

## **COLLATERAL ASSIGNMENT OF SUBLEASE**

THIS COLLATERAL ASSIGNMENT OF SUBLEASE (this "Agreement") is entered into effective as of the 26th day of August, 2013, by **HIGHWAY 11/31 II, LLC**, a Delaware limited liability company ("Borrower"), to and for the benefit of **MIDSOUTH BANK, N.A.**, ("Lender").

### **RECITALS**

A. Borrower has entered into that certain Commercial Loan Agreement (the "Loan Agreement"), dated as of the date hereof, with the Lender, pursuant to which Lender has made a loan to Borrower in connection with the acquisition of a leasehold interest in certain real property located in the City of Alabaster, State of Alabama, as more particularly described on the attached **Exhibit A**.

B. On the date hereof, Borrower executed and delivered to Lender that certain Promissory Note (the "Note") in the stated principal amount of Four Million Eight Hundred Thousand and No/100 Dollars (\$4,800,000.00) to evidence the indebtedness of a loan (the "Loan") from Lender to Borrower. The obligations of Borrower to Lender under the Note are secured, in part, by the land and certain other property owned by Borrower (the "Property") more particularly described in the Loan Agreement of even date herewith, executed by Borrower and Lender.

C. It is a condition precedent to Lender's willingness to make the Loan that this Agreement be executed and delivered by Borrower.

NOW, THEREFORE, IN CONSIDERATION of the entry into this Agreement by the parties hereto and to induce Lender to enter into the Loan and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower hereby covenants, represents, warrants and agrees as follows:

1. Borrower hereby expressly assigns and sets over to Lender, as additional security for the Loan, all of its rights, title and interest in and to, and its rights, benefits and privileges under, the ***Highway 11/31 II Sublease as last amended***, as described on **Exhibit B** attached hereto and made a part hereof by reference and incorporation (the "Sublease").

2. Borrower hereby agrees to provide Lender written notice of any breach or default under the Sublease or the occurrence of any event which, with notice or the lapse of time, or both, would reasonably be expected to constitute a breach or an event of default thereunder and shall not terminate the Sublease, without the prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed. It is acknowledged and agreed that Lender has no obligation to cure such breach or default and may elect to do so in its sole and absolute discretion.

3. Borrower represents and warrants that: (i) a true, correct and complete copy of the Sublease and any supplements, amendments or modifications thereto has been provided to Lender; (ii) the Sublease is the legal, valid and binding obligation of Borrower, enforceable in accordance with the terms and is in full force and effect; and (iii) there are no breaches or defaults under the Sublease or events which, with notice or lapse of time, or both, would reasonably be expected to constitute a breach or default thereunder.

4. Borrower covenants and agrees to perform its obligations under the Sublease as set forth therein.

5. Borrower hereby covenants and agrees not to assign, transfer, modify, amend or change the Sublease in any respect without Lender's prior written consent, which will not be unreasonably withheld, conditioned or delayed.

6. Borrower hereby acknowledges that Borrower is solely and absolutely liable for performing any and all obligations and paying any and all amounts due to any landlords under the Sublease and that Lender shall have no liability for performing any such obligation or paying any such amount.

7. Borrower acknowledges that Lender is relying upon the covenants, representations, warranties and agreements of Borrower set forth in this Agreement in making the Loan, in the absence of which Lender would not make the Loan.

8. This Agreement shall be binding upon Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

9. This agreement shall be governed by the laws of the State of Alabama and the applicable laws of the United States of America.

11. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

(Signatures to follow on next page)



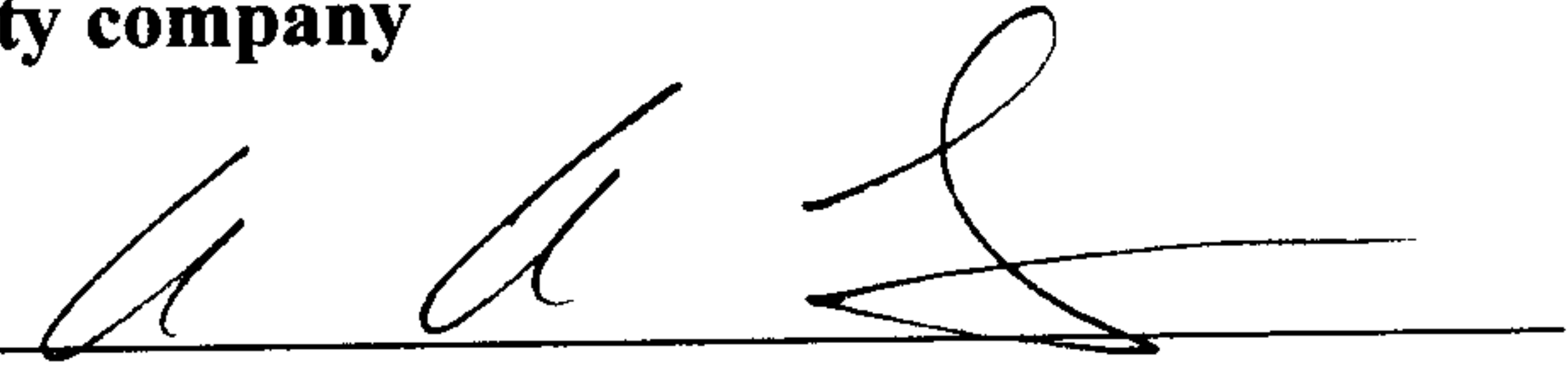
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IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement or caused it to be executed on its behalf by its duly authorized representatives on the day and year first above written.

**BORROWER:**

**HIGHWAY 11/31 II, LLC, a Delaware limited liability company**

By: 

Name: William A. Leitner

Its: Authorized Manager



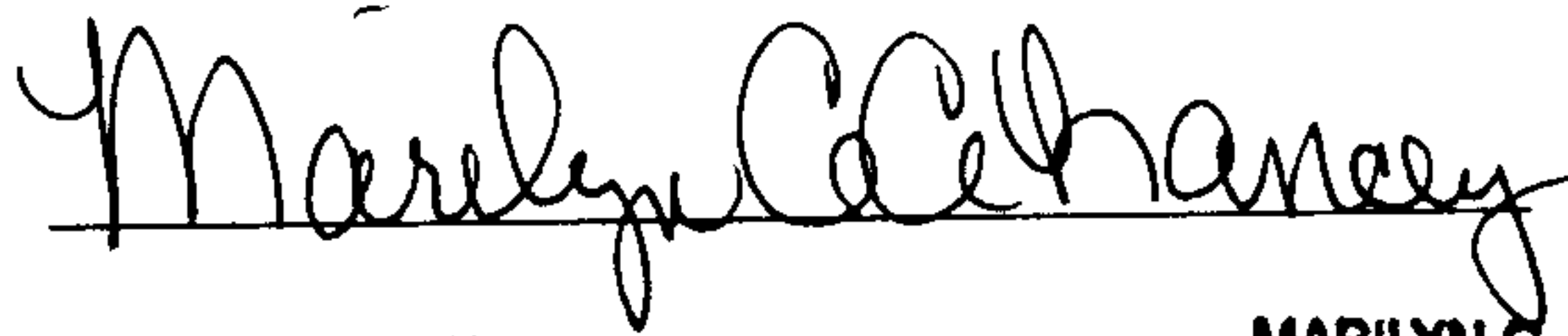
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STATE OF ALABAMA )

COUNTY OF HOUSTON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William A. Leitner, whose name as Authorized Manager of HIGHWAY 11/31 II, LLC, a Delaware limited liability company, is signed to the foregoing Collateral Assignment of Sublease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Amendment, (s)he, in her/his capacity and with full authority, executed the same voluntarily for and as the act of and on behalf of said entity.

Given under my hand and official seal this the 22<sup>nd</sup> day of August, 2013.



Notary Public

My Commission Expires: \_\_\_\_\_

MARILYN C. CHANCEY  
Notary Public, State of Alabama  
Alabama State at Large  
My Commission Expires  
January 18, 2016



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**Exhibit A**

**LEGAL DESCRIPTION**


**Lot 15-A of Colonial Promenade Alabaster South No. 2 as recorded in Plat Book 43,  
Page 104, records of Shelby County, State of Alabama."**



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## **Exhibit B**

The Commercial Development Authority of the City of Alabaster, Alabama (the "Authority"), as ground lessor, leased to Colonial Realty Limited Partnership, ground lessee, the property described on Exhibit "A" of that certain Ground Lease and Option Agreement dated December 1, 2005, a memorandum of which was recorded January 11, 2006 as Instrument No. 20060111000019860, as assigned to Highway 31 Alabaster Two, LLC by instruments recorded January 11, 2006 as Instrument Nos. 20060111000019870 and 20060111000019880 (the "Ground Lease"), a portion of said property was subleased by Highway 31 Alabaster Two, LLC to Target as set forth in Memorandum of Sub-Ground Lease and Purchase and Sale Agreement recorded January 13, 2006 as Instrument No. 20060113000022880 (the "Target Sublease Parcel" and/or "Target Sublease"). The Ground Lease was subsequently assigned by Highway 31 Alabaster Two, LLC to Highway 11/31 LLC by instrument recorded December 18, 2007 as Instrument No. 20071218000569440. The property as described in the Ground Lease and the Target Sublease was subdivided by Survey of Colonial Promenade Alabaster South recorded in Map Book 38, Pages 119A and 119B, and further subdivided by Survey of Colonial Promenade Alabaster South No. 2, recorded in Map Book 43, Page 104 (the "Subdivision"), and the Ground Lease was amended to reflect the new property description, as set forth in Memorandum of First Amendment of Ground Lease and Option Agreement recorded simultaneously herewith as Instrument No. 20130826000349390 (the "Amended Ground Lease"), with the Target Sublease being simultaneously assigned to Borrower, Highway 11/31 II, LLC, by Assignment and Assumption of Sublease recorded simultaneously herewith on 8-26-2013, 2013 as Instrument No. 20130826000349370 (the "**Highway 11/31 II Sublease**"), as amended by First Amendment of Sub-Ground Lease and Purchase and Sale Agreement by and between Highway 11/31 LLC and Highway 11/31 II, LLC, recorded simultaneously herewith on 8-26-13, 2013 as Instrument No. 20130826000349400 (the "**Highway 11/31 II Sublease as last amended**") all records of Shelby County, Alabama.

  
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