

NOTE TO PROBATE JUDGE: This agreement is filed to amend and restate those certain instruments specifically referred to below which secured an indebtedness currently evidenced by a \$2,700,000.00 Note on which \$3,215.70 worth of mortgage tax has already been paid and to in connection herewith pay an additional \$834.30 worth of mortgage tax currently due and to amend the instruments to add thereto the property described on Exhibit "I", and "K" which was inadvertently omitted from same. Nothing contained herein changes the maturity date of the Note or instruments referred to herein.

STATE OF ALABAMA
COUNTY OF JEFFERSON (Birmingham and Bessemer)
COUNTY OF SHELBY
COUNTY OF TALLAPOOSA
COUNTY OF ST. CLAIR

**AMENDED AND RESTATED
MORTGAGE
and
ASSIGNMENT OF RENTS**



20110818000817510 1/25
Bk: LR201106 Pg:18159
Jefferson County, Alabama
I certify this instrument filed on
08/18/2011 09:10:12 AM MTG
Judge of Probate- Alan L. King

This Amendment pertains to the following instruments:

1. Mortgage dated April 10, 2009 from Peak, Inc. to Compass Bank recorded on April 20, 2009 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Book LR200961, Page 18505 pertaining to the property described on Exhibit "A" attached hereto;
2. Assignment of Rents recorded on April 20, 2009 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Book LR200961, Page 18513 pertaining to the property described on Exhibit "A" attached hereto;
3. Mortgage dated April 10, 2009 from Peak, Inc. to Compass Bank recorded on April 14, 2009 in the Office of the Judge of Probate of Shelby County, Alabama as 20090414000137310 pertaining to the property described on Exhibit "B" attached hereto;
4. Assignment of Rents recorded on April 14, 2009 in the Office of the Judge of Probate of Shelby County, Alabama as 20090414000137320 pertaining to the property described on Exhibit "B" attached hereto;
5. Mortgage dated April 10, 2009 from Peak, Inc. to Compass Bank recorded on April 20, 2009 in the Office of the Judge of Probate of Jefferson County, Alabama as Book LR200961, Page 18518 pertaining to the property described on Exhibit "C" attached hereto;
6. Assignment of Rents recorded on April 20, 2009 in the Office of the Judge of Probate of Jefferson County, Alabama as Book LR200961, Page 18526 pertaining to the property described on Exhibit "C" attached hereto;
7. Mortgage dated April 10, 2009 from Peak, Inc. to Compass Bank recorded on April 14, 2009 in the Office of the Judge of Probate of Tallapoosa County, Alabama as 247359 pertaining to the property described on Exhibit "D" attached hereto;
8. Assignment of Rents recorded on April 14, 2009 in the Office of the Judge of Probate of Tallapoosa County,



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Shelby Cnty Judge of Probate, AL
08/19/2011 01:41:59 PM FILED/CERT

Alabama as 247360 pertaining to the property described on Exhibit "D" attached hereto;

9. Mortgage dated April 10, 2009 from Peak, Inc. to Compass Bank recorded on April 20, 2009 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Book LR200961, Page 18544 pertaining to the property described on Exhibit "E" attached hereto;
10. Assignment of Rents recorded on April 20, 2009 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Book LR200961, Page 18552 pertaining to the property described on Exhibit "E" attached hereto;
11. Mortgage dated April 10, 2009 from Peak, Inc. to Compass Bank recorded on April 14, 2009 in the Office of the Judge of Probate of St. Clair County, Alabama as Mortgage Book 2009, Page 15712 pertaining to the property described on Exhibit "F" attached hereto;
12. Assignment of Rents recorded on April 14, 2009 in the Office of the Judge of Probate of St. Clair County, Alabama as Deed Book 2009, Page 3131 pertaining to the property described on Exhibit "F" attached hereto;
13. Mortgage dated April 10, 2009 from Peak, Inc. to Compass Bank recorded on April 14, 2009 in the Office of the Judge of Probate of Shelby County, Alabama as 200904140001377330 pertaining to the property described on Exhibit "G" attached hereto;
14. Assignment of Rents recorded on April 14, 2009 in the Office of the Judge of Probate of Shelby County, Alabama as 20090414000137340 pertaining to the property described on Exhibit "G" attached hereto;
15. Mortgage dated April 10, 2009 from Peak, Inc. to Compass Bank recorded on April 20, 2011 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Book LR200961, Page 18531 pertaining to the property described on Exhibit "H" attached hereto; and
16. Assignment of Rents recorded on April 20, 2011 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Book LR200961, Page 18539 pertaining to the property described on Exhibit "H" attached hereto.

THIS Amendment (hereinafter "Amendment") effective as of August 1, 2011 is executed by **PEAK, INC.**, an Alabama corporation, whose address is 2100 Providence Park, Suite 250, Birmingham, AL, 35209 (hereinafter referred to as "Mortgagor") and is in favor of **COMPASS BANK** whose address is P.O. Box 10566, Birmingham, Alabama, 35296 (hereinafter "Mortgagee") and amends the instruments referred to above (collectively along with this Amendment referred to as the "Mortgage"):

WITNESSETH

WHEREAS, the mortgage dated April 10, 2009 from Mortgagor to Mortgagee and recorded on April 20, 2009 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Book LR200961, Page 18505 secured \$286,200.00 of the Note (as defined herein), and upon recordation thereof a mortgage tax of \$429.30 was paid.

WHEREAS, the mortgage dated April 10, 2009 from Mortgagor to Mortgagee and recorded on April 14, 2009 in the Office of the Judge of Probate of Shelby County, Alabama as 20090414000137310 secured \$440,100.00 of the Note, and upon recordation thereof a mortgage tax of \$660.15 was paid.

WHEREAS, the mortgage dated April 10, 2009 from Mortgagor to Mortgagee and recorded on April 20, 2009 in the Office of the Judge of Probate of Jefferson County, Alabama as Book LR200961, Page 18518 secured \$321,300.00 of the Note, and upon recordation thereof a mortgage tax of \$481.95 was paid.

WHEREAS, the mortgage dated April 10, 2009 from Mortgagor to Mortgagee and recorded on April 14, 2009 in the Office of the Judge of Probate of Tallapoosa County, Alabama as 247359 secured \$135,000.00 of the Note, and upon recordation thereof a

mortgage tax of \$202.50 was paid.

WHEREAS, the mortgage dated April 10, 2009 from Mortgagor to Mortgagee and recorded on April 20, 2009 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Book LR200961, Page 18544 secured \$253,800.00 of the Note, and upon recordation thereof a mortgage tax of \$380.70 was paid.

WHEREAS, the mortgage dated April 10, 2009 from Mortgagor to Mortgagee and recorded on April 14, 2009 in the Office of the Judge of Probate of St. Clair County, Alabama as Mortgage Book 2009, Page 15712 secured \$218,700.00 of the Note, and upon recordation thereof a mortgage tax of \$328.05 was paid.

WHEREAS, the mortgage dated April 10, 2009 from Mortgagor to Mortgagee and recorded on April 14, 2009 in the Office of the Judge of Probate of Shelby County, Alabama as 200904140001377330 secured \$218,700.00 of the Note, and upon recordation thereof a mortgage tax of \$328.05 was paid.

WHEREAS, the mortgage dated April 10, 2009 from Mortgagor to Mortgagee and recorded on April 20, 2011 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Book LR200961, Page 18531 secured \$270,000.00 of the Note, and upon recordation thereof a mortgage tax of \$405.00 was paid.

WHEREAS, upon the recordation of the above referenced mortgages a combined mortgage tax of \$3,215.70 ($\$0.15/100 \times \$2,143,800.00$) was paid.

WHEREAS, in connection with this amendment, Mortgagee discovered that Mortgagor had not given Mortgagee a mortgage on the property described on Exhibit "I", and "K" and due to such omission \$834.30 worth of mortgage tax on the face amount of the Note had not been paid.

WHEREAS, both Mortgagor and Mortgagee desire to pay the full mortgage tax due on the mortgages securing the Note and desire that Mortgagee have and hold a mortgage on each parcel of property described on Exhibit "A", "B", "C", "D", "E", "F", "G", "H", "I", and "K" to secure that indebtedness evidenced by the Note.

WHEREAS, the said Mortgagor, is and will be indebted to Mortgagee by the terms of a Note dated April 10, 2009 (hereinafter along with all amendments, renewals, extensions and modifications, "Note") in the principal sum of \$2,700,000.00, payable in accordance with the terms of such Note, and all renewals, modifications, extensions and amendments thereto.

WHEREAS, this Amendment amends the Mortgages securing the Note and adds in addition thereto a mortgage interest in the property described on Exhibit "I", and "K" but it does not change the Maturity Date of the Note nor of the mortgages referred to herein.

NOW THEREFORE, the undersigned Mortgagor 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 Note, the Hedge Agreement (as that term is defined herein), this Mortgage (hereinafter, collectively with the indebtedness evidenced by the Note and the Mortgage, "Debt"), and in compliance with all the stipulations herein contained, does hereby grant, bargain, sell, and convey unto Mortgagee, their successors, and assigns the following (hereinafter "Mortgaged Property"):

- a) The Land situated in Jefferson, Shelby, Tallapoosa, and St. Clair County, Alabama and described on Exhibit "A", "B", "C", "D", "E", "F", "G", "H", "I", and "K" 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 Mortgagor 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 Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Mortgagor of, in and to the same, including but not limited to: 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. Mortgagee is hereby authorized on behalf of and in the name of Mortgagor to execute and deliver valid acquittance for, and appeal from, any such judgments or awards. Mortgagee 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 Mortgagor is the lessor, including but not limited to the existing lease 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 Mortgagor 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 Mortgagor 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 Mortgagor 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 Mortgagor 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. Mortgagor hereby appoints the Mortgagee as the Mortgagor'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 Mortgagor, all of which awards, damages, premiums, and payments are hereby assigned to Mortgagee 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.

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

PROVIDED HOWEVER, if the indebtedness secured by the Mortgage is paid, and Mortgagee, its successors, and assigns is

reimbursed for any amounts it may have expended pursuant to the authorization of the Mortgage, including without limitation, sums spent in payment of taxes, assessments, insurance, or other liens and interest thereon, and Mortgagor 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

Mortgagor further represents, warrants, covenants and agrees with Mortgagee as follows:

1. **Performance of Mortgage, Note and Loan Documents.** Mortgagor shall perform and comply with all provisions hereof, of the Note, the Hedge Agreement, 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.** Mortgagor covenants with Mortgagee 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 Mortgagee hereunder and its successors and assigns shall quietly enjoy and possess the same; and Mortgagor will warrant and forever defend the title to said Mortgaged Property unto Mortgagee, its successors, and assigns, against lawful claims of all persons.
3. **Future Advances and Other Debts.** It is the Mortgagor's expressed intention that the continuing grant of the Mortgaged Property by the Mortgage shall secure the payment and performance of all of the indebtedness of Mortgagor to Mortgagee evidenced by the Note and such future advances made in connection with this Mortgage.
4. **After-Acquired Property.** Without limitation to the generality of the other provisions of the 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 Mortgagor by whatsoever means, including that in the event that the Mortgagor 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 the Mortgage the Mortgagor 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 Mortgagor or the Mortgagee or any other person or entity, be and become subject to the Mortgage and the lien hereof. In consideration of Mortgagee making the loan as evidenced by the Note, and to secure the Debt, Mortgagor hereby grants, bargains, sells and conveys to Mortgagee, on the same terms as set forth in the Mortgage and intended to be a part hereof, all such after-acquired property and estates.
5. **Taxes, Utilities, and Liens.** The Mortgagor shall pay promptly, when and as due, and, if requested, will exhibit promptly to the Mortgagee 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 Mortgagee 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 the 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 Mortgagor shall immediately pay any increased taxes if allowed by law, and if Mortgagor fails to pay such additional taxes, or if Mortgagor is prohibited from paying such taxes, or if Mortgagee in any way is adversely affected by such law, order, rule, or regulation, then in any such events, all indebtedness secured by the Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Mortgagee.

6. **Monthly Tax Deposit.** If Mortgagee requires, Mortgagor shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, as estimated by Mortgagee, 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 Mortgagee's general funds. Mortgagor agrees to pay Mortgagee the amount of any deficiency necessary to enable Mortgagee to pay such taxes when due. If an Event of Default shall occur under the Mortgage or under the Note, any of the Loan Documents, or any of the other indebtedness instruments, such amount may be applied by Mortgagee to the reduction of the indebtedness secured hereby in any manner selected by Mortgagee. However, unless otherwise agreed by Mortgagee in writing, no application of tax deposits to the Note, to other indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note, the other indebtedness, or any such other obligations.

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

8. **Hazard Insurance.** For the benefit of Mortgagee, Mortgagor 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 Mortgagee, with Mortgagee shown as Mortgagee and Loss Payee under a standard New York non-contributory Mortgagee/Loss Payee endorsement making losses payable to Mortgagee.

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

Mortgagee 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 Mortgagee instead of to the Mortgagor and Mortgagee jointly. After deducting from said insurance proceeds any expenses incurred by Mortgagee in the collection or handling of said funds, Mortgagee 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 Mortgagor's Debt selected by Mortgagee, whether then matured or to mature in the future, or at the option of the Mortgagee, 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 Mortgagee, all without affecting the lien of the Mortgage for the full amount secured hereby before such payment took place. Mortgagee shall not be liable to Mortgagor 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.

Mortgagor further covenants that all insurance policies will contain a clause that prohibits them from being cancelled upon less than twenty (20) days' notice to Mortgagee, and to deliver to the Mortgagee 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.

Mortgagor hereby transfers, assigns, sets over, and delivers to Mortgagee 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 Mortgagor, and further agrees that all such insurance and insurance policies shall be held by Mortgagee 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 Mortgagor fails to keep said property insured as above specified, then Mortgagee 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 the Mortgage and bear interest from the date of payment by Mortgagee at the rate set forth in the Note plus two percentage points (2%).

If Mortgagee requires, Mortgagor 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 Mortgagee, 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 Mortgagee's general funds. Mortgagor agrees to pay Mortgagee the amount of any deficiency necessary to enable Mortgagee to pay such insurance premiums when due. If an Event of Default shall occur under the Mortgage or under the Note, any of the Loan Documents, or any of the other indebtedness instruments, such amount may be applied by Mortgagee to the reduction of the indebtedness secured hereby in any manner selected by Mortgagee. However, unless otherwise agreed by Mortgagee in writing, no application of insurance premiums to the Note, to other indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note, the other indebtedness, or any such other obligations.

Mortgagor agrees to give Mortgagee 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 Mortgagee'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 Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of the indebtedness secured by the Mortgage immediately due and payable.

Mortgagee is hereby authorized to enter upon and inspect the Mortgaged Property, and to inspect the Mortgagor's or Mortgagor'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 Mortgagor and shall not be permitted to take priority over the lien of the Mortgage, provided that Mortgagor, upon first furnishing to Mortgagee reasonable security for the payment of all liability, costs, and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens. In those instances where Mortgagee'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 Mortgagee shall be made solely by Mortgagee and shall be binding upon Mortgagor.

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

12. **Waiver of Exemption.** Mortgagor waives all rights of exemption pertaining to real or personal property as to any Debt secured by or that may be secured by the Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the Debt secured hereby.

13. **Governmental Compliance.** Mortgagor shall comply with all laws, governmental standards, and regulations applicable to Mortgagor or the Mortgaged Property with regards to occupational safety, hazardous waste and materials, and environmental matters. Mortgagor shall promptly notify the Mortgagee of its receipt of any nature of a violation by Mortgagor or the Mortgaged Property of any such law, standard, or regulation. Mortgagor represent and warrant to Mortgagee 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. Mortgagor shall indemnify and hold Mortgagee harmless for any and all loss incurred by Mortgagee as a result of Mortgagor's breach of this warranty and representation. This indemnification shall survive the payment of the Note, the exercise of any right or remedy under the Note 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 Mortgagee's making the loan evidenced by the Note 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, Mortgagor does hereby sell, assign and transfer unto the Mortgagee 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 Mortgagee.
15. **Representations and Warranties Related to Existing Leases.** (a) Mortgagor 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 Mortgagor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Existing Leases on the Mortgagor's part to be kept, observed and performed. (c) The Mortgagor 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 the 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 Mortgagor 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) Mortgagor shall not renew or otherwise extend the term of the Existing Leases; provided, however, that nothing herein contained shall prevent the Mortgagor, 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 the Mortgage. (g) To the best of the Mortgagor'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 Mortgagor covenants and agrees that the Mortgagor 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 Mortgagor, and shall give prompt notice to the Mortgagee in the event the Mortgagor fails to observe, perform, and discharge the same; (b) enforce or secure in the name of the Mortgagee 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 Mortgagor and any lessee thereunder, and, upon request by the Mortgagee to do so in the name and on behalf of the Mortgagee but at the expense of the Mortgagor, and to pay all costs and expenses of the Mortgagee, including reasonable attorneys' fees, in any action or proceeding in which the Mortgagee 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 Mortgagee; (g) upon Mortgagee's request, furnish the Mortgagee 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 Mortgagee may require.
17. **Mortgagee Shall Have No Obligations with Respect to Leases.** The Mortgagee 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 Mortgagor shall and does hereby agree to indemnify and hold the Mortgagee 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 Mortgagee 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 Mortgagee in connection with any one or more said leases, subleases or agreements, the Mortgagor agrees to reimburse the Mortgagee for the amount thereof, including costs, expenses and reasonable attorneys' fees, all of which shall be secured by the assignment hereunder and by the Mortgage.

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

SECURITY AGREEMENT

18. **Grant of Security Interest.** Mortgagor (the "Debtor" for Uniform Commercial Code purposes), in consideration of Mortgagee (the "Secured Party" for Uniform Commercial Code purposes) making the loan evidenced by the Note, 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 Note and in the Loan Documents, does hereby grant to Mortgagee 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.** Mortgagor 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 Mortgagor and Mortgagee. The Mortgage shall constitute a financing statement under the UCC. Further, Mortgagor authorizes Mortgagee to file financing statements pursuant to the UCC in form satisfactory to Mortgagee as to the Mortgaged Property, and Mortgagor will pay the cost of filing the same in all public offices wherever filing is deemed by the Mortgagee to be necessary or desirable. Mortgagor authorizes Mortgagee to prepare and to file financing statements covering the Collateral and the Mortgaged Property and where applicable to sign the Mortgagor's signature to such financing statements in jurisdictions where Mortgagor's signature is required. Mortgagor promises to pay the Mortgagee 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.

If certificates of title are issued or outstanding with respect to any of the Collateral, the Mortgagor shall cause Mortgagee's name to be properly noted thereon.

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

MORTGAGEE'S RIGHTS AND REMEDIES UPON DEFAULT

21. **Events of Default.** The Mortgagor shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"): (a) if Mortgagor 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 Mortgagor 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 Mortgagor defaults in any of the covenants, conditions, and agreements herein contained; (d) if Mortgagor or any of Mortgagor's guarantors become insolvent or bankrupt; (e) if a receiver of Mortgagor's or any of Mortgagor's guarantors' property be appointed; (f) if Mortgagor 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 Mortgagor and Mortgagee for which the Mortgage is security or this instrument or in the execution or the acknowledgment thereof, or if a homestead claim is set up to said property or any part thereof adverse to the Mortgage, and if the said Mortgagor shall fail for thirty (30) days after demand by the Mortgagee, 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 the 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 the Mortgage; or (j) if the Mortgagor defaults under the Hedge Agreement.

Further, an Event of Default hereunder shall constitute a default under the Hedge Agreement

22. **Acceleration of Debt.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee, or other holder or holders of the indebtedness secured by the 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 the Mortgage by the power of sale hereunder described or by suit, as such Mortgagee, or other holder or holders of said indebtedness, may elect. Upon such acceleration of the Debt, the Mortgagor covenants to pay, in addition to all other amounts due, interest on the Debt until paid at the rate set forth in said Note.

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 Mortgagee, the holder of the debt hereby secured shall have the right to enter upon and take possession of the Mortgaged Property 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 Mortgagee 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 Mortgagor. 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 the 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 Mortgagee, 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 the 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 Mortgagor 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 the Mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of the Mortgage, together with interest thereon; (c) to the payment and satisfaction of said principal indebtedness and interest secured by the Mortgage thereon to the day of sale; and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor'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 Mortgagee, 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 Mortgagor herein to collect the Rents; (b) to without taking possession, in the Mortgagee'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 Mortgagee 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 Mortgagor, 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 Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the Mortgagor 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 Mortgagee 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 Mortgagor under the 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 the Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Mortgagee 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 the Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application of the rents may have cured the original default. If the Mortgagee 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 Mortgagee, 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 Mortgagor 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 Mortgagor agrees that the Mortgagee shall be entitled without the necessity of a hearing or notice to Mortgagor 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 Mortgagee, in addition to any and all remedies it may have or exercise under the Mortgage, the Note, 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 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 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; (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 (d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of 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 any collateral to Mortgagee or any other party.

28. **Access to Property; Operation of Property by Mortgagee.** Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person, firm or corporation

designated by the Mortgagee) 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 Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; and the Mortgagee 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 Mortgagor with respect to the Mortgaged Property.

29. **Waiver of Automatic Stay.** Mortgagor 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, Mortgagee 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 Mortgagee as provided in the Mortgage or any other agreement, and as otherwise provided by law, and Mortgagor 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 Mortgagee 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 Mortgagor. The procurement of insurance or the payment of taxes or other liens, debts, or charges by Mortgagee 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 Mortgagee to procure such insurance or to pay such taxes, debts, liens, or charges.

MISCELLANEOUS PROVISIONS

31. **Mortgagor to Pay Attorneys' Fees and Costs.** Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred or paid by Mortgagee in collecting or securing, or attempting to collect or secure, the indebtedness secured hereby, the Note, or any part thereof, or in defending or attempting to defend the priority of the Mortgage against any lien on the Mortgaged Property, unless the Mortgage is herein expressly made subject to any such lien; and/or all costs incurred in the foreclosure of the 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 Mortgagee 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 Note plus two percentage points (2%); and it shall be at once due and payable. All expenses incurred by Mortgagee, 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 Mortgagee 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 Mortgagee 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 the Mortgage in any respect, Mortgagor will pay to Mortgagee, 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 Mortgagee, the same shall be secured by the lien of the 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 Note 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 Mortgagee 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 Mortgagee's prior written approval, Mortgagee may, at its option, declare the indebtedness due and payable in full.

34. **Books and Records.** Mortgagor 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 Mortgagee, Mortgagor shall furnish to Mortgagee within ten (10) days after request therefor from Mortgagee, a rent schedule of the Mortgaged Property, certified by the Mortgagor, 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 Mortgagor to Mortgagee, is now or hereafter further secured by security interest or mortgages, pledges, contracts of guaranty, assignments of leases or other securities, the Mortgagee 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 Mortgagee may determine.

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

37. **Notices.** Wherever and whenever in the 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 the 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 Mortgagors or Mortgagee 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, Mortgagee transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Mortgagee'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 Mortgagee retains any of such indebtedness or instruments, Mortgagee 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 Mortgagor shall be construed to refer to the maker or makers of the Mortgage, whether one or more persons or a corporation, and all covenants and agreements herein contained shall bind the successors and assigns of the Mortgagor, and every option, right, and privilege herein reserved or secured to Mortgagee 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 the Mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law.

41. **This Amendment amends the Mortgages.** Mortgagor hereby agrees and directs Mortgagee to take any action necessary to conform the Mortgages referenced herein, or the documents executed in connection therewith to the terms as herein cited and by these presents accepts and confirms their liability under said Mortgages and the documents executed in connection therewith with the terms as herein modified. This Amendment amends the Mortgages and is not a novation thereof. All terms of

the Mortgages, not specifically amended hereby remain in full force and effect.

42. **Hedge Agreement.** Mortgagor and Mortgagee may from time to time be parties to an ISDA Master Agreement, the schedules attached thereto and one or more confirmations issued in connection therewith (collectively, the "Hedge Agreement"), under the terms of which Mortgagor and Mortgagee have entered into one or more of the following types of transactions: interest rate swap, cap, floor, collar or option. Mortgagor hereby agrees that all of its obligations under the Hedge Agreement (including but not limited to all of the obligations arising out of any prepayment provision associated with the Hedge Agreement) shall be part of the "Debt" as that term is used herein. Mortgagor further agrees that the Mortgaged Property, shall be security for the payment and performance of all of the Mortgagor's obligations under the Hedge Agreement, and that the grant of the lien contained in this Mortgage is intended to be the grant of a lien against the Mortgaged Property to secure all of the Debt which shall include the obligations of Mortgagor under the Hedge Agreement. Mortgagor further agrees that (i) a default under this Mortgage shall constitute an Event of Default (as that term is defined in the Hedge Agreement) under the Hedge Agreement, and (ii) the occurrence of an Event of Default under The Hedge Agreement shall constitute a default under this Mortgage, and Mortgagee shall thereafter have all rights and remedies following a default under the Mortgage and the occurrence of an Event of Default under the Hedge Agreement.

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

PEAK, INC., an Alabama corporation

By: 

Print Name: Mark W. Bond

Title: President

STATE OF ALABAMA
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Mark W. Bond, whose name as President of PEAK, INC., an Alabama 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 said instrument, he/she, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in his/her capacity as aforesaid.

Given under my hand and official seal, this the 12th day of August, 2011.



NOTARY PUBLIC

My Commission Expires: 4-27-14

THIS INSTRUMENT PREPARED BY AND AFTER
RECORDATION SHOULD BE RETURNED TO:
William B. Hairston, III
ENGEL, HAIRSTON & JOHANSON, P.C.
109 North 20th Street, Fourth Floor
P.O. Box 11405
Birmingham, Alabama 35202
(205) 328-4600

EXHIBIT "A"

PARCEL I:

Lot 2-A, according to the Map of Taco Bell's Restaurant No.2, as recorded in Map Book 27, Page 70, in the Office of the Judge of Probate of Jefferson County, Alabama, Bessemer Division.

PARCEL II:

A private, permanent, non-exclusive easement for vehicular and pedestrian access, egress and ingress for the benefit of Lot 2-A as created by that certain deed with grant of easements and reservations of easements and covenants as recorded in Bessemer Real Volume 970, Page 420, over, under and across the following described property:

Commence at the Westernmost lot corner of Lot 2 of the Plat, said point also being on the Northeasterly right of way line of Aaron Aronov Drive (Jefferson County Road 65; right of way width; 100 feet); thence run Northeasterly along the common lot line of said Lot 2 and Lot 2A of the Plat for a distance of 161.06 feet to the point of beginning; thence continue Northeasterly along said common lot line for a distance of 28.94 feet to the Easternmost corner of Lot 2A of the Plat; thence leaving said common lot line, deflect 79° 13' 11" to the right and run Southeasterly for a distance of 91.24 feet to a point on the Eastern lot line of said Lot 2 and on the Westerly right of way line of Vinesville Road (right of way width; 100 feet), said point being on a nontangent curve to the left having a central angle of 2° 22' 30" and a radius of 1,005.37 feet and a chord of 41.67 feet which deflects 55° 28' 15" to the right from the previous course; thence run Southerly along said lot line and along said curve for an arc distance of 41.67 feet; thence leaving said right of way line, deflect 88° 48' 41" to the right, from chord, and run Westerly through the interior of said Lot 2 for a distance of 11.62 feet; thence deflect 42° 14' 42" to the right and run Northwesterly through the interior of said Lot 2 for a distance of 111.65 feet to the point of beginning.

SUBJECT TO:

- i) taxes for 2011, a lien but not yet payable;
- ii) title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Bessemer Volume 326, page 562 and Bessemer Real Volume 576, page 391;
- iii) easement/right of way granted to Alabama Power Company recorded in Bessemer Real Volume 188, page 638 and 647 and Bessemer Real Volume 189, page 559;
- iv) easement as recorded in Bessemer Real Volume 836, page 479;
- v) restrictions appearing of record in Bessemer Real Volume 970, page 413;
- vi) easements, terms and conditions, covenants and restrictions as set out in Deed recorded in Bessemer Real Volume 970, page 420;
- vii) easements as shown on record maps;
- viii) Exxon Access Agreement recorded in real Volume 1080, page 483 (Parcel II);
- ix) Restrictions, conditions and release of damages as described in deed between TBLD Corporation and Peak, Inc as recoded in Instrument 200361/9385; and
- x) Grant of limited purpose easement as recorded in Instrument 200361/9389.

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EXHIBIT "B"

A parcel of land located in the NW ¼ of the SE ¼ of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the NE corner of the SW ¼ of Section 31, Township 19 South, Range 2 West; thence run in a Westerly direction along the Northern line of said ¼ section for a distance of 301.28 feet; thence turn an angle to the left of 51° 49' 38" and run in a Southwesterly direction for a distance of 524.90 feet; thence turn an angle to the right of 15° 42' 53" and run in a Southwesterly direction for a distance of 15.00 feet; thence turn an angle to the left of 102° 10' 58" and run in a Southeasterly direction for a distance of 195.60 feet; thence turn an angle to the right of 13° 53' 06" and run in a Southeasterly direction for a distance of 185.50 feet; thence turn an angle to the right of 03° 06' 00" and run in a Southeasterly direction for a distance of 201.40 feet; thence run an angle to the right of 03° 14' 59" and run in a Southeasterly direction for a distance of 584.70 feet to the point of beginning; from the point of beginning thus obtained, thence continue same Southeasterly direction for a distance of 309.49 feet to the Northwestern right of way line of Alabama Highway No. 119; thence turn an angle to the left of 93° 41' 50" and run in a Northeasterly direction along said right of way for a distance of 175.96 feet; thence turn an angle to the left of 87° 58' 14" and run in a Northwesternly direction for a distance of 308.60 feet; thence turn an angle to the left of 91° 53' 48" and run in a Southwesterly direction for a distance of 166.94 feet to the point of beginning; being situated in Shelby County, Alabama.

LESS AND EXCEPT THE FOLLOWING PROPERTY:

A part of the SW ¼ of the SE ¼, Section 31, Township 19 South, Range 2 West, identified as Tract No. 9 on Project No. STPAA-7136(1) in Shelby County, Alabama, and being more fully described as follows:

Commencing at the Southwest corner of said SW ¼ of the SE ¼; thence North along the West line of said SW ¼ of the SE ¼ a distance of 923 feet, more or less, to the present North right of way line of Alabama Highway 119; thence Northeasterly along said right of way line a distance of 96 feet, more or less, to the Northeast property line and the point of beginning of the property herein to be conveyed; thence Northeasterly a distance of 175 feet, more or less, to the East property line; thence Northwesternly along said east line a distance of 30 feet, more or less, to a point that is 70 feet Northwesternly of and at right angles to the centerline of said project; thence Southwesterly a distance of 175 feet, more or less, to the West property line; thence Southeasterly a distance of 30 feet, more or less, to the point of beginning.

SUBJECT TO:

- i) taxes for the year 2011, a lien but not yet due or payable;
- ii) easement to City of Pelham as recorded in Real 143, page 341; and
- iii) Declaration of easements, Covenants, and Restrictions appearing of record in Instrument 1994-8120 and refiled as Instrument 1994-10053

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EXHIBIT "C"

Lot 3, according to the Trussville Marketplace Survey, as recorded in Map Book 187, Page 67, in the Probate Office of Jefferson County, Alabama.

Subject to:

- i) taxes for the year 2011 a lien but not yet payable'
- ii) restrictions created under that certain Lease Agreement with Harco, Inc recorded in Instrument No 9709/6921;
- iii) declaration of easement as recorded in Instrument 9706/5569;
- iv) Easement as reserved in deed recorded in Instrument 9706/5571;
- v) Right of way granted to Alabama Power Company as set out in instrument recorded in Volume 1852, page 9, Instrument 9712/3394, and Instrument 9802/2049;
- vi) Restrictions appearing of record in Instrument 9613/5592, amended in Instrument 9812/2380, 9613/5593, and map book 187, page 67; and
- vii) Proposed easement for ingress and egress as shown on Map Book 187, page 67.

EXHIBIT "D"

Commencing at the Northwest corner of the Southwest $\frac{1}{4}$ of Section 3, Township 22 North, Range 21 East, Tallapoosa County, Alabama, thence run North 85 degrees 12 minutes 00 seconds East 1869.47 feet to a point; thence run North 85 degrees 12 minutes 14 seconds East 152.07 feet to an existing iron pin; thence run South 05 degrees 19 minutes 01 seconds East 257.85 feet to an iron pin set and the point of beginning of the parcel herein described; thence run North 88 degrees 33 minutes 26 seconds East 127.89 feet to an iron pin set; thence run South 04 degrees 22 minutes 26 seconds West 41.69 feet to an existing iron pin; thence run South 08 degrees 55 minutes 18 seconds West 77.12 feet to an existing iron pin; thence run South 03 degrees 09 minutes 43 seconds East 46.62 feet to an existing iron pin set on the North right of way of Old US 280; thence run along said right of way South 80 degrees 12 minutes 31 seconds West 100.17 feet to an existing iron pin; thence run North 05 degrees 19 minutes 01 seconds West 178.89 feet to the point of beginning.

Less and except an easement (20 feet in width) for egress and ingress and being more particularly described as follows: Commencing at the Southwest corner of the aforementioned lot; thence run North 0 degrees 34 minutes 53 seconds West 178.50 feet to the North boundary of said lot; thence run North 88 degrees 33 minutes 26 seconds East 20.00 feet to a point; thence run South 0 degrees 34 minutes 53 seconds East 175.56 feet to the South boundary of said lot; thence run South 80 degrees 12 minutes 31 seconds West 20.26 feet to the point of beginning.

Subject to:

- i taxes for the year 2011, a lien but not yet payable; and
- ii reservations as set out on deed recorded on Card 107479.

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EXHIBIT "E"

Parcel I:

All right title and interest of Mortgagor under the terms of a lease dated September 25, 1998 wherein Kenneth S. Jones and Barbara Jones is Lessor and Mortgagor is Lessee which was filed for record as Instrument 9814/7399 in the office of the Judge of Probate of Jefferson County, Alabama, together with any and all options under the Lease or otherwise from the Lessor to purchase the leased realty, the lease being of certain premises owned by the Lessor and located in Jefferson County, Alabama and being more particularly described as follows, and all right title and interest of the Mortgagor in and to the following described premises, whether now owned or hereafter acquired, to wit:

Lot 6, Block I, according to the Survey of Glass's Second Addition to New Merkle, as recorded in Map Book 28, Page 51, in the Probate Office of Jefferson County, Alabama.

ALSO, part of Lot 7, Block 1, according to the Survey of Glass's Second Addition to New Merkle, as recorded in Map Book 28, Page 51, in the Probate Office of Jefferson County, Alabama, being more particularly described as follows:

Begin at the Southeast corner of Lot 7, in Block 1; thence run West for a distance of 140.3 feet to the Southwest corner of Lot 7; thence run North along West line of Lot 7 for a distance of 24 feet; thence East to the East line of Lot 7 to a point 2 feet North of the Southeast corner of Lot 7; thence South along the East lot line of Lot 7 for a distance of 2 feet to the point of beginning.

Parcel II:

Lots 7 and 8, Block 1, Glass's Second Addition to New Merkle, as recorded in Map Book 28, Page 51, in the Probate Office of Jefferson County, Alabama, less and except the following described real property: that portion of Lot 7, Block 1, Glass's Second Addition to New Merkle, beginning at the Southeast corner of Lot 7, Block 1, Glass's Second Addition to New Merkle, thence West 140.3 feet to the Southwest corner of said Lot 7; thence North along the West line of said Lot 7 twenty-four (24) feet; thence East to the East line of said Lot 7, at a point two (2) feet North of the Southeast corner of said Lot 7; thence South along the East line of said Lot 7, two (2) feet to the point of beginning.

SUBJECT TO:

- i) taxes and assessments for the year 2011, a lien but not yet payable;
- ii) right of way to Alabama Power company recorded in Volume 5890, page 578;
- iii) title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Volume 4444, page 124; and
- iv) easements and building line as shown on recorded map

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EXHIBIT "F"

Commencing at the point of intersection of the South right of way of Lynwood Drive and the East line of Section 1, Township 17 South, Range 3 East, St. Clair County, Alabama; thence North 00° 35' 35" West along the East line of said section for 287.31 feet to a point; thence North 00° 18' 00" West along the East line of said Section for 154.01 feet to a point, thence North 83° 51' 10" West for 518.99 feet to a point on the East right of way of Highway #231 and the North right-of-way of Starnes Drive, also the point of beginning; thence North 36° 15' 00" West along the East right-of-way of Highway #231 for 150.00 feet to a point; thence North 53° 45' 00" East for 150.00 feet to a point; thence South 31° 58' 20" East for 66.92 feet to the North right-of-way of Starnes Drive; thence along an arc of a curve to the left for 40.42 feet having a radius of 161.64 feet and a chord bearing and distance of South 29° 19' 30" West for 40.31 feet to the P.C. of said curve; thence South 22° 09' 40" West for 127.14 feet back to the point of beginning.

Being in and a part of the SE ¼ of the SE ¼ of Section 1, Township 17 South, Range 3 East, St. Clair County, Alabama, Pell City Division.

SUBJECT TO: taxes for the year 2011, a lien but not yet due or payable

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EXHIBIT "G"

Lot 10-A according to a Resurvey of Lot 10, Cahaba Park South, as recorded in Map Book 11, Page 89, in the Probate Office of Shelby County, Alabama.

Situated in Shelby County, Alabama

Subject to:

- i) taxes for the year 2011, a lien but not yet payable;
- ii) transmission line permit to Alabama Power Company recorded in Deed Book 285, page 802, and in Deed Book 347, page 105;
- iii) restrictions and covenants contained in Covenant and Agreement dated August 20, 1985 by and among the Water Works Board of the City of Birmingham, Investment Southeastern Ltd, 280 Associates Ltd, and Kovach-Eddleman Properties recorded in Real Volume 069, page 393;
- iv) restrictions and Covenants contained in Declaration of Protective Covenants and Agreements recorded in real Volume 37, page 96 as amended by that Amended Declaration of Covenants recorded in Real Voule 51, page 996;
- v) Signage landscaping and other covenants and restrictions contained in letter to Shelby County Planning Commission and referenced in Real Volume 160, page 841;
- vi) Restrictions and covenants contained in Declaration of easements recorded in Real Volume 71, page 925;
- vii) Easement for storm sewer recorded in Real Volume 71, page 994;
- viii) Restrictions and covenants contained in agreement recorded in Real Volume 38, page 71;
- ix) Restrictions and covenants contained in Reciprocal Easement Agreement recorded in Real Volume 38, page 59;
- x) Sanitary sewer Easement recorded in Real Volume 72, page 01;
- xi) Easement in favor of Alabama Power Company recorded in Real Volume 67, page 559;
- xii) Restrictions and covenants contained in Declaration of Protective Covenants and Agreements recorded in Real Volume 71, page 931 and Real record 087, page 644;
- xiii) Non-exclusive sewer easement recorded in Real Record 073, page 986;
- xiv) 10 foot easement along the Southwesterly and Southeasterly lot lines, and 5 foot easement along the Northwesterly lot lines as shown on recorded map; and
- xv) Easement as reserved by instrument recorded in Real Volume 160, page 841.

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EXHIBIT "H"

Lot 1, according to the Survey of Express Oil Survey, as recorded in Map Book 180, Page 32, in the Probate Office of Jefferson County, Alabama.

LESS AND EXCEPT that part conveyed to the State of Alabama by deed recorded in Instrument 200462/6303, being more particularly described as follows:

A part of the NW ¼ of the SW ¼ of Section 28, Township 19 South, Range 3 West, Jefferson County, Alabama, identified as Tract No. 16, Project No. ST-659(16), more particularly described as follows: A part of Lot No. 4, according to the Survey of A.P.E.C. Addition to Lake Crest, as recorded in Map Book 32, Page 46, in the Probate Office of Jefferson County, Alabama, Bessemer Division, described as: Commencing at the NE corner of said Lot No. 4; thence Southeasterly along the Northeast boundary of said Lot No. 4 a distance of 88.603 meters to a point on the required right of way line that is offset 15.0 meters and perpendicular to the Project centerline, the point of beginning; thence continue Southeasterly along the Northeast boundary of said Lot No. 4 (the Northeast property line) a distance of 2.837 meters to the present Northwest right of way line of Alabama Hwy 150; thence Southwesterly along said present Northwest right of way line a distance of 36.460 meters to the Southwest boundary of said Lot No. 4 (the Southwest property line); thence Northwesterly along said Southwest boundary line a distance of 2.837 meters to a point on the required right of way line (said point offset 15.0 meters and perpendicular to said Project centerline); thence Northeasterly along said required right of way line, parallel with said Project centerline, a distance of 36.460 meters to the point of beginning.

SUBJECT TO:

- i) taxes for the year 2011 a lien but not yet payable;
- ii) right of way granted to Jefferson County, Alabama for sanitary sewer service as recorded as Instrument 200360/5759;
- iii) common driveway agreement as recorded in Instrument No 9501/1693; and
- iv) Right of way as set out in Volume 245, page 513 and Volume 333, page 14.

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EXHIBIT "I"

All right title and interest of Mortgagor under the terms of a lease dated March 22, 1995 wherein James F. Donovan and Dorothy Donovan is Lessor and Mortgagor is Lessee which was filed for record in as Instrument 1995-08866 and amended on April 4, 1995 with such amendment recorded as Instrument 1995-08867, in the office of the Judge of Probate of Shelby County, Alabama, together with any and all options under the Lease or otherwise from the Lessor to purchase the leased realty, the lease being of certain premises owned by the Lessor and located in Shelby County, Alabama and being more particularly described as follows, and all right title and interest of the Mortgagor in and to the following described premises, whether now owned or hereafter acquired, to wit:

Commence at the Southeast corner of Section 31, Township 18 South, Range 1 West; thence run North along the East line of said Section a distance of 1663.70 feet; thence turn left 90°18'08" and run West 533.53 feet; thence turn left 90°00'00" and run South 239.54 feet; thence turn 83°08'00" right and run Westerly along the North right of way line of U.S. Highway 280 24.75 feet to the point of beginning; thence continue Westerly 120.00 feet; thence turn 96°52'00" right and run North 256.70 feet; thence turn 90°00'00" right and run Easterly 119.14 feet; thence turn 90°00'00" right and run South 242.35 feet to the point of beginning.

Being situated in Shelby County, Alabama

SUBJECT TO:

- i) Taxes for 2011, a lien but not yet payable;
- ii) Right of way granted to Alabama Power Company recorded as 20080917000368580;
- iii) Affidavit concerning driveway as recorded in Instrument 1999-46825;
- iv) Easement with covenants and restrictions affecting land as recorded in Instrument 2001-16718;
- v) License for ingress and egress as recorded in Misc 17, page 657;
- vi) Right of way to Alabama Power Company evidenced by instrument recorded in Deed book 112, page 131, deed book 129, page 151, and deed book 220, page 349;
- vii) Easement agreement as recorded in Instrument 1996-32293 and 1996-32294;
- viii) Right of way to State of Alabama in Deed Book 251, page 447.

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EXHIBIT "J"

INTENTIONALLY OMITTED

20110819000245620 24/26 \$91.00
Shelby Cnty Judge of Probate, AL
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EXHIBIT "K"


All right title and interest of Mortgagor under the terms of a lease dated October 1, 1999 wherein Layne J. Lee and Freda J. Lee is Lessor and Mortgagor is Lessee which was filed for record in Instrument S9907731 in the office of the Judge of Probate of St. Clair County, Alabama, together with any and all options under the Lease or otherwise from the Lessor to purchase the leased realty, the lease being of certain premises owned by the Lessor and located in St. Clair County, Alabama and being more particularly described as follows, and all right title and interest of the Mortgagor in and to the following described premises, whether now owned or hereafter acquired, to wit:

From the Northeast corner of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 15, Township 17 South, Range 1 East; run West along the section line 511.66 feet to a point on the arc of a curve on the Westerly right of way of U.S. Highway No. 411, and the point of beginning of the property herein described; thence deflect left 72 degrees, 28 minutes, 10 seconds (to chord) and run Southwesterly along the arc of said curve, being concave Northwesterly, and having a radius of 2008.70 feet, for a chord distance of 158.26 feet; thence form an interior angle left of 103 degrees, 40 minutes, 38 seconds (from chord) and run Westerly 146.72 feet; thence form an interior angle left of 76 degrees, 30 minutes, 22 seconds and run Northeasterly 147.78 feet to a point on the North line of said section; thence form an interior angle left of 107 degrees, 20 minutes, 51 seconds and run East along section line 150.00 feet to the point of beginning; being a part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 15, Township 17 South, Range 1 East, St. Clair County, Alabama.

Subject to:

- i) taxes for the year 2011 a lien but not yet due or payable; and
- ii) easement to City of Leeds, recorded in Instrument S99010571

20110818000817510 25/25
Bk: LR201106 Pg:18159
Jefferson County, Alabama
08/18/2011 09:10:12 AM MTG
Fee - \$77.00
Mortgage Tax -\$834.30
Total of Fees and Taxes-\$911.30
JCOCKRELL


20110819000245620 25/26 \$91.00
Shelby Cnty Judge of Probate, AL
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Shelby Cnty Judge of Probate, AL
08/19/2011 01:41:59 PM FILED/CERT

Jefferson County

I, _____, Judge of Probate in and
for the State of Alabama, hereby certify that
the _____ is a true and correct copy of the
original _____ of same as appears of

recorded _____ 201104 page 18189

Witness my official seal, this the 18
alan Jeffery 2011