



22,250,000

20021113000565880 Pg 1/28 33,467.00
Shelby Cnty Judge of Probate, AL
11/13/2002 14:48:00 FILED/CERTIFIED

**FUTURE ADVANCE MORTGAGE,
ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT
(ALABAMA)**

STATE OF ALABAMA

COUNTY OF SHELBY

THIS INDENTURE (herein this "**Mortgage**") made this 13th day of November, 2002, between **AIG BAKER BROOKSTONE, L.L.C.**, a Delaware limited liability company (hereinafter called the "**Borrower**," whether one or more), Mortgagor, and **COMPASS BANK** (hereinafter called "**Bank**"), Mortgagee.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" AS DEFINED IN SECTION 7-9A-334(h) OF THE CODE OF ALABAMA AND SECURES, AMONG OTHER OBLIGATIONS, AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.

WITNESSETH:

WHEREAS, Borrower is justly indebted to Bank on a loan (the "**Loan**") in the principal sum of TWENTY-TWO MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$22,250,000.00), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note dated November 15, 2002, payable to Bank with interest thereon as provided therein (the "**Note**") ; and

WHEREAS, Borrower may hereafter become indebted to Bank or to a subsequent holder of this Mortgage on loans or otherwise (the Bank and any subsequent holder of this Mortgage being referred to herein as "**Lender**") ; and

WHEREAS, the parties desire to secure the principal amount of the Note with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Note and any and all other additional indebtedness of Borrower to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise, including all obligations incurred by the Borrower under any agreement between Borrower and Lender or any affiliate of Lender, whether now existing or hereafter entered into, which provides for an interest rate currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign currency exchange transaction, cross currency rate swap, currency option, any combination of, or option with respect to, any of the foregoing or similar transactions, for the purpose of hedging the Borrower's exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (each, a "Hedge Agreement") (herein "**Other Indebtedness**").

NOW, THEREFORE, the Borrower, in consideration of Lender's making the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to reasonable attorneys' fees, and any and all Other Indebtedness as set

LOAN NO. _____ THIS INSTRUMENT
PREPARED BY:

**Randolph H. Lanier
BALCH & BINGHAM LLP
1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203**

(Rev. 09/94)

forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and set forth in all other documents evidencing, securing or executed in connection with the Loan (this Mortgage, the Note and such other documents are sometimes referred to herein as the "**Loan Documents**"), and as may be set forth in instruments evidencing or securing Other Indebtedness (the "**Other Indebtedness Instruments**") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of the Lender or hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "**Mortgaged Property**") to-wit:

- (a) All that tract or parcel or parcels of land and estates particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Land**");
- (b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Borrower and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property actually are located on or adjacent to the Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the "**Improvements**");
- (c) All accounts (as presently or hereafter defined in the UCC), general intangibles, goods, contracts and contract rights relating to the Land and Improvements, whether now owned or existing or hereafter created, acquired or arising, including without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and Improvements;
- (d) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:
 - (i) All rents, royalties, profits, issues and revenues of the Land and Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created; and
 - (ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land and Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Land and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf of and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and reasonable attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released;
- (e) Any and all licenses, development permits, building permits, utility supply agreements, sewer and water discharge permits and agreements, and other licenses, permits and agreements relating to the use, development, construction, occupancy and operation of the Land and Improvements, whether now or hereafter issued or executed, and all modifications, amendments, replacements or re-issuances of the foregoing;
- (f) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a) - (e) above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a) - (e) above.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject, however, to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if the Borrower shall fully pay or cause to be fully paid to the Lender the principal and interest payable with respect of the Loan and the Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, reasonable attorneys' fees, and shall pay any and all Other Indebtedness, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of the Borrower, all without fraud or delay, and (ii) the Lender shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Note, any other Loan Document or any Other Indebtedness Instrument (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

AND the Borrower further represents, warrants, covenants and agrees with the Lender as follows:

ARTICLE I GENERAL

1.01 Performance of Mortgage, Note and Loan Documents. The Borrower shall perform, observe and comply with all provisions hereof, of the Note, of the other Loan Documents, and of the Other Indebtedness Instruments, and shall duly and punctually pay to the Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, of the Note, of the other Loan Documents, and of the Other Indebtedness Instruments, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02 Warranty of Title. Borrower hereby warrants that, except as set forth on **Exhibit B** hereto: (i) it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is described on **Exhibit A** hereto, (ii) it has good and absolute title to all existing personal property hereby granted as security, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; (iii) that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature; and (iv) that Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Future Advances, Revolving and Open-End Loans, and Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of the Borrower to the Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

1.04 Monthly Tax Deposit. If required by Lender after an Event of Default, Borrower shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, as estimated by Lender, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Such amount shall be used by Lender to pay such the taxes on the Mortgaged Property when due. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums may be applied by the Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Note, any of the other Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by the Lender in writing, no application of tax deposits to the Note, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan, the Other Indebtedness, or any such other obligations.

1.05 Other Taxes, Utilities and Liens.

- (a) The Borrower shall pay promptly, when and as due, and, if requested, will exhibit promptly to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and

other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

- (b) The Borrower promptly shall pay and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Mortgaged Property.
- (c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Borrower immediately shall pay any increased taxes if allowed by law, and if Borrower fails to pay such additional taxes, or if Borrower is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.06 Insurance.

- (a) The Borrower shall procure for, deliver to, and maintain for the benefit of the Lender during the term of this Mortgage insurance policies in such amounts as the Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the Lender, and, unless otherwise agreed by the Lender in writing, shall provide for coverage without coinsurance. Deductible amounts shall be subject to the approval of Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender, as mortgagee. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower, or its assigns, in and to all insurance policies then in force shall pass to the purchaser or grantee.
- (b) The Lender hereby is authorized and empowered, at its option, in consultation with the Borrower, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company hereby is authorized and directed to make payment for all such losses directly to the Lender instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said funds, the Lender may apply the net proceeds, at its option, either toward repairing or restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Borrower's indebtedness selected by Lender, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be used to repair such improvements, or to build new improvements in their place or for any other purpose and in a manner satisfactory to the Lender, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be liable to Borrower or otherwise responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.
- (c) If required by the Lender after an Event of Default, the Borrower shall pay on the first day of each month, in addition to any regular installment of principal and interest and other charges with respect to indebtedness secured hereby, and the monthly tax deposit provided for in Paragraph 1.04 hereof, one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the provisions of this Paragraph 1.06. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts deposited by Borrower with Lender pursuant to this Paragraph 1.06 to enable the Lender to pay such insurance premiums when due. In the event of an Event of Default hereunder or of a default by Borrower under the Note, any other Loan Documents, or any Other Indebtedness Instruments, the Lender may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Lender, but, unless otherwise agreed by the Lender in writing, no application of insurance proceeds to the Loan, to Other Indebtedness, or to other obligations secured hereby,

shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan, the Other Indebtedness, or any such other obligations.

1.07 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief for any condemnation and hereby is authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, which, after deducting therefrom all its expenses, including reasonable attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require. The Borrower promptly shall notify the Lender in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. The Lender shall be entitled to retain, at the expense of the Borrower, its own legal counsel in connection with any such proceedings or threatened proceedings. Lender shall be under no obligation to the Borrower or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.

1.08 Care of the Property.

- (a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair (ordinary wear and tear excepted), and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.
- (b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery or appurtenances, subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Ten Thousand Dollars (\$10,000.00) for any single transaction, or a total of Thirty-Five Thousand Dollars (\$35,000.00) in any one year, upon replacing the same with, or substituting for the same, free and clear of all liens and security interests except those created by the Loan Documents or Other Indebtedness Instruments, other furniture, furnishings, equipment, tools, appliances, machinery or appurtenances not necessarily of the same character, but of at least equal value and of equal or greater utility in the operation of the Mortgaged Property, and costing not less than the amount realized from the property sold or otherwise disposed of. Such substitute furniture, furnishings, equipment, tools, appliances, machinery and appurtenances shall forthwith become, without further action, subject to the provisions of this Mortgage.
- (c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Borrower shall give immediate written notice of the same to the Lender.
- (d) The Lender hereby is authorized to enter upon and inspect the Mortgaged Property, and, upon prior notice to Borrower, except that no notice shall be required after an Event of Default, to inspect the Borrower's or Borrower's agent's records with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours.
- (e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower promptly shall restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor; provided, however, that if there are insurance proceeds, the Borrower shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds from the casualty in question and held by Lender, as allowed under Paragraph 1.06, toward restoring the damaged improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrower promptly shall restore, repair or alter the remaining property in a manner satisfactory to the Lender; provided, however, that if there are condemnation proceeds or awards, the Borrower shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds or awards from the condemnation and held by Lender, as provided in Paragraph 1.07, toward restoring the damaged improvements.

1.09 Further Assurances; After-Acquired Property.

- (a) At any time, and from time to time, upon request by the Lender, the Borrower, at Borrower's expense, will make, execute and deliver or cause to be made, executed and delivered to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.
- (b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.09, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by the Borrower by whatsoever means, including that in the event the Borrower is the owner of an estate or interest in the Mortgaged Property or any part thereof (such as, for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage the Borrower obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of the Borrower or the Lender or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lender's making the Loan as aforesaid, and to secure the Loan, the Other Indebtedness and obligations set forth above, Borrower hereby grants, bargains, sells and conveys to Lender, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

1.10 Additional Security. The Lender also shall have and hereby is granted a security interest in all monies, securities and other property of the Borrower, now or hereafter assigned, held, received, or coming into the possession, control, or custody of the Lender by or for the account of the Borrower (including indebtedness due from the Lender to the Borrower, and any and all claims of Borrower against Lender, at any time existing) whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, the Lender may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Loan or Other Indebtedness secured hereby, and in such manner as the Lender may determine, any such monies, securities or other property held or controlled by the Lender. No such application of funds shall, unless otherwise expressly agreed by the Lender in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or such Other Indebtedness or obligations.

1.11 Leases Affecting Mortgaged Property. The Borrower shall comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower shall furnish Lender with executed copies of all leases now or hereafter existing on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Borrower shall not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by the Lender, the Borrower shall execute and deliver to Lender, as additional security, such other documents as may be requested by Lender to evidence further the assignment to Lender hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. The Borrower shall not cancel, surrender or materially modify any lease affecting the Mortgaged Property or any part thereof without the written consent of the Lender.

1.12 Expenses. The Borrower shall pay or reimburse the Lender for all reasonable attorneys' fees, costs and expenses incurred by the Lender in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the other Loan Documents or the Other Indebtedness Instruments, or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, any of the other Loan Documents, any of the Other Indebtedness Instruments, Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, any environmental condition of or affecting the Mortgaged Property, or any action to protect the security hereof; and any such

amounts paid or incurred by the Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

1.13 Performance by Lender of Defaults by Borrower. If the Borrower shall default beyond any applicable cure period in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or otherwise described in Paragraphs 1.04 and 1.05 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments, then the Lender, at its option, and after prior notice to the Borrower, may perform or observe the same; and all payments made for costs or expenses incurred by the Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon calculated in the manner set forth in the Note, and at the default interest rate specified in the Note, or, if no default interest rate is specified, then at the rate set forth in the Note, plus two percentage points (2%). The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender hereby is empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower for trespass or otherwise, except for matters caused by the Lender's gross negligence or willful misconduct.

1.14 Books and Records. The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of the Lender, the Borrower shall furnish to the Lender (i) within ninety (90) days after the end of the Borrower's fiscal year a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by an officer of AIG Baker Shopping Centers, L.L.C., and (ii) within ten (10) days after request therefor from Lender, a rent schedule of the Mortgaged Property, certified by the Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date and the rent paid.

1.15 Estoppel Affidavits. The Borrower within twenty (20) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Loan and Other Indebtedness and whether or not any offsets or defenses exist against any principal and interest.

1.16 Alienation or Sale of Mortgaged Property. If Borrower should sell, assign, mortgage, grant a deed of trust, encumber, grant a security interest in or convey all, or any part, of the Mortgaged Property, except for easements or rights-of-way required in the normal course of development, without the prior written consent of Lender, then such action shall be an Event of Default hereunder and, in such event, the entire balance of the indebtedness (including the Loan and all Other Indebtedness) secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of the Lender.

Anything in this Mortgage or in any other Loan Document to the contrary notwithstanding, Borrower may transfer member or ownership interests in the Borrower without Lender's consent, among companies that are owned or controlled by, or under the common control with, the Borrower, American International Group, Inc., A.B. Operations, Inc., AIG/Baker, Inc., Alex Baker Limited Partnership or A.B. Development, Inc.; provided, that the transferee entity shall have a financial condition comparable to the transferor entity (net worth and liquidity). For purposes of this paragraph, "control" shall mean ownership of 51% or more of the voting interests in the respective entity.

1.17 Environmental and Compliance Matters. Borrower represents, warrants and covenants that, except as set forth in the Phase I Environmental Site Assessment covering the Mortgaged Property and previously delivered to Lender:

- (a) No Hazardous Materials (hereinafter defined) have been or are, to the best of Borrower's knowledge, or will be while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "**Hazardous Materials**" includes, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("**CERCLA**") (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act ("**RCRA**") (42 U.S.C. Sections 6901, *et seq.*), the Clean Water Act (33 U.S.C. Sections 1251, *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*), the Toxic Substances Control Act (15 U.S.C. Sections 2601, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration ("**OSHA**") pertaining to occupational

exposure to asbestos, as amended from time to time, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

- (b) To the best of Borrower's knowledge, no underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;
- (c) All of the Mortgaged Property complies to the best of Borrower's knowledge, and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;
- (d) There are no pending claims or, to the best of Borrower's knowledge threats of claims, by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;
- (e) The Borrower promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Mortgaged Property or any part thereof. Without limiting the foregoing, the Borrower represents and covenants that the Mortgaged Property is in present compliance with, and in the future shall comply with, as applicable, the Americans With Disabilities Act of 1990, ("**ADA**") (42 U.S.C. Sections 12101, *et seq.*) and the Rehabilitation Act of 1973 ("**Rehabilitation Act**") (29 U.S.C. Sections 749, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto.
- (f) Borrower shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.17, or of any notice of other claim relating to the environmental or physical condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Borrower agrees to and does hereby indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation or warranty set forth in this Paragraph 1.17, (ii) Borrower's failure to perform any obligations of this Paragraph 1.17, (iii) Borrower's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, with all occupational health and safety laws, rules and regulations, with the ADA or the Rehabilitation Act, as applicable, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, and any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences. However, this indemnification shall not apply to any new Hazardous Materials first stored, generated or placed on the Mortgaged Property after the acquisition of title to the Mortgaged Property by Lender through foreclosure or deed in lieu of foreclosure or purchase from a third party after the Loan has been paid in full.

1.18 Inspection Rights and Easements. In addition to other inspection rights of Lender, the Borrower shall and hereby does grant and convey to the Lender, its agents, representatives, contractors, and employees, to be exercised by Lender following an Event of Default hereunder or under any of the other Loan Documents, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing (herein "**Inspections**"), as the Lender, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, the ADA and the Rehabilitation Act, as applicable, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to the Lender, the Lender shall have no obligation to perform any such Inspections, or to take any remedial action. All the costs and expenses incurred by the Lender with respect to any Inspections which the Lender may conduct or take pursuant to this Paragraph 1.18, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by the Borrower, with interest, and shall be secured by this Mortgage and the other Loan Documents.

1.19 Use, Governmental Compliance, etc. The Borrower shall: (a) use the Mortgaged Property solely for the uses provided for in the Loan Agreement or Construction Loan Agreement executed by Borrower and Lender in connection with the Loan, or otherwise as permitted in writing by the Lender; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) compliance with the environmental laws, rules and regulations referenced in Paragraph 1.17(a) hereof or as otherwise may be applicable to the Mortgaged Property from time to time, (ii) the use of the Mortgaged Property and the conduct of any business or activity on the Mortgaged Property, and (iii) the construction, completion and occupancy of the improvements constructed or to be constructed on the Mortgaged Property, including all required zoning, building, land use, environmental, wetlands, coastal development, endangered species, cultural resources, storm water discharge, liquor, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Mortgaged Property or any business or activity conducted thereon; and (d) not permit any act to be done on the Mortgaged

Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto. For the purposes hereof, (a) a **"Governmental Authority"** means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof having jurisdiction over or with respect to all or any part of the Mortgaged Property, and (b) **"Governmental Requirements"** means all laws, rules, regulations, ordinances, judgments, decrees, codes, order, injunctions, notices and demand letters of any Governmental Authority.

ARTICLE II

ASSIGNMENT OF RENTS AND LEASES

2.01 Assignment. Borrower, in consideration of Lender's making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to reasonable attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto the Lender all leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, including without limitation those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to the Lender, and the Borrower does hereby appoint irrevocably the Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and after an Event of Default, to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

2.02 Prepayment of Rent. The Borrower represents and agrees that no rent (other than security deposits) has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Borrower. The Borrower waives any right of setoff against any person in possession of any portion of the Mortgaged Property. The Borrower agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

2.03 Not Mortgagee in Possession; No Liability. Nothing herein contained shall be construed as constituting the Lender as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Lender, no liability shall be asserted or enforced against the Lender, all such liability being expressly waived and released by the Borrower.

2.04 Present Assignment. It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Borrower shall have the right to collect the rents and to enter into leases with respect to the Mortgaged Property as herein provided so long as there exists no Event of Default under this Mortgage, and provided further, that Borrower's right to collect such rents and to enter into such leases shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Lender.

2.05 No Obligation of Lender Under Leases. The Lender shall not, prior to becoming the title owner of the Mortgaged Property, be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and the Borrower shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements; provided, that Borrower shall not indemnify Lender against matters caused by Lender's own gross negligence or willful misconduct. Should the Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Lender in connection with any one or more of said leases, subleases or agreements (other than with respect to matters caused by the Lender's own gross negligence or willful misconduct), the Borrower agrees to

reimburse the Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Borrower, all such costs, expenses and reasonable attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

2.06 Instruction to Lessees. The Borrower does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to the Lender upon receipt of demand from said Lender to pay the same.

2.07 Default (Assignment). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, then, in addition to the right to demand and collect directly from tenants rents accruing from leases of the Mortgaged Property, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE III SECURITY AGREEMENT

3.01 Grant of Security Interest. Borrower (the "debtor" for purposes of the Uniform Commercial Code), in consideration of Lender's (the "secured party" for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to reasonable attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby assign and grant to Lender title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the "Collateral").

3.02 Definitions and Interpretation of Uniform Commercial Code. All terms used herein which are defined in the Alabama Uniform Commercial Code (the "Uniform Commercial Code") shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein. References herein to the Uniform Commercial Code shall mean the Alabama Uniform Commercial Code as existing on the date of this Mortgage and as revised and amended from time to time. Anything to the contrary herein notwithstanding, rights and remedies of the debtor and secured party under the Uniform Commercial Code shall be deemed to mean such rights and remedies existing under the Uniform Commercial Code as in effect on the date such rights or remedies are enforced; provided, that no such interpretation shall have the effect of invalidating any security interest created hereunder. No reference herein to rights or remedies existing under the Uniform Commercial Code on the date of this Mortgage, which may not exist or which may be modified under later revisions or amendments to the Uniform Commercial Code, shall have the effect of invalidating this Mortgage or any security interest created hereunder.

3.03 Financing Statements. No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on an addendum attached hereto, if any, and except for the financing statements executed by Borrower and Lender. At the Lender's request, the Borrower will join with Lender in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to the Lender, and will pay the cost of filing the same in all public offices wherever filing is deemed by the Lender to be necessary or desirable. The Borrower authorizes the Lender to prepare and to file financing statements covering the Collateral signed only by the Lender and to sign the Borrower's signature to such financing statements in jurisdictions where Borrower's signature is required. The Borrower promises to pay to the Lender the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

3.04 Representations of Borrower (Collateral). With respect to all of the Collateral, Borrower represents and warrants that:

- (a) The Collateral is used or bought primarily for business purposes;
- (b) If the Loan is a construction loan, the Collateral is being acquired and/or installed with the proceeds of the Note which Lender may disburse directly to the seller, contractor, or subcontractor;
- (c) All the Collateral will be kept at the address of Borrower shown in Paragraph 5.07 or, if not, at the real property described in **Exhibit A** hereto. Borrower promptly shall notify Lender of any change in the location of the Collateral. Except for transactions in the ordinary course of Borrower's business, Borrower, its agents or employees, will not remove the Collateral from said location without the prior written consent of the Lender;
- (d) If certificates of title are issued or outstanding with respect to any of the Collateral, the Borrower shall cause the Lender's interest to be properly noted thereon; and

- (e) Borrower's name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to the Lender. Borrower promptly shall advise the Lender in writing of any change in Borrower's name.

3.05 Assignment of Liabilities. If at any time or times by sale, assignment, negotiation, pledge, or otherwise, Lender transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Lender's rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Lender retains any of such indebtedness or instruments, Lender shall continue to have the rights and remedies herein set forth with respect thereto.

3.06 No Obligation of Lender Under Assigned Contracts. The Lender shall not, prior to becoming the title owner of the Mortgaged Property, be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any contracts or agreements relating to the Mortgaged Property, and the Borrower shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any such contracts or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said contracts or agreements; provided, that Borrower shall not indemnify Lender against matters caused by Lender's own gross negligence or willful misconduct. Should the Lender incur any such liability, loss or damage, under said contracts or agreements or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Lender in connection with any on or more of said contracts or agreements (other than with respect to matters caused by Lender's own gross negligence or willful misconduct), the Borrower agrees to reimburse the Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Borrower, all such costs, expenses and reasonable attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

3.07 Default (Security Agreement). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, the Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

4.01 Event of Default. The term "Event of Default," wherever used in this Mortgage, shall mean the occurrence or existence of any one or more of the following events or circumstances:

- (a) Failure by the Borrower to pay within ten (10) days after written notice from Lender that the same was not paid on the date when due and payable any installment of principal, interest, escrow deposit or other charge payable under the Note, this Mortgage or under any other Loan Document; or
- (b) If there shall be an Event of Default (after the expiration of all permitted cure periods set forth therein) under the Construction Loan Agreement between Borrower and Lender dated contemporaneously herewith and relating to the Loan.

4.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire balance of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby (or such parts as Lender may elect) with interest accrued thereon (or such parts as Lender may elect) shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

4.03 Right of Lender to Enter and Take Possession.

- (a) If an Event of Default shall have occurred and be continuing, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Lender or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Borrower or then owner of the Mortgaged Property relating thereto, and may exclude the Borrower and its agents and employees wholly therefrom.
- (b) Upon every such entering upon or taking of possession, the Lender, as attorney-in-fact or agent of the Borrower, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Lender) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs,

renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Lender) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Lender) and exercise all the rights and powers of the Borrower in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Borrower to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance as the Lender may determine to pay, (dd) such taxes, assessments and other charges prior to this Mortgage as the Lender may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender, Lender shall apply the remainder of the moneys so received by the Lender, first to the payment of accrued interest under the Note; second to the payment of tax deposits required in Paragraph 1.04; third to the payment of any other sums required to be paid by Borrower under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.

- (c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.
- (d) In connection with any action taken by the Lender pursuant to this Paragraph 4.03, the Lender shall not be liable for any loss sustained by Borrower, resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of the Lender in managing the Mortgaged Property unless such loss is caused by the gross negligence, willful misconduct, or bad faith of the Lender, nor shall the Lender be obligated to perform or discharge any obligation, duty or liability under any lease agreement covering the Mortgaged Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Borrower shall and does hereby agree to indemnify the Lender for, and to hold the Lender harmless from, any and all liability, loss or damage which may or might be incurred by the Lender under any such lease agreement or under or by reason of this Mortgage or the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such lease agreement. Should the Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby and Borrower shall reimburse the Lender therefor immediately upon demand. Nothing in this Paragraph 4.03 shall impose any duty, obligation or responsibility upon the Lender for the control, care, management or repair of the Mortgaged Property, or for carrying out of any of the terms and conditions of any such lease agreement; nor shall it operate to make the Lender responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties or for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Borrower hereby assents to, ratifies and confirms any and all actions of the Lender with respect to the Mortgaged Property taken under this Paragraph 4.03

4.04 Receiver.

- (a) If an Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.

- (b) The Borrower shall pay to the Lender upon demand all costs and expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 4.04; and all such expenses shall be secured by this Mortgage.

4.05 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Loan; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Lender, all as the Lender may elect.

4.06 Rights of a Secured Party. Upon the occurrence of an Event of Default, the Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any of the other Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

- (a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Borrower and without any liability for rent, storage, utilities or other sums;
- (b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Borrower at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Borrower agrees shall be reasonable notice of any sale or disposition of the Collateral;
- (c) The right to require Borrower, upon request of Lender, to assemble and make the Collateral available to Lender at a place reasonably convenient to Borrower and Lender; and
- (d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Lender upon default, Borrower does hereby irrevocably appoint Lender attorney-in-fact for Borrower, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Borrower could do, and to sell, assign, and transfer any collateral to Lender or any other party.

4.07 Power of Sale. If an Event of Default shall have occurred, Lender may sell the Mortgaged 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 Mortgaged 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 Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged 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 provisions of Paragraph 4.06 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

4.08 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 4.07, or any sale pursuant to Paragraph 4.06, shall be applied as follows:

- (a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;
- (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Loan Documents, such repayment to be applied in the manner determined by Lender;

- (c) Third, to the payment of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due;
- (d) Fourth, the balance, if any, shall be paid as provided by law.

4.09 Lender's Option on Foreclosure. At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

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

4.11 Suits to Protect the Mortgaged Property. The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

4.12 Borrower to Pay the Note on any Default in Payment; Application of Moneys by Lender. If an Event of Default (beyond any applicable cure periods) shall occur in the payment of any amount due under this Mortgage, the Note, any of the other Loan Documents or any of the Other Indebtedness Instruments, or if any other Event of Default shall occur under this Mortgage, then, upon demand of the Lender, the Borrower shall pay to the Lender the whole amount due and payable under the Note and under all Other Indebtedness Instruments; and in case the Borrower shall fail to pay the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Lender's agents and attorneys.

4.13 Delay or Omission No Waiver. No delay or omission of the Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, any of the other Loan Documents, or the Other Indebtedness Instruments to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

4.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder, under any of the other Loan Documents, or under any of the Other Indebtedness Instruments shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Lender (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, in any of the other Loan Documents, or in any of the Other Indebtedness Instruments; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, any of the other Loan Documents or the Other Indebtedness Instruments; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, the other Loan Documents, or the Other Indebtedness Instruments of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, without notice to any person, corporation or other entity (except notice shall be given to Borrower so long as Borrower remains liable under the Note, this Mortgage or any of the other Loan Documents) hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the other Loan

Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings — Position of Parties Restored. In case the Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

4.16 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, any of the other Loan Documents, the Other Indebtedness Instruments or now or hereafter existing at law or in equity or by statute.

ARTICLE V MISCELLANEOUS

5.01 Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, the Borrower shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of the Lender.

5.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof. "Herein," "hereby," "hereunder," "hereof," and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.

5.03 Gender; Number. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

5.04 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, in any of the other Loan Documents, or in the Other Indebtedness Instruments shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, in the other Loan Documents and in the Other Indebtedness Instruments shall be in no way affected, prejudiced or disturbed thereby.

5.05 Loan Documents. Wherever reference is made herein to this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments, such reference shall include all renewals, extensions, modifications and refinancings thereof.

5.06 Instrument Under Seal. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

5.07 Addresses and Other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

(a)	Name of Borrower (Debtor):	AIG BAKER BROOKSTONE, L.L.C.
	Address of Borrower:	1710 Lee Branch Lane Birmingham, Alabama 35242
(b)	Name of Lender (Secured Party):	COMPASS BANK
	Address of Lender:	Compass Bank P.O. Box 10566 Birmingham, Alabama 35296 Attention: Birmingham Real Estate Banking

- (c) **Record Owner of Real Estate**
described on Exhibit A hereto: AIG Baker Brookstone, L.L.C.

5.08 Purpose of Collateral. Borrower represents and warrants to Lender that the Collateral is used and bought primarily for business purposes.

5.09 Applicable Law. This Mortgage shall be governed in all respects by the laws of the State of Alabama.

5.10 Rider. Additional provisions of this Mortgage, if any, are set forth below or on a Rider attached hereto and made a part hereof.

Additional Notice Provisions. A copy of any notices to Borrower also shall be sent to:

Michael A. Gordon, Esq.
Arent Fox Kintner Plotkin & Kahn, P.L.L.C.
1050 Connecticut Avenue, NW
Washington, D.C. 20036-5339

and to:

AIG Global Real Estate Investment Corp.
One Chase Manhattan Plaza, 57th Floor
New York, NY 10005
Attention: General Counsel

Application of Insurance and Condemnation Proceeds. Notwithstanding the provisions of Paragraphs 1.06 and 1.07 hereof, respectively relating to the application of insurance proceeds and condemnation proceeds, if the damage to the Mortgaged Property through casualty or condemnation can be repaired in a timely and economically feasible manner, and in a manner which remains in compliance with all leases on the Mortgaged Property and the requirements of all applicable building, subdivision and zoning codes, Lender agrees that it will make such proceeds available to the construction costs of, or to reimburse Borrower for those costs of construction incurred by Borrower in, effecting the repair and restoration of those portions of the Mortgaged Property which shall have been condemned, damaged or destroyed in accordance with the following conditions and procedures:

- (a) There shall then exist no uncured Event of Default on the part of Borrower hereunder or under any other Loan Document;
- (b) No portion of such proceeds shall be made available by Lender for architectural reviews or for any other purposes which are not directly attributable to the costs of reconstructing those portions of the Mortgaged Property which are so taken, damaged or destroyed;
- (c) Borrower shall have first provided assurances satisfactory to Lender that such repair can be timely completed to the satisfaction of Lender (including without limitation depositing with Lender such amounts as shall in the opinion of Lender may be required in addition to the available insurance or condemnation proceeds, to fully pay the cost of such repair and restoration); and
- (d) Each disbursement by Lender of such proceeds and deposits (i) shall be funded on a periodic basis, but no more frequently than monthly, (ii) shall not in any instance be in an amount greater than the actual cost of such repair and restoration which has been performed plus fees and expenses associated with such repair and restoration, including without limitation those items listed in (iii) and (v) below (aa) since the date of performance of that portion of such work which was reimbursed with the immediately preceding disbursement, or (bb) with respect to the first disbursement, since the date of commencement of such work (which cost shall be verified in writing in each instance by an architect, engineer or other party theretofore approved by Lender), (iii) shall be conditioned in part upon the delivery to Lender of a current title insurance policy, (iv) shall be further conditioned upon Lender's satisfaction that any undisbursed proceeds and deposits are sufficient to fully pay the then remaining costs of completing such repair and restoration, and (v) conditioned upon the approval of each draw request by an architect or engineer approved by Lender (whose expenses shall be paid by Borrower) as to the matters described in (i) - (iv) above and that the work is being performed in accordance with plans and specifications for such work which have been previously submitted to and approved in writing by Lender. In the event and to the extent such insurance proceeds or condemnation proceeds are not required or used for the repair and restoration of the Mortgaged Property as aforesaid, Lender shall be entitled to apply such sums on account of the indebtedness secured by this Mortgage, regardless of whether the same shall then be due and payable, and any balance of such sums thereafter remaining shall be paid to Borrower.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed and effective as of the day and year first above written.

BORROWER (Mortgagor, Debtor):

AIG BAKER BROOKSTONE, L.L.C.,
a Delaware limited liability company

WITNESS:

By: **AIG BAKER SHOPPING CENTER
PROPERTIES, L.L.C.,**
a Delaware limited liability company and
its sole Member

Amy E. McNule

By: [Signature]
Its: Executive Vice President

STATE OF ALABAMA

COUNTY OF SHELBY

I, Sharon Linthicum Sanders, a notary public in and for said county in said state, hereby certify that W. ERNEST MOSS, whose name as Executive Vice President of AIG BAKER SHOPPING CENTER PROPERTIES, L.L.C., a Delaware limited liability company, as the sole member of **AIG BAKER BROOKSTONE, L.L.C.**, a Delaware limited liability company, 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said AIG BAKER SHOPPING CENTER PROPERTIES, L.L.C., as the sole member of **AIG BAKER BROOKSTONE, L.L.C.**

Given under my hand and official seal this 13th day of November, 2002.

[Signature]
Notary Public

[Notarial Seal]

My Commission Expires: 3-16-03

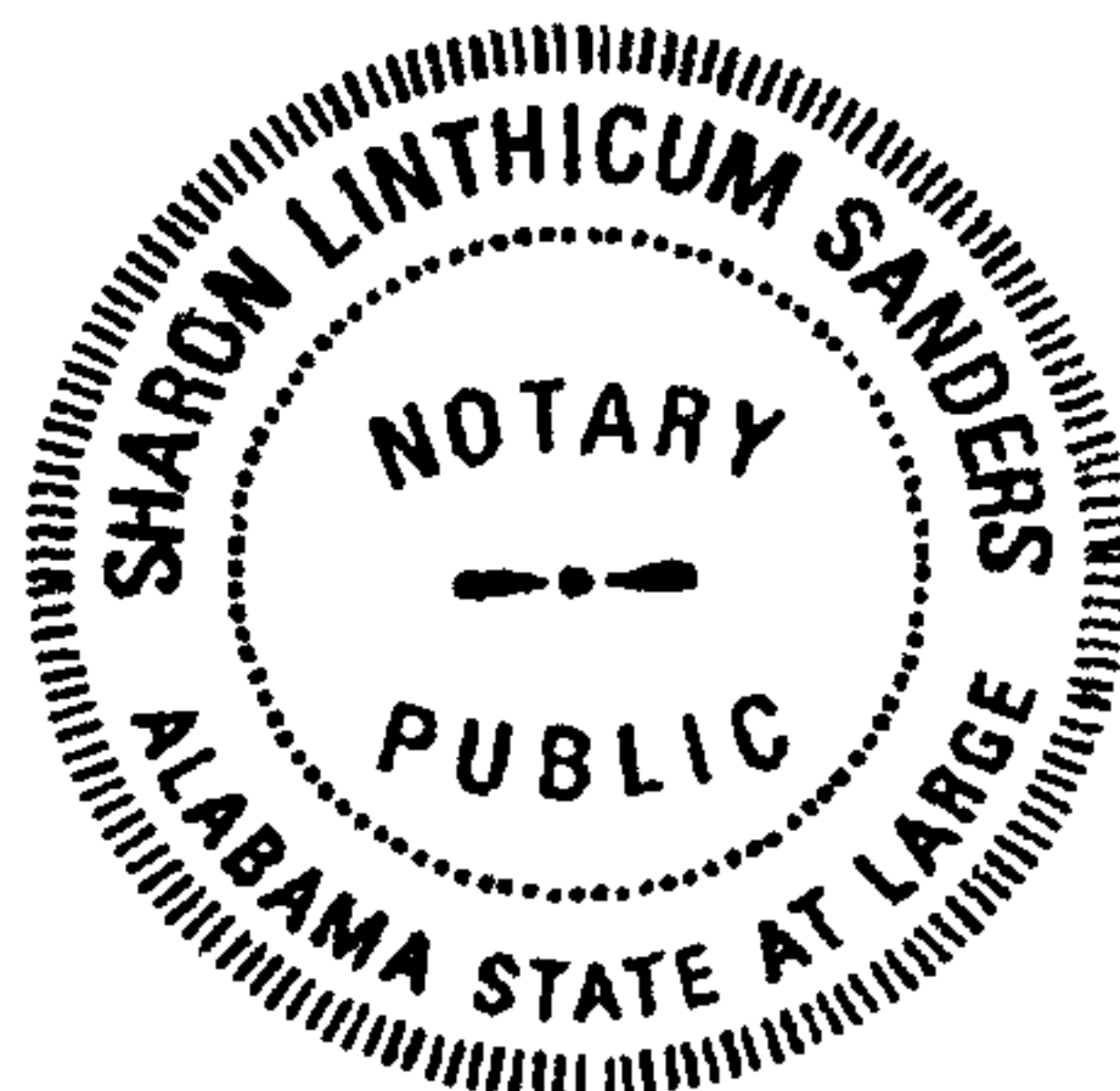


EXHIBIT A

Description of Real Property

PARCEL 1:

A parcel of land situated in the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama said point being the POINT OF BEGINNING; thence proceed South 88 degrees 49 minutes 06 seconds West along said South line of said Southeast quarter of Northwest quarter for a distance of 760.20 feet to a point; thence proceed North 23 degrees 08 minutes 39 seconds East for a distance of 1085.69 feet to a point; thence proceed North 88 degrees 41 minutes 32 seconds East for a distance of 326.16 feet to a point on the East line of said Southeast quarter of Northwest quarter; thence proceed South 00 degrees 25 minutes 08 seconds East along said East line of said Southeast quarter of Northwest quarter for a distance of 629.58 feet to a point; thence proceed North 70 degrees 03 minutes 41 seconds West for a distance of 152.68 feet to a point; thence proceed South 00 degrees 01 minutes 46 seconds East for a distance of 133.15 feet to a point; thence proceed South 70 degrees 07 minutes 57 seconds East for a distance of 153.57 feet to a point on the East line of said Southeast quarter of Northwest quarter; thence proceed South 00 degrees 25 minutes 08 seconds East along said East line of said Southeast quarter of Northwest quarter for a distance of 227.25 feet to the POINT OF BEGINNING.

PARCEL 2:

A parcel of land situated in the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed North 00 degrees 25 minutes 08 seconds West along the East line of said Southeast quarter of Northwest quarter for a distance of 227.25 feet the POINT OF BEGINNING; thence proceed North 70 degrees 07 minutes 57 seconds West for a distance of 153.57 feet to a point; thence proceed North 00 degrees 01 minutes 46 seconds West for a distance of 133.15 feet to a point; thence proceed South 70 degrees 03 minutes 41 seconds East for a distance of 152.68 feet to a point on the East line of said Southeast quarter of Northwest quarter; thence proceed South 00 degrees 25 minutes 08 seconds East along said East line of said Southeast quarter of Northwest quarter for a distance of 133.28 feet to the POINT OF BEGINNING.

PARCEL 3:

A parcel of land situated in the Southwest quarter of the Northeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Southwest quarter of the Northeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, said point being the POINT OF BEGINNING; thence proceed North 00 degrees 25 minutes 08 seconds West along the West line of said Southwest quarter of Northeast quarter for a distance of 470.00 feet to a point; thence proceed North 88 degrees 49 minutes 06 seconds East for a distance of 165.30 feet to a point on the West right of way of U.S. Highway 280; thence proceed South 03 degrees 59 minutes 20 seconds West along said West right of way of U.S. Highway 280 for a distance of 89.76 feet to a concrete right of way monument; thence proceed South 07 degrees 19 minutes 16 seconds East along said West right of way of U.S. Highway 280 for a distance of 382.76 feet to a point on the South line of said Southwest quarter of Northeast quarter; thence proceed South 88 degrees 49 minutes 06 seconds West along said South line of said Southwest quarter of Northeast quarter for a distance of 204.40 feet to the POINT OF BEGINNING.

PARCEL 4:

A parcel of land situated in the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a 2 inch capped pipe purported to be the Southwest corner of the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed North 00 degrees 30 minutes 04 seconds West along the West line of said Southeast quarter of Northwest quarter for a distance of 395.59 feet to the POINT OF BEGINNING; thence continue North 00 degrees 30 minutes 04 seconds West along said West line of said Southeast quarter of Northwest quarter for a distance of 591.56 feet to a rebar found; thence proceed North 88 degrees 41 minutes 32 seconds East for a distance of 1009.80 feet to a point; thence proceed South 23 degrees 08 minutes 39 seconds West for a distance of 651.90 feet to a point; thence proceed South 88 degrees 50 minutes 25 seconds West for a distance of 403.29 feet to a point; thence proceed North 20 degrees 26 minutes 26 seconds West for a distance of 114.82 feet to a point; thence proceed North 60 degrees 33 minutes 36 seconds West for a distance of 31.16 feet to a point; thence proceed South 28 degrees 19 minutes 52 seconds West for a distance of 142.74 feet to a point; thence proceed South 88 degrees 50 minutes 25 seconds West for a distance of 210.00 feet to the POINT OF BEGINNING.

PARCEL 5:

A parcel of land situated in the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a 2 inch capped pipe purported to be the Southwest corner of the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County said point being the point of beginning; thence proceed North 00 degrees 30 minutes 04 seconds West along the West line of said Southeast quarter of Northwest quarter for a distance of 395.59 feet to a point; thence proceed North 88 degrees 50 minutes 25 seconds East for a distance of 748.29 feet to a point; thence proceed South 23 degrees 08 minutes 39 seconds West for a distance of 433.79 feet to a point on the South line of said Southeast quarter of Northwest quarter; thence proceed South 88 degrees 49 minutes 06 seconds West along said South line of said Southeast quarter of Northwest quarter for a distance of 574.30 feet to the POINT OF BEGINNING.

PARCEL 6:

A parcel of land situated in the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a 2 inch capped pipe purported to be the Southwest corner of the Southeast quarter of the Northwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed North 00 degrees 30 minutes 04 seconds West along the West line of said Southeast quarter of Northwest quarter for a distance of 395.59 feet to a point; thence proceed North 88 degrees 50 minutes 25 seconds East for a distance of 210.00 feet the POINT OF BEGINNING; thence proceed North 28 degrees 19 minutes 52 seconds East for a distance of 142.74 feet to a point; thence proceed South 66 degrees 33 minutes 36 seconds East for a distance of 31.16 feet to a point; thence proceed South 20 degrees 26 minutes 26 seconds East for a distance of 114.82 feet to a point; thence proceed South 88 degrees 50 minutes 25 seconds West for a distance of 135.00 feet to the POINT OF BEGINNING.

PARCEL 7:

A parcel of land situated in the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being the middle one-third of the North one-half of the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, more particularly described as follows:

Commence at a set capped rebar purported to be the Northwest corner of the Northeast quarter of the Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed North 88 degrees 49 minutes 06 seconds East along the North line of said Northeast quarter of Southwest quarter for a distance of 444.83 feet to a point, said point being the POINT OF BEGINNING of herein described parcel; thence proceed North 88 degrees 49 minutes 06 seconds East continuing along the North line of said Northeast quarter of Southwest quarter for a distance of 444.83 feet to a point; thence proceed South 00 degrees 25 minutes 57 seconds East for a distance of 658.31 feet to a point; thence proceed South 88 degrees 52 minutes 06 seconds West for a distance of 444.67 feet to a point; thence proceed North 00 degrees 26 minutes 46 seconds West for a distance of 657.92 feet to the POINT OF BEGINNING.

PARCEL 8:

A parcel of land situated in the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; being that certain 30 foot strip of land adjoining and running along the South side of the North half of the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, more particularly described as follows:

Commence at a 2 inch capped pipe purported to be the Northwest corner of the Northeast quarter of the Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed South 00 degrees 27 minutes 35 seconds East along the West line of said Northeast quarter of Southwest quarter for a distance of 657.54 feet to a point, said point being the POINT OF BEGINNING of herein described parcel; thence proceed North 88 degrees 52 minutes 06 seconds East for a distance of 444.67 feet to a point; thence proceed South 00 degrees 26 minutes 46 seconds East for a distance of 30.00 feet to a point; thence proceed South 88 degrees 52 minutes 06 seconds West for a distance of 444.67 feet to a point on the West line of said Northeast quarter of Southwest quarter; thence proceed North 00 degrees 27 minutes 35 seconds West along the West line of said Northeast quarter of Southwest quarter for a distance of 30.00 feet to the POINT OF BEGINNING.

PARCEL 9:

A parcel of land situated in the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being the North one-third of the West one-third of the North half of the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, more particularly described as follows:

Commence at a 2 inch capped pipe purported to be the Northwest corner of the Northeast quarter of the Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, said point also known as the POINT OF BEGINNING; thence proceed

North 88 degrees 49 minutes 06 seconds East along the North line of said Northeast quarter of Southwest quarter for a distance of 444.83 feet to a point; thence proceed South 00 degrees 26 minutes 46 seconds East for a distance of 219.31 feet to a point; thence proceed South 88 degrees 50 minutes 06 seconds West for a distance of 444.78 feet to a point on the West line of said Northeast quarter of the Southwest quarter; thence along the West line of said Northeast quarter of the Southwest quarter proceed North 00 degrees 27 minutes 35 seconds West for a distance of 219.18 feet to the POINT OF BEGINNING.

PARCEL 10:

A parcel of land situated in the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being the North half of the South two-thirds of the West one-third of the North half of the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, more particularly described as follows:

Commence at a 2 inch capped pipe purported to be the Northwest corner of the Northeast quarter of the Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed South 00 degrees 27 minutes 35 seconds East along the West line of said Northeast quarter of Southwest quarter for a distance of 219.18 feet to a point, said point also known as the POINT OF BEGINNING of herein described parcel; thence proceed North 88 degrees 50 minutes 06 seconds East for a distance of 444.78 feet to a point; thence proceed South 00 degrees 26 minutes 46 seconds East for a distance of 219.31 feet to a point; thence proceed South 88 degrees 51 minutes 06 seconds West for a distance of 444.73 feet to a point on the West line of said Northeast quarter of Southwest quarter; thence along the West line of said Northeast quarter of Southwest quarter proceed North 00 degrees 27 minutes 35 seconds West for a distance of 219.18 feet to the POINT OF BEGINNING.

PARCEL 11:

All North half (N 1/2) of the North half (N 1/2) of Southwest quarter (SW 1/4) of Northwest quarter (NW 1/4) of Section 5, Township 19 South, Range 1 West. Also a part of the North half (N 1/2) of North half (N 1/2) of Southeast quarter (SE 1/4) of Northeast quarter (NE 1/4) of Section 6, Township 19 South, Range 1 West that lies East of Alabama Highway #119 (Cahaba Valley Highway) right of way; being more particularly described as follows:

Being a point commonly purported to be the Northwest corner of Southwest quarter of Northwest quarter of Section 5, Township 19 South, Range 1 West; thence proceed North 88 degrees 38 minutes 50 seconds East along the North line of said Southwest quarter of the Northwest quarter for a distance of 1334.18 feet to a point purported to be the Northeast corner of said quarter section; thence proceed South 00 degrees 29 minutes 13

seconds East along the East line of said quarter section for a distance of 331.15 feet to a point; thence leaving the East line of said quarter section proceed South 88 degrees 45 minutes 44 seconds West for a distance of 1333.86 feet to a point on the West line of said Section 5; thence proceed South 88 degrees 54 minutes 17 seconds West for a distance of 715.74 feet to a point; thence proceed North 24 degrees 11 minutes 22 seconds West for a distance of 52.13 feet to a point; thence proceed North 58 degrees 49 minutes 55 seconds West for a distance of 73.62 feet to a point on the Southeasterly right of way margin of Alabama Highway #119 (Cahaba Valley Highway), said point lying on a curve to the right, said curve having a radius of 2824.79 feet, a central angle of 03 degrees 18 minutes 07 seconds and a chord which bears North 43 degrees 30 minutes 40 seconds East for a distance of 162.77 feet; thence proceed along the arc of said curve 162.79 feet and along said Southeasterly right of way margin of Alabama Highway #119 (Cahaba Valley Highway) to a point of tangency; thence continuing along said Southeasterly right of way margin of Alabama Highway #119 (Cahaba Valley Highway) proceed North 45 degrees 09 minutes 43 seconds East for a distance of 181.26 feet to a point on the North line of the Southeast quarter of the Northeast quarter of said Section 6; thence proceed North 88 degrees 54 minutes 18 seconds East along the North line of said Southeast quarter of the Northeast quarter of Section 6 for a distance of 556.39 feet to the POINT OF BEGINNING.

LESS AND EXCEPT FROM SAID PARCEL 11 THE FOLLOWING:

A parcel of land situated in the Southeast quarter of the Northeast quarter of Section 6, Township 19 South, Range 1 West, Shelby County, Alabama, said parcel of land being more particularly described as follows:

Commence at a rebar found purported to be the Northeast corner of the Southeast quarter of the Northeast quarter of Section 6, Township 19 South, Range 1 West, said point also known as the POINT OF BEGINNING; thence proceed South 00 degrees 32 minutes 10 seconds East along the East line of said quarter section for 278.46 feet to an iron pin set; thence leaving the East line of said quarter section, proceed South 88 degrees 45 minutes 44 seconds West for 42.13 feet to an iron pin set at the beginning of a curve to the right, said curve being tangent to the last described course having a radius of 550.00 feet, a central angle of 16 degrees 12 minutes 33 seconds and a chord which bears North 83 degrees 08 minutes 00 seconds West for 155.08 feet; thence proceed along the arc of said curve for 155.60 feet to an iron pin set at the beginning of a curve to the right, said curve being non-tangent to the last described curve, having a radius of 543.97 feet, a central angle of 19 degrees 58 minutes 00 seconds and a chord which bears North 61 degrees 28 minutes 22 seconds West for 188.61 feet; thence proceed along the arc of said curve for 189.56 feet to an iron pin set at the beginning of a curve to the right, said curve being non-tangent to the last described curve having a radius of 538.00 feet, a central angle of 08 degrees 32 minutes 46 seconds and a chord which bears North 50 degrees 49 minutes 47 seconds West for 80.17 feet; thence proceed along the arc of said curve for 80.25 feet to an iron pin set; thence

proceed North 46 degrees 33 minutes 25 seconds West and tangent to the last described curve for 132.70 feet to an iron pin set; thence proceed North 05 degrees 24 minutes 50 seconds West for 19.01 feet to an iron pin set on the North line of said Southeast quarter of the Northeast quarter of Section 6; thence proceed North 88 degrees 54 minutes 18 seconds East along said quarter section line for 519.58 feet to the POINT OF BEGINNING.

PARCEL 12: INTENTIONALLY DELETED

PARCEL 13:

A parcel of land situated in the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being the South one-third of the West one-third of the North half of the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, more particularly described as follows:

Commence at a 2 inch capped pipe purported to be the Northwest corner of the Northeast quarter of the Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed South 00 degrees 27 minutes 35 seconds East along the West line of said Northeast quarter of Southwest quarter for a distance of 438.36 feet to a point said point also known as the POINT OF BEGINNING of herein described parcel; thence proceed North 88 degrees 51 minutes 06 seconds East for a distance of 444.73 feet to a point; thence proceed South 00 degrees 26 minutes 46 seconds East for a distance of 219.31 feet to a point; thence proceed South 88 degrees 52 minutes 06 seconds West for a distance of 444.67 feet to a point on the West line of said Northeast quarter of Southwest quarter; thence along the West line of said Northeast quarter of Southwest quarter proceed North 00 degrees 27 minutes 35 seconds West for a distance of 219.18 feet to the POINT OF BEGINNING.

PARCEL 14: INTENTIONALLY DELETED.

PARCEL 15:

A parcel of land situated in the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; being the West one-third of the South half of the Northeast quarter of Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, more particularly described as follows:

Commence at a 2 inch capped pipe purported to be the Northwest corner of the Northeast quarter of the Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed South 00 degrees 27 minutes 35 seconds East along the

West line of said Northeast quarter of Southwest quarter for a distance of 657.54 feet a point, said point also known as the POINT OF BEGINNING of herein described parcel; thence proceed North 88 degrees 52 minutes 06 seconds East for a distance of 444.67 feet to a point; thence proceed South 00 degrees 26 minutes 46 seconds East for a distance of 657.92 feet to a point on the South line of said Northeast quarter of Southwest quarter; thence proceed South 88 degrees 55 minutes 06 seconds West along the South line of said Northeast quarter of Southwest quarter for a distance of 444.51 feet to a found 2 inch capped pipe purported to be the Southwest corner of said Northeast quarter of the Southwest quarter; thence along the West line of said Northeast quarter of Southwest quarter proceed North 00 degrees 27 minutes 35 seconds West for a distance of 657.53 feet to the POINT OF BEGINNING.

PARCEL 16: INTENTIONALLY DELETED.

SECTION 17: INTENTIONALLY DELETED.

PARCEL 18: INTENTIONALLY DELETED.

PARCEL 19:

A parcel of land situated in the S.W. 1/4 of the N.W. 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a 2" diameter open top pipe found at the N.E. corner of the S.W. 1/4 of the N.W. 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed S 00 degrees 29 minutes 13 seconds East along the East line of said S.W. 1/4 of N.W. 1/4 for 331.15 feet to a rebar found and the POINT OF BEGINNING; thence proceed South 00 degrees 30 minutes 04 seconds East and continuing along the East line of said S.W. 1/4 of N.W. 1/4 for 692.40 feet to a point on a curve to the right, said curve being non-tangent to the last described course and having a central angle of 03 degrees 43 minutes 33 seconds, a radius of 530.00 feet and a chord which bears N 11 degrees 58 minutes 12 seconds West, for 34.46 feet; thence proceed northwesterly along the arc of said curve for 34.46 feet to the end of said curve; thence proceed N 10 degrees 06 minutes 25 seconds West and tangent to the last described curve for 194.85 feet to the beginning of a curve to the left, said curve being tangent to the last described course and having a central angle of 76 degrees 12 minutes 04 seconds, a radius of 545.00 feet, and a chord which bears North 48 degrees 12 minutes 27 seconds W, for 672.58 feet; thence proceed Northwesterly along the arc of said curve for 724.83 feet to a point; thence proceed N 03 degrees 41 minutes 31 seconds E along a line that is non-tangent to the last described curve for 5.00 feet to a point on a curve to the left, said curve being non-tangent to the last described course and having a central angle of 04 degrees 55 minutes

47 seconds, a radius of 550.00 feet and a chord which bears N 88 degrees 46 minutes 22 seconds W, for 47.31 feet; thence proceed Northwesterly along the arc of said curve for 47.32 feet to a point; thence proceed north 88 degrees 45 minutes 44 seconds E for 583.85 feet to the POINT OF BEGINNING.

Together with those nonexclusive slope and construction easements for the benefit of the above parcel as created by that certain Temporary Construction and Slope Easement Agreement between Asbury United Methodist Church and AIG Baker Brookstone, L.L.C., dated Nov 6, 2002, recorded in 2002110800557110, over, under and across the property described in said instrument.

EXHIBIT B

Permitted Exceptions to Title

1. Taxes due and payable October 1, 2003.
- 2-6 INTENTIONALLY OMITTED
7. Right-of-way granted Alabama Power Company recorded in Deed Book 109, page 496 and Deed Book 185, page 132.
8. Rights of others in and to the use of ingress and egress easements as recorded in Deed Book 174, page 402 as amended by Deed Book 247, page 645 and in Deed Book 314, page 344.
9. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including release of damages, as recorded in Deed Book 247, page 709; Deed Book 259, page 350 and Deed Book 331, page 262.
10. Riparian and other rights created by the fact that subject property lies adjacent to or is bounded by a creek or stream as shown by Survey of Jim C. McCullers, dated April 22, 2002.
11. Right-of-way to the State of Alabama as recorded in Deed Book 298, page 259 and Deed Book 294, page 422.
12. Any loss, claim, damage or expense including additional tax due, if any, arising from or due to the fact that ad valorem taxes for subject property have been paid under a current use assessment. (As to Parcels 4, 5, 6, 7 & 11)
13. Right-of-way granted Alabama Power Company recorded in Deed Book 109, page 497.
14. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including release of damages. (As to Parcels 7, 8, 9, 10 & 11)
15. Fence encroachment onto portion of subject property designated as possible overlap, as shown by Survey of Jim C. McCullers, dated April 22, 2002. (Parcel 3)
16. Terms and conditions of that certain private easement for ingress and egress as recorded under Instrument Number 1992-25099.
17. Any part of subject property lying within the bounds of roads (Parcels 13 and 15).
18. Riparian and other rights created by the fact that subject property lies adjacent to or is bounded by ponds and streams (Parcels 13 and 15).

19. Any loss, claim, damage or expense including additional tax due, if any, arising from or due to the fact that ad valorem taxes for subject property have been paid under a current use assessment. (As to Parcel 15)
20. Easement as described in Real Volume 169, page 379 and Real Volume 169, page 381. (As to Parcel 13)
21. INTENTIONALLY OMITTED
22. INTENTIONALLY OMITTED
23. Transmission line permit granted to Alabama Power Company as shown by instrument recorded in Deed Book 166, Page 418; Deed Book 134, Page 552 (As to Parcel 19).
24. Oil and Gas lease as recorded in Deed Book 346, Page 368. (As to Parcel 19)
25. Conditions and restrictions as described in that certain Memorandum of Lease by and between AIG Baker Brookstone, L.L.C. and Publix of Alabama, L.L.C. as recorded under Instrument Number 20020729000351020 and amended by that certain First Amendment to Memorandum of Lease recorded under Instrument Number 20020826000405690.
26. Covenants and conditions as recited in deed to AIG Baker Brookstone, L.L.C. as recorded under Instrument Number 20021108000557100. (As to Parcel 19)
27. Terms and conditions of that certain temporary construction and slope easement agreement as recorded under Instrument Number 20021108000557110. (As to Parcel 19)