

THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT AND IS FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9-402(6), CODE OF ALABAMA, 1975, AS AMENDED AND SHOULD BE CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS.

S&R CONVENIENCE STORES, INC., as mortgagor
("Borrower")

to

LEHMAN BROTHERS HOLDINGS INC., d/b/a LEHMAN CAPITAL,
A DIVISION OF LEHMAN BROTHERS HOLDINGS INC., as mortgagee
("Lender")

Inst # 2000-16968

05/23/2000-16968
01:38 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
033 HWS 89.50

MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS, SECURITY AGREEMENT,
FINANCING STATEMENT AND FIXTURE FILING

Dated: As of May 18, 2000

Locations: As set forth on the annexed Schedule of Properties

PREPARED BY AND UPON
RECORDATION RETURN TO:

Thacher Proffitt & Wood
50 Main Street
White Plains, New York 10606
Attention: Gregory P. Murphy, Esq.

Loan Number: ~~217000034~~ 030600034

SCHEDULE OF PROPERTIES

Site Number	Street Address	City/Town/ Village	County	State	Tax Parcel I.D. Number	Type of Estate (Fee/Ground Lease/Occupancy Lease)
Short Stop #4	7583 Highway 78	Sumiton	Jefferson	AL		Fee
Short Stop #5	290 Cane Creek Road	Warrior	Jefferson	AL		Fee
Short Stop #7	132 US Highway 87	Calera	Shelby	AL		Fee
Short Stop #9	780 Mineral Springs Road	Pell City	St. Clair	AL		Fee
Short Stop #11	5500 Highway 78 West	Jasper	Walker	AL		Fee

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES
AND RENTS, FINANCING STATEMENT AND FIXTURE FILING

This Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing ("**Security Instrument**") is made by S&R CONVENIENCE STORES, INC., an Alabama corporation, with an address of 1799 Elliot Boulevard, Jasper, Alabama 35501 ("**Borrower**") to LEHMAN BROTHERS HOLDINGS INC., d/b/a LEHMAN CAPITAL, A DIVISION OF LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation ("**Lender**"), with an address of 3 World Financial Center, New York, New York 10285-0900 for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, as of the 18th day of May, 2000.

Recitals

Borrower and Lender wish to enter into a loan transaction under the terms and conditions set forth in the Loan Agreement and the other Loan Documents (as defined below).

Lender is unwilling to provide Borrower with the loan and other financial accommodations described in the Loan Documents unless Borrower executes and delivers to Lender this Security Instrument and agrees to abide by the terms and conditions set forth herein.

Agreements

1. **Definitions.** All capitalized terms used in this Security Instrument shall be defined as set forth in this Security Instrument or, in the absence of a definition in this Security Instrument, as set forth in the Loan Agreement and the other Loan Documents. Terms that are not defined in this Security Instrument, the Loan Agreement or the other Loan Documents shall be defined as set forth in the UCC (as defined below).

(a) "**Bankruptcy Code**" shall mean the Bankruptcy Code of the United States of America as codified under 11 U.S.C. Section 101 *et seq.* and any amendments, modifications, replacements or substitutions thereto.

(b) "**Enterprise**" shall have the meaning given to such term in the Loan Agreement.

(c) "**Environmental Claims**" shall mean all administrative, regulatory, judicial or other actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or other proceedings relating to any Environmental Law, permit issued under any Environmental Law, or Hazardous Substance in any way.

(d) "**Environmental Insurance Policy**" shall mean a policy or policies of insurance in form and substance satisfactory to Lender in its sole discretion, issued by a Qualified

Insurer covering liability and remediation expenses resulting from or related to (x) Environmental Claims, (y) violations of Environmental Laws, and (z) if required by Lender, underground storage tanks.

(e) **"Environmental Law"** shall mean all present and future Legal Requirements relating to the protection of human health and safety, Hazardous Substances, or the environment in any way and shall specifically include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, both as amended from time to time.

(f) **"Fee Parcels"** shall mean the real property described in EXHIBIT A attached hereto and made a part hereof.

(g) **"Governing Law State"** shall mean the State of Alabama.

(h) **"Governmental Authorities"** shall mean all foreign, federal, state, county, city, municipal and other governmental or quasi-governmental authorities and all instrumentalities, divisions, agencies, bodies or departments of such governmental or quasi-governmental authorities.

(i) **"Ground Lease"** shall mean each Lease Agreement described in Part 1 of EXHIBIT B attached hereto and made a part hereof.

(j) **"Hazardous Substances"** shall mean (i) all chemicals, materials or substances defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic" "pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law; and (ii) all other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Governmental Authority including, but not limited to: (A) asbestos or materials containing asbestos; (B) lead paint or materials containing lead paint; or (C) "PCB's", "PCB particles", "PCB containers", "PCB equipment", "PCB transformers" or "PCB contaminated electrical equipment" as such terms are defined in the Code of Federal Regulations.

(k) **"Improvements"** shall have the meaning given to such term in the definition of "Property".

(l) **"Indemnified Obligations"** shall have the meaning given to such term in Section 10 herein.

(m) **"Indemnified Parties"** shall have the meaning given to such term in Section 10 herein.

(n) **"Land"** shall mean, collectively, the Fee Parcels and the Leasehold Parcels.

(o) **"Lease Agreement"** shall mean each lease described in EXHIBIT B (including Part 1 and Part 2 thereof) attached hereto and made a part hereof and any and all amendments, extensions, modifications, replacements and substitutions thereto.

(p) **"Leasehold Estate"** shall have the meaning given to such term in the definition of "Property".

(q) **"Leasehold Parcels"** shall mean, collectively, the parcels of real property demised pursuant to each Lease Agreement and described in EXHIBIT B (including Part 1 and Part 2 thereof) attached hereto and made a part hereof.

(r) **"Leases"** shall have the meaning given to such term in the definition of "Property".

(s) **"Legal Requirements"** shall mean all present and future laws, rules, regulations, judgments, orders, permits, licenses, authorizations, requirements and agreements of any kind from or with any Governmental Authority (including, but not limited to any court) pertaining to any Loan Party, the Enterprises, or the Property in any manner.

(t) **"Liabilities"** shall mean the Loan, together with any and all present and future, primary and secondary, direct and indirect, joint and/or several, absolute and contingent, liquidated and unliquidated, indebtedness, liabilities and obligations of Borrower or any other Loan Party to Lender of any kind described in the Loan Documents or otherwise pertaining to the Loan in any manner.

(u) **"Lien"** shall mean any security interest, mortgage, pledge, lien, lease, claim, charge or other encumbrance upon any personal or real property including, but not limited to, the interest of a vendor or lessor under a conditional sale agreement, capital lease or other title retention agreement.

(v) **"Loan"** shall mean the loan in the original principal amount of THREE MILLION SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$3,600,000.00) provided by Lender to Borrower pursuant to the terms and conditions of the Loan Agreement (as defined below) and the other Loan Documents (as defined below).

(w) **"Loan Agreement"** shall mean the Loan and Security Agreement between Borrower and Lender dated of even date herewith and any amendments, extensions, modifications, replacements and substitutions thereto.

(x) **"Loan Documents"** shall mean the Loan Agreement, the Note, this Security Instrument, the Assignment of Leases and Rents, if any, the Guaranties, if any, the Subordination Agreements, if any, the Estoppel Agreements, and all other indentures, notes, security agreements,

deeds of trusts, mortgages, leases, guaranties, instruments, contracts, or other agreements of any kind pertaining to the Loan in any manner and any amendments, extensions, modifications, replacements and substitutions thereto.

(y) **"Loan Party"** shall have the meaning given to such term in the Loan Agreement.

(z) **"Note"** shall mean the Promissory Note in the principal amount of the Loan, made by Borrower to Lender bearing even date herewith, and any amendments, extensions, modifications, replacements and substitutions thereto.

(aa) **"Occupancy Lease"** shall mean each Lease Agreement described in Part 2 of EXHIBIT B attached hereto and made a part hereof.

(bb) **"Premises"** shall have the meaning given to such term in the definition of "Property".

(cc) **"Property"** shall mean all of Borrower's present and future rights, title and interests in and to (1) the Land, (2) each Lease Agreement and the leasehold estate(s) created thereby (the **"Leasehold Estate(s)"**), and (3) all rights to the Land which may be acquired by the Borrower at any time, including all rights, privileges, options, elections and other benefits of every name and nature; together with all present and future easements and rights used or to be used in connection therewith or as a means of access thereto or therefrom; together with all rights, title and interests that Borrower now has or may hereafter acquire in:

(i) all right, title and interest of the Borrower in, to, under or derived from all buildings, structures, facilities and other improvements of every kind and description now or hereafter located on the Land, including all parking areas, roads, driveways, walks, fences, walls, drainage facilities and other site improvements, all water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utility equipment and facilities, all plumbing, lighting, heating, ventilating, air-conditioning, refrigerating, incinerating, compacting, fire protection and sprinkler, surveillance and security, public address and communications equipment and systems, all awnings, floor coverings, partitions, elevators, escalators, motors, machinery, pipes, fittings and other items of equipment, appliances, apparatus, accessories, furnishings, furniture, curtains, draperies, carpets, rugs, pictures, paintings, statues, works of art, decorations, inventory and personal property of every kind and description now or hereafter located on the Land or attached to the improvements which by the nature of their location thereon or attachment thereto are real property under applicable law; and including all materials intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, equipment, fixtures, structures and improvements, all of which materials shall be deemed to be part of the Land immediately upon delivery thereof on the Land and to be part of the improvements immediately upon their incorporation therein hereinafter, all of the foregoing property may

be referred to collectively as the **"Improvements"** and the Land with the Improvements and the tangible property described in the following subsection thereon and appurtenant rights thereto may be referred to collectively as the **"Premises"**;

(ii) all rights, title and interests of the Borrower in, to, under or derived from all machinery, equipment, fixtures and accessions thereof and renewals, and/or replacements thereof and/or substitutions therefor and other tangible property of every kind and nature whatsoever owned by the Borrower, or in which the Borrower has or shall have an interest, now or hereafter located upon the Land, or appurtenant thereto, or usable exclusively in connection with the present or future operation and occupancy of the Land or the Improvements;

(iii) all rights, title and interests of the Borrower in, to, under or derived from each Lease Agreement and Leasehold Estate (together with all amendments, supplements, consolidations, replacements, restatements, extensions, renewals, and other modifications thereof) and all tenements, hereditaments and appurtenances now or hereafter relating to the Land; including party walls, drainage rights, crops, timber, agriculture and horticulture, oil, gas and other mineral rights and riparian and other water rights; the streets, roads, sidewalks and alleys abutting the Land; all air space and rights to use air space above the Land; all development, operating or similar rights appurtenant to the Land (including, without limitation, all water, water rights, and rights arising from reciprocal access agreements, joint occupancy, use or development agreements, and parking agreements); all rights of ingress and egress now or hereafter appertaining to the Land; and all easements, licenses and rights of way and rights in connection therewith or as a means of access thereto, now or hereafter appertaining to the Land;

(iv) all rights, title and interests of the Borrower in, to, under or derived from all contract rights, claims, chattel paper, documents, instruments, general intangibles, computer hardware, software and intellectual property, accounts, deposits, escrows, guaranties and warranties, letters of credit, and documents, in each case relating to the Premises or to the present or future operation or occupancy of the Premises, and all plans, specifications, maps, surveys, studies, books of account, records, files, insurance policies, guarantees and warranties, all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Land and Improvements, all relating to the Premises or to the present or future operation or occupancy of the Premises, all architectural, engineering, construction and management contracts, all supply and service contracts for water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utilities relating to the Premises and all other agreements affecting or relating to the use, enjoyment or occupancy of the Premises;

(v) all rights, title and interests of the Borrower in, to, under or derived from all leases and other agreements affecting the use, enjoyment or occupancy of the Premises, including without limitation, subleases, licenses, concessions, tenancies and other

occupancy agreements of or relating to the Premises (together with all amendments, supplements, consolidations, replacements, restatements, extensions, renewals and other modifications thereof), if any, now or hereafter in effect, whether or not of record and all additional remainders, reversions, and other rights and estates appurtenant thereto (hereinafter, all of the foregoing may be referred to collectively as the "Leases"); and the right to bring actions and proceedings under the Leases or for the enforcement thereof and to do anything which the Borrower or any lessor is or may become entitled to do under the Leases;

(vi) all rights, title and interests of the Borrower in, to, under or derived from all rents, royalties, issues, profits, receipts, revenue, income, earnings and other benefits now or hereafter accruing with respect to all or any portion of the Premises, including without limitation, all cash or security deposits, escrow accounts, reserves, advance rentals and deposits or payments of a similar nature, and all rents and other payments or sums now or hereafter payable pursuant to the Leases; all other rents and other sums now or hereafter payable pursuant to the Leases; all other sums now or hereafter payable with respect to the use, occupancy, management, operation or control of the Premises; together with the right, but not the obligation, to collect and receive all such rents or revenues, and all other claims, rights and remedies now or hereafter belonging or accruing with respect to the Premises, including oil, gas and mineral royalties, all of which the Borrower hereby irrevocably directs to be paid to the Lender, subject to the license granted to the Borrower pursuant to the Assignment of Leases and Rents dated of even date herewith between Borrower and Lender, if any, to be held, applied and disbursed, as provided in this Security Instrument;

(vii) all rights, title and interests of the Borrower in, to, under or derived from all licenses, agreements (including any management agreement, other agreement or service contract for the use and enjoyment of all food, liquor and beverage licenses to the extent assignable), authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Premises (including all rights of the Borrower in and to plans and specifications, designs, surveys, drawings and other matters prepared in connection with any construction on the Land or for the Improvements), and all rights, title and interests of the Borrower in, to, under or derived from all good will, trademarks, service marks, logos, trade names or business names relating to the Premises or the present or future operation of occupancy of the Premises excluding, however, from the grant under this Subsection (vii) any franchise rights and any permits which cannot be transferred or encumbered by the Borrower without causing a default thereunder or a termination thereof;

(viii) all rights, title and interests of the Borrower in, to, under or derived from all amounts deposited with the Lender, including all insurance proceeds and awards, and including all notes, certificates of deposit, securities and other investments relating thereto and all interest, dividends and other income thereon, proceeds thereof and rights relating thereto;

(ix) all rights, title and interests of the Borrower in, to, under or derived from all proceeds of any sale, transfer, financing, refinancing, and any and all awards, claims for damages, judgments, settlements and any other compensation made for or as a result of the taking by condemnation or eminent domain (or any proceeding or purchase in lieu thereof of the whole or any part of the Premises), financing, refinancing or a conversion into cash or liquidated claims, whether voluntary or involuntary, of any of the Premises, including all insurance proceeds and awards and title insurance proceeds under any title insurance policy now or hereafter held by the Borrower, and all rights, dividends and other claims of any kind whatsoever (including damage, secured, unsecured, priority and bankruptcy claims) now or hereafter relating to any of the Premises, all of which the Borrower hereby irrevocably directs be paid to the Lender to the extent provided hereunder, to be held, applied and disbursed as provided in this Security Instrument;

(x) all rights, title and interests of the Borrower as seller in, to or under any agreement, contract, understanding or arrangement pursuant to which the Borrower has obtained the agreement of any person to purchase any of the Premises or any interest therein and all income, profits, benefits, avails, advantages and claims against guarantors under any thereof;

(xi) all rights, title and interests of the Borrower in, to or derived from the Premises hereafter acquired by the Borrower, and all right, title and interest of the Borrower in, to, under or derived from all extensions, improvements, betterments, renewals, substitutions, and/or replacements of, and additions and appurtenances to, any of the Premises hereafter acquired by or released to the Borrower or constructed or located on, or attached to, the Premises; and

(xii) all proceeds of any and all of the above items (i) through (xi).

(dd) **"Qualified Insurers"** shall mean domestic primary insurers having a claims paying ability rating of A or better assigned by both Standard & Poors Ratings Service and Moody's Investors Service (or such other credit rating agencies as may be designated by Lender) or a general policy rating of A- or better and a financial class of VIII or better by A.M. Best Company, Inc.

(ee) **"Rents"** shall have the meanings given to such term in **Section 5** herein.

(ff) **"Secured Creditor Policy"** shall mean a policy or policies of insurance obtained by Lender at the Loan Parties' sole cost and expense insuring Lender against liability and/or impairment of the value of the Property and Collateral resulting from or related to Environmental Claims or violations of Environmental Laws.

(gg) **"Security Instrument"** shall have the meaning given to such term in the first paragraph hereof.

(hh) "UCC" shall mean the Uniform Commercial Code as adopted by the Governing Law State and any amendments, modifications, replacements and substitutions thereto.

2. **Grant.** To secure the payment and performance of the Liabilities, Borrower hereby assigns, conveys, grants, mortgages, sells and transfers to Lender (and with power of sale and right of entry and possession) the Property.

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever; PROVIDED HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender and perform the Liabilities at the time and in the manner provided in the Note and this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

3. **Assignment of Section 365 Rights.** To the maximum extent permitted by applicable law, Borrower hereby assigns, conveys, sells and transfers to Lender all of its rights, pursuant to Section 365 of the Bankruptcy Code or any similar law, whether by action or inaction, to assume and reject each Lease Agreement or any other lease or executory contract constituting a portion of the Property. Without limiting the foregoing, Borrower shall not, whether by action or inaction, assume or reject any Lease Agreement or any other lease or executory contract constituting a portion of the Property pursuant to Section 365 of the Bankruptcy Code or any similar law without obtaining the prior written consent of Lender.

4. **Representations, Warranties and Covenants.** All of Borrower's representations, warranties and covenants set forth in the Loan Agreement and other Loan Documents (including, but not limited to, the representations, warranties and covenants set forth in **Section 5** of the Loan Agreement) are incorporated herein by this reference. In addition, Borrower hereby represents and warrants to and covenants with Lender that:

(a) Borrower is and shall be (i) the owner of good and marketable title to each Fee Parcel, (ii) the owner of good and marketable title to each Ground Lease, the Leasehold Estate created thereby, and the Improvements located upon the Leasehold Parcel demised pursuant to such Ground Lease, (iii) the owner of good and marketable title to each Occupancy Lease and the Leasehold Estate created thereby, and a leasehold estate in the Improvements located upon the Leasehold Parcel demised pursuant to such Occupancy Lease, and (iv) the owner of good and marketable title to the Property other than as described in the preceding clauses (i) through (iii), in each case free and clear of all Liens, except for the Permitted Liens scheduled in the Loan Agreement and Borrower has defended and shall defend the Leasehold Estate created under each Lease Agreement, for the remainder of the term set forth therein, and the Property from any claims other than the Permitted Liens;

(b) Borrower has provided and shall provide Lender with accurate and complete copies of each Lease Agreement and all other leases, subleases, purchase and sale agreements, development agreements, plans and specifications, licenses, permits, and other instruments, agreements or documents of any kind pertaining to the Property;

(c) Borrower has paid and performed, and shall pay and perform all of the Taxes, Impositions, and other liabilities and obligations of any kind pertaining to the Enterprises, Lease Agreements, other Leases, and Property when due, and Borrower further covenants that it shall not do or permit anything which will impair the security of this Security Instrument or which will entitle the landlord under any Lease Agreement to declare an event of default thereunder or to terminate such Lease Agreement;

(d) To the best of Borrower's knowledge, all other parties to each Lease Agreement and other Leases have paid and performed all of their liabilities and obligations described in or otherwise pertaining to such Lease Agreement and other Leases when due, and there are no uncured defaults under any Lease Agreement or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the Borrower to be observed and performed, and Borrower shall not permit any other party to any Lease Agreement or Leases to fail to pay and perform all of its liabilities and obligations described in or otherwise pertaining to such Lease Agreement or other Leases when due, without obtaining the prior written consent of Lender;

(e) Borrower has not accepted the prepayment of, and shall not accept the prepayment of, any amounts owing under Leases (with the exception of one month's rental payments), without obtaining the prior written consent of Lender;

(f) Except as permitted by the Loan Agreement and the replacement of worn-out equipment with goods of equal or greater value that are subject to a valid and perfect first priority Lien in favor of Lender, Borrower has not altered, amended, modified, replaced, substituted, subordinated, or terminated nor permitted any Lease Agreement, other Leases, or Property to be altered, amended, modified, replaced, substituted, subordinated, or terminated in whole or in part and shall not alter, amend, modify, replace, substitute, subordinate or terminate nor permit any Lease Agreement, other Leases or Property to be altered, amended, modified, replaced, substituted, subordinated, or terminated in whole or in part without obtaining the prior written consent of Lender;

(g) Except for the Permitted Liens, Borrower has not assigned, conveyed, leased, sold, transferred, or encumbered nor permitted the assignment, conveyance, lease, sale, transfer or encumbrance of any Lease Agreement, other Leases, or Property in whole or in part, nor has Borrower assigned, conveyed, sold, transferred or encumbered or permitted the assignment, conveyance, sale, transfer or encumbrance of any interest in Borrower. Borrower shall not assign, convey, lease, sell, transfer or encumber nor permit any assignment, conveyance, lease, sale, transfer or encumbrance of any Lease Agreement, other Leases or Property in whole or in part nor shall Borrower assign, convey, sell, transfer or encumber nor permit any assignment, conveyance, sale,

transfer or encumbrance of any interest in Borrower (except as expressly permitted in the Loan Agreement) in each case without obtaining the prior written consent of Lender;

(h) The Property possesses and shall possess all necessary street access, parking spaces, and similar rights for the conduct of each Enterprise;

(i) Each Enterprise, each Lease Agreement, all other Leases, and Property are and shall be in compliance with all applicable Legal Requirements and Contractual Obligations of any kind;

(j) None of the Property encroaches upon or interferes with nor shall encroach upon or interfere with the boundaries of the Property or the rights, title and interests of the owners of any adjoining real property;

(k) The Property is and shall be zoned for the conduct of each Enterprise and Borrower possesses and shall possess all necessary approvals, authorizations, licenses and permits for the conduct of each Enterprise;

(l) The Property is and shall be served by all necessary water, electric, gas, telephone, sewer, and sanitation services necessary for the conduct of each Enterprise;

(m) Borrower, at its sole cost and expense, shall keep the Property insured in accordance with the terms and provisions of the Loan Agreement;

(n) Borrower has kept and shall keep the Property in good condition and repair and has not committed or permitted, and shall not commit nor permit, any waste to be committed with respect to the Property;

(o) Borrower has repaired or replaced and will repair or replace any damaged, destroyed or lost portion of the Property to the satisfaction of Lender;

(p) In the event of any insured casualty affecting all or any portion of the Property, or the taking of any portion of the Property by any Condemnation, all proceeds of such casualty, or awards of such Condemnation, shall be held, applied and disbursed in accordance with the terms and provisions of the Loan Agreement;

(q) Upon Lender's request and so long as Borrower is not required to provide such amounts to any Person possessing superior rights in any Enterprise, Lease Agreement, other Leases, and Property, Borrower shall provide Lender (i) on a monthly basis with an amount equal to one-twelfth (1/12th) of the estimated annual Taxes and Impositions pertaining to each Enterprise, Lease Agreement, other Leases, and Property and (ii) on demand, such additional amount as is required, in Lender's reasonable judgment, in order that the foregoing monthly deposits (together with such additional amount) shall be sufficient to (x) pay the Taxes and Impositions next due, and

(y) permit Lender to maintain a reserve equal to three such monthly deposits. Such monies shall secure the payment and performance of the Liabilities and may be commingled by Lender with its other monies without Borrower being paid any interest or other remuneration of any kind. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing under the Loan Documents, Lender shall apply such monies against the Taxes and Impositions owing by Borrower with respect to each Enterprise, Lease Agreement, other Leases, and Property;

(r) Borrower has provided and shall promptly provide Lender with copies of any notices of default pertaining to any liabilities or obligations relating to the Enterprises, Lease Agreements, other Leases, or the Property;

(s) No Enterprise, Lease Agreement, other Leases, or Property, in whole or in part, is, and none of the foregoing shall be subject to any Condemnation, eminent domain or similar proceeding of any kind;

(t) Borrower will pay the Liabilities at the time and in the manner provided in the Note, this Security Instrument and the other Loan Documents;

(u) Borrower represents that the Property presently does, and covenants that the Property at all times shall, strictly comply to the extent applicable with the requirements of all Access Laws (as defined in the Loan Agreement). Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Property, Borrower shall not alter the Property in any manner which would increase the Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. The foregoing shall apply to tenant improvements constructed by the Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer or other person acceptable to Lender. Borrower agrees to give prompt written notice to Lender of the receipt by Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws;

(v) No portion of the Improvements is situated in a federally designated "special flood hazard area" except for Improvements with respect to which the Borrower has obtained Flood Policies meeting the requirements of **Section 5(o)** of the Loan Agreement; and

(w) Each parcel of the Premises is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of the Premises, and no other land or improvements is assessed and taxed together with any of the Premises or any portion thereof.

5. **Assignment of Leases.** In connection with the Loan, Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in all current and future Leases and rents, revenues, royalties, profits and other payments or sums derived therefrom

(collectively, the "Rents"), it being intended by Borrower that such assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Lender. Borrower shall execute and deliver to Lender such additional instruments, in form and substance reasonably satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section, Lender has granted to Borrower a revocable license to operate and manage the Property and to collect the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Liabilities, in trust for the benefit of Lender for use in the payment of such sums. Upon the occurrence of an Event of Default, the license granted to Borrower shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Property. Lender is hereby granted and assigned by Borrower the right, at its 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. Any Rents collected after revocation of the license may be applied toward payment of the Liabilities in such priority and proportions as Lender in its discretion shall deem appropriate. Borrower hereby irrevocably appoints Lender its attorney in fact, which appointment shall be coupled with an interest, for the purpose of effecting the terms of this paragraph. Borrower hereby represents and warrants to Lender that Borrower has not assigned the Leases and/or Rents to any Person other than Lender.

6. **Security Agreement, Financing Statement and Fixture Filing.** To the extent necessary to grant Lender a valid and perfected security interest in the personal property constituting a portion of the Property, this Security Instrument shall constitute a security agreement, financing statement and fixture filing under the UCC and shall be deemed to grant a security interest to Lender in the Property and to include the following information:

Name and Address of the Debtor:

S&R Convenience Stores, Inc.
1799 Elliot Boulevard
Jasper, Alabama 35501
Taxpayer Identification No.: _____

Name and Address of the Secured Party:

Lehman Brothers Holdings Inc. d/b/a
Lehman Capital, a Division of Lehman Brothers Holdings Inc.
3 World Financial Center
New York, New York 10285-0800

Collateral: All of the Property described in this Security Instrument (some of which may constitute machinery, equipment, fixtures, crops, standing timber

and fixtures upon the real property described herein and the proceeds therefrom, including without limitation, insurance proceeds).

Name and Address of Record Owner of Land:

The Record Owner of the Property is:
S&R Convenience Stores, Inc.
1799 Elliot Boulevard
Jasper, Alabama 35501

7. **Power of Attorney.** In addition to any other power of attorney granted to Lender in the Loan Agreement and the other Loan Documents, Borrower hereby appoints Lender and its designees as Borrower's attorney in fact and agent to execute any document and take any action that should have been (but was not) executed or taken by Borrower with respect to each Enterprise, Lease Agreement, other Leases, other Primary Enterprise and Property Documents or the Property. Such powers of attorney are coupled with an interest and irrevocable. Borrower shall reimburse Lender for any amounts expended by Lender in connection with its exercise of such powers of attorney, together with interest at the Default Rate in accordance with the terms and conditions set forth in the Loan Agreement and other Loan Documents.

8. **Event of Default.** The occurrence of any one or more of the following events shall constitute an **Event of Default** hereunder:

(a) **Monetary Defaults.** The failure of Borrower or any of the other Loan Parties to pay on or prior to the tenth (10th) day after the same is due any of the Liabilities or any other amount owing to Lender hereunder, under the Loan Agreement, the other Loan Documents, or any other indenture, note, security agreement, deed of trust, mortgage, lease, guaranty, instrument, contract, or other agreement;

(b) **Covenant Defaults.** The failure of Borrower or any of the other Loan Parties to comply with any of the requirements of **Sections 5(f), 5(h), 5(o), 5(r), 5(s), 5(u), 5(z) or 5(gg)** of the Loan Agreement;

(c) **Breaches of Representations or Warranties.** The breach or inaccuracy of Borrower's or any other Loan Party's representations or warranties to Lender hereunder, under the Loan Agreement, the other Loan Documents, or any other indenture, note, security agreement, deed of trust, mortgage, lease, guaranty, instrument, contract, or other agreement;

(d) **Nonmonetary Defaults.** The failure of Borrower or any other Loan Party to perform any of its obligations hereunder, under the Loan Agreement or the other Loan Documents (other than as provided in **Sections 8(a) through 8(c)** above), and such failure is not cured within thirty (30) days following the earlier to occur of Lender's provision of notice thereof to the Loan Parties, or the Loan Parties' actual knowledge of such failure, provided, however, that such notice

and cure rights shall not apply to any default that cannot be cured, or which is required to be corrected within a shorter time period in accordance with Legal Requirements, or constitutes more than the third occurrence of an Event of Default during any twelve (12) month period;

(e) **Third Party Contracts.** Borrower's or any other Loan Party's default beyond applicable notice and cure periods under any of the Primary Enterprise and Property Documents, or any other material Contractual Obligation with a Person other than Lender;

(f) **False or Misleading Statements.** The provision by or on behalf of Borrower or any other Loan Party to Lender of any false or misleading Financial Statements or other material information and materials pertaining to any Loan Party's business operations (including, but not limited to, the Enterprises), financial condition, or assets (including, but not limited to, the Property and Collateral);

(g) **Limitation or Contest of Liabilities or Liens.** The threatened or actual limitation (other than limitations specifically described herein, in the Loan Agreement and the other Loan Documents) or contest by Borrower or any other Loan Party of any of the Liabilities owing to Lender or Liens in favor of Lender described herein, in the Loan Agreement, and the other Loan Documents;

(h) **Levy or Seizure.** The actual or attempted levy, seizure or attachment of Borrower's or any other Loan Party's assets (including, but not limited to, the Collateral and the Property) which assets, either individually, or in the aggregate, have a fair market value (as determined by Lender) or book value greater than or equal to the Judgment Default Amount (as defined in the Loan Agreement);

(i) **Bankruptcy, Insolvency, Etc. ("Voluntary").** Borrower, any other Loan Party or any Guarantor shall (1) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar official of itself or of all or a substantial part of its property, (2) be generally not paying its debts as such debts become due (as such concept is defined and construed under applicable bankruptcy law), (3) make a general assignment for the benefit of its creditors, (4) commence a voluntary case under the Bankruptcy Code (as now or hereafter in effect), (5) take any action or commence any case or proceeding under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, or any other law providing for the relief of debtors, (6) fail to contest in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code or other law, (7) take any action under the laws of its jurisdiction of incorporation or organization similar to any of the foregoing, or (8) take any corporate action for the purpose of effecting any of the foregoing;

(j) **Bankruptcy, Insolvency, Etc. ("Involuntary").** A proceeding or case shall be commenced, without the application or consent of Borrower, any other Loan Party or any Guarantor in any court of competent jurisdiction, seeking (1) the liquidation, reorganization,

dissolution, winding up, or composition or readjustment of its debts, (2) the appointment of a trustee, receiver, custodian, liquidator or the like of it or of all or any substantial part of its assets, or (3) similar relief in respect of it, under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts or any other law providing for the relief of debtors, and such proceeding or case shall continue and not be stayed or dismissed, for a period of thirty (30) days; or an order for relief shall be entered in an involuntary case under the Bankruptcy Code, against Borrower, any other Loan Party or any Guarantor; or action under the laws of the jurisdiction of incorporation or organization of Borrower, any other Loan Party or any Guarantor similar to any of the foregoing shall be taken with respect to Borrower, any other Loan Party or any Guarantor and shall continue unstayed and in effect for any period of thirty (30) days;

(k) **Entry of Judgment or Order.** The entry of any judgment in an amount greater than or equal to the Judgment Default Amount or other material order or decree against Borrower or any other Loan Party which remains unsatisfied or undischarged and in effect for five (5) Business Days after such entry without a stay of enforcement or execution;

(l) **Criminal Proceedings.** The indictment or institution of any criminal proceeding against Borrower or any other Loan Party or any owner, director, manager, or officer of Borrower or any other Loan Party for any felony;

(m) **Material Adverse Change.** The occurrence of any material adverse change in Borrower's, Guarantor's or any other Loan Party's business operations (including, but not limited to, the Enterprises), financial condition, or assets (including, but not limited to, the Collateral and Property);

(n) **Death, Dissolution, Etc.** The cessation of business, death, dissolution, incapacity, liquidation, retirement or withdrawal of: (i) Borrower or any other Loan Party; or (ii) owners representing a percentage of the Equity Securities of Borrower or any other Loan Party greater than or equal to the Equity Default Percentage (as defined in the Loan Agreement); or (iii) any Key Person (as defined in the Loan Agreement) unless Borrower or such other Loan Party provides a replacement for such Key Person who is acceptable to Lender within sixty (60) days thereafter; or

(o) **Cross-Default.** The occurrence of any event of default under the documents which evidence and/or secure any other obligation owed by Borrower or any of the other Loan Parties to Lender.

9. **Remedies.** Upon the occurrence of any Event of Default, Lender shall possess all of the following remedies without presentment, demand, notice, protest, or legal process of any kind:

(a) **Acceleration of Liabilities.** Lender may accelerate and declare all of the Liabilities (including, but not limited to, the Yield Maintenance Amount (as defined in the Note) and any other fees and charges described in Section 2 of the Loan Agreement) immediately due and

payable (provided that in the event of any Event of Default arising under Sections 8(i) or 8(j) herein the Liabilities shall automatically become immediately due and payable);

(b) **Cessation of Additional Loans or Other Financial Accommodations.** Lender may cease providing Borrower and the other Loan Parties with any additional loans or other financial accommodations required by the Loan Documents, if any, or any other instrument, agreement or document of any kind;

(c) **Repossession or Assemblage of Collateral.** Lender may seek to repossess the Collateral or cause Borrower and the other Loan Parties to assemble and make available to Lender the Collateral with or without resorting to legal process. In the event that Lender seeks to replevy the Collateral, such replevin may be conducted on an ex parte basis and without the posting of any bond;

(d) **Entry Upon, Possession and Protection of Collateral and Property.** Lender may seek to enter upon and take possession of the Collateral and Property with or without resorting to legal process. Lender shall have the right, but not the obligation, to take any actions it deems appropriate to preserve or protect the Collateral and Property, and all costs and expenses incurred by Lender in doing so shall be Liabilities secured hereby;

(e) **Notification and Collection of Accounts, Rents and Other Monies.** Lender may notify all Persons (including any lessees of the Collateral and Property) to pay all accounts, rents, and other amounts owing to Borrower or the other Loan Parties directly to Lender and to take any necessary actions to collect such accounts, rents, and other monies;

(f) **Other UCC Rights.** Lender may conduct a private or public sale of the Collateral, retain the Collateral in satisfaction of the Liabilities secured by such assets, or exercise any other rights against the Collateral that are permitted by the UCC (as defined herein). To the extent that notice of any private or public sale of the Collateral is required by the UCC, Borrower and each other Loan Party agrees that ten (10) days shall constitute reasonable notice thereof;

(g) **Appointment of Receiver.** Lender may seek the appointment of a receiver for the Enterprises, Collateral or Property. Such appointment may be obtained without notice (all notice being waived) and on an ex parte basis, without regard to Borrower's or any other Loan Party's financial condition or the value of the Collateral or Property, and without the posting of any bond;

(h) **Foreclosure of Collateral and Property.** Lender may seek to foreclose on the Collateral and Property by any trustee sale, judicial foreclosure, or other means permitted by applicable law;

(i) **Amendment, Modification, Replacement, Substitution and Termination of Primary Enterprise and Property Documents and Other Agreements.** Lender may seek to

amend, modify, replace, substitute and/or terminate the Primary Enterprise and Property Documents and any other instruments, agreements and documents of any kind constituting a portion of the Collateral or the Property. Borrower hereby appoints Lender as its attorney-in-fact to execute any documents and take any actions with respect to the remedies described in this subsection. Such powers of attorney are coupled with an interest and irrevocable; and

(j) **Other Remedies.** Lender may seek to exercise any other remedy provided for hereunder, in the Loan Agreement, the other Loan Documents, any other indenture, note, security agreement, deed of trust, mortgage, lease, guaranty, instrument, contract, or other agreement or permitted by applicable law or in equity.

All of the foregoing remedies shall be cumulative and non-exclusive in nature and may be exercised by Lender in any order and concurrently. The proceeds from any disposition or foreclosure of the Collateral or Property and any other monies recovered by Lender may be applied by Lender against the Liabilities in the following order: first, to any outstanding attorneys' and other fees, charges, and expenses (including, but not limited to, the Yield Maintenance Amount, any other fees and charges described in **Section 2** of the Loan Agreement and any expenses pertaining to repossession, repair, preparation and advertisement for disposition or foreclosure, appointment of a receiver for, and disposition or foreclosure of the Collateral and Property); second, to any outstanding interest; and third, to any outstanding principal.

10. **Reimbursement of Expenses; Indemnification.** Borrower shall reimburse Lender for all attorney's fees and expenses (whether incurred before, during or following any trial, appeal, administrative, arbitration, or other legal proceeding of any kind), Taxes (as defined in the Loan Agreement) and other Impositions (as defined in the Loan Agreement), UCC and lien, certificate of title and other search fees, filing fees, recording fees, survey costs, engineering study and report costs, soil test costs, title abstract and insurance premiums and expenses, appraisal and valuation costs, environmental site assessment costs, space planning expenses, advertising costs, sale and lease commissions, preparation costs and other expenses, expert witness fees and expenses, insurance costs, maintenance and repair costs, telephone charges, overnight mail charges, hand delivery charges, postage, and other expenses incurred in negotiating, documenting, filing, recording, administering, defending, and enforcing Lender's rights and remedies (including, but not limited to, exercising any power of attorney or right to perform the Liabilities) hereunder, under the Loan Agreement and the other Loan Documents and/or to protect or preserve the Collateral and Property as well as any other charges, expenses and amounts described hereunder, in the Loan Agreement and the other Loan Documents or to which Lender may be entitled to collect with respect to the Loan under applicable law. In addition, Borrower shall reimburse Lender for all trustee, receiver and property manager fees and commissions and all costs, expenses and charges incurred by those parties hereunder, or in connection with the Loan Agreement, the other Loan Documents, the Enterprises, Collateral and Property. All such costs, expenses and charges (collectively, the "**Reimbursement Expenses**") shall be payable by Borrower to Lender within five (5) Business Days after demand from Lender and, if not paid when due, shall accrue interest at the Default Rate (as defined in the Note). The Reimbursement Expenses shall be deemed incorporated in the definition of the term Liabilities

contained in, and shall be secured by the lien of this Security Instrument. The lien of all such future advances for the Reimbursement Expenses shall relate back to the date this Security Instrument is recorded.

Borrower shall defend (with counsel satisfactory to Lender, in its discretion), protect, indemnify and hold harmless Lender, its participants, successors and assigns, and their Affiliates, and the respective owners, directors, managers, officers, employees, and agents of any of the foregoing persons who may hold or acquire a full or partial interest in the Loan or this Security Instrument at any time (including, but not limited to, investors or prospective investors in the securities as well as custodians, trustees and other fiduciaries for such investors), any servicers of the Loan and any Other Disposition Parties (collectively, "**Indemnified Parties**") from and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind (including, but not limited to, the attorneys' fees and related expenses incurred by each Indemnified Party before, during or following any trial, appeal, administrative, arbitration, or other legal proceeding of any kind whether or not such Indemnified Party shall be a designated party to such proceeding) which may be imposed on, incurred by, or asserted against any Indemnified Party as the result of or in connection with this Security Instrument, the Loan Agreement, the other Loan Documents, the Loan Parties, their business operations (including, but not limited to, the Enterprises), their assets (including, but not limited to, the Collateral and the Property), or the Loan in any manner (collectively "**Indemnified Obligations**"). Without limiting the foregoing, Borrower shall defend (with counsel satisfactory to Lender in its discretion), protect, indemnify and hold harmless the Indemnified Parties from and against all Indemnified Obligations which may be imposed on, incurred by, or asserted against any Indemnified Party as the result of or in connection with the actual or alleged breach of any Environmental Law by or any Environmental Claim pertaining to the Loan Parties, their business operations (including, but not limited to, the Enterprises), or their assets (including, but not limited to, the Collateral and the Property) in any manner. Provided, however, Borrower shall not be required to defend, protect, indemnify or hold harmless any Indemnified Party from an Indemnified Obligation caused solely by such Indemnified Party's gross negligence or willful misconduct. All Indemnified Obligations shall be deemed to be Liabilities hereunder. Provided further, however, the obligations of the Borrower under this section shall survive payment of the Loan and any termination, satisfaction, assignment, discharge of this Security Instrument, the Loan Agreement or the other Loan Documents, entry of a judgment, possession or sale of the Collateral and Property, the exercise of any other rights and remedies and any discharge in bankruptcy.

11. **Waiver of Setoff and Counterclaim.** All amounts due under this Security Instrument, the Loan Agreement and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a counterclaim (other than a mandatory or compulsory counterclaims) in any action or proceeding brought against it by Lender, or arising out of or in any way connected with this Security Instrument, the Loan Agreement, any of the other Loan Documents, or the Liabilities.

12. **Documentary Stamps.** If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to the Loan Agreement, this Security Instrument or any of the other Loan Documents, or shall impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

13. **Change in the Laws Regarding Taxation.** If any law is enacted, adopted or amended after the date of this Security Instrument which imposes a tax (other than income taxes), either directly or indirectly, on the Liabilities or Lender's interest in the Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender or its counsel determines that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Liabilities immediately due and payable.

14. **Right to Cure Defaults.** Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, take such action as Lender may deem necessary to protect its security for the Loan. Lender is authorized to enter upon the Property for such purposes or to appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Liabilities (including Lender's attorneys' fees to the extent permitted by law), with interest at the Default Rate for the period after notice from Lender that such Advances were incurred to the date of payment to Lender, shall constitute a portion of the Liabilities, shall be secured by this Security Instrument, and the other Loan Documents and shall be due and payable to Lender upon demand.

15. **Lender's Right of Inspection.** Borrower shall (a) permit Lender or its representatives to enter on and inspect the Property at all reasonable times during business hours upon advance notice (which may be by telephone or, in the event of an emergency, on less than twenty-four (24) hours advance notice) and to inspect and audit all records relating to the Property, including all Leases, rent rolls or related reports, for the purpose of determining whether Borrower is in compliance with the provisions of the Loan Agreement, this Security Instrument or any of the other Loan Documents; and (b) shall prepare such schedules, summaries, reports and progress schedules as Lender may from time to time request.

16. **Environmental Matters.** Borrower represents, warrants and covenants that: (i) Borrower and each other Loan Party have complied and shall comply in all materials respects with all Environmental Laws in the operation of their businesses and ownership, lease and use of their assets; (ii) neither Borrower, any other Loan Party, their business operations (including, but not limited to, the Enterprises), nor their assets (including, but not limited to, the Collateral and Property) have contained, stored, generated, used, released or transported or shall contain, store, generate, use, release or transport any Hazardous Substance that might constitute a violation of any Environmental Law or subject Borrower, any other Loan Party, their business operations, or their assets to any

Environmental Claim; (iii) neither Borrower nor any other Loan Party has owned, leased or used or shall own, lease or use any above-ground or underground storage tanks and neither above-ground nor underground storage tanks constitute or shall constitute a portion of or have been or shall be located on their assets (including, but not limited to, the Collateral and Property) except for storage tanks in compliance with applicable Environmental Laws and other Legal Requirements; and (iv) neither the Borrower nor any other Loan Party possess any knowledge or have received notice of any pending or threatened Environmental Claim against Borrower, any other Loan Party, their business operations (including, but not limited to, the Enterprises), or against any Property adjoining or in the vicinity of the Property which could threaten the Collateral and Property or their other assets with an Environmental Claim. Borrower shall provide Lender with prompt written notice of Borrower's or any other Loan Party's breach of any Environmental Laws in any material respect and of any pending or threatened Environmental Claims against Borrower, any other Loan Party, their business operations (including, but not limited to, the Enterprises), or their assets (including, but not limited to, the Collateral and Property) and with copies of all communications to or from Borrower or any other Loan Party and any Person relating to such breaches of Environmental Laws and pending or threatened Environmental Claims. Borrower shall permit Lender to join and participate, as a party if it so elects, in any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Law or Hazardous Substance, and Borrower shall pay all reasonable attorneys' fees incurred by Lender in connection therewith. In the event Lender believes that Borrower, any other Loan Party, their business operations (including, but not limited to, the Enterprises), or their assets (including, but not limited to, the Collateral) are in violation of any Environmental Law in any material respect or are subject to any pending or threatened Environmental Claim, then at Lender's request and at Borrower's cost, Borrower shall promptly provide to Lender an environmental site assessment report, or environmental audit report, as applicable, at Lender's sole discretion, regarding the affected business operations or assets in form and substance and prepared by an environmental consulting firm acceptable to Lender as well as any additional information and materials requested by Lender with respect to such violation or Environmental Claim, and, if requested by Lender, an Environmental Insurance Policy. Lender may, at any time, obtain for its own benefit a Secured Creditor Policy, the cost of which shall, if Lender has reasonably requested such Secured Creditor Policy, be paid by the Borrower on demand and added to the Liabilities. Proceeds paid under any Secured Creditor Policy shall be paid to Lender for its own benefit and shall not be subject to the provisions of Sections 5(o) or 5(q) of the Loan Agreement. Without waiving any Event of Default arising from the existence of a violation of any Environmental Law or pending or threatened Environmental Claim, Borrower shall promptly remedy or cause such violation to be remedied and resolve or cause such Environmental Claim to be resolved to the satisfaction of Lender and the applicable Governmental Authorities at Borrower's cost. Lender may at any time in its reasonable discretion order an inspection or audit and/or obtain an Environmental Insurance Policy, and Borrower hereby grants to Lender and its employees and agents access to the Property and a license to undertake such inspection or audit or obtain such Environmental Insurance Policy. The cost of such inspection, audit and Environmental Insurance Policy shall be paid by Borrower on demand and added to the Liabilities and shall bear interest thereafter until paid at the Default Rate (as defined in the Note). Notwithstanding the preceding sentence, if any such inspection or audit undertaken by Lender indicates that no violation of any

Environmental Law exists with respect to such Property, Lender shall pay the cost of such inspection or audit. The obligations and liabilities of Borrower under this section shall survive any termination, satisfaction, or assignment of this Security Instruments and the exercise by Lender of any of its rights or remedies hereunder including, without limitation, the acquisition of any of the Properties by foreclosure or a conveyance in lieu of foreclosure.

17. **Further Assurances.** Borrower shall do, execute, acknowledge and deliver, at the sole cost and expense of Borrower, all such further acts, deeds, conveyances, mortgages, assignments, financing statements, notices of assignment, transfers and assurances as Lender may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm unto Lender the rights now or hereafter intended to be granted to Lender under this Security Instrument.

18. **No Merger.** There shall be no merger of the interest or estate created by this Security Instrument with any other interest or estate in the Property at any time held by or for the benefit of the Lender or any subsidiary or affiliate in any capacity, whether by purchase, operation of law, or otherwise, without the express prior written consent of the Lender.

19. **Marshaling and Other Matters.** Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force, and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives and renounces any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

20. **Preservation Rights.** No delay or omission on the Lender's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Lender's action or inaction impair any such right or power. The Lender's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Lender may have under other agreements, at law or in equity. The Lender may exercise any one or more of its rights and remedies without regard to the adequacy of its security.

21. **Illegality.** In case any one or more of the provisions contained in this Security Instrument should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

22. **Service of Process.** To the extent permitted by applicable law, process in any suit, action or proceeding may be served by certified mail, postage prepaid, to Borrower, at the address set forth above or to such other address of which Borrower shall have given Lender written notice. Nothing in this Section shall affect the Lender's right to serve process in any manner permitted by

law, or limit Lender's right to bring proceedings against Borrower in the courts of any other jurisdiction.

23. **WAIVER OF JURY TRIAL.** BORROWER HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

24. **CHOICE OF LAW.** THE PARTIES AGREE THAT IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY, ENFORCEMENT AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE GOVERNING LAW STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

25. **True and Correct Copy/Borrower Review.** Borrower acknowledges that:

(a) Borrower has received, without charge, a true and correct copy of this Security Instrument; and

(b) Borrower has read and understood all the provisions of this Security Instrument, including the Waiver of Jury Trial, and has been advised by counsel as necessary or appropriate.

26. **No Assumption of Borrower's Obligations Nor Construction as Mortgagee-in-Possession.** Nothing contained in this Security Instrument or the other Loan Documents nor the enforcement of any of Lender's rights or remedies with respect to the Property shall constitute Lender's assumption of any of Borrower's obligations with respect to the Property nor construe Lender to constitute a mortgagee-in-possession.

27. **No Merger; Acquisition of Additional Rights in Property.** Absent Lender's written consent, each Lease Agreement and the Leasehold Estate created thereby, and Borrower's other leasehold estates shall not merge with any of Borrower's other rights, title and interests in the Property by purchase, operation of law, or otherwise, but shall always be kept separate and distinct, notwithstanding the union of said estates either in the landlord or lessee thereunder, or in a third party. If Borrower acquires any additional rights, title or interests in the Leasehold Parcels and related assets constituting the Property, this Security Instrument shall constitute a lien and security

interest against such additional rights, title and interests and the definition of Property shall be expanded to include such additional rights, title and interests.

28. **Incorporation of Other Terms and Conditions.** All of the other terms and conditions set forth in the Loan Agreement and other Loan Documents (including, but not limited to, those pertaining to indemnification, reinstatement of Liabilities, further assurances, power of attorney, reimbursement of expenses, modification and waiver, notice, successors and assigns, loan sales and participations, disclosure of information, headings, grammatical changes, essence of time, survival, severability, joint and several obligations, construction, forum selection, integration, counterparts, waiver of dower and curtesy) are incorporated herein by this reference.

29. **Homestead.** Borrower hereby waives and renounces all homestead and exemption rights provided by the constitution and laws of the United States of America and any state, in and to the Property as against the collection of the Liabilities or any portion thereof.

30. **Special Alabama Provisions.**

(a) **Inconsistencies.** In the event of any inconsistency between the terms and conditions of the other articles and provisions of this Security Instrument and this Section 30, the terms and conditions of this Section 30 shall control and be binding.

(b) **Grant.** The first sentence of Section 2 of this Security Instrument is hereby deemed revised to insert and add the word "bargains" immediately following the phrase "Borrower hereby" and immediately preceding the word "assigns".

(c) **Power of Sale.** Borrower hereby vests Lender with full power and authority, upon the happening of an Event of Default, at Lender's option, to declare all sums secured hereby to be immediately due and payable, and at Lender's option, to take possession of the Property if and to the extent allowed by law, and to sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Lender may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The proceeds of any foreclosure sale pursuant to this paragraph shall be applied first, to the payment of the costs of said sale, including reasonable attorney's and auctioneer's fees; second, to the payment of the indebtedness hereby secured, whether due or not, with the unpaid interest thereon to the date of sale, and any amount that may be due Lender by virtue of any of the

special liens or agreements herein contained; and, third, the balance, if any, to be paid over to Borrower, or as may otherwise be provided by law.

(d) **Assignment of Leases.** Section 5 of this Security Instrument is deemed revised to replace the words "Borrower hereby absolutely and unconditionally assigns to Lender" with the following:

"Borrower hereby grants, bargains, sells, conveys and unconditionally assigns to Lender, and grants to Lender as additional security for the payment of the Liabilities, a continuing security interest in the following rights, interests and estates now owned or hereafter acquired by Borrower:"

(e) **Remedies.** Section 9, subpart (h) of this Security Instrument is hereby deemed revised to insert and add the phrase "power of sale" immediately following the phrase "judicial foreclosure," and immediately preceding the words "or other means".

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by
Borrower the day and year first above written.

WITNESSES:

Name:

Name:

S&R CONVENIENCE STORES, INC.

By: Rhonda M. Dollar
Name: Rhonda M. Dollar
Title: President

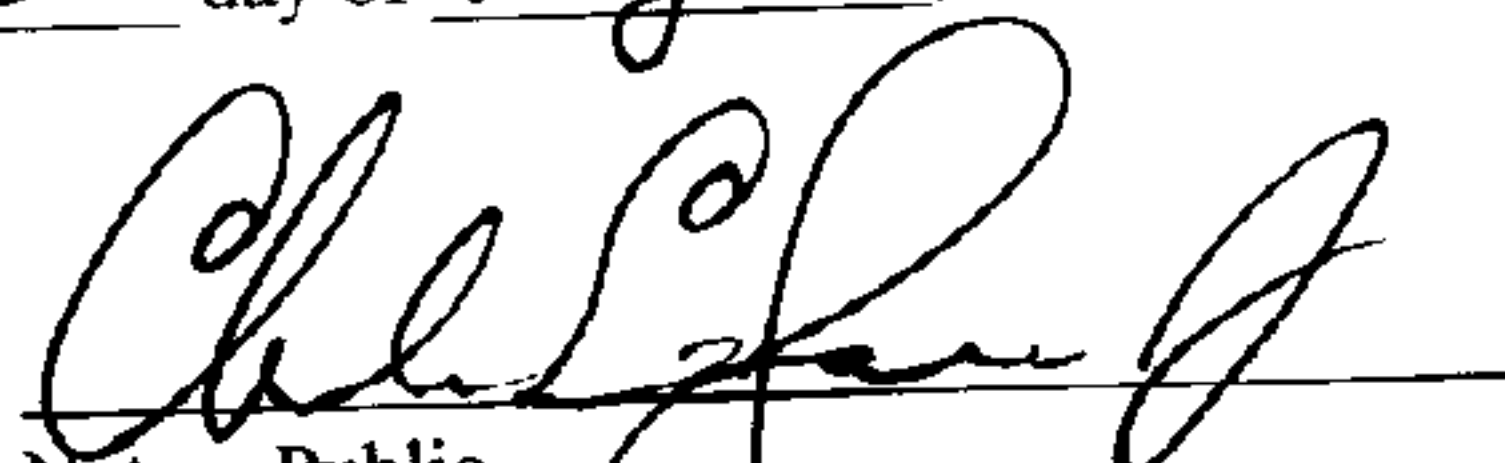
ACKNOWLEDGMENT

STATE OF ALABAMA)

COUNTY OF)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that RHONDA M. DOLLAR, whose name as President of S&R CONVENIENCE STORES, 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, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 2nd day of May, 2000.


Notary Public
My Commission Expires: 8-13-01

PARCEL II (SHORT STOP #4)

Exhibit A

Commence at the Northeast corner of the Southeast quarter of the Southwest quarter of Section 13, Township 15 South, Range 5 West, and South along the East line of said quarter section for a distance of 165.50 feet for the point of beginning; thence continue South along the last described course for a distance of 403.69 feet to the Northerly right of way line of U.S. Highway 78; thence run North 45 degrees 33 minutes 30 seconds West along said right of way for a distance of 345.0 feet; said point being on the East right of way of Turner Road; thence run North 08 degrees 59 minutes 30 seconds West along the east right of way line of Turner Road for a distance of 132.30 feet to a point; thence North 83 degrees 16 minutes 35 seconds East (Deed) North 83 degrees 16 minutes 53 seconds East (Measured) for a distance of 268.86 feet (Deed) 268.84 feet (Measured) to the point of beginning. Minerals and usual mining rights excepted.

PARCEL III (SHORT STOP #5)

Exhibit A

A part of the Northwest quarter of the Northeast quarter of Section 23, Township 14 South, Range 3 West, situated in Jefferson County, Alabama, more particularly described as follows:

Commence at the Southwest corner of the Northwest quarter of the Northeast quarter of Section 23, Township 14 South, Range 3 West and run North along the West line thereof for 643.7 feet to the Southerly right of way line of Cane Creek Road; thence 96 degrees 33 minutes 52 seconds right and run East along said right of way for 20.13 feet to the point of beginning; thence continue along the last described course and along said right of way for 210.0 feet; thence 83 degrees 26 minutes 08 seconds right and run South for 208.71 feet; thence 96 degrees 33 minutes 52 seconds right and run West for 210.0 feet; thence 83 degrees 26 minutes 08 seconds right and run North for 208.71 feet to the point of beginning. Minerals and usual mining rights excepted.

PARCEL IV (SHORT STOP #7)

Exhibit A

Being Lot 1, in Airport Plaza, as recorded in Map Book 19, Page 36, in the Probate Office of Shelby County, Alabama. Minerals and usual mining rights excepted.

PARCEL V (SHORT STOP #9)

Exhibit A

From the Southeast corner of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 34, Township 16 South, Range 3 East go North 0 degrees 16 minutes 17 seconds West 89.56 feet for the point of beginning; thence South 74 degrees 51 minutes 00 seconds East 201.4 feet; thence North 05 degrees 47 minutes 48 seconds West 479.41 feet; thence South 34 degrees 12 minutes 24 seconds West 199.75 feet; thence South 81 degrees 56 minutes 48 seconds West 264.83 feet to the Southeast right of way of Eden Cut off Road; thence left 135.7 feet along an arc of a curve which has a delta angle of 5 degrees 39 minutes 16 seconds and a radius of 1,375 feet, and a chord bearing of South 24 degrees 05 minutes 45 seconds West; thence South 68 degrees 59 minutes 52 seconds East 200.79 feet to a point; thence South 74 degrees 46 minutes 52 seconds East for 99.96 feet to the point of beginning. Lying in the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 34, Township 16, South, Range 3 East, St. Clair County, Alabama. Minerals and usual mining rights excepted.

PARCEL VI (SHORT STOP #11)

Exhibit A

A parcel of land located in the East half of the Northwest quarter of the Southwest quarter of Section 1, Township 14 South, Range 8 West, Walker County, Alabama, being more particularly described as follows:

Starting at the Northeast corner of said East half, thence North 89 degrees 46 minutes 51 seconds West along the North boundary of the East half a distance of 206.59 feet; thence South 46 degrees 14 minutes 15 seconds West a distance of 479.88 feet to the East right of way of Gamble Road; thence South 39 degrees 19 minutes 05 seconds East along said right of way a distance of 60.00 feet to the point of beginning; thence continue South 39 degrees 19 minutes 05 seconds East along said right of way a distance of 88.62 feet to a point; thence South 03 degrees 16 minutes 33 seconds West along said right of way a distance of 177.99 feet to a found right of way marker, thence South 41 degrees 31 minutes 03 seconds East, Deed, South 36 degrees 21 minutes 19 seconds East, Measured, a distance of 38.99 feet to the North right of way of Highway 78; thence South 86 degrees 43 minutes 01 seconds East along said North right of way a distance of 206.29 feet; thence North 03 degrees 16 minutes 59 seconds East a distance of 318.16 feet; thence North 86 degrees 43 minutes 01 seconds West a distance of 249.35 feet; thence South 46 degrees 14 minutes 15 seconds West a distance of 61.37 feet to the point of beginning. Minerals and usual mining rights excepted.

Inst # 2000-16968

05/23/2000-16968
01:38 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
833 HHS 89.50