

THIS INSTRUMENT WAS PREPARED BY
~~AND WHEN RECORDED RETURN TO:~~

Wells Fargo Bank, National Association
1700 Lincoln Street, 3rd Floor
Denver, CO 80203-4500
MAC C7300-033

Attention: Doc Team 4
Obligor No.: 6214041358
Unit No.: 22749
4623 Highway 280 S.
Birmingham, Alabama 35242
Jefferson County
Property: See Exhibit A



20130823000344810 1/15 \$56.00
Shelby Cnty Judge of Probate, AL
08/23/2013 08:41:27 AM FILED/CERT

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this “Assignment”) is entered into effective as of December 20, 2012, by **TACALA, LLC**, a Delaware limited liability company, having its principal place of business at 400 Hamilton Avenue, Suite 230, Palo Alto, California 94301 (the “Assignor”), to and for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as administrative agent for itself and on behalf of the other Holders of Secured Obligations (as defined in the hereinafter defined Credit Agreement) to the extent and in the manner provided in Article XII of the Credit Agreement, having an office at 1808 Aston Avenue, Suite 250, Carlsbad, California 92008 (in such capacity, together with its successor and assigns, the “Assignee”).

As additional security for that certain Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith given by Assignor to Assignee upon Assignor’s interest in the lease described in Exhibit A (the “Subject Lease”), Assignor for good and valuable consideration, receipt whereof is hereby acknowledged, hereby unconditionally and absolutely grants, transfers, and assigns to Assignee, as administrative agent for itself and on behalf of the other Holders of Secured Obligations, the entire lessor’s and sublessor’s interest, as applicable, in and to all leases, subleases, and other agreements affecting

the use, enjoyment, or occupancy of all or any part of the lot(s) or piece(s) of land more particularly described in Exhibit A annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements, and improvements now or hereafter located thereon (herein collectively referred to as the "Property");

TOGETHER WITH all other leases, subleases, and other agreements affecting the use, enjoyment, or occupancy of the Property now or hereafter made affecting the Property or any portion thereof, together with any extension, renewal, restatement, replacement, or modification of the same, this Assignment of present and future leases and subleases and future agreements being effective without further or supplemental assignment;

The leases, subleases, and other agreements described above, together with all other present and future leases and subleases and present and future agreements and any extension, renewal, restatement, replacement, or modification of the same, are herein individually referred to as a "Lease" and collectively referred to as the "Leases"; and

TOGETHER WITH:

(1) all of Assignor's right, title and interest in and to all deposits (whether for security or otherwise), accounts, general intangibles, rents, income, issues, and profits arising from the Leases and renewals thereof and the absolute, unlimited, and continuing right to receive and collect all rents, revenues, income, issues, proceeds, and profits (including all oil and gas or other mineral royalties and bonuses) from the use, enjoyment, and occupancy of the Property whether paid or accruing before or after the filing by or against Assignor of any petition for relief under the Bankruptcy Code, 11 U.S.C. §101 et seq., as the same may be amended (the "Bankruptcy Code"), (herein collectively referred to as the "Rents");

(2) all of Assignor's claims and rights to (i) the payment of damages arising from any rejection by a lessee or sublessee, as applicable, of any Lease under the Bankruptcy Code, and (ii) any award or other payment which Assignor may hereafter become entitled to receive with respect to any Lease as a result of or pursuant to any bankruptcy, insolvency, reorganization, or similar proceedings involving the lessee or sublessee, as applicable, under such Lease (herein collectively referred to as the "Bankruptcy Claims");

(3) all of Assignor's right, title, and interest in and claims under any and all lease guaranties, letters of credit, and any other credit support given by any guarantor in connection with any of the Leases (herein individually referred to as a "Lease Guarantor" and collectively referred to as the "Lease Guarantors") to Assignor (herein individually referred to as a "Lease Guaranty" and collectively referred to as the "Lease Guaranties"); and

(4) all of Assignor's right, title and interest in and to all proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties, and the Bankruptcy Claims.

THIS ASSIGNMENT is made in consideration of the Lenders' agreement to provide Assignor, Tacala Tennessee Corp., a Delaware corporation, Tacala Georgia Corp., a Delaware corporation, and Tacala Investment Corp., a Delaware corporation (collectively, the "Borrower") certain loans and letters of credit (herein collectively referred to as the "Loan") pursuant to and

in accordance with the terms of that certain Fourth Amended and Restated Credit Agreement dated as of the date hereof, between Borrower, Assignee, and certain other lenders party thereto (as amended, restated, modified or otherwise supplemented from time to time, the "Credit Agreement"), which Loan shall be evidenced by the Credit Agreement and those certain promissory notes dated as of the date hereof, made pursuant to the terms of the Credit Agreement, by Borrower payable to each respective Lender (herein collectively referred to as the "Note"), and secured by, among other things, those certain mortgages, deeds of trust, and deeds to secure debt made by Assignor in favor of Assignee, as administrative agent for itself and the other Holders of Secured Obligations (herein collectively referred to as the "Security Instrument"). The Loan, interest, and all other sums due and payable under the Note, the Security Instrument, the Credit Agreement, and all of the other Loan Documents (as hereinafter defined) are herein collectively referred to as the "Debt." All of the loan documents now or hereafter executed by Assignor and/or others in favor of Assignee and the other Holders of Secured Obligations in connection with and/or which wholly or partially secure or guarantee payment of the Debt (including the Note, this Assignment, and the Security Instrument) are herein collectively referred to as the "Loan Documents." Any capitalized terms not defined herein shall have the meanings set forth for such capitalized terms in the Credit Agreement.

ASSIGNOR WARRANTS that (a) Assignor is the sole owner of the entire lessor's or sublessor's interest, as applicable, in the Leases; (b) the Leases are valid and enforceable; (c) the terms of all alterations, modifications, and amendments to the Leases are fully reflected in the copies of the Leases delivered by Assignor to Assignee; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated (except to Assignee); (e) except as otherwise provided in the applicable lease, none of the Rents have been collected for more than one (1) month in advance (provided that a security deposit shall not be deemed rent collected in advance); (f) except as otherwise disclosed in writing to Assignee, the premises demised under the Leases have been completed and the tenants or subtenants, as applicable, under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (g) there exist no offsets or defenses to the payment of any portion of the Rents; (h) Assignor has received no notice from any tenant or subtenant challenging the validity or enforceability of any Lease; (i) there are no agreements with the tenants or subtenants under the Leases other than expressly set forth in each Lease; (j) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (k) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (l) each Lease is subordinate to the Loan Documents, either pursuant to its terms or a recorded subordination agreement; and (m) no brokerage commissions or finders fees are due and payable regarding any Lease.

ASSIGNOR COVENANTS with Assignee that, except as otherwise permitted by the terms of the Credit Agreement, Assignor (a) shall observe and perform all the obligations imposed upon the lessor or sublessor, as applicable, under the Leases and shall not do or permit to be done anything to impair the value of the Leases; (b) shall promptly send copies to Assignee of all notices of default which Assignor shall send or receive thereunder; (c) shall enforce in a commercially reasonable manner all of the terms, covenants, and conditions contained in the Leases upon the part of the lessee or sublessee, as applicable, thereunder to be observed or performed; (d) shall not collect any of the Rents more than one (1) month in advance except as otherwise provided in the applicable Lease (provided that a security deposit shall not be deemed

rent collected in advance); (e) shall not execute any other assignment of the lessor's or sublessor's interest, as applicable, in the Leases or the Rents; (f) shall not materially alter, modify, or change the terms of the Leases without the prior written consent of Assignee or cancel or terminate any Lease (except for defaults thereunder) of more than ten (10%) percent of the rentable space of the Property or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees or sublessees, as applicable, thereunder; (g) shall not alter, modify, or change the terms of any Lease Guaranty or cancel or terminate such Lease Guaranty without the prior written consent of Assignee; and (h) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Assignee.

ASSIGNOR FURTHER COVENANTS with Assignee that, except as otherwise permitted by the terms of the Credit Agreement: (a) all Leases shall be written on the standard form of lease which shall have been approved by Assignee, except as otherwise consented to by Assignee; (b) upon request, Assignor shall furnish Assignee with executed copies of all Leases; (c) no material changes may be made to the Assignee-approved standard lease without the prior written consent of Assignee; and (d) all proposed Leases and renewals of existing Leases shall be subject to the prior approval of Assignee (other than renewals or extensions of existing Leases that are made pursuant to the existing terms of such Leases).

THIS ASSIGNMENT is made on the following terms, covenants, and conditions:

PART 1

GENERAL PROVISIONS

1. Present Assignment. Assignor does hereby absolutely and unconditionally assign to Assignee all of Assignor's right, title, and interest in and to all current and future Leases and Rents, Lease Guaranties, and Bankruptcy Claims, it being intended by Assignor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Assignee shall not be construed to bind Assignee to the performance of any of the covenants, conditions, or provisions contained in any such Lease or otherwise impose any obligation upon Assignee. Assignor agrees to execute and deliver to Assignee such additional instruments, in form and substance satisfactory to Assignee, as may hereafter be requested by Assignee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section 1, Assignee grants to Assignor a revocable license to operate and manage the Property and to collect the Rents and other sums due under the Lease Guaranties and Bankruptcy Claims, subject to the terms and conditions of the Loan Documents. Assignor shall hold the Rents and all sums received pursuant to any Lease Guaranty and Bankruptcy Claims, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Assignee for use in the payment of such sums. Upon the occurrence and during the continuation of an Event of Default, the license granted to Assignor herein shall automatically be revoked without notice to Assignor, and Assignee shall immediately be entitled to possession of all Rents and all sums received pursuant to any Lease Guaranty or Bankruptcy Claims, whether or not Assignee enters upon or takes control of the Property. Assignee is hereby granted and assigned by Assignor the right, at Assignee's option,

upon revocation of the license granted herein, to enter upon the Property in person, by agent, or by court-appointed receiver to collect the Rents and all sums received pursuant to any Lease Guaranty or Bankruptcy Claims. Any Rents and all sums received pursuant to any Lease Guaranty or Bankruptcy Claims collected after the revocation of the license may be applied toward payment of the Debt and other Secured Obligations in such priority and proportions as provided in the Credit Agreement.

2. Remedies of Assignee.

(a) Upon or at any time after an Event of Default and in accordance with the terms of the Credit Agreement, Assignee shall have the immediate and continuing authority, at its option, without waiving such Event of Default, without notice and without regard to the adequacy of the security for the Debt, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, to take possession of the Property and have, hold, manage, lease, and operate the Property on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of the Property in its own name, demand, sue for, or otherwise collect and receive all Rents and all sums received pursuant to any Lease Guaranty or Bankruptcy Claims, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs, or replacements thereto or thereof as may seem proper to Assignee and may apply the Rents and all sums received pursuant to any Lease Guaranty or Bankruptcy Claims to the payment of the following in such order and proportion as Assignee in its Sole Discretion may determine, any law, custom, or use to the contrary notwithstanding: (i) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees, and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents, and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements, and all expenses incident to taking and retaining possession of the Property; and (ii) the Debt and other Secured Obligations, together with all costs and reasonable attorneys' fees. In addition to the rights which Assignee may have herein, upon the occurrence of an Event of Default, Assignee, at its option, may either require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Rents and all sums received pursuant to any Lease Guaranty or Bankruptcy Claims, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in possession of Assignor, or may require Assignor to vacate and surrender possession of the Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise. For purposes of this Section 2, upon the occurrence and during the continuation of an Event of Default Assignor grants to Assignee its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any or all other actions designated by Assignee for the proper management and preservation of the Property. The exercise by Assignee of the option granted it in this Section 2 and the collection of the Rents and all sums received pursuant to any Lease Guaranty or Bankruptcy Claims and the application thereof as herein

provided shall not be considered a waiver of any default by Assignor under any of the Loan Documents.

(b) Upon the occurrence and during the continuation of an Event of Default, Assignee shall have the right, in its own name or in the name of Assignor in respect of any claim, suit, action, or proceeding relating to the rejection of any Lease, to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices, and other documents, in any case in respect of the lessee or sublessee, as applicable, under such Lease under the Bankruptcy Code.

(c) If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor or sublessor, as applicable, under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Assignee not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Assignee shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Assignee demands that Assignor assume and assign the Lease to Assignee pursuant to Section 365 of the Bankruptcy Code and (ii) Assignee covenants to cure or provide adequate assurance of future performance under the Lease. If Assignee serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Assignee of the covenant provided for in clause (ii) of the preceding sentence.

3. No Liability of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after an Event of Default or from any other act or omission of Assignee in managing the Property after an Event of Default unless such loss is caused by the willful misconduct or gross negligence of Assignee. Assignee shall not be obligated to perform or discharge any obligation, duty, or liability under the Leases or under or by reason of this Assignment, and Assignor shall, and hereby agrees, to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss, or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in the Leases. Should Assignee incur any such liability for which it is indemnified and held harmless by Assignor pursuant to the preceding sentence, the amount thereof, including costs, expenses, and reasonable attorneys' fees, together with interest thereon as provided in the Credit Agreement, shall be secured hereby and by the Security Instrument and the other Loan Documents and Assignor shall reimburse Assignee therefor immediately upon demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums secured hereby to be immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management, or repair of the Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by the tenants, subtenants, or any other parties, or for any dangerous or defective condition of the Property,

including, without limitation, the presence of any Hazardous Materials or Hazardous Substances (as defined in that certain Third Amended and Restated Environmental Liabilities Agreement dated as of the date hereof), or for any loss or injury or death to any tenant, subtenant, licensee, employee, or stranger arising from the management, upkeep, repair, or control of the Property.


4. Notice to Lessees. Assignor hereby authorizes and directs the lessees and sublessees named in the Leases or any other or future lessees, sublessees, or occupants of the Property, upon receipt from Assignee of written notice to the effect that Assignee is then the holder of this Assignment and that an Event of Default exists, to pay over to Assignee all Rents and all sums under any Lease Guaranty and to continue so to do until otherwise notified by Assignee. Assignor hereby agrees that each such lessee or sublessee, as applicable, and any other or future lessee, sublessee, and occupant may rely upon such written notice from Assignee to so pay the Rents and other sums without any inquiry into whether there exists an Event of Default or whether Assignee is otherwise entitled to the Rents and such other sums. Assignor hereby waives any right, claim, or demand which Assignor may now or hereafter have against any present or future lessee, sublessee, or occupant by reason of such payment of Rents and other sums to Assignee, and any such payment shall discharge such lessee's, sublessee's, or occupant's obligation to make such payment to Assignor.

5. Other Security. Assignee may take or release other security for the payment of the Debt or other Secured Obligations, may release any party primarily or secondarily liable therefor, may grant extensions, renewals, or indulgences with respect thereto and may apply any other security held by it to the reduction or satisfaction of the Debt or other Secured Obligations without prejudice to any of its rights under this Assignment.

6. Other Remedies. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any Loan Document and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Debt and other Secured Obligations and to enforce any other security therefor held by it may be exercised by Assignee prior to, simultaneously with, or subsequent to any action taken by it hereunder.

7. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor and Assignee shall be obligated to account only for such Rents as are actually collected or received by Assignee.

8. Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of this Assignment shall prevail. Notwithstanding the foregoing, to the extent any provision of this Assignment conflicts with any provision of the Credit Agreement, then the provision of the Credit Agreement shall control and the conflicting provision of this Assignment shall be deemed to be amended to accord with the applicable provision of the Credit Agreement.


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9. No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged, or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge, or termination is sought.

10. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Assignor" shall mean "each Assignor and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Assignee" shall mean "Assignee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Security Instrument or the other Loan Documents," the word "person" shall have the same meaning as the term "Person" in the Security Instrument, the word "Property" shall include any portion of the Property and any interest therein, and the word "Debt" shall mean the Loan with interest thereon as provided in the Note and the Security Instrument and all other sums due pursuant to the Note, the Security Instrument, this Assignment, and the other Loan Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Non-Waiver. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (i) the failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Security Instrument, the Note, or any of the other Loan Documents, (ii) the release regardless of consideration, of the whole or any part of the Property or other collateral as security for the Debt or other Secured Obligations, or (iii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Security Instrument, or any of the other Loan Documents. Assignee may resort for the payment of the Debt or other Secured Obligations to any other security held by Assignee in such order and manner as Assignee, in its Sole Discretion, may elect. Assignee may take any action to recover the Debt or other Secured Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct, and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

12. Inapplicable Provisions. If any term, covenant, or condition of this Assignment is held to be invalid, illegal, or unenforceable in any respect, this Assignment shall be construed without such provision.

13. Duplicate Originals. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

14. Governing Law; Consent to Jurisdiction.

(a) THIS ASSIGNMENT IS GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT (A) AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND (B) THAT THE CREATION, PRIORITY, VALIDITY AND PERFECTION OF THE LIENS GRANTED HEREBY, AND THE REMEDIES GRANTED HEREIN (INCLUDING, WITHOUT LIMITATION, THE ASSIGNEE'S RIGHTS TO ATTACHMENT OF RENTALS FOLLOWING AN EVENT OF DEFAULT) , SHALL BE GOVERNED BY THE APPLICABLE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

(b) ASSIGNOR AND ASSIGNEE HEREBY CONSENT, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM, OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OTHER THAN PURSUIT OF A JUDGMENT ON THE NOTE, WHERE SUIT IS ALSO BROUGHT IN THE STATE WHERE THE PROPERTY IS LOCATED, TO TAKE JURISDICTION OF THE PROPERTY. ASSIGNOR FURTHER CONSENTS, GENERALLY, UNCONDITIONALLY, AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE WHERE THE PROPERTY IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM, OR DISPUTE ARISING WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, FORECLOSURES. ASSIGNOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS, GENERALLY, UNCONDITIONALLY, AND IRREVOCABLY, AT THE ADDRESS SET FORTH IN THE FIRST PARAGRAPH HEREOF IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ASSIGNOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ASSIGNEE TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST ASSIGNOR IN ANY JURISDICTION.

15. Termination of Assignment. Upon the indefeasible payment in full in cash of the Debt and other Secured Obligations and the termination of all Commitments, this Assignment shall terminate and become and be void and of no effect. Upon such termination, Assignee agrees to execute, acknowledge and deliver, in recordable form, a satisfaction or discharge of the Security Instrument and this Assignment duly executed by Assignee. The affidavit of any officer of Assignee stating that any amount due under the Loan Documents is not satisfied shall

constitute prima facie evidence of the validity, effectiveness, and continuing force of this Assignment and any party may and is hereby authorized to rely thereon.

16. Transfer by Assignee. No notice to or consent by Assignor shall be required for any assignment or reassignment, from time to time, of any or all of the rights of Assignee under this Assignment. All references to "Assignee" hereunder shall be deemed to include the assigns of Assignee.

17. Joint and Several Liability. If at any time there is more than one person who is an Assignor hereunder, the liability and obligations of each Assignor shall be joint and several.

18. Notices. All notices or other written communications hereunder shall be given and become effective as provided in the Credit Agreement.

19. **WAIVER OF RIGHT TO JURY TRIAL.** ASSIGNOR BY EXECUTION AND DELIVERY HEREOF, AND ASSIGNEE BY ACCEPTANCE HEREOF, HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY.


20. **ENTIRE AGREEMENT.** THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO RELATING TO THE SUBJECT MATTER OF THIS ASSIGNMENT.

21. Interest and Other Charges. Notwithstanding any provision of this Assignment to the contrary, it is the intent of Assignor, Assignee, and the other Holders of Secured Obligations that Assignee and the other Holders of Secured Obligations shall not be entitled to receive, collect, reserve, or apply, as interest or other charges, any amounts in excess of the maximum amounts legally permitted to be charged under applicable laws or regulations. In the event this Assignment requires a payment of interest or other charges that exceeds the maximum amounts legally permitted to be charged under applicable law or regulations, such interest or other charges, as the case may be, shall not be received, collected, charged, or reserved until such time as such interest or other charges, as the case may be, together with all other interest and other charges then payable, fall within the maximum amounts legally permitted to be charged under applicable laws and regulations. In the event Assignee and/or any of the other Holders of Secured Obligations receives any such interest or other charges in excess of the maximum

amounts legally permitted to be charged under applicable laws and regulations, the amount that would be excessive interest or other charges shall be deemed a partial prepayment of the principal obligations due hereunder and treated under this Assignment as such, or, if the principal obligations due hereunder have been fully paid, any remaining excess funds shall immediately be paid to Assignor, and, in such event, Assignee and the other Holders of Secured Obligations shall not be subject to any penalties provided by applicable laws or regulations for contracting for, charging, reserving, collecting, or receiving interest or other charges in excess of the maximum amounts legally permitted to be charged under applicable laws and regulations.

22. Successors and Assigns. This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee, including any subsequent holder of the Note, and shall be binding upon Assignor, its heirs, executors, administrators, successors, and assigns and any subsequent owner of the Property.

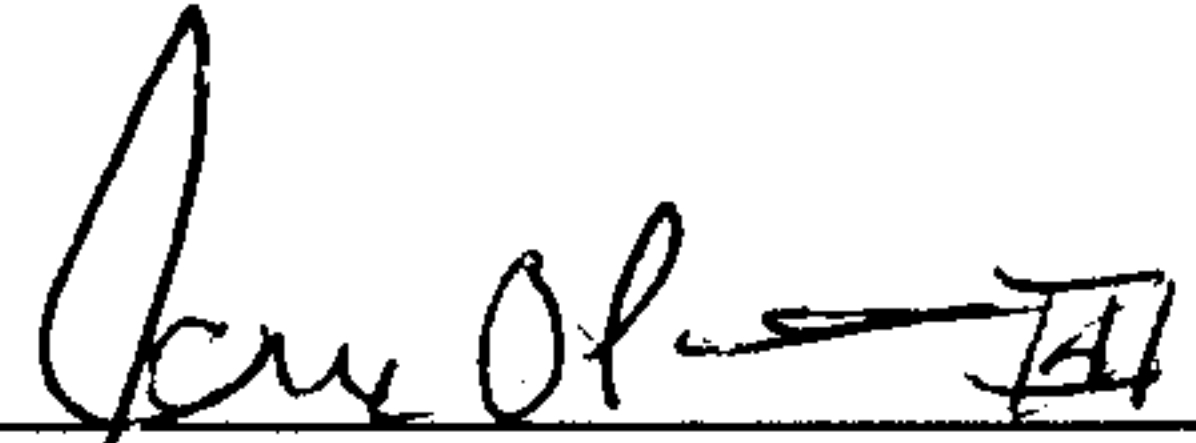
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IN WITNESS WHEREOF, Assignor has executed this instrument the date first above written.

ASSIGNOR:


TACALA, LLC,
a Delaware limited liability company

By: 

Name: Jerre O. Pierson, III

Title: Chief Financial Officer

[NOTARIAL BLOCK ON FOLLOWING PAGE]


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Shelby Cnty Judge of Probate, AL
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ACKNOWLEDGMENT

STATE OF GEORGIA)
) ss.
COUNTY OF FULTON)

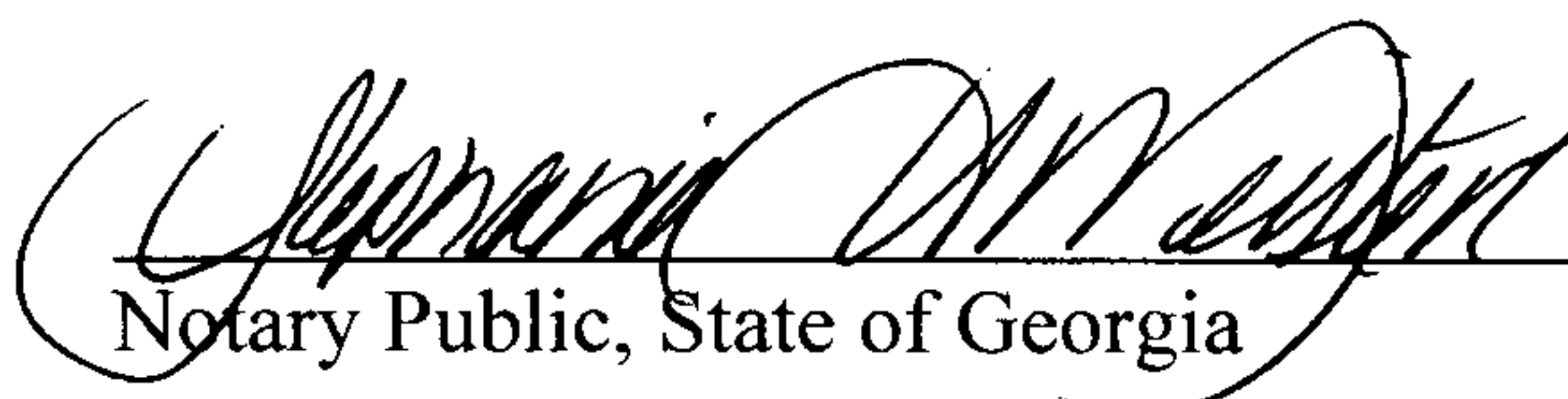
I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jerre O. Pierson, III, as Chief Financial Officer of TACALA, LLC, a Delaware limited liability company, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such Chief Financial Officer and with full authority, executed the same voluntarily for and as the act of the limited liability company.

Given under my hand and official seal, this the 12th day of December, 2012.

[S E A L]

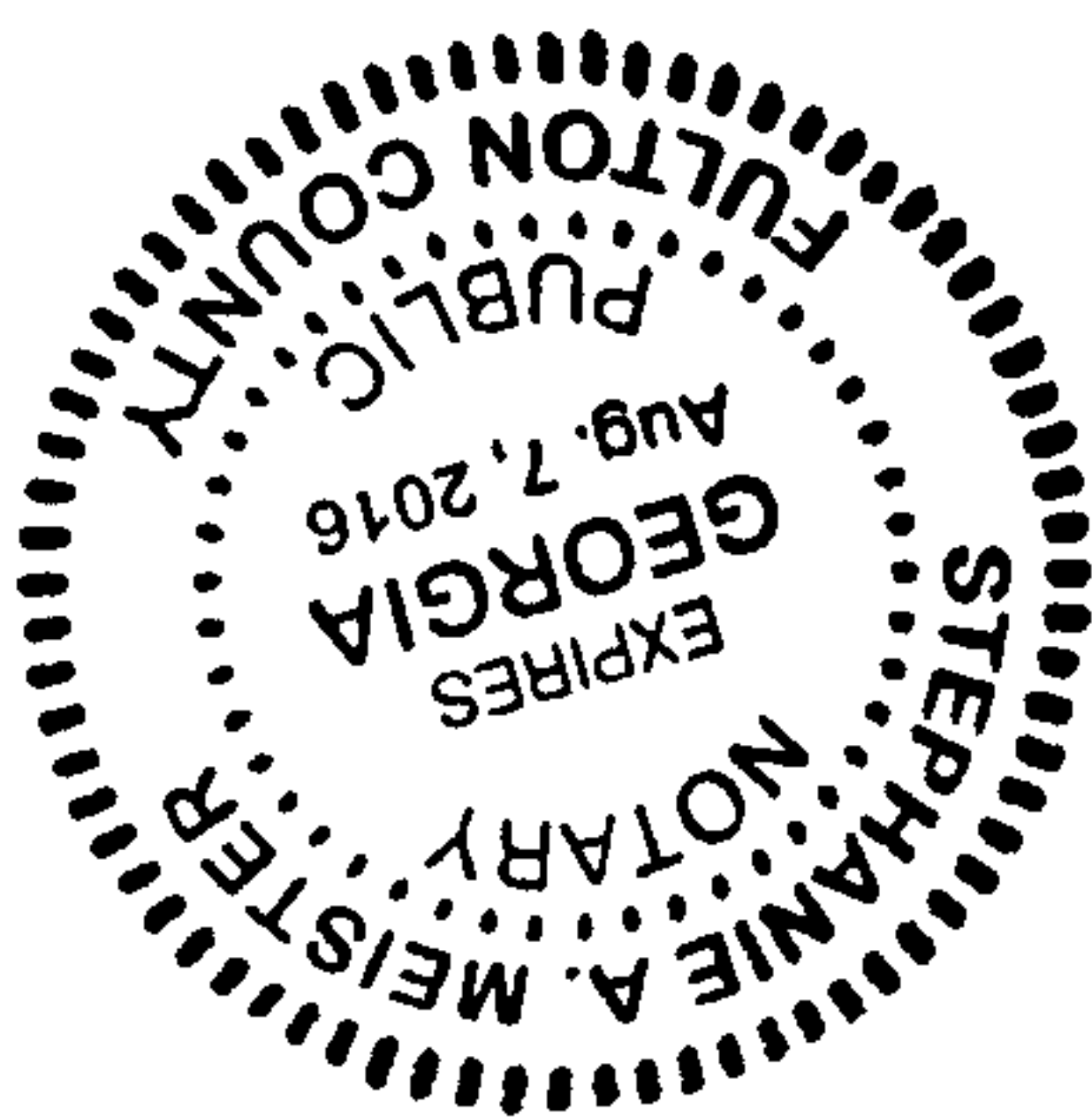
My Commission Expires:


August 7, 2016



Notary Public, State of Georgia

Stephanie A. Meister_____
Printed Name of Notary Public




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Unit No. 22749
4623 Highway 280 S.
Birmingham, Alabama 35242
Jefferson County

EXHIBIT A

Description of the Subject Lease and the Real Property

Description of the Subject Lease

Master Land and Building Lease dated August 16, 2005 between LDVFIH Taco LLC as Landlord and Tacala, LLC as Tenant;

Memorandum of Lease by and between LDVFIH Taco, LLC and Tacala, LLC, recorded as Instrument 2005090100453310, as affected by Addendum to Lease dated August 15, 2005, recorded as Instrument 20050901000453320

Certificate of Name change of landlord to FRIF Taco with the SOS OF DE



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Description of the Real Property

A parcel of land situated in the Northwest quarter of the Northwest quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama being more particularly described as follows:

Commence at the Northwest corner of Section 36, Township 18 South, Range 2 West, and run South along the West line of said section a distance of 277.41 feet to a point on the Northeasterly right of way line of U.S. Highway 280; thence 53 degrees 01 minutes 13 seconds to the left in a Southeasterly direction along the Northeasterly right of way line of U.S. Highway 280 a distance of 254.49 feet to a point; thence 0 degrees 32 minutes 45 seconds to the right in a Southeasterly direction along the Northeasterly right of way line of U.S. Highway 280 a distance of 190.23 feet to the point of beginning; thence continue along the last stated course a distance of 135.00 feet to a point; thence 92 degrees 30 minutes to the left in a Northeasterly direction 275.00 feet to a point; thence 87 degrees 30 minutes to the left in a Northwesterly direction a distance of 135.00 feet to a point; thence 92 degrees 30 minutes to the left in a Southwesterly direction a distance of 275.00 feet to the point of beginning.

TOGETHER WITH Reciprocal Easement Agreement dated 7th August 1985 and recorded in Real Volume 038, Page 59, in the Probate Office of Shelby County, Alabama.

Being the same property as set forth on that certain survey dated July 5, 2005, prepared by Derek L. Harvel of Harvel & Associates, Inc. and described as follows:

SURVEYOR'S LEGAL DESCRIPTION

Lot 2, Cahaba South Park as recorded map or plat of said subdivision on file and of record in the Office of the Judge of Probate of Shelby County, Alabama, said tract situated, lying and being a part of the County of Shelby, State of Alabama, and being more particularly described as follows:

Beginning at a pk nail on the Northeast right of way margin of U.S. Highway 280 East, said point being the Southwest corner of said Lot 2, Cahaba Park South, said point also being the True Point of Beginning; thence run North 35 degrees 00 minutes 48 seconds East along the West boundary of said Lot 2 for a distance of 275.00 feet to an iron pin on the Northwest corner of said Lot 2; thence run South 52 degrees 41 minutes 12 seconds East along the North boundary of said Lot 2 for a distance of 135.00 feet to an iron pin on the Northeast corner of said Lot 2; thence run South 35 degrees 00 minutes 48 seconds West along the East boundary line of said Lot 2 for a distance of

WHEN RECORDED, RETURN TO:
FIRST AMERICAN MORTGAGE SERVICES
1100 SUPERIOR AVENUE, SUITE 200
CLEVELAND, OHIO 44114
NATIONAL RECORDING

46410088 TACALA, LLC

FIRST AMERICAN ELS
ASSIGNMENT OF RENTS

AL

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