of said quarter-quarter section and run North 00 degrees 00 minutes 00 seconds West along the West line of said quarter-quarter section for a distance of 332.95 feet to a point on the Northwestern right of way line of Valleydale Road (80' right of way) and a point on a curve to the left, said curve having a radius of 5689.64 feet, a central angle of 00 degrees 11 minutes 26 seconds, a chord distance of 18.93 and a chord bearing of N 46 degrees 31 minutes 07 seconds East, thence run along arc of said curve and along said right of way of Valleydale Road for a distance of 18.93 feet to a found capped rebar stamped "PLS#15153", said point also being the POINT OF BEGINNING; thence leaving said right of way, run North 00 degrees 00 minutes 00 seconds West for a distance of 512.44 feet to a found capped rebar stamped "PLS#15153"; thence run South 90 degrees 00 minutes 00 seconds East for a distance of 121.98 feet to a set 5/8" rebar capped and stamped CA-560LS; thence run South 00 degrees 00 minutes 00 seconds East for a distance of 304.58 feet to a set 5/8" rebar capped and stamped CA-560LS; said point being at the point of beginning of a tangent curve to the left, said curve having a radius of 87.00 feet, a central angle of 41 degrees 49 minutes 54 seconds and a chord distance of 62.12 feet and a chord bearing of South 20 degrees 54 minutes 57 seconds East; thence run in a Southerly to Southeasterly direction along the arc of said curve for a distance of 63.52 feet to a set 5/8" rebar capped and stamped CA-560LS on the Northwesterly right of way line of Valleydale Road and a point on a non-tangent curve to the left, said curve having a radius of 5689.68 feet, a central angle of 02 degrees 05 minutes 38 seconds, a chord distance of 207.93 feet and a chord bearing of South 43 degrees 53 minutes 34 seconds West; thence run in a Southwesterly direction along arc of said curve and along the Northwesterly right of way of said Valleydale Road for a distance of 207.94 feet to the POINT OF BEGINNING. Said parcel contains 55,568 square feet or 1.28 acres more or less.