


SBA Loan No. 32886060-03


20121127000451300 1/9 \$36.00
Shelby Cnty Judge of Probate, AL
11/27/2012 09:12:33 AM FILED/CERT

**STATE OF ALABAMA
COUNTY OF SHELBY**

SUBORDINATION AGREEMENT

WHEREAS, BENTON INVESTMENTS, INC., an Alabama corporation (hereinafter referred to as "Borrower"), is presently indebted to the U. S. Small Business Administration, an agency of the Government of the United States of America (hereinafter referred to as "SBA") as evidenced by that certain Note executed by said Borrower dated August 12, 2009, in the original principal amount of \$322,000.00 in favor of BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY (hereinafter referred to as "CDC") and assigned by CDC to SBA; and

WHEREAS, the Note is secured by, among other things, that certain Mortgage (Participation) executed by Robert Benton (along known as Robert Elbert Benton) (hereinafter referred to as "Owner") in favor of CDC dated August 12, 2009 and recorded as Instrument 20090817000315770 with the Judge of Probate, Shelby County, Alabama, and that certain Assignment of Leases and Rents dated that date and recorded as Instrument 20090817000315620 (hereinafter collectively referred to as the "SBA Mortgage"), and assigned by CDC to SBA in accordance with the terms of an Assignment of Note and Security dated August 12, 2009 and recorded as Instrument 20090915000352010, with the Judge of Probate, Shelby County, Alabama; and

WHEREAS, said Borrower is desirous of obtaining an additional loan in the amount of \$292,464.00 from TRADERS & FARMERS BANK (hereinafter referred to as "Lender") refinancing and paying off the existing obligations to BANCORPSOUTH (also known as BANCORPSOUTH BANK) evidenced by that Promissory Note and loan in the original principal amount of \$280,000.00.00 and secured by a mortgage on the real estate described herein below, which is superior to the SBA Mortgage; and

WHEREAS, the Lender requires the Borrower to secure the loan with a Mortgage on the real estate described on Exhibit "A" attached hereto, and further requests that SBA subordinate its Mortgage to that Mortgage having been taken or to be taken by said Lender.

NOW THEREFORE, in and for good and valuable consideration, and in order to induce said Lender to make said loan to said Borrower, SBA does herewith **subordinate** its Mortgage, to that Mortgage taken or to be taken by the Lender, which secures said loan, subject to the following:

- (1) Except as expressly provided herein, this agreement shall not operate or be construed to alter the priority of the SBA Mortgage with regard to any legal or equitable interest in the property. Owner and Lender shall hold SBA harmless from any impairment of its lien (with regard to any third party) which is occasioned by this subordination.
- (2) **Use of Proceeds.** All proceeds of Lender's loan, if a refinance, shall be applied to satisfy debt secured by a lien(s) presently superior to the lien of the SBA Mortgage, plus

customary closing costs. Any other use of proceeds not described herein shall void this agreement.

- (3) This subordination agreement is void if not duly executed by Owner, Lender, SBA, the Borrower and all Guarantors of the Borrower.
- (4) Compliance With 504 Loan Program Requirements. Lender confirms that the note evidencing Lender's loan, any lien instruments securing Lender's loan, and all other documents executed in connection with Lender's loan ("Lender's Loan Documents") (a) have no open-ended features and allow reasonable future advances only for the costs of collection the obligor is liable for under the Lender's Loan Documents, maintaining collateral, and/or protecting the lien(s) securing the Lender's loan, (b) are not cross-collateralized with any other financing now or hereafter to be provided by Lender, (c) have no early call features, (d) are not payable on demand unless the Lender's loan is in default, (e) have a term that at least equals, and do not require a balloon payment prior to, the term of the previous Third Party Lender's loan unless SBA has approved a shorter term, (f) have a reasonable interest rate that does not, and will not, exceed the maximum interest rate for a Third Party Loan as published by SBA and in effect as of the date of this Agreement, and (g) do not establish a preference in favor of Lender, as compared to CDC and SBA, related to making, servicing, or liquidating the Lender's loan (including but not limited to, with respect to repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a certificate of deposit, or acceptance of a separate or companion loan) other than Lender's senior lien position(s) on the collateral. Lender agrees that if Lender's Loan Documents or any provision therein does not comply with these requirements, then Lender waives its right to enforce any such non-complying document or provision unless Lender has obtained the prior written consent of CDC and/or SBA permitting such enforcement.
- (5) Subordination of Default Charges. "Default Charges" mean any prepayment penalties, fees, or charges incurred in prepaying the Lender's loan, in whole or in part, prior to the stated maturity; any late fees or charges due in connection with the Lender's loan; any escalated, increased, or default interest charged in excess of the rate of interest in Lender's note absent a default, event of default, or other delinquency; and any other default charges, penalties, or fees of any nature whatsoever due because of a default, event of default, or other delinquency in connection with the Lender's loan. Lender hereby subordinates the collection of any Default Charges to the collection by CDC and/or SBA of the loan made by the CDC to Borrower, hereinafter referred to as the "504 Loan" and, to the extent that Lender's Loan Documents secure any Default Charges, Lender hereby subordinates such lien(s) to the lien(s) securing the 504 Loan.
- (6) Notice of Default Under the Lender Loan. If any default, event of default or delinquency, upon which Lender intends to take action, occurs under the Lender's Loan Documents, then Lender agrees to give CDC and SBA written notice of such default, event of default or delinquency and the opportunity to cure the default, event of default, or delinquency and bring the Lender's loan current or to purchase Lender's note, provided that the amount to bring the Lender's loan current or to purchase Lender's note will be net of all amounts attributable to Default Charges. Lender further agrees that if Lender receives



from CDC or SBA any amounts attributable to Default Charges, then Lender will immediately remit such amounts to SBA. Notice hereunder must be given within thirty (30) days after the default, event of default or delinquency upon which Lender intends to take action and at least sixty (60) days prior to the date of any proposed sale of collateral and Lender will not sell all or any portion of its collateral without giving CDC and the SBA such notice. A default in the obligation secured by the mortgage to Lender may be cured (including purchase of the property at foreclosure sale) by the SBA via cash, certified funds, or a United States Treasury check, at the option of the SBA. Notice under this Agreement shall be deemed to have been given when sent by certified or registered mail, return receipt requested, addressed, as the case may be, to BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY (CDC) at 1500 1st Avenue North, Suite 108B, Birmingham, Alabama 35203, Attention: Servicing, and also to the SBA at 2120 Riverfront Drive, Suite 100, Little Rock, Arkansas 72202.

- (7) Collection and Liquidation. In the event that either the Lender's loan or the 504 Loan is declared in default; Lender, CDC and SBA agree to cooperate in liquidating and/or selling the collateral. Lender agrees (a) to accept cash, certified funds or a U.S. Treasury check(s) in connection with any purchase of Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Lender's loan; (c) to provide CDC and SBA with copies of any appraisals, environmental investigations, or title examinations or searches of the collateral conducted by or for Lender; and (d) to provide any other information about Borrower or the Lender's loan requested by CDC and/or SBA in writing.
- (8) No Implied Third Party Beneficiaries. Except to the extent stated in this Agreement, this Agreement does not modify or affect otherwise any other agreement that either party may have with third parties, including but not limited to, Borrower. This Agreement also does not grant any right, benefit, priority, or interest to any third parties, including but not limited to, Borrower.
- (9) Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective parties to this Agreement and their respective heirs, successors and assigns, including any party acquiring the Lender's loan or Lender's Loan Documents by sale, assignment, or other transfer.
- (10) Federal Law. When SBA is the holder of the note evidencing the 504 Loan, this agreement and all documents evidencing or securing the 504 Loan will be construed in accordance with federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. No Borrower or guarantor of the 504 Loan may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.
- (11) Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same

instrument.

IN WITNESS WHEREOF, the Administrator has caused this Subordination Agreement to be executed on this the 31st day of October, 2012.

U.S. SMALL BUSINESS ADMINISTRATION

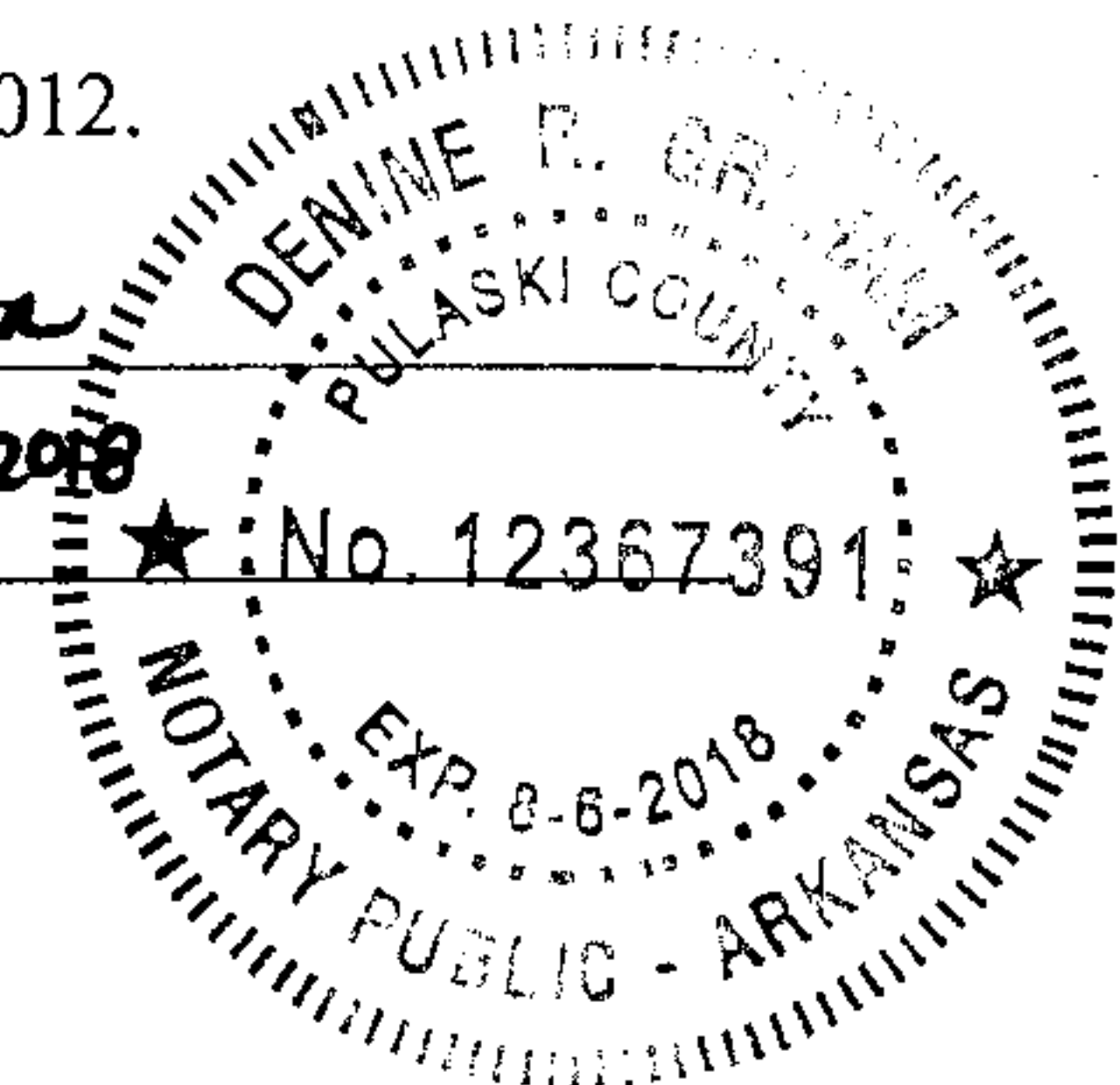
By: *Gerald E. Johnson*
Name: Gerald E. Johnson
Title: SLO

STATE OF ARKANSAS
COUNTY OF PULASKI

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that GERALD JOHNSON whose name as SLO of the U.S. Small Business Administration, an agency of the U.S. Government, 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 agent/officer, and with full authority, executed the same voluntarily, as an act of said agency, acting in its capacity as such agent/officer as aforesaid.

GIVEN UNDER MY HAND and seal of office this, the 31st day of October, 2012.

Denine R. Graham
Notary Public
My commission expires: 8-6-2018



IN WITNESS WHEREOF, the undersigned parties have consented to the contents, terms and conditions of this Subordination Agreement, this 20th day of ~~October~~ November, 2012

OWNER



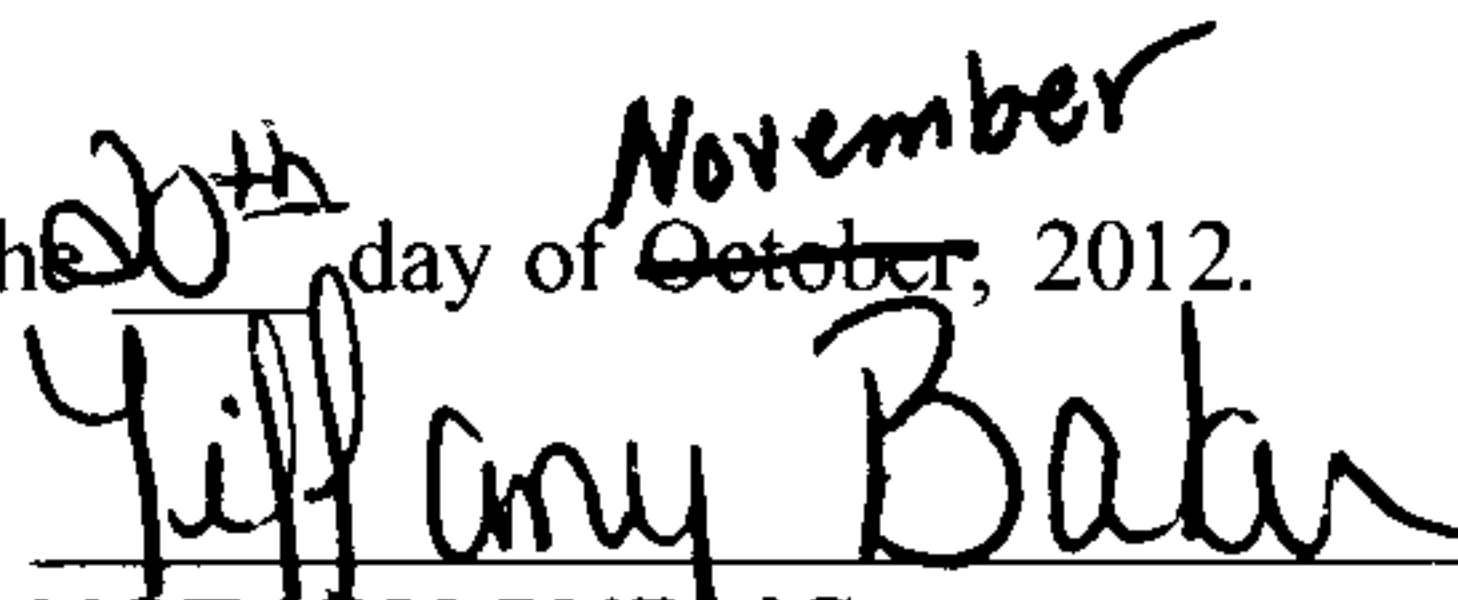
Robert Benton (also known as Robert Elbert Benton)
(Individually)

Winston

STATE OF ALABAMA)
~~JEFFERSON~~ COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert Benton (also known as Robert Elbert Benton), whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 20th day of ~~October~~ November, 2012.



NOTARY PUBLIC

My Commission Expires: _____ My Commission Expires 2/24/2014



LENDER:

TRADERS & FARMERS BANK

BY: Will Walker
Print Name: Will Walker
Title: President

STATE OF Alabama
Winston COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Will Walker whose name as President of TRADERS & FARMERS BANK, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of 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 20th day of November, 2012.

Tiffany Batin
NOTARY PUBLIC
My Commission Expires: My Commission Expires 2/24/2014

THIS INSTRUMENT PREPARED BY AND AFTER
RECORDATION SHOULD BE RETURNED TO
Heather E. Ward
ENGEL HAIRSTON & JOHANSON, P.C.
4th Floor 109 North 20th Street
P.O. Box 11405
Birmingham, Alabama 35202
(205) 328-4600

Following recordation the CDC should retain a copy of this agreement and the original should be mailed to the SBA as follows:

Little Rock Commercial Loan Servicing Center
Attn: Collateral Cashier
2120 Riverfront Drive, Suite 100
Little Rock, Arkansas 72202

The undersigned Guarantor(s)/Borrower(s) hereby consent to all terms above and acknowledge their liability for the above referenced SBA loan is in no manner diminished by this agreement.

BORROWER

BENTON INVESTMENTS, INC.

BY:

Robert Benton (also known as Robert Elbert Benton)
(Its President)

GUARANTORS

Robert Benton (also known as Robert Elbert Benton)
(Individually)

Winston STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert Benton (also known as Robert Elbert Benton) whose name as President of BENTON INVESTMENTS, 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, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 20th day of November, 2012.

Tiffany Baker
NOTARY PUBLIC

My Commission Expires: My Commission Expires 2/24/2014

Winston STATE OF ALABAMA)
STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert Benton (also known as Robert Elbert Benton), whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 20th day of November, 2012.

Tiffany Baker
NOTARY PUBLIC

My Commission Expires: My Commission Expires 2/24/2014

EXHIBIT "A"

BORROWER: BENTON INVESTMENTS, INC.
LENDER: TRADERS & FARMERS BANK

PARCEL I

Part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at a point on the South line of Lot 13, Block 2, Cedar Grove Estates, a map of which is recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 3, page 53, said point on South line of said Lot 13 being at its intersection with the West right-of-way of line of U.S. Highway #31 (being approximately 24.10 feet West of the original Southeast corner of said Lot 13), run in a westerly direction along the South line of said Lot 13 for a distance of 83.27 feet; thence turn an angle to the left of 97 degrees 44 minutes and run in a southerly direction for a distance of 170.62 feet to a point on the North right-of-way line of Industrial Road (Shelby County Highway #66); thence turn an angle to the left of 82 degrees 11 minutes 20 seconds and run in a southeasterly direction along said North right-of-way line for a distance of 60.31 feet to a point of intersection with the West right-of-way line of U.S. Highway #31; thence turn an angle to the left of 90 degrees 04 minutes 40 seconds and run in a northerly direction along said West right-of-way line of U.S. Highway #31 for a distance of 169.15 feet to the point of beginning. Also, the South 5.00 feet of said Lot 13, Block 2, Cedar Grove Estates less and except that part taken for highway right-of-way.

PARCEL II

Part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at the Southwest corner of Lot 13, Block 2, Cedar Grove Estates, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 3, page 53, running in an Easterly direction along the South line of said Lot 13, for a distance of 50.77 feet to the existing iron pin and being a corner of that certain property as described in Deed Book 347, page 556; thence turn an angle to the right of 82 degrees 16 minutes and running in a southerly direction for a distance of 170.62 feet to an existing spike being the Southwest corner of that property as described in aforementioned Book 347, page 556; thence turn an angle to the right of 97 degrees 48 minutes 40 seconds and running in a westerly direction along the North right of way line of Industrial Road for a distance of 50.40 feet to an existing iron pin being on the right of way line of L & N Railroad Tracks; thence turn an angle to the right of 82 degrees 03 minutes 46 seconds and running in a northerly direction along said East right of way line of said railroad for a distance of 170.60 feet, more or less, to an existing iron pin being the point of beginning.

All property located in Shelby County, Alabama.

SUBJECT TO: i) taxes and assessments for the year 2012, a lien but not yet payable; ii) Waterline Easement recorded

in Real 355, page 496 in the Probate Office of Shelby County, Alabama; iii) right of way to Shelby County, recorded in Instrument 1996-39161, in the Probate Office of Shelby County, Alabama; iv) Lease Agreement as recorded in Real 50, page 869, in the Probate Office of Shelby County, Alabama; v) right of way to Shelby County, recorded in Volume 256, page 873, in the Probate Office of Shelby County, Alabama; vi) rights of way and easements as may exist by virtue of railroad bordering subject property; vii) less and except any part of subject property which lies within a railroad; viii) rights acquired by Shelby County for road purposes over property described in condemnation Lis Pendens recorded at Lis Pendens Volume 4, page 462, in the Probate Office of Shelby County, Alabama, dated April 19, 1968; ix) transmission line permit to Alabama Power Company, recorded in Deed Book 103, Page 54; Deed Book 138, page 434; Deed Book 134, page 25; Deed Book 160, page 64; Deed Book 176, page 377; Deed Book 170, page 252 and Deed Book 160, page 66, in the Probate Office of Shelby County, Alabama; x) easement to Shelby County, as recorded in Deed Book 167, page 236; Deed Book 167, page 242; Deed Book 102, page 446; Deed Book 167, page 380 and in Deed Book 167, page 234, in the Probate Office of Shelby County, Alabama; xi) permit to American Telephone and Telegraph Company recorded in said Probate Office in Deed Book 168, page 473 and 474; xii) easement to Postal Telegraph & Cable Company, as recorded in Deed Book 80, page 44, in the Probate Office of Shelby County, Alabama; xiii) permit to Southern Bell Telephone & Telegraph Company recorded in Deed Book 175, page 409; xiv) restrictions appearing of record in Deed Book 141, page 192 and 193, in the Probate Office of Shelby County, Alabama, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin; xv) right of way to Southern Bell Telephone & Telegraph Company, recorded in Deed Book 168, page 480, in the Probate Office of Shelby County, Alabama; xvi) less and except any portion of subject property lying within a road right of way or easement; and xvii) coal, oil, gas and mineral and mining rights which are not owned by Mortgagor.

