


This instrument prepared by:

Damon P. Denney, Esq.  
Burr & Forman LLP  
3100 SouthTrust Tower  
Birmingham, Alabama 35203  
(205) 458-5198

  
20030107000012530 Pg 1/53 14,592.50  
Shelby Cnty Judge of Probate, AL  
01/07/2003 08:15:00 FILED/CERTIFIED

COUNTERPART 1 OF 3

**CONSOLIDATED, AMENDED AND RESTATED MORTGAGE,**  
**LEASEHOLD MORTGAGE AND SECURITY AGREEMENT**

STATE OF ALABAMA )

COUNTIES OF JEFFERSON, SHELBY AND TUSCALOOSA )

THIS CONSOLIDATED, AMENDED AND RESTATED MORTGAGE, LEASEHOLD MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), made and entered into effective as of the 31<sup>st</sup> day of December, 2002, by **SHOP-A-SNAK FOOD MART, INC.**, a Delaware corporation (formerly an Alabama corporation), whose address is 833 Greensprings Highway, Birmingham, Alabama 35209, Attention: Edward J. Marino, Jr. ("Mortgagor") and **SOUTHTRUST BANK**, an Alabama banking corporation formerly known as "SouthTrust Bank of Alabama, National Association" and "SouthTrust Bank, National Association", with principal offices in Birmingham, Alabama, whose address is 420 North 20th Street (35203), P. O. Box 2554, Birmingham, Alabama 35290, Attention: Metropolitan Lending Department ("Mortgagee").

**WITNESSETH:**

**WHEREAS**, Mortgagor is justly indebted to Mortgagee for two loans (the "Consolidated Loans") in the aggregate principal amounts of (i) \$5,515,000.00, as evidenced by that certain Consolidated, Amended and Restate Real Estate Note Number One of even date herewith in said amount (the "First Consolidated Real Estate Note"), payable to the Mortgagee with interest thereon and (ii) \$4,100,000.00, as evidenced by that certain Consolidated, Amended and Restate Real Estate Note Number Two of even date herewith in said amount (the "Second Consolidated Real Estate Note"; together with the First Consolidated Real Estate Note and any and all extensions, revisions, modifications or amendments hereafter made, referred to as the "Notes"), payable to the Mortgagee with interest thereon, and such Consolidated Loans have been disbursed under the provisions of an Amended and Restated Master Loan Agreement between Mortgagor and Mortgagee dated of even date herewith (hereinafter, together with any and all extensions, revisions, modifications or amendments heretofore, simultaneously herewith or hereafter made, referred to as the "Loan Agreement"), and payable as provided for in the Notes

---

This Consolidated, Amended and Restated Mortgage, Leasehold Mortgage and Security Agreement consolidates, amends, restates and replaces in their entirety the mortgages more particularly described on the attached Schedule II.

[all of the Notes, the Loan Agreement, this Mortgage, the Consolidated, Amended and Restated Assignment of Rents and Leases from Mortgagor to Mortgagee of even date herewith (hereinafter, together with any and all extensions, revisions, modifications or amendments thereto hereafter made, the "Assignment of Rents and Leases"), each of the other "Loan Documents" (as defined in the Loan Agreement), and any and all other documents and instruments relating to the Consolidated Loans or any other Loans (as defined in the Loan Agreement), together with any and all extensions, revisions, modifications or amendments hereafter made to any of the foregoing, hereinafter collectively referred to as the "Loan Documents"]; and

**WHEREAS**, the parties desire to secure all of the following (hereinafter collectively referred to as the "Secured Obligations"):

(a) The payment of the principal amount of the Notes, together with interest thereon, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Notes, and any and all indebtedness of Mortgagor to Mortgagee, due, or to become due, which Mortgagee has advanced, or has obligated itself to advance, and all other indebtedness of Mortgagor to Mortgagee arising out of any one or more of the Loan Documents, and any renewals, extensions and/or modifications thereof, and whether incurred or given as maker, endorser, guarantor or otherwise (all of the foregoing hereinafter referred to collectively as the "Secured Indebtedness"), including, but not limited to (i) all sums advanced by Mortgagee to Mortgagor or expended by Mortgagee for Mortgagor's account, including but not limited to advances for taxes and insurance pursuant to the terms of this Mortgage; (ii) all court costs, expenses and costs of whatever kind incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien of this conveyance, including reasonable attorney's fees; (iii) any amounts expended by Mortgagee in removing, isolating or cleaning up any hazardous materials from the Mortgaged Property (as hereinafter defined), whether or not such action is required by any "Applicable Environmental Law" (as hereinafter defined); and (iv) any and all obligations to repay and/or perform all indebtedness, liabilities or obligations of Mortgagor which may at any time become due under any and all Financial Contracts (including terms and conditions incorporated by reference therein) executed between Mortgagor and Mortgagee or any affiliate of Mortgagee; and

(b) The prompt performance of any and all other obligations of Mortgagor to Mortgagee, whether now existing or hereafter arising under or pursuant to any one or more of the Loan Documents.

**NOW, THEREFORE**, for and in consideration of the Mortgagee making the Consolidated Loans above-mentioned and to secure the prompt payment and performance of the Secured Obligations, Mortgagor does hereby irrevocably CONVEY, WARRANT, GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, PLEDGE and set over unto Mortgagee, and the successors and assigns of Mortgagee, all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto (herein referred to collectively as the "Mortgaged Property"):



(a) All of those certain tracts, pieces or parcels of land, and interests in land, located in Jefferson, Tuscaloosa or Shelby Counties (as applicable), Alabama, more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Fee Land");

(b) All estate, right, title, and interest of Mortgagor in, to, under, or derived from those certain lease agreements described in Schedule I attached hereto and made a part hereof (the "Ground Leases"), granting to Mortgagor leasehold estates in and to certain tracts or parcels of land located in Jefferson County, Alabama, as more particularly described in Exhibit A-1 attached hereto and by this reference made a part hereof (the "Leasehold Land"; collectively with the Fee Land, the "Land"); together with all amendments, supplements, consolidations, extensions, renewals, and other modifications of the Ground Leases now or hereafter entered into in accordance with the provisions thereof; together with all other, further, additional, or greater estate, right, title, or interest of Mortgagor in, to, under, or derived from the Leasehold Land that might at any time be acquired by Mortgagor by the terms of the Ground Leases, by reason of the exercise of any option thereunder or otherwise, including the right of the Mortgagor to possession under Section 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code") in the event of the rejection of the Ground Leases by the Lessors thereunder or its trustee pursuant to said Section; and together with all rights and benefits of whatsoever nature derived or to be derived by the Mortgagor under the Ground Leases, including (subject to the terms hereof) the rights to exercise options, to give consents, to modify, extend, or terminate the Ground Leases, to surrender the Ground Leases, to reject the Ground Leases, or elect to treat the Ground Leases as rejected or to remain in possession under Section 365 of the Bankruptcy Code, and to receive all deposits and other amounts payable to Mortgagor under the Ground Leases; and

(c) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (collectively the "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage;

(d) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Mortgaged

Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor; and

(e) All rents, issues, profits, revenues and proceeds of and from the Mortgaged Property, or any part thereof, from time to time accruing (including without limitation all payments under leases, ground leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds, and all proceeds from any sale or other disposition of the Mortgaged Property, or any part thereof), and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same, reserving only the right to Mortgagor to collect the same so long as Mortgagor is not in default hereunder or such collection is not otherwise restricted by this Mortgage.

**TO HAVE AND TO HOLD** the Mortgaged Property and all parts, rights, members and appurtenances thereof, to the use and benefit of Mortgagee and the successors, successors-in-title and assigns of Mortgagee, forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Mortgaged Property as aforesaid and has good right to convey the same, that the same are unencumbered except for those matters expressly set forth in Exhibit A hereto, and Mortgagor does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to those matters set forth in said Exhibit A.

**PROVIDED, HOWEVER,** that should the Secured Indebtedness secured by this Mortgage be paid according to the tenor and effect thereof when the same shall become due and payable as provided for in the Loan Documents, and should Mortgagor perform all covenants contained in the Loan Documents in a timely manner, then this Mortgage shall be cancelled and released.

**MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:**

## **ARTICLE 1**

1.1 **Payment and Performance of Loan Documents.** Mortgagor will perform, observe and comply with all the provisions hereof, and of each of the other Loan Documents, including, but not limited to, the due and punctual payment of the principal amount due under the Notes, together with interest thereon, and all other sums of money required to be paid by Mortgagor pursuant to any one or more of the Loan Documents, without any deductions, credits or set-offs whatsoever.



## 1.2 **Taxes, Liens and Other Charges.**

(a) Mortgagor shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Mortgaged Property, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Mortgagee such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as Mortgagee may require. Mortgagor shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object, and unless, at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Mortgagee; and (iii) Mortgagor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(b) Mortgagor shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Consolidated Loans and/or any one or more of the Loan Documents.

(c) Mortgagor shall pay, on or before the due date thereof, (i) all premiums on policies of insurance covering, affecting or relating to the Mortgaged Property, as required pursuant to Section 1.03, below; (ii) all premiums on collaterally assigned life insurance policies, if any; (iii) all ground rentals, other lease rentals and other sums, if any, owing by Mortgagor and becoming due under any lease or rental contract affecting the Mortgaged Property; and (iv) all utility charges which are incurred by Mortgagor for the benefit of the Mortgaged Property, or which may become a charge or lien against the Mortgaged Property for gas, electricity, water and sewer services and the like furnished to the Mortgaged Property, and all other public or private assessments or charges of a similar nature affecting the Mortgaged Property or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. Mortgagor shall submit to Mortgagee such evidence of the due and punctual payment of all such premiums, rentals and other sums as Mortgagee may require.

(d) Mortgagor shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Mortgaged Property; provided, however, that Mortgagor may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded in such manner as not to adversely affect the Mortgaged Property or this Mortgage. Mortgagor has not consented and will not consent to the performance

of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

### **1.3     Insurance.**

(a)     Mortgagor shall procure for, deliver to and maintain for the benefit of the Mortgagee during the term of this Mortgage, such insurance policies with such insurance companies and in such amounts as required by the Loan Agreement. In the event the Mortgagor fails to maintain any insurance as required hereunder, then the Mortgagee shall have the right to procure such insurance as provided in the Loan Agreement, whether or not the Mortgagor's failure to maintain such insurance constitutes an Event of Default hereunder or an event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default. Any amounts paid by the Mortgagee for insurance shall be due and payable to the Mortgagee upon demand and shall be secured by this Mortgage. The Mortgagee shall have such further rights with respect to any such insurance policies, including the right to make proof of loss for and to settle, adjust, compromise and collect the proceeds of any insurance claims, as provided for in the Loan Agreement, and all costs incurred by the Mortgagee in connection therewith shall be secured by this Mortgage.

(b)     Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section 1.03, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Mortgagee as its interest may appear, instead of to Mortgagor and Mortgagee jointly. In the event any insurance company fails to disburse directly and solely to Mortgagee but disburses instead either solely to Mortgagor or to Mortgagor and Mortgagee jointly, Mortgagor agrees immediately to endorse and transfer such proceeds to Mortgagee to the extent of Mortgagee's interest therein. Upon the failure of Mortgagor to endorse and transfer such proceeds as aforesaid, Mortgagee may execute such endorsements or transfers for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's agent and attorney-in-fact so to do. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Mortgagee shall apply the net insurance proceeds or any part thereof, at its option, (i) to the payment of the Secured Indebtedness, whether or not due and in whatever order Mortgagee elects (in which case a portion of or the entire Secured Indebtedness shall, at Mortgagee's option, immediately become due and payable), (ii) to the repair and/or restoration of the Mortgaged Property, or (iii) for any other purposes or objects for which Mortgagee is entitled to advance funds under this Mortgage, all without affecting the lien and security interest created by this Mortgage, and any balance of such monies then remaining shall be paid to Mortgagor or the person or entity lawfully entitled thereto. Mortgagee shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c)     Notwithstanding the provisions of Paragraph (b) to the contrary, Mortgagee agrees that the proceeds of any insurance or any part thereof (after deducting therefrom all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees) will be made available by Mortgagee (consistent with disbursement procedures and subject to such terms and conditions as provided under the Loan



Agreement with respect to advances to be made thereunder) to be applied by Mortgagor to restoration or repair of the property damaged provided the following conditions are met:

(i) there exists no Event of Default (as defined in Article II) or any event or condition which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder and/or under any of the other Loan Documents and/or cause any termination or right of termination under any tenant leases now or hereafter in effect;

(ii) the Mortgagor presents sufficient evidence to the Mortgagee, in its sole and absolute discretion, that (A) the Mortgaged Property is capable of being, and will be, restored in compliance with all applicable laws, rules and regulations to an architectural whole and to substantially the same condition and value as prior to the damage, (B) restoration of the Mortgaged Property to an architectural whole will be completed on or before the earlier of (x) the maturity date of the Notes, or (y) the date required by tenant leases now or hereafter in existence, (C) there are sufficient funds from the insurance proceeds and other available monies, to completely restore or repair the Mortgaged Property to an architectural whole, as well as to maintain relevant debt service coverages and other operating expenses, and (D) the Mortgagee will not incur any liability to any other person as a result of such use or release of insurance proceeds;

(iii) the plans and specifications for restoration or repair are approved in writing by the Mortgagee, which approval shall not be unreasonably withheld (provided Mortgagee shall grant its approval if the plans and specifications for restoration or repair will result in the restoration of the Mortgaged Property to its condition prior to the casualty);

(iv) all parties having existing or expected possessory interests in the Mortgaged Property agree to continue, in a manner satisfactory to the Mortgagee, in its sole and absolute discretion, to fulfill the contract terms then in effect following the restoration or repair (including, without limitation, the payment of rent or other sums without abatement or reduction except as approved by the Mortgagee, in its sole discretion), or the Mortgagor shall deliver security satisfactory to the Mortgagee, in its sole and absolute discretion, to substitute for the loss of income caused by the failure of any such possessory interest to agree to continue to fulfill the contract terms then in effect following restoration or repair;

(v) all parties having operating, management or franchise interests in, and arrangements concerning, the Mortgaged Property, if any, agree that they will continue their interests and arrangements for the contract terms then in effect following the restoration or repair;

(vi) all parties having commitments to provide financing with respect to the Mortgaged Property, to purchase the Mortgagor's interest in full or in part in the Mortgaged Property, or to purchase the Consolidated Loans, agree in a manner satisfactory to the Mortgagee, in its sole and absolute discretion, that their commitments will continue in full force and effect and, if necessary, the expiration of such

commitments will be extended by the time necessary to complete the restoration or repair; and

(vii) the Mortgagor shall enter into such agreements and deliver such other documents and other things as may be required by the Mortgagee providing for disbursement of all such proceeds in accordance with disbursement procedures and other requirements substantially similar to those provided under the Loan Agreement.

If the foregoing conditions are satisfied within thirty (30) days of the date of loss, then the insurance proceeds shall be held by the Mortgagee and, after deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, the Mortgagee shall disburse the net insurance proceeds to or on behalf of the Mortgagor (consistent with disbursement procedures and subject to such terms and conditions as provided under the Loan Agreement with respect to advances to be made thereunder) as repair or restoration progresses and to the extent such proceeds are required to defray the expenses of such restoration or repair; and to the extent any such proceeds are not required to defray the expenses of such restoration or repair, the Mortgagee may, at its option, apply any such unused proceeds to (i) the outstanding balance of the Consolidated Loans, or (ii) for any other purposes or objects for which the Mortgagee is entitled to advance funds under this Mortgage, all without affecting the lien and security interest created by this Mortgage, and any balance of such monies then remaining shall be paid to the Mortgagor or the person or entity lawfully entitled thereto. At all times during such restoration or repair, the Mortgagor shall deposit with the Mortgagee funds which, when added to insurance proceeds on deposit with the Mortgagee, are sufficient to complete the restoration or repair of the Mortgaged Property to an architectural whole, as determined by the Mortgagee, in the Mortgagee's discretion, in accordance with the approved plans and specifications and all applicable laws, rules and regulations, including, but not limited to, building codes and zoning ordinances and regulations.

If the conditions set forth in clauses (i) through (vii), inclusive, of this Section 1.03(c) are not satisfied within thirty (30) days of the date of loss, then the insurance proceeds shall be disbursed as provided for in Subparagraph (b) of this Section 1.03.

**1.4 Monthly Deposits.** After the occurrence of an Event of Default, at the option of Mortgagee and further to secure the payment of the taxes, assessments and other sums referred to in Section 1.02 and the premiums on the insurance referred to in Section 1.03, Mortgagor shall upon request of Mortgagee deposit with Mortgagee, on the first day of each month, such amounts as, in the estimation of Mortgagee, shall be necessary to pay such charges as they become due; said deposits to be held and to be used by Mortgagee to pay current taxes and assessments, insurance premiums and other charges on the Mortgaged Property as the same accrue and are payable. Payment from said sums for said purposes shall be made by Mortgagee at its discretion and may be made even though such payments will benefit subsequent owners of the Mortgaged Property. Said deposits shall not be, nor be deemed to be, trust funds, but may be, to the extent permitted by applicable law, commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. If said deposits are insufficient to pay the taxes and assessments, insurance premiums and other charges in full as the same become payable, Mortgagor will deposit with Mortgagee such additional sum or sums as may be required in order for Mortgagee to pay such taxes and assessments, insurance premiums and other charges



in full. Upon any default in the provisions of this Mortgage or the Notes, or any instrument evidencing, securing or in any way related to the Secured Obligations, Mortgagee may, at its option, apply any money in the fund relating from said deposits to the payment of the Secured Indebtedness in such manner as it may elect.

1.5 **Condemnation.** If all or any portion 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 quasi-governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, other than an insubstantial taking for the purpose of widening existing roads bordering the Land which does not adversely affect access or the use of the Land for a gasoline station/convenience store and related operations and is not so substantial as to permit any tenant (whether or not then in possession) to terminate its lease or reduce the term thereof or the rent payable thereunder, then the portion of the Secured Indebtedness which has been advanced with respect to the acquisition or improvement of the Mortgaged Property shall, at the option of Mortgagee, immediately become due and payable. Mortgagor, immediately upon obtaining knowledge of the institution, or the proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation of the Mortgaged Property or any part thereof will notify Mortgagee, and Mortgagee is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Mortgagee, in its own or in Mortgagor's name, any action or proceeding relating to any condemnation. Mortgagor may compromise or settle any claim for compensation, but shall not make any compromise or settlement for an award that is less than the Secured Indebtedness without the prior written consent of Mortgagee. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Mortgagor to Mortgagee, and Mortgagee is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittances therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, the net proceeds shall be dealt with by the Mortgagee in accordance with, and subject to, the same terms and conditions as set forth in Paragraph (b) or Paragraph (c), as applicable, of Section 1.03 hereof as if the condemnation proceeds were insurance proceeds and as if the date the condemnation proceeds become payable to the Mortgagor was the date of loss.

1.6 **Care of Mortgaged Property.**

(a) Mortgagor will keep the buildings, parking areas, roads and walkways, landscaping, and all other Improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Mortgaged Property or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Mortgaged Property.

(b) Mortgagor will not remove, demolish or alter the structural character of any Improvement located on the Land without the written consent of Mortgagee.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Mortgagor will give immediate written notice thereof to Mortgagee.

(d) Mortgagee or its representative is hereby authorized to enter upon and inspect the Mortgaged Property at any time.

(e) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor shall give prompt notice thereof to Mortgagee and Mortgagor shall promptly, at Mortgagor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

#### 1.7 **Leases, Contracts, Etc.**

(a) As additional collateral and further security for the Secured Obligations, Mortgagor does hereby assign to Mortgagee Mortgagor's interest in and rights under any and all ground leases, leases, tenant contracts, rental agreements, franchise agreements, management contracts, contracts for the sale of the Mortgaged Property or any site within the Mortgaged Property and other contracts, licenses and permits now or hereafter affecting the Mortgaged Property, or any part thereof, and Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as hereafter may be requested by Mortgagee further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Mortgagee to any lease, tenant contract, rental agreement, franchise agreement, management contract, sales contract or other contract, license or permit, or to impose upon Mortgagee any obligation with respect thereto. Without first obtaining on each occasion the written approval of Mortgagee, Mortgagor shall not enter into any ground leases, leases, tenant contracts, rental agreements, franchise agreements, management contracts, contracts for the sale of the Mortgaged Property or any site within the Mortgaged Property or other contracts, licenses or permits affecting the Mortgaged Property, or any part thereof, or cancel or permit the cancellation of any franchise agreement, management contract, license, permit, lease or other contract, or accept, or permit to be made, any prepayments of any installment of rent or fees thereunder (except the usual prepayment of rent which results from the acceptance by a landlord on the first day of each month of the rent for the ensuing month). Mortgagor shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of said instruments, now or hereafter existing, on the part of Mortgagor to be kept and performed and shall at all times do all things necessary to compel performance by each other party to said instruments of all obligations, covenants and agreements by such other party to be performed thereunder.



(b) Mortgagor shall not execute an assignment of the rents, issues or profits, or any part thereof, from the Mortgaged Property unless Mortgagee shall first consent to such assignment, which consent may be given or denied in Mortgagee's sole discretion, and unless such assignment shall expressly provide that it is subordinate to the assignment contained in this Mortgage and any assignment executed pursuant hereto.

(c) Mortgagor shall furnish to Mortgagee, within thirty (30) days after a request by Mortgagee to do so, a sworn statement setting forth the names of all lessees and tenants of the Mortgaged Property, the terms of their respective leases, tenant contracts or rental agreements, the space occupied, and the rentals payable thereunder, and stating whether any defaults, off-sets or defenses exist under or in connection with any of said leases, tenant contracts or rental agreements.

(d) Mortgagor shall submit to Mortgagee, within ten (10) days of its receipt thereof, copies of all leases executed and options exercised with respect to the Mortgaged Property.

(e) Each future lease, tenant contract or rental agreement pertaining to the Mortgaged Property, or any part thereof, shall provide that in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee or tenant thereunder will, upon request of Mortgagee or any other person or entity succeeding to the interest of Mortgagee as a result of such enforcement, automatically become the lessee or tenant of Mortgagee or said successor in interest, without change in the terms or other provisions of said lease, tenant contract or rental agreement. The Mortgagor shall cause the foregoing requirement to be satisfied by the execution by such tenants of subordination and attornment agreements satisfactory to Mortgagee.

**1.8 Security Agreement.** With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Mortgaged Property, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Mortgaged Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and Mortgagor hereby grants to Mortgagee a security interest in said personal property. Mortgagor hereby authorizes Mortgagee to file such financing statements covering such personal property described herein as Mortgagee deems necessary without the signature or prior approval of Mortgagor. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (a) as prescribed herein, or (b) as prescribed by general law, or (c) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Mortgagor and Mortgagee that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate conveyed hereby regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial

numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (iii) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (A) the proceeds of any fire and/or hazard insurance policy, or (B) any award in eminent domain proceedings for taking or for loss of value, or (C) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Mortgagee as determined by this instrument or affect the priority of Mortgagee's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Mortgagee in the event any court shall at any time hold, with respect to the foregoing items (A), (B), or (C), that notice of Mortgagee's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. This Mortgage may be filed as a financing statement in any office where Mortgagee deems such filing necessary or desirable and Mortgagor will promptly upon demand reimburse Mortgagee for the costs therefor.

1.9 **Further Assurances; After-Acquired Property.** At any time, and from time to time, upon request by Mortgagee, Mortgagor will make, execute, and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Mortgagee, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Mortgagee, be necessary or desirable in order to effectuate, complete or perfect or to continue and preserve (a) the obligations of Mortgagor under the Loan Documents, and (b) the security interest created by this Mortgage as a first and prior security interest upon, in and to all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor so to do, Mortgagee may make, execute, record, file, rerecord and/or refile any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor so to do. The security interest provided for in this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.10 **Indemnity; Expenses.** Mortgagor will pay or reimburse Mortgagee, upon demand therefor, for all reasonable attorney's fees, costs and expenses incurred by Mortgagee in any suit, action, legal proceeding or dispute of any kind in which Mortgagee is made a party or appears as party plaintiff or defendant, affecting the Secured Obligations, this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, and any such amounts paid by Mortgagee shall be added to the Secured Indebtedness and shall be secured by this Mortgage. Mortgagor will indemnify and hold Mortgagee harmless from and against all claims, damages, and expenses including attorney's fees and court costs, resulting from any action by a third party against Mortgagee relating to this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law,



rule or regulation, including those relating to environmental standards or dangerous or hazardous wastes, provided Mortgagor shall not be required to indemnify Mortgagee for matters directly caused by Mortgagee's intentional, reckless or grossly negligent misconduct.

1.11 **Estoppel Affidavits.** Either Mortgagee or Mortgagor, upon ten (10) days prior written notice, shall furnish the other a written statement, duly acknowledged, based upon its records, setting forth the unpaid principal of, and interest on, the Secured Indebtedness, stating whether or not to its knowledge any off-sets or defenses exist against the Secured Indebtedness, or any portion thereof, and, if such off-sets or defenses exist, stating in detail the specific facts relating to each such off-set or defense.

1.12 **Subrogation.** To the full extent of the Secured Indebtedness, Mortgagee is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every lien, claim, demand and other encumbrance on the Mortgaged Property which is paid or satisfied, in whole or in part, out of the proceeds of the Secured Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Mortgagee as additional collateral and further security for the Secured Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Mortgagee had they been duly and legally assigned, transferred, set over and delivered unto Mortgagee by assignment, notwithstanding the fact that the same may be satisfied and cancelled of record.

1.13 **Books, Records, Accounts and Reports.** Mortgagor shall keep and maintain or shall cause to be kept and maintained, at Mortgagor's cost and expense, and in accordance with standard accounting principles, proper and accurate books, records and accounts reflecting all items of income and expense in connection with any services, equipment or furnishings provided in connection with the operation of the Mortgaged Property. Mortgagee, by Mortgagee's agents, accountants and attorneys, shall have the right from time to time to examine such books, records and accounts at the office of Mortgagor or such other person or entity maintaining such books, records and accounts, to make such copies or extracts thereof as Mortgagee shall desire, and to discuss Mortgagor's affairs, finances and accounts with Mortgagor and with the officers and principals of Mortgagor, at such reasonable times as may be requested by Mortgagee. In addition, Mortgagor will furnish (or cause to be furnished) to Mortgagee such financial statements or such other financial information as required by the Loan Agreement.

1.14 **Limit of Validity.** If from any circumstances whatsoever, fulfillment of any provision of the Notes, this Mortgage or any other Loan Document shall, at the time performance of such provision shall be due, cause any applicable usury or similar law to be violated when appropriate consideration is given to obligations of like character and amount and to borrowers and lenders of like character and classification, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that the obligation so to be performed and the validity thereof shall be reduced to the extent necessary (but only to the extent necessary) so as to not cause a violation of such applicable usury or similar law. The provisions of this Section 1.14 shall control every other provision of the Loan Documents.

1.15 **No Default Affidavits.** At Mortgagee's request, all payments made under the Notes or hereunder shall be accompanied by the affidavit of Mortgagor, a principal officer

thereof if Mortgagor is a partnership or a principal financial or accounting officer of Mortgagor if Mortgagor is a corporation, dated within five (5) days of the delivery of such payment to Mortgagee, swearing that Mortgagor knows of no Event of Default (as hereinafter defined), nor of any default which, after notice or lapse of time or both, would constitute an Event of Default, which has occurred and is continuing or, if any such default or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and the action Mortgagor has taken or proposes to take with respect thereto and, except as otherwise specified, stating that Mortgagor has fulfilled all of Mortgagor's obligations under this Mortgage which are required to be fulfilled on or prior to the date of such affidavit.

1.16 **Legal Actions.** In the event that Mortgagee is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Mortgaged Property, any one or more of the Loan Documents, the Secured Obligations or the validity or priority of this Mortgage (but excluding any action or proceeding involving a dispute solely between Mortgagee and a participating lender, if any), Mortgagor shall immediately, upon demand, reimburse Mortgagee for all costs, expenses and liabilities incurred by Mortgagee by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Mortgagee shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.17 **Use and Management of Mortgaged Property.** Mortgagor shall at all times operate the Mortgaged Property as a gasoline station/convenience store and related operations. Mortgagor shall not be permitted to alter or change the use of the Mortgaged Property without the prior written consent of Mortgagee.

1.18 **Conveyance of Mortgaged Property.** Mortgagor shall not directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property without the prior written consent of Mortgagee except as provided in Section 9.2(B) of the Loan Agreement. Mortgagee's consent to such a transfer, if given in Mortgagee's sole discretion, shall not release or alter in any manner the liability of Mortgagor or anyone who has assumed or guaranteed the payment or performance of the Secured Obligations or any portion thereof. At the option of Mortgagee, the Secured Indebtedness shall be immediately due and payable in the event that Mortgagor conveys all or any portion of the Mortgaged Property or any interest therein, or in the event that Mortgagor's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Mortgagee's prior written consent thereto except as provided in Section 9.2(B) of the Loan Agreement, and any waiver or consent for any prior transfer shall not preclude Mortgagee from declaring the Secured Indebtedness due and payable for any subsequent transfer.

1.19 **Acquisition of Collateral.** Mortgagor shall not acquire any portion of the personal property covered by this Mortgage subject to any security interest, conditional sales contract, title retention arrangement or other charge or lien taking precedence over the security title and lien of this Mortgage.

1.20 **Compliance with Applicable Environmental Law.** The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or oil, or hazardous substances, including without limitation



the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C Section 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. Section 6901 et seq.; and the Superfund Amendments and Reauthorization Act of 1986, as codified at 42 U.S.C. Section 9671 et seq.; the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. The Mortgagor represents and warrants to the Mortgagee that, to the best of its knowledge, the Mortgaged Property is not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property; that, to the best of its knowledge, the Mortgagor has obtained any and all permits, licenses or similar authorizations necessary to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law; that, to the best of its knowledge, the Mortgagor has taken all steps necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of or otherwise released on the Mortgaged Property in violation of any Applicable Environmental Law; and that, to the best of its knowledge, the use which the Mortgagor has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property in violation of any Applicable Environmental Law. The Mortgagor hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities or response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Mortgaged Property and to indemnify and forever save the Mortgagee harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the Mortgaged Property, excluding, however, any such application resulting from conditions caused by materials placed on the Mortgaged Property following foreclosure or acceptance by Mortgagee of a deed in lieu of foreclosure; and this indemnity shall survive any payment of the Notes or foreclosure of this Mortgage or the taking by the Mortgagee of a deed in lieu of foreclosure. The Mortgagor agrees to notify the Mortgagee in the event that any governmental agency or other entity notifies the Mortgagor that it may not be in compliance with any Applicable Environmental Laws with respect to the Mortgaged Property. The Mortgagor agrees to permit the Mortgagee to have access to the Mortgaged Property at all reasonable times in order to conduct, at the Mortgagee's expense, any tests which the Mortgagee deems are necessary to ensure that the Mortgaged Property is in compliance with all Applicable Environmental Laws.

## ARTICLE 2

2.1 **Events of Default.** The terms "default", "Event of Default" or "Events of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by Mortgagor to pay any portion of the Secured Indebtedness, within ten (10) days of the date same comes due; or

(b) Failure by Mortgagor duly to observe or perform any other term, covenant, condition or agreement of this Mortgage which failure is not cured within thirty (30) days of written notice thereof, or such longer period up to sixty (60) days if such failure is not capable of being fully cured within thirty (30) days, provided that Mortgagor has commenced and continues to diligently pursue cure of such failure; or

(c) The occurrence of an Event of Default under any one or more of the Loan Documents or any other instrument or agreement now or hereafter evidencing or securing the Notes or the Secured Obligations; or

(d) Any representation, statement or warranty of Mortgagor contained in any one or more of the Loan Documents or in any other instrument, document, transfer, conveyance, assignment or loan agreement given by Mortgagor with respect to the Secured Obligations, proving to be untrue or misleading in any material respect; or

(e) Unless the written consent of Mortgagee is first obtained (which consent may be withheld in Mortgagee's sole discretion), there occurs any transfer of the Mortgaged Property, or any interest therein, or any further encumbrance of the Mortgaged Property except as permitted herein or in the Loan Agreement.

Provided that with respect to any of the foregoing, such Event of Default will be deemed to have occurred upon the occurrence of such event without notice being required if Mortgagee is prevented from giving notice by bankruptcy or other applicable law.

2.2 **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire Secured Indebtedness shall, at the option of Mortgagee, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.3 **Right to Enter and Take Possession.**

(a) If an Event of Default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Mortgagor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Mortgagor;

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Property to Mortgagee. Mortgagor will pay to Mortgagee, upon demand, all expenses of obtaining such judgment or decree,



including reasonable compensation to Mortgagee, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, 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 insured; (iii) manage and operate the Mortgaged Property and exercise all of the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine to be in its best interest. Mortgagee may collect and receive all the rents, issues, profits and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Mortgagee may at its option pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Mortgagee, Mortgagee shall apply the remainder of the monies and proceeds so received by Mortgagee, first, to the payment of accrued interest; second, to the payment of deposits required in Section 1.04 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 2.03 to the contrary notwithstanding, Mortgagee shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Mortgagee of its rights under this Mortgage and Mortgagee shall be liable to account only for the rents, incomes, issues and profits actually received by Mortgagee;

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

**2.4 Performance by Mortgagee.** If Mortgagor shall default in the payment, performance or observance of any term, covenant or condition of this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith, with interest thereon at two percent (2%) in excess of the rate provided in the Notes or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee. Mortgagee shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Mortgagee is hereby 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 term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Notwithstanding anything to the contrary herein, Mortgagee shall have no obligation, explicit or implied, to pay, perform or observe any term, covenant, or condition.

2.5 **Receiver.** If any Event of Default shall have occurred, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Obligations 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 and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Mortgagor will pay unto Mortgagee upon demand all expenses, including receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.05, and any such amounts paid by Mortgagee shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

## 2.6 **Enforcement.**

(a) If an Event of Default shall have occurred, then at the option of Mortgagee this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and the Mortgagee, or its agent, may sell the Mortgaged Property or any part of the Mortgaged Property at one or more public sales before the door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, as may be required. At any such sale, Mortgagee may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property. Mortgagee shall have the right to enforce any of its remedies set forth herein without notice to Mortgagor, except for such notice as may be required by law. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels and in such manner or order as Mortgagee in its sole discretion may elect, and if Mortgagee so elects, Mortgagee may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the Uniform Commercial Code of the state in which the Land is located, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or the Secured Indebtedness is paid in full. If the Secured Indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Mortgagee at its option may exhaust the remedies granted under any of said security instruments or this Mortgage either concurrently or independently, and in such order as Mortgagee may determine.

Said sale may be adjourned by the Mortgagee, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.



(b) In the event of any sale of the Mortgaged Property as authorized by this Section 2.06, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment or non-performance of the Secured Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

(c) If an Event of Default shall have occurred, Mortgagee may, in addition to and not in abrogation of the rights covered under Subparagraph (a) of this Section 2.06, either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy to pursue any other remedy available to it, all as Mortgagee in its sole discretion shall elect.

2.7 **Purchase by Mortgagee.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Mortgagee may bid for and purchase the Mortgaged Property if the highest bidder therefor.

2.8 **Application of Proceeds of Sale.** In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied: (a) first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees as may be necessary in the collection of the indebtedness secured by this Mortgage and/or the foreclosure of this Mortgage; (b) then to the repayment of money, including interest thereon, which Mortgagee may have paid, or become liable to pay, or which it may be necessary to pay for, including insurance premiums, liens, assessment, taxes and charges including utility charges advanced by Mortgagee, and interest thereon; (c) then to payment of the Secured Indebtedness and accrued interest thereon, in such order of priority as Mortgagee shall determine, in its sole discretion; and (d) finally the remainder, if any, shall be paid to the person or entity appearing to be the record owner of the Mortgaged Property at the time of sale, after deducting any expenses incurred in ascertaining who is such owner, or as may otherwise be provided by law.

2.9 **Mortgagor as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Mortgagor (if Mortgagor shall remain in possession) and all persons holding under Mortgagor shall be deemed tenants holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

2.10 **Waiver of Appraisement, Valuation, Etc.** Mortgagor agrees, to the full extent permitted by law, that in case of a default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, or exemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

2.11 **Waiver of Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Secured Indebtedness, or any part thereof.

2.12 **Leases.** Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceeding instituted by Mortgagee to collect the sums secured hereby.

2.13 **The Ground Leases.**

(a) Mortgagor represents and warrants to Mortgagee that (i) Mortgagor has furnished to Mortgagee a copy of the Ground Leases certified as true and correct by Mortgagor; (ii) the Ground Leases have not been modified, assigned by Mortgagor or, to the knowledge of Mortgagor, assigned by the lessor under the Ground Leases ("Lessors"); (iii) the Ground Leases are in full force and effect and, to the knowledge of Mortgagor, there is no default, or existing condition which with the giving of notice or passage of time or both would cause a default, under any Ground Lease; and (iv) the execution, delivery, and performance of this Mortgage do not require any consent under, and will not contravene any provision of or cause a default under, any Ground Lease.

(b) Mortgagor (i) shall duly and punctually pay, perform and observe all of its obligations under the Ground Leases; (ii) shall do all things reasonably necessary or appropriate to enforce, preserve, and keep unimpaired the rights of Mortgagor and the obligations of the Lessors under the Ground Leases; and (iii) shall not enter into any amendment or other agreement or take any other action modifying or terminating any rights or obligations of Mortgagor under any Ground Lease or subordinating any right of Mortgagor under any Ground Lease to any lien.

(c) If Mortgagor fails or refuses to perform any obligations of Mortgagor under any Ground Lease, Mortgagee may, but shall not be required to, perform any and all such obligations, including but not limited to the payment of any and all rent or other sums due from Mortgagor thereunder. Any rent or other sums so paid by Mortgagee shall constitute a part of the indebtedness secured by this Mortgage and shall bear interest at the Default Rate specified in the Loan Agreement, shall be payable upon demand, and shall be secured by the lien of this Mortgage.

(d) So long as any portion of the indebtedness secured hereby shall remain unpaid, unless Mortgagee shall otherwise consent, the fee title to the land underlying the Ground Leases and leasehold estate created under the Ground Leases shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, any of the Lessors, or in any other person by purchase, operation of law or otherwise. Mortgagee reserves the right, at any time, to release portions of the Mortgaged Property, including, but not limited to, the leasehold estate created by any Ground Lease, with or without consideration, at Mortgagee's election, without waiving or affecting any of its rights hereunder, and any such release shall not



affect Mortgagee's rights in connection with the portion of the Mortgaged Property not so released.

(e) Mortgagor hereby unconditionally assigns, transfers and sets over to Mortgagee all of Mortgagor's claims and rights to the payment of damages arising from any rejection by any Lessor of a Ground Lease under the Bankruptcy Code. Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of any Ground Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notice and other documents, in any case in respect of any of the Lessors under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all indebtedness secured hereby shall have been satisfied and discharged in full. Any amount received by Mortgagee as damages arising out of the rejection of any Ground Lease as aforesaid shall be applied first to all costs and expenses of Mortgagee (including, without limitation, attorneys' fees and disbursements) incurred in connection with the exercise of any of its right or remedies under this subsection (e).

(f) Mortgagor shall not, without Mortgagee's prior written consent, elect to treat any Ground Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without Mortgagee's prior written consent shall be void.

(g) If pursuant to Section 365(h)(1) of the Bankruptcy Code, Mortgagor seeks to offset against the rent reserved in any Ground Lease the amount of any damages caused by the non-performance by a Lessor of any of the Lessor's obligations under any Ground Lease after the rejection by such Lessor of a Ground Lease under the Bankruptcy Code, Mortgagor shall, prior to effecting such offset, notify Mortgagee of its intention to do so, setting forth the amounts proposed to be so offset and the basis therefor. Mortgagee shall have the right, within ten (10) days after receipt of such notice from Mortgagor, to reasonably object to all or any part of such offset, and, in the event of such reasonable objection, Mortgagor shall not effect any offset of the amounts so objected to by Mortgagee for a period of thirty (30) days after Mortgagee has delivered its objection notice to Mortgagor during which time Mortgagee shall have the right to bring its objections to the attention of any court supervising the bankruptcy of a Lessor of a Ground Lease and both Mortgagee and Mortgagor agree to abide by the decision of any such court. If (i) Mortgagee has failed to object as aforesaid within ten (10) days after notice from Mortgagor, or (ii) the court fails to render its decision within the above-mentioned thirty day period, Mortgagor may proceed to effect such offset in the amounts set forth in Mortgagor's notice. Neither Mortgagee's failure to object as aforesaid nor any objection or other communication between Mortgagee and Mortgagor relating to such offset shall constitute an approval of any such offset by Mortgagee.

(h) If any action, proceeding, motion or notice shall be commenced or filed in respect of Mortgagor or the Mortgaged Property in connection with any case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Mortgagor), Mortgagee shall have the option, to the exclusion of Mortgagor, exercisable upon notice from Mortgagee to Mortgagor, to conduct and control any such litigation with counsel of Mortgagee's choice. Mortgagee may proceed in its own name or in the name of Mortgagor in connection with

any such litigation, and Mortgagor agrees to execute any and all powers, authorizations, consents and other documents required by Mortgagee in connection therewith. Mortgagor shall pay to Mortgagee all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) paid or incurred by Mortgagee in connection with the prosecution or conduct of any such proceedings within five (5) days after notice from Mortgagee setting forth such costs and expenses in reasonable detail. Any such costs or expenses not paid by Mortgagor as aforesaid shall be secured by the lien of this Mortgage and shall be added to the principal amount of the indebtedness secured hereby. Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of any Ground Lease in any such case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Mortgagor) without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed.

(i) Mortgagor shall promptly, after obtaining knowledge thereof, notify Mortgagee orally of any filing by or against any Lessor of a petition under the Bankruptcy Code. Mortgagor shall thereafter forthwith give written notice of such filing to Mortgagee, setting forth any information available to Mortgagor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Mortgagor shall promptly deliver to Mortgagee following receipt any and all notices, summonses, pleadings, applications and other documents received by Mortgagor in connection with any such petition and any proceedings relating thereto.

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

2.14 (k) Effective upon the entry of an order for relief in respect of Mortgagor under the Bankruptcy Code, Mortgagor hereby assigns and transfers to Mortgagee a non-exclusive right to apply to the bankruptcy court under Section 365(d)(4) of the Bankruptcy Code for an order extending the period during which any Ground Lease may be rejected or assumed.

2.15 **Discontinuance of Proceedings.** In case Mortgagee shall have proceeded to enforce any right, power 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 Mortgagee, then in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred.

2.16 **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Mortgagee 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 now or hereafter existing at law, in equity or by statute.

2.17 **Waiver.**

(a) No delay or omission by Mortgagee 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 this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver expressed or implied by Mortgagee to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies of Mortgagee hereunder.

(b) No act or omission by Mortgagee shall release, discharge, modify, change or otherwise affect the original liability of Mortgagor under any one or more of the Loan Documents or any other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, endorser, surety or guarantor, nor preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Mortgagee. Without limiting the generality of the foregoing, Mortgagee may (i) grant forbearance or an extension of time for the payment of all or any portion of the Secured Indebtedness; (ii) take other or additional security for the payment of any of the Secured Indebtedness; (iii) waive or fail to exercise any right granted herein or in any one or more of the other Loan Documents; (iv) release any part of the Mortgaged Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of any one or more of the Loan Documents; (v) consent to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consent to the granting of any easement or other right affecting the Mortgaged Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to any one or more of the Loan Documents, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Secured Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Mortgagee from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without

notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Secured Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, 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 liabilities, obligations or undertakings.

2.18 **Suits to Protect the Mortgaged Property.** Mortgagee shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the rents, issues, profits and revenues 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 materially impair the security hereunder or be prejudicial to the interest of Mortgagee.

2.19 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

### ARTICLE 3

3.1 **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Mortgagor and Mortgagee and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Mortgagor" or "Mortgagee", such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Mortgagor or Mortgagee, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

3.2 **Terminology.** All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

3.3 **Severability; Complete Agreement.** If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Notes, the other Loan Documents, and any other instruments



executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

3.4 **Applicable Law.** This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Alabama.

3.5 **Notices.** All notices provided for herein, or in any one or more of the other Loan Documents, or in any other instrument or document evidencing or securing any of the Secured Obligations, or required by applicable law, shall be given personally, by mail, or by Federal Express or other similar national overnight courier, and addressed to the appropriate party at the address designated for such party as set forth below, or such other single address as the party who is to receive such notice may designate in writing.

If to Mortgagor, to: Shop-A-Snak Food Mart, Inc.  
833 Greensprings Highway  
Birmingham, Alabama 35209  
ATTENTION: Edward J. Marino, Jr.

with copy to: Charles A.J. Beavers, Jr., Esq.  
Bradley, Arant, Rose & White  
One Federal Place  
1819 5th Avenue North  
Birmingham, Alabama 35203

If to the Bank:  
  
SouthTrust Bank  
420 North 20th Street  
Post Office Box 2554 (35290)  
Birmingham, Alabama 35203  
ATTN: Middle Markets Banking

with copy to: Damon P. Denney  
Burr & Forman LLP  
420 North 20th Street  
Birmingham, Alabama 35203

Notice by mail shall be by registered or certified mail. All fees or expenses of mail or overnight courier shall be paid by the sender. Notice shall be deemed received at the earlier of the time actually received or two (2) days following the time deposited when sent by mail or overnight courier in the manner aforesaid. Actual receipt of notice shall not be required to effect notice hereunder.

3.6 **Replacement of Notes.** Upon receipt of evidence reasonably satisfactory to Mortgagor of the loss, theft, destruction or mutilation of either or both of the Notes, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Mortgagor or, in the case of any such mutilation, upon surrender and cancellation of the affected Note, Mortgagor at Mortgagee's expense will execute and deliver, in lieu thereof,

a replacement Notes, identical in form and substance to such Note and dated as of the date of such Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement Note.

3.7 **Assignment.** This Mortgage is assignable by Mortgagee and any assignment hereof by Mortgagee shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Mortgagee.

3.8 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage, each of the other Loan Documents, and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Obligations.

3.9 **Release.** Provided that no Event of Default then exists, Mortgagee agrees to release this Mortgage upon payment in full by Mortgagor of all of the Secured Indebtedness.

3.10 **Future Advances.** Upon request of Mortgagor, Mortgagee, at Mortgagee's option so long as this Mortgage secures indebtedness held by Mortgagee, may make future advances to Mortgagor. Such future advances, with interest thereon, shall be secured hereby if made under the terms of this Mortgage, the Notes or the Loan Agreement, or if made pursuant to any other promissory note, instrument or agreement stating that sums advanced thereunder are secured hereby.

3.11 **Release of Mortgagor Projects.** Mortgagor hereby agrees that until such time as all Obligations have been paid in full, Mortgagee shall not be required to release this Mortgage with respect to any Project unless Mortgagor has met the "Release Conditions" applicable to such Project. As used herein, Release Conditions shall mean: (i) Mortgagor shall have requested in writing that Mortgagee partially release this Mortgage with respect to a Project and Mortgagor must set forth in such written request the amount of the "Required Principal Reduction" calculated as set forth in this Section 3.11, (ii) No Event of Default shall exist as of the date of such written request or the date of the proposed partial release and (iii) if, at the time of such request, Mortgagor has not previously paid down (whether through prepayments or regularly scheduled principal payments) the outstanding principal balance of the Consolidated Loans by an amount equal to the Required Principal Reduction, as calculated by Mortgagor and confirmed by Mortgagee, Mortgagor must pay such additional amount as is necessary to cause the total principal reduction under the Consolidated Loans to equal the Required Principal Reduction (hereinafter, the "Additional Principal Paydown Amount") to Mortgagee prior to the release of the Project made the basis of the request. Upon satisfaction by Mortgagor of the Release Conditions with respect to any Project, Mortgagee shall partially release this Mortgage with respect to such Project, and the excess portion of the Additional Principal Paydown Amount, if any (being the portion not necessary to satisfy all then accrued and outstanding Obligations under the Consolidated Loans), shall be applied by Mortgagee first as a prepayment of principal against the Consolidated Loan evidenced by the Second Consolidated Real Estate Note and then as a prepayment of principal against the Consolidated Loan evidenced by the First Consolidated Real Estate Note; provided, however, that in the event Mortgagor elects to enter into a Financial Contract with respect to that portion of the Consolidated Loan evidenced by the First Consolidated Real Estate Note, Borrower acknowledges and agrees that any portion of the



Additional Principal Paydown Amount which is to be paid against the First Consolidated Real Estate Note shall be increased by any prepayment or break fees required under the applicable Financial Contract associated with the early payment of such indebtedness.

(a) Definitions. As used herein,

(i) "Agreed Value" shall mean, as to any particular Project, the dollar figure which Mortgagor and Mortgagee have attributed to such Project, said dollar figure for each Project being more particularly set forth as follows:

(A)	821 Greensprings Highway:	\$750,000.00;
(B)	2677 Valleydale Road:	\$1,200,000.00;
(C)	1503 11th Avenue South:	\$1,150,000.00;
(D)	830 9th Avenue North:	\$750,000.00;
(E)	724 Skyland Blvd:	\$1,200,000.00;
(F)	2400 McFarland Blvd:	\$1,300,000.00;
(G)	615 University Blvd:	\$1,000,000.00;
(H)	2258 Bessemer Road:	\$650,000.00;
(I)	400 Oxmoor Road:	\$1,355,000.00;
(J)	2501 John Hawkins Parkway:	\$1,315,000.00;
(K)	199 Main Street:	\$1,375,000.00;
(L)	998 Academy Drive:	\$1,253,000.00;
(M)	1050 South Main Street:	\$1,290,000.00;
(N)	1816 Crestwood Blvd:	\$650,000.00;
(O)	603 Bessemer Road:	\$1,100,000.00.

(ii) "Aggregate Agreed Value" shall mean the sum of \$16,338,000.00, said sum being the total of all Agreed Values for all Projects which are included as collateral under this Mortgage.

(iii) "Aggregate Release Percentage of Previously Released Projects" shall mean the sum of all Release Percentages of Projects released as collateral under this Mortgage.

(iv) "Project" shall mean any Borrower Project or Borrower Leased Facility which is included as a part of the Property more particularly described on Exhibit A attached hereto.

(v) "Release Percentage" shall mean, as to any Project, the percentage calculated by dividing the Agreed Value of such Project by the Aggregate Agreed Value of all Projects, said percentages for each Project being more particularly set forth as follows.

(P)	821 Greensprings Highway:	4.59;
(Q)	2677 Valleydale Road	7.34;
(R)	1503 11th Avenue South:	7.04;

(S)	830 9th Avenue North:	4.59;
(T)	724 Skyland Blvd:	7.34;
(U)	2400 McFarland Blvd:	7.96;
(V)	615 University Blvd:	6.12;
(W)	2258 Bessemer Road:	3.98;
(X)	400 Oxmoor Road:	8.29;
(Y)	2501 John Hawkins Parkway	8.05;
(Z)	199 Main Street	8.42;
(AA)	998 Academy Drive	7.67;
(BB)	1050 South Main Street	7.90;
(CC)	1816 Crestwood Blvd:	3.98;
(DD)	603 Bessemer Road:	6.73.

(vi) "Required Principal Reduction" means the product of:

(ii) \$9,615,000.00, said amount being the aggregate stated principal amount of the Consolidated Loans times

(iii) the product of

(A) the sum of

(1) the Release Percentage of the Project to be released plus

(2) the Aggregate Release Percentage of Previously Released Projects times

(B) one hundred twenty five percent (125%)

(b) In order to release a Project, the Mortgagor must pay down or have paid down the outstanding principal balance of the Consolidated Loans by an amount equal to the Required Principal Reduction. In the event Mortgagor has failed to pay such amount prior to release of a Project, Mortgagor must pay an additional amount (the "Additional Principal Paydown Amount") equal to the difference between the Required Principal Reduction and the total of all principal payments made to date under the Consolidated Loans (whether by prepayment or regularly scheduled payments of principal under the Consolidated Loans).

(c) By way of example only,

(i) Mortgagor requests a release of the Project located at 821 Greensprings Highway prior to any principal reduction of the Consolidated Loans. The Additional Principal Paydown Amount for this Project would be \$551,660.63 (calculated by multiplying \$9,615,000 times the product of 4.59% times 125% and subtracting the sum of all previous principal reductions [said sum being zero] ); then.



(ii) Mortgagor subsequently requests a release of the Project located at 2677 Valleydale Road and, in addition to the \$551,660.63 paid to obtain the release of the Project located at 821 Greensprings Highway, Mortgagor has further reduced the outstanding principal balance of the Consolidated Loans through regular monthly installments of principal under the Consolidated Notes by \$100,000 (resulting in a total reduction in principal since closing of \$651,660.63). The Additional Principal Paydown Amount for this Project is calculated by taking the difference between the Required Principal Reduction (said amount being \$1,433,836.88 and calculated as the product of

(A) \$9,615,000 times

(B) the product of

(1) 11.93% (being the sum of 4.59% [Greensprings] plus 7.34% [Valleydale]) times

(2) 125%)

and subtracting the total principal reduction paid to date under the Consolidated Loans (said total principal paid to date being \$651,660.63) to arrive at the positive Additional Principal Paydown Amount of \$782,176.25. This Additional Principal Paydown Amount is stated as a formula as follows:

(i)  $A = \$9,615,000$

(ii)  $B = [(1) \text{ times } (2)] = [11.93\% \text{ times } 125\%] = 14.9125\%$

(iii)  $[A \text{ times } B] = [\$9,615,000 \text{ times } 14.9125\%] = \$1,433,836.88$

(iv)  $\$1,433,836.88 - \$651,660.63 = \$782,176.25 = \text{Additional Principal Paydown Amount}$

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officer and Mortgagee has caused this instrument to be executed by its duly authorized officer as of the day and year first above written.

MORTGAGOR:

SHOP-A-SNAK FOOD MART, INC.  
a Delaware corporation

By: *Ed Marino Jr*  
Its *President*

STATE OF *Alabama* )  
COUNTY OF *Jefferson* )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that *Ed Marino, Jr.*, whose name as *President* of Shop-A-Snak Food Mart, Inc., a Delaware corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the *31<sup>st</sup>* day of *December*, 20*07*.

(SEAL)

Notary Public  
My Commission Expires:

*Kerri W. Stealy*  
*Oct 25, 2004*



**EXHIBIT A**

**FEE LAND**

**LEGAL DESCRIPTION AND TITLE EXCEPTIONS**

400 Oxmoor Road

**PARCEL I:**

Lot 2, according to the Survey of Exxon's Green Springs Subdivision, as recorded in Map Book 115, page 51, in the Probate Office of Jefferson County, Alabama.

**PARCEL II:**

A mutual, nonexclusive easement for access described as follows:

A parcel of land situated in the Southeast quarter of the Southwest quarter of Section 14, Township 18 South, Range 3 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of said quarter-quarter section; thence run North 1°15'00" West along the East line of said quarter-quarter section for 899.71 feet to the point of beginning, said point being 75.00 feet, as measured along the East line of said quarter-quarter section, South of the Southeastern right of way line of Oxmoor Road; thence to the left with an interior angle of 12°32'19" and run North 13°47'19" West for 62.95 feet to a point on the Southeasterly right of way line of Oxmoor Road; thence to the right with an interior angle of 122°12'11" and run North 44°00'30" East along said Southeasterly right of way line of Oxmoor Road for 19.24 feet; thence to the right with an interior angle of 45°15'30" and run South 1°15'00" East along the East line of said quarter-quarter section for 75.00 feet to the point of beginning.

**PARCEL III:**

An easement for a sign or standard on the following described property:

Beginning at a concrete monument on the intersection of the East right of way of FA Highway 65 and the South right of way of Oxmoor Road; thence running Southerly along said I-65 right of way a distance of 8.12 feet; thence to the left with an interior angle of 80°00' a distance of 20.41 feet; thence to the left with an interior angle of 70° a distance of 15.61 feet to a point on the right of way of Oxmoor road; thence to the left and running along the right of way of Oxmoor Road a distance of 20.47 feet to the point of beginning; being the same property set out in the "Agreement for Location of Pylon Sign" dated April 26, 1977, by Exxon Corporation, Mead Land Services, Inc. and Thompson Motels, Inc., recorded in Real 1485, page 191, in the Office of the Judge of Probate of Jefferson County, Alabama, which easement was created by the instrument denominated "Easement for Sign or Standard" dated August 29, 1970, by R. D. Thompson, Inc., The Mead Corporation and Thompson Motels, Inc., recorded in Real 666, page 767, in said Probate Office, as modified and amended by said "Agreement for Location of Pylon Sign" recorded in Real 1485, page 191, in said Probate Office.



# *NW Valleydale Road*

## **PARCEL A**

A parcel of land located in the NW 1/4 of Section 15, Township 19 South, Range 2 West, more particularly described as follows: Commence at the SW corner of the north half of the SE 1/4 of the NW 1/4 of said Section 15; thence in a northerly direction along the westerly line of said 1/4-1/4 section, a distance of 476.55 feet to the Point of Beginning; thence continue along last described course, a distance of 92.76 feet to the intersection with the southeasterly R.O.W. line of Valleydale Road (County Road #17); thence 49 degrees, 54 minutes right, in a northeasterly direction along said R.O.W. line, a distance of 149.63 feet; thence 47 degrees, 18 minutes, 15 seconds right, in a southeasterly direction, a distance of 97.37 feet to the intersection with the southwesterly R.O.W. line of Caldwell Mill Road (County Road #29); thence 46 degrees, 10 minutes, 55 seconds right, in a southeasterly direction along said R.O.W. line, a distance of 155.00 feet; thence 90 degrees right, in a southwesterly direction, a distance of 130.22 feet; thence 43 degrees, 49 minutes, 04 seconds right, in a northwesterly direction, a distance of 200.56 feet to the Point of Beginning, containing 45,491 square feet or 1.044 acres.

## **PARCEL B**

A parcel of land located in the North Half of the SE 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West, more particularly described as follows: Begin at the SW corner of said North Half; thence in a northerly direction along the westerly line of said 1/4-1/4 section, a distance of 476.55 feet; thence 97 degrees, 12 minutes, 14 seconds right, in a southeasterly direction, a distance of 200.56 feet; thence 43 degrees, 49 minutes, 04 seconds left, in a northeasterly direction a distance of 130.22 feet to the intersection with the southwesterly R.O.W. line of Caldwell Mill Road (County Road #29); thence 90 degrees right, in a southeasterly direction along said R.O.W. line, a distance of 672.22 feet to the intersection with the south line of said north half; thence 127 degrees, 28 minutes, 05 seconds right, in a westerly direction along said south line, a distance of 704.50 feet to the Point of Beginning, containing 251,213 square feet or 5.767 acres.

724 Skyland Blvd.  
Tract 69636

PARCEL OF LAND LOCATED IN PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 10 WEST, AND PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 21 SOUTH, RANGE 10 WEST, IN TUSCALOOSA COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 36; THENCE EASTERLY ALONG THE SOUTH BOUNDARY OF SAID SOUTHEAST QUARTER FOR A DISTANCE OF 161.8 FEET TO A POINT; THENCE WITH A DEFLECTION ANGLE OF 83 DEGREES, 24 MINUTES TO THE RIGHT, RUN IN A SOUTHERLY DIRECTION FOR A DISTANCE OF 192.7 FEET TO A POINT ON THE NORTH BOUNDARY OF U.S. HIGHWAY NO. 11 (BYPASS); THENCE EASTERLY ALONG THE CURVING NORTH BOUNDARY OF U.S. HIGHWAY NO. 11 (BYPASS) FOR A DISTANCE OF 217.84 FEET TO A P.T. (HIGHWAY 386+88.9); THENCE CONTINUE EASTERLY ALONG THE NORTH BOUNDARY OF SAID U.S. HIGHWAY NO. 11 (BYPASS) FOR A DISTANCE OF 614.36 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE CONTINUE EASTERLY ALONG THE NORTH BOUNDARY OF SAID U.S. HIGHWAY NO. 11 (BYPASS) FOR A DISTANCE OF 200.0 FEET TO A POINT; THENCE TO THE LEFT WITH AN INTERIOR ANGLE OF 140 DEGREES, 13 MINUTES, AND RUN NORTHEASTERLY ON AND ALONG U.S. HIGHWAY NO. 11 (BYPASS) RIGHT-OF-WAY FOR 152.80 FEET TO A POINT; THENCE TO THE LEFT WITH AN INTERIOR ANGLE OF 150 DEGREES, 34 MINUTES AND RUN IN A NORTHERLY DIRECTION ALONG THE WESTERLY LINE OF ALBRIGHT ROAD, SOMETIMES KNOWN AS THE JUG FACTORY ROAD, FOR A DISTANCE OF 66.04 FEET TO A POINT; THENCE TO THE LEFT, WITH AN INTERIOR ANGLE OF 171 DEGREES, 03 MINUTES CONTINUE NORTHERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF ALBRIGHT ROAD 83.96 FEET TO A POINT; THENCE TO THE LEFT WITH AN INTERIOR ANGLE OF 78 DEGREES, 10 MINUTES AND RUN WESTERLY AND PARALLEL TO THE NORTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 11 (BYPASS) 307.44 FEET TO A POINT; THENCE TO THE LEFT WITH AN INTERIOR ANGLE OF 101 DEGREES, 50 MINUTES AND RUN IN A SOUTHERLY DIRECTION 247.00 FEET TO THE POINT OF BEGINNING.



2400 McFarland Blvd.

Tract 69637

Part of Lots 9 and 10 according to the Resurvey of Lot G Rose Place, situated in the City of Tuscaloosa, County of Tuscaloosa, State of Alabama, being more particularly described as follows:

Commence at the Southeast corner of said Lot 10, said point being on the Westerly right of way line of U. S. Highway No. 82 Bypass (McFarland Boulevard); thence run in a Northwesterly direction along said Westerly right of way line for a distance of 75.25 feet meas. (75.00 feet deed) to the point of beginning; thence continue along last described course for a distance of 183.20 feet (meas. & deed) to a point; thence to the left with an interior angle of 152 deg. 5 min. 30 sec, meas. (151 deg. 58 min. 00 sec., deed) run in a Northwesterly direction along said right of way line for a distance of 51.83 feet meas. (51.65 feet, deed) to the beginning of a curve to the right, said curve having a radius of 3469.75 feet, a central angle of 2 deg. 59 min. 57 sec; thence to the right with an interior angle of 127 deg. 32 min. 30 sec. to chord and run in a Northeasterly direction along the right of way line of Hargrove Road and along arc of said curve for a distance of 181.62 feet to a point on the North line of said Lot 9; thence to the left with an interior angle of 80 deg. 30 min. from chord, run in a Southeasterly direction for a distance of 235.00 feet meas. (235.18 feet, deed) to a point; thence to the left with an interior angle of 96 deg. 41 min. 26 sec. meas., run in a Southeasterly direction for a distance of 205.31 feet meas. (207.62 feet, deed) to the point of beginning.

Being the same property conveyed to Humble Oil & Refining Company, a Delaware corporation, by deed from Danny Hugh Maness and wife, Betty Jean Maness; Andy Bervis Maness and wife, Kathryn Maness; Jackie Loyl Maness and wife, Margarette Maness; and Robert K. Maness, unmarried, dated January 22, 1971, recorded in the Office of Probate Judge, County of Tuscaloosa, State of Alabama, on January 22, 1971 and recorded in Deed Book 589 page 801.

6309th Avenue North SCHEDULE

### PARCEL I

Part of Lots 1, 2, 3, 18 and 19, in Block 436, according to the map of West Lake Highlands, as recorded in Map Book 2, page 46, in the Bessemer Division of the Office of the Judge of Probate of Jefferson County, Alabama, more particularly described by metes and bounds as follows: Begin at the northwest corner of said Lot 18, said point being the point of intersection of the southwesterly line of the right-of-way of 9th Street (formerly Adger Road) with the southeasterly line of a 20 foot alley running in a northeasterly and southwesterly direction through said Block 436, and run thence southeastwardly along the southwesterly line of the right-of-way of 9th Street (formerly Adger Road) for a distance of 80.23 feet; thence turn an interior angle of 114 degrees 32 minutes (115 degrees 31 minutes description) to the right and run southwardly for a distance of 62.32 feet to a point on the northwesterly line of the right-of-way of U. S. Highway No. 11, said point being on a curve to the right having a radius of 7,733.11 feet and a central angle of 1 degree 29 minutes 52 seconds; thence to the right with an interior angle of 131 degrees 43 minutes 04 seconds measured to the tangent of said curve, and run southwestwardly along the arc of said curve and along the northwesterly line of said right-of-way for a distance of 202.15 feet (200.48 feet description); thence turn an interior angle of 93 degrees 32 minutes 04 seconds measured from tangent of said curve to the right and run northwestwardly for a distance of 103.46 feet (102.19 feet description) to a point of intersection with the southeasterly line of the aforementioned 20 foot alley; thence to the right with an interior angle of 90 degrees and run northeastwardly along the southeasterly line of said alley for a distance of 221.12 feet (219.57 feet description) to the point of beginning.

### PARCEL II

An easement for ingress and egress as reserved by Humble Oil & Refining Company n/k/a the Exxon Corporation in the deed dated June 28, 1965, recorded in Real Volume 15, page 367, in the Probate Office of Jefferson County, Alabama, Bessemer Division, over, upon and across the following described parcel:

Part of Lot 4, Block 436, according to the Map and Survey of Block 436, West Lake Highlands, as recorded in Map Book 2, page 46, in the Office of the Judge of Probate of Jefferson County, Alabama, Bessemer Division, and a parcel lying adjacent to said Lot 4, which is more particularly described as follows: Commence at the intersection of the southeasterly line of a 20 foot wide alley with the southwesterly right-of-way line of Adger Road, said point being the northwest corner of Lot 18 of said Block 436; thence southeasterly along the southwesterly line of Adger Road for 80.23 feet; thence to the right with an interior angle of 115 degrees 31 minutes and run southerly for 62.32 feet to a point on the northwesterly right-of-way line of U. S. #11, said point being on a curve to the right having a radius of 7,733.11 feet; thence to the right with an interior angle of 131 degrees 55 minutes 25 seconds as measured to tangent of said curve; thence southwestwardly along the arc of said curve and along said right-of-way for 200.48 feet to the point of beginning; thence



continue southwesterly along the arc of said curve and along said right-of-way line for 51.08 feet; thence to the right with an interior angle of 84 degrees 46 minutes 25 seconds as measured from tangent of said curve and run northwesterly along said right-of-way line for 45.19 feet to a point on a curve to the right having a radius of 7,688.11 feet; thence to the left with an interior angle of 275 degrees 15 minutes 26 seconds as measured to tangent of said curve; thence southwesterly along the arc of said curve and along said right-of-way line for 100.00 feet; thence to the right with an interior angle of 90 degrees as measured from tangent of said curve and run northwesterly 41.92 feet to the intersection with the southeast line of said 20 foot wide alley and its extension; thence to the right with an interior angle of 96 degrees 44 minutes 02 seconds and run northeasterly along said alley line and its extension for 136.15 feet to the northwest corner of said Lot 4; thence run southeasterly for 102.19 feet to the point of beginning. Being situated in Jefferson County, Alabama.

615 University Blvd.

A parcel of land which includes part of Lots 1, 2, 3, and 10, Block 3, and all of Lot 4, Block 3, according to the Survey of Castle Hill Heights Subdivision No. 2, recorded in Plat Book 3 page 48 in the Probate Office of Tuscaloosa County, Alabama, and part of a 10 foot wide alley adjacent to and West of said Lot 10 and part of a 10 foot wide alley adjacent to and South of said Lots 3 and 4 and part of a 10 foot wide alley adjacent to and East of said Lot 1, all being more particularly described as follows:

Begin at the Northwest corner of said Lot 4, said point being on the Southerly right of way line of University Avenue (U.S. Highway No. 11); thence run South 85 deg. 40 min. 00 sec. East along said Southerly right of way line of University Avenue (U.S. Highway No. 11) for 265.00 feet; thence to the right with an interior angle of 108 deg. 00 min. 00 sec. and run South 13 deg. 40 min. 00 sec. East for 33.36 feet to a point on the Northerly right of way line of 10th Street East (Bear Bryant Blvd.); thence to the right with an interior angle of 107 deg. 04 min. 15 sec. and run South 59 deg. 15 min. 45 sec. West along said Northerly right of way line of 10th Street East (Bear Bryant Blvd.) for 55.22 feet to the beginning of a curve to the right, said curve having a radius of 1879.86 feet and subtending a central angle of 5 deg. 48 min. 05 sec.; thence run Southwesterly (ch. South 62 deg. 09 min. 47.5 sec. West) along the arc of said curve along said Northerly right of way line of 10th Street East (Bear Bryant Blvd.) for 190.34 feet to a point on the centerline of what was formerly a 10 foot wide alley; thence to the right with an interior angle of 67 deg. 19 min. 50 sec. as measured from tangent of said curve and run North 2 deg. 16 min. 00 sec. West along the centerline of what was formerly said 10 foot wide alley for 14.83 feet to a point on the centerline of what was formerly another 10 foot wide alley; thence to the left with a deflection angle of 83 deg. 24 min. 00 sec. and run North 85 deg. 40 min. 00 sec. West along the centerline of said former 10 foot wide alley for 50.00 feet; thence to the right with an interior angle of 96 deg. 36 min. 00 sec. and run North 2 deg. 16 min. 00 sec. West along the West line of said Lot 4 and its extension, for 151.03 feet to the point of beginning; being situated in Tuscaloosa County, Alabama.



603 Bessemer Road

Lot 11-A, according to Armstrong's Resurvey of Lots 6 through 11, Block 9, and acreage, Tract of Midfield, Sector A, as recorded in Map Book 30, page 32, in the Probate Office of Jefferson County, Alabama, Bessemer Division; being situated in Jefferson County, Alabama.

1050 South Main Street

Agent File No.: 128174

The land referred to in this Commitment is described as follows:

Commence at the SE corner of the SE 1/4 of the SE 1/4 of Section 29, Township 16 South, Range 4 West, Jefferson County, Alabama; thence run in a Northerly direction along the East line of said 1/4 1/4 and along the East line of the NE 1/4 of the SE 1/4 of said Section 29 a distance of 1496.18 feet to the point of beginning, said point of beginning being situated on the Northeasterly right of way line of U. S. Highway No. 78 West; thence 52 deg. 07 min. to the left and run in a Northwesterly direction along said Northeasterly right of way of U. S. Highway No. 78 a distance of 27.62 feet to the point of commencement to a curve to the right, said curve having a total central angle of 33 deg. 57 min., said curve being a 1 deg. 00 min. curve; thence continue in a Northwesterly direction along said Northeasterly right of way line a distance of 270.63 feet; thence from the chord of last described curve turn an angle to the right of 54 deg. 13 min. 30 sec. and run in a Northerly direction a distance of 185.06 feet to a point, said point being situated on the Southwesterly right of way line of the Old U. S. Highway No. 78, said point also being situated on a curve; thence 134 deg. 22 min. 30 sec. to the right (angle being measured to the chord of next described course); thence run in a Southeasterly direction along the arc of said curve a distance of 329.36 feet to its intersection with the East line of said NE 1/4 of SE 1/4 of said Section 29; thence run in a Southerly direction along the East line of said 1/4 1/4 a distance of 129.66 feet to the point of beginning; being situated in Jefferson County, Alabama.

Being a part of the NE 1/4 of the SE 1/4 of Section 29, Township 16 South, Range 4 West, being situated in Jefferson County, Alabama.



99B Academy Drive

**Parcel I**

**Lot 2, according to the Survey of Academy Business Park - Phase II, as recorded in Map Book 33 page 46 in the Probate Office of Jefferson County, Alabama, Bessemer Division; being situated in Jefferson County, Alabama.**

**Parcel II**

**ALSO, A 36 foot Temporary, Grading and Slope Easement described as follows:**

**A parcel of land situated in the SW 1/4 of Section 19, Township 19 South, Range 4 West, more particularly described as follows:**

**Begin at the SE corner of Lot 2, Academy Business Park, Phase II, as recorded in Map Book 33 page 46, said point being on the Westerly right of way of Academy Way as recorded in Map Book 32 page 59 in the Office of the Judge of Probate of Jefferson County, Alabama (Bessemer Division); thence in a Southwesterly direction along the Westerly right of way of Academy Way a distance of 35.68 feet to the beginning of a curve to the right having a radius of 520.00 feet and a central angle of 00 deg. 02 min. 09 sec.; thence along said curve to the right and along said right of way line, a distance of 0.32 feet; thence 89 deg. 57 min. 51 sec. right, angle measured to said curve to the right, in a Northwesterly direction a distance of 236.0 feet; thence 90 deg. 00 min. 00 sec. right in a Northeasterly direction a distance of 251.10 feet to the Southerly right of way of Academy Drive; thence 90 deg. 09 min. 55 sec. right, in a Southeasterly direction along the right of way of Academy Drive a distance of 36.0 feet to the Northwest corner of said Lot 2; thence 89 deg. 50 min. 05 sec. right, in a Southwesterly direction a distance of 215.0 feet; thence 90 deg. 00 min. 00 sec. left in a Southeasterly direction a distance of 200.0 feet to the point of beginning; being situated in Jefferson County, Alabama.**

**Being a part of Lots 1 and 3, according to the Survey of Academy Business Park - Phase II, as recorded in Map Book 33 page 46 in the Probate Office of Jefferson County, Alabama (Bessemer Division), and a part of the NW 1/4 of the SW 1/4 of Section 19, Township 19 South, Range 4 West, Jefferson County, Alabama.**

199 Main Street

**Part of the NE 1/4 of the NE 1/4 of Section 26, Township 16 South, Range 1 West, and being more particularly described as follows:**

**Begin at the intersection of the southerly right of way line of U. S. Highway No. 11 as presently located and the easterly Right of Way line of Avenue "A" as shown on the map of Actons Addition to Trussville as recorded in Map Book 15 page 83 in the Probate Office of Jefferson County, Alabama; then run South 23 deg. 13 min. East along said Right of Way line of said Avenue "A" for 160.00 feet; thence to the left with an interior angle of 90 deg. 03 min. and run North 66 deg. 50 min. East for 165.00 feet; thence to the left with an interior angle of 89 deg. 57 min. and run North 23 deg. 13 min. West for 160.00 feet; to a point on the southerly right of way line of U. S. Highway No. 11 as presently located; thence to the left with an interior angle of 90 deg. 03 min. and run South 66 deg. 50 min. West along the southerly Right of Way line of U. S. Highway No. 11 for 165.00 feet to the point of beginning; being situated in Jefferson County, Alabama.**



1503 1/4 Avenue South

Part of Block 789, City of Birmingham, Alabama, being more particularly described as follows:

Beginning at the Southeast intersection of 11th Avenue and 15th Street South, also being the Northwest corner of Block 789, City of Birmingham, Alabama, run thence in a Northeasterly direction along the Southeast right-of-way line of 11th Avenue South for a distance of 194 feet to an existing iron pin; thence turn an angle to the right of  $90^{\circ}$  and run in a Southeasterly direction for a distance of 162.33 feet to an existing iron pin being on the Northwest right-of-way line of an existing alley in said block 789; thence turn an angle to the right of  $90^{\circ} 01'$  and run in a Southwesterly direction along said Northwest right-of-way line of said alley for a distance of 225.34 feet to a point of intersection with the Northeast right-of-way line of 15th Street South; thence turn an angle to the right of  $100^{\circ} 55'$  and run in a Northwesterly direction along said Northeast right-of-way line of 15th Street South for a distance of 165.26 feet to the point of beginning.

This survey has never been filed for record and is not available for recordation.

2601 John Hawkins Parkway

**Lot 1, according to the Survey of Trace Crossings Commercial Subdivision, as recorded in Map Book 32 page 20 in the Probate Office of Jefferson County, Alabama, Bessemer Division, and Map Book 190 page 53 in the Probate Office of Jefferson County, Alabama, Birmingham Division; being situated in Jefferson County, Alabama.**

**Together with rights of ingress and egress pursuant to that certain Easement Agreement recorded in Instrument #9861/2239 in the Probate Office of Jefferson County, Alabama, Bessemer Division and that certain Easement Agreement recorded as Instrument #9861/2240 in said Probate Office.**



821 Greensprings Hwy

Lot 1, according to a Resurvey, as recorded in Map Book 72 page 88 in the Probate Office of Jefferson County, Alabama, of Lots 1, 2, 3, and 4 of Tichenor's Survey, situated in the NE 1/4 of NE 1/4 of Section 23, Township 18 South, Range 3 West, Jefferson County, Alabama. Mineral and mining rights excepted.

Title Exceptions are as set forth on the following Title Policies:

1. Title Policy was issued on September 8, 1998 by Chicago Title Insurance Company with policy number 01-0002-107-00018227.
2. Title Policy was issued on October 21, 1991 by First American Insurance Title Company with policy number FA-13-13951.
3. Title Policy was issued on August 12, 1992 by First American Title Insurance Company with policy number FA-14-202283
4. Title Policy was issued on November 27, 1995 by First American Title Insurance Company with policy number FA-31-131910.
5. Title Policy was issued on March 4, 2002 by First American Title Insurance Company with policy number FA-31-584831.
6. Title Policy was issued on June 27, 2000 by First American Title Insurance Company with policy number FA-31-463271.
7. Title Policy was issued on March 31, 1999 by First American Title Insurance Company with policy number FA-31-318651.
8. Title Policy was issued on October 22, 1999 by First American Title Insurance Company with policy number FA-31-410851.
9. Title Policy was issued on January 23, 1992 by Lawyers Title Insurance Corporation with policy number 82-02-596779.
10. Title Policy was issued on September 9, 1998 by First American Title Insurance Company with policy number FA-31-327523.
11. Title Policy was issued on January 26, 1990 by First American Title Insurance Company with policy number FA-ZZ-39666.
12. Title Policy issued by First American Title Insurance Company with policy number 142036A.
13. Title Policy issued by First American Title Insurance Company with policy number 142036B.



**EXHIBIT A-1**

**LEASE LAND**

**LEGAL DESCRIPTION AND TITLE EXCEPTIONS**

*1816 Crestwood Blvd*

Parts of Lots 1, 2, 5 and 6, Block 6 of Horan and Hatzell Addition to Irondale, as recorded in Map Book 1 page 305 in the Probate Office of Jefferson County, Alabama, and a 15 foot vacated alley lying between Lots 1 and 2 and Lots 5 and 6 and recorded in Deed Volume 4078 page 498 in the Probate Office of Jefferson County, Alabama, all of which is more particularly described as follows:

Commence at SW corner of the SE 1/4 of the SW 1/4 of Section 24, Township 17 South, Range 2 West, and run North along the West line of said 1/4 1/4 Section for 15.24 feet to its intersection with the Northerly right of way line of U. S. Highway No. 78; thence 63 deg. 32 min. right and run Northeasterly along said right of way line for 27.93 feet to the point of beginning; thence 63 deg. 32 min. left and run North and parallel with the West line of said 1/4 1/4 Section for 155.12 feet to an iron pin on the South right of way line of 19th Street if extended; thence to the right with an interior angle of 87 deg. 43 min. and run East along said right of way line of 19th Street and its extension thereof for 288.73 feet to an iron pin in the Northerly right of way line of U. S. Highway No. 78; thence to the right with an interior angle of 28 deg. 45 min. and run Southwesterly along said right of way line for 322.28 feet to the point of beginning; being situated in Jefferson County, Alabama.



775B Bessemer Road

---

Lot RV-4, according to the Survey of Domit's Resurvey No. 2, as recorded in Map Book 183 page 28 in the Probate Office of Jefferson County, Alabama; being situated in Jefferson County, Alabama. Mineral and mining rights excepted.

Title Exceptions are as set forth on the following Title Policies:

1. Title Policy was issued on June 26, 1996 by First American Title Insurance Company with policy number FA-31-169823.
2. Title Policy was issued on May 23, 1996 by First American Title Insurance Company with policy number FA-31-162630.



## **SCHEDULE I**

### **GROUND LEASES**

1. Lease between Mortgagor, as Lessee, and Violette Lee Copeland and husband, Dan E. Copeland, as Lessors, dated July 2, 1993, as amended by First Amendment to Lease dated September 1, 1993, as commemorated in the Memorandum of Lease dated September 16, 1993 recorded as Instrument No. 9312/6362 in the Probate Office of Jefferson County, Alabama (Irondale/74022) .

2. Ground Lease dated as of July 28, 1995, between Milton J. Domit, as landlord, and 5 Points West Texaco, LLC, as tenant, as modified by First Modification to Lease dated as of December 8, 1995, a memorandum of said lease, as so modified, being recorded as Instrument No. 9601/6391, in the Probate Office of Jefferson County, Alabama, as assigned to McCollough Snappy Service Oil Company, Inc. pursuant to an Assignment of Ground Lease dated as of February 7, 1996, a memorandum of which is recorded as Instrument No. 9606/5054 in the Probate Office of Jefferson County, Alabama, as assigned to Shop-A-Snak Food Mart, Inc. pursuant to an Assignment of Ground Lease dated as of March 25, 1996, a memorandum of which is recorded as Instrument No. 9606/5056 in the Probate Office of Jefferson County, Alabama (5 Points West/19490).

## SCHEDULE II

### **CONSOLIDATED, AMENDED AND RESTATED MORTGAGES AND LEASEHOLD MORTGAGES**

1. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank, National Association, a national banking association, dated September 4, 1998 and recorded September 8, 1998 with the Judge of Probate of Jefferson County, Alabama at Book 9811, Page 6664; For informational purposes only: Greensprings 24208.
2. Leasehold Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank of Alabama, National Association, a national banking association, dated June 21, 1996 and recorded June 26, 1996 with the Judge of Probate of Jefferson County, Alabama at Book 9607, Page 8345; For informational purposes only: Irondale 74022.
3. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank of Alabama, National Association, a national banking association, dated August 26, 1991 and recorded with the Judge of Probate of Shelby County, Alabama at Real 360, Page 925, as amended by Amendment to Mortgage and Security Agreement and Assignment of Leases, dated October 10, 1991 and recorded October 18, 1991 at Book 369, Page 131; For informational purposes only: Valleydale 10983.
4. Mortgage, Leasehold Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama Corporation to SouthTrust Bank of Alabama, National Association, a national banking association, dated August 11, 1992 and recorded August 12, 1992 with the Judge of Probate of Jefferson County, Alabama at Book 4336, Page 719. Recorded August 12, 1992 with the Judge of Probate of Jefferson County, Bessemer Division, Alabama at Real 900 Page 791. Recorded August 12, 1992 with the Judge of Probate of Tuscaloosa County, Alabama at Book 1580, Page 0060. For informational purposes only: (Exxon #1 12495 and Exxon #2 12496)
5. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank of Alabama, National Association, a national banking association, dated November 6, 1995 and recorded November 27, 1995 with the Judge of Probate of Tuscaloosa County, Alabama at Book 1739, Page 591. For informational purposes only: University 18060
6. Leasehold Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank of Alabama, National Association, a national banking association, dated May 15, 1996 and recorded May 23, 1996 with the Judge of Probate of Jefferson County, Alabama at Book 9606, Page 5071. For informational purposes only: 5 Points West 19490



7. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., a Delaware corporation to SouthTrust Bank, an Alabama banking corporation, dated February 27, 2002 and recorded March 4, 2002 with the Judge of Probate of Jefferson County, Alabama at Book 200260, Page 6422. For informational purposes only: Midfield 247692
8. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank, an Alabama banking corporation, dated and recorded June 27, 2000 with the Judge of Probate of Jefferson County, Alabama at Book 200007, Page 6486. For informational purposes only: Graysville 46560
9. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank, National Association, a national banking association, dated March 30, 1999 and recorded March 31, 1999 with the Judge of Probate of Jefferson County, Alabama at Book 9960 and Page 9536. For informational purposes only: Academy 30251
10. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank, National Association, a national banking association, dated October 19, 1999 and recorded October 22, 1999 with the Judge of Probate of Jefferson County, Alabama at Book 9914 and Page 1428. For informational purposes only: Trussville 30151
11. [Intentionally omitted]
12. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank of Alabama, National Association, a national banking association, dated January 23, 1992 and recorded 1/23/92 with the Judge of Probate of Jefferson County, Alabama at Book 4187, Page 161.m For informational purposes only: UAB 11620
13. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank, National Association, a national banking association, dated September 4, 1998 and recorded September 9, 1998 with the Judge of Probate of Jefferson County, Alabama at Book 9562, Page 4261. For informational purposes only: Sulphur Springs 24209
14. Mortgage and Security Agreement executed by Shop-A-Snak Food Mart, Inc., an Alabama corporation to SouthTrust Bank of Alabama, National Association, a national banking association, dated and recorded May 25, 1990 with the Judge of Probate of Jefferson County, Alabama at Book 3826, Page 714. For informational purposes only: Greensprings 09179