

**MORTGAGE, SECURITY AGREEMENT AND
FINANCING STATEMENT**

STATE OF ALABAMA §

§

COUNTY OF SHELBY §

SCHLOTZSKY'S REAL ESTATE HOLDINGS, LTD., a Texas limited partnership ("Mortgagor") to secure the payment and performance of the Obligations (as hereinafter described and defined), and for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in cash and other valuable consideration in hand paid to Mortgagor, the receipt and adequacy of which are hereby acknowledged, and for and in consideration of the debt, hereinafter mentioned, has GRANTED, BARGAINED, SOLD, ASSIGNED, TRANSFERRED and CONVEYED and by these presents does GRANT, BARGAIN, SELL, ASSIGN, TRANSFER and CONVEY, unto FIRST AMERICAN BANK, SSB, a Texas state savings bank, (herein called "Mortgagee"), whose address is 4900 East 42nd Street, Odessa, Texas 79762, with power of sale, all of the interest of Mortgagor in and to the following real and personal properties, rights, title, interests and estates described or to which reference is made in Paragraphs I through V, inclusive, below, whether now owned by Mortgagor or hereafter acquired by Mortgagor (herein collectively called the "Mortgaged Property"):

Paragraph I. All of Mortgagor's interest in all of that land described in **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "**Land**");

Paragraph II. Subject to the terms of the documents creating or evidencing the Land, all buildings and other improvements now or hereafter situated or placed on the Land, all of which improvements shall be deemed and considered to be a part of the realty;

Paragraph III. Subject to the terms of the documents creating or evidencing the Land, all fixtures and equipment, including, but not limited to, all heating, lighting, cooling, ventilating, air conditioning, refrigeration, plumbing, incinerating, water-heating, cooking, pollution control, gas, electric, solar, nuclear and other equipment and fixtures, now or hereafter attached to or used in connection with said Land or any of said improvements or both, and all renewals and replacements thereof, all substitutions therefor and all additions and accessions thereto, all of which shall also be deemed and considered to be a part of the realty;

Paragraph IV. Subject to the terms of the documents creating or evidencing the Land, all right, title and interest in and to said Land, improvements, fixtures and equipment, acquired by Mortgagor after the execution of this instrument; and

Paragraph V. Subject to the terms of the documents creating or evidencing the Land, any and all rights and appurtenances belonging, incident or appertaining to said Land, improvements, fixtures and equipment, or any part thereof.

The property described or referred to in this Section 1.1., including the Land, is hereinafter called the "**Mortgaged Property.**"

TO HAVE AND TO HOLD the Mortgaged Property, together with all and singular the rights, privileges, contracts and appurtenances now or hereafter at any time before the foreclosure or release hereof in anywise belonging or appertaining thereto, unto Mortgagee and its successors and assigns, forever, and Mortgagor hereby binds and obligates Mortgagor to warrant and forever defend, all and the singular, the Mortgaged Property unto Mortgagee and to its successors and assigns, against the lawful claims of any and all Persons whomsoever claiming or to claim the same, or any part thereof, **SUBJECT, HOWEVER, ONLY** to the liens, easements, restrictions, security interests, and other matters (if any) as reflected on **Exhibit "B"** attached hereto and incorporated herein by reference and the liens and security interests created by the Loan Documents (collectively, the **"Permitted Exceptions"**).

This conveyance is made, however, upon the terms and provisions hereinafter set out to secure the full and final payment and performance of the Obligations.

To further secure the Obligations, Mortgagor hereby grants to Mortgagee a security interest in the Mortgaged Property insofar as such Mortgaged Property consists of equipment, general intangibles, accounts, inventory, fixtures and any and all other personal property of any kind or character defined in and subject to the provisions of the Code, whether now owned or hereafter acquired, including the proceeds and products from any and all of such Mortgaged Property (all of such Mortgaged Property (and the proceeds and products thereof) being herein called the **"Collateral"**). Upon the happening of any Default, Mortgagee is and shall be entitled to all of the Rights afforded a secured party by the Code with reference to the Collateral, or Mortgagee may proceed as to both the real and personal property covered hereby in accordance with the Rights granted under this Mortgage in respect to the real property covered hereby. Such Rights shall be cumulate and in addition to those granted to Mortgagee under any other provision of the Mortgage or under any other instrument executed in connection with or as security for all or any part of the Obligations.

REFERENCE IS MADE TO SECTION 4.13 FOR THE DEFINITIONS OF SEVERAL OF THE TERMS USED HEREIN. CAPITALIZED TERMS NOT DEFINED HEREIN SHALL HAVE THE MEANING GIVEN TO SUCH TERMS IN THE LOAN AGREEMENT.

ARTICLE ONE

SECURED OBLIGATION

This Mortgage, Security Agreement and Financing Statement (the **"Mortgage"**) is made to secure and enforce the following note or notes and the obligations, indebtedness, covenants, conditions, agreements, loans, advances, debts and liabilities (collectively, the **"Obligations"**):

Section 1.1 Note. All indebtedness now and hereafter evidenced and to be evidenced by that certain term note of even date herewith (the **"Note"**) in the principal sum of **ONE MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,600,000.00)**, with

final payment due on March 25, 2010, bearing interest at the rate or rates therein stated, principal and interest payable to the order of Mortgagee on the dates therein stated;

Section 1.2 Loan Agreement. Those obligations specified in that certain Loan Agreement of even date herewith (the "**Loan Agreement**"), by and among Mortgagor, as borrower; Bobby D. Cox, as guarantor ("**Guarantor**"); and Mortgagee, as lender.

Section 1.3 Other Obligations. All other obligations, if any, described or referred to herein;

Section 1.4 Extensions and Renewals. Any extensions, renewals and rearrangements of said note, notes or obligations or of any indebtedness evidenced thereby;

Section 1.5 Sums Advanced by Lender. Any and all sums, together with interest accruing thereon as herein provided, which may hereafter be advanced by Mortgagee under the terms of this instrument on account of the failure of Mortgagor to keep, observe or perform Mortgagor's covenants under this instrument, as hereinafter provided; and

ARTICLE TWO

CERTAIN REPRESENTATIONS, WARRANTIES, AND COVENANTS OR MORTGAGOR

Section 2.1 Representations and Warranties. Mortgagor represents and warrants to Mortgagee that:

(a) Authority. Mortgagor has authority to execute this Mortgage, to grant, bargain, sell, mortgage, assign, transfer, and convey the Mortgaged Property to the Mortgagee pursuant to this Mortgage, and to make the covenants, representations, warranties, and assignments contained in this Mortgage.

(b) Title. Mortgagor (i) has good title to, (ii) is the lawful owner and holder of, and (iii) is possessed of the Mortgaged Property free and clear of any and all Liens and encumbrances except the liens, easements, restrictions, security interests, and other matters (if any) as reflected on Exhibit "B" attached hereto and incorporated herein by reference and the liens and security interests created by the Loan Documents.

(c) Taxes. All real property and other Taxes payable by Mortgagor with respect to the Mortgaged Property have been paid.

Section 2.2 Covenants of Mortgagor. Mortgagor, for Mortgagor and Mortgagor's Successors, covenants and agrees, unless otherwise specifically permitted or allowed in the Mortgagor Loan Agreement, to:

- (a) Additional Documents. At any time, and from time to time, upon request by Mortgagee, forthwith execute and deliver to Mortgagee any and all additional instruments and further assurances, and do all other acts and things, as may be necessary or proper, in Mortgagee's opinion, to effect the intent of these presents and to evidence and perfect more fully the Rights and Liens herein created or intended to be created and to protect the Rights of Mortgagee hereunder.
- (b) Existence. Continuously maintain Mortgagor's existence in good standing as a limited partnership in the State of Texas and its due qualification as a limited partnership in the State of Texas and its due qualification as a foreign limited partnership under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.
- (c) Cure of Defects. If the validity or priority of this Mortgage or of any Rights or Liens created or evidenced hereby with respect to the Mortgaged Property or any material part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Mortgagor with respect thereto, give written notice thereof to Mortgagee promptly and, at Mortgagor's own cost and expense, diligently endeavor to cure any defect that may be developed or claimed, and take all necessary and property steps for the defense of such legal proceedings, including, but not limited to, the employment of counsel acceptable to Mortgagee, the prosecution or defense of litigation and the release or discharge of all adverse claims, and Mortgagee (whether or not named as party to legal proceedings with respect thereto), is hereby authorized and empowered to take such additional steps as in its judgment and discretion may be necessary or proper for the defense of any such legal proceedings, including, but not limited to, the prosecution or defense of litigation, and the compromise or discharge of any adverse claims made with respect to the Mortgaged Property, and all expense so incurred of every kind and character shall be a demand obligation owing by Mortgagor to Mortgagee.
- (d) Payment of Taxes. Pay, or cause to be paid, before delinquent, all real property and other lawful Taxes in respect to the Mortgaged Property, or any part thereof, and from time to time, upon request of Mortgagee, to furnish to Mortgagee evidence satisfactory to Mortgagee of the timely payment of such Taxes.
- (e) Compliance with Contracts, Easements and Restrictive Covenants. Timely perform all obligations under, and not violate any contract, easement or restrictive covenant affecting the Mortgaged Property.
- (f) Maintenance of Mortgaged Property. At all times maintain, preserve, and keep the Mortgaged Property in good repair and condition, and from time to time make all necessary and proper repairs, replacements, and renewals; and not to commit or permit any waste on or of the Mortgaged Property; and not to do anything to the Mortgaged Property that may impair its value.

- (g) Payment for Labor and Materials. Subject to Mortgagor's right to contest in good faith, Promptly pay all bills for labor and materials incurred in connection with the Mortgaged Property and never permit to be fixed against the Mortgaged Property, or any part thereof, any Lien, even though inferior to the Lien hereof, for any such bill which may be legally due and payable, except a Permitted Exception.
- (h) Performance of Obligations. Pay the Note in accordance with the terms of the Loan Agreement.
- (i) Mortgage Taxes. At any time any Law shall be enacted imposing or authorizing the imposition of any Tax upon this Mortgage, or upon any Lien created hereby, immediately pay all such Taxes; provided that, in the alternative, Mortgagor may, in the event of the enactment of such a Law, and must, if it is unlawful for Mortgagor to pay such Taxes, prepay that portion of the Obligations which Mortgage in good faith determines is secured by property covered by such Law within 30 days after demand therefor by Mortgagee.
- (j) Performance of Covenants. Punctually and properly perform all of Mortgagor's covenants, duties, and liabilities under the Loan Agreement, this Mortgage.
- (k) Inspection of Mortgaged Property. Upon reasonable prior notice by Mortgagee and so as not to cause interruption to the business located in or on the Mortgaged Property, allow Mortgagee to inspect the Mortgaged Property and all records relating thereto, and to make and take away copies of such records.
- (l) Operation of Mortgaged Property. So long as Mortgagor is operating the Mortgaged Property, operate the Mortgaged Property, or cause it to be operated, in a reasonably careful and efficient manner in accordance with the practices of the industry and in compliance with all contracts, easements and restrictive covenants affecting the Mortgaged Property and all applicable Laws.
- (m) Insurance. So long as any of the Obligations remains unpaid or unperformed, Mortgagor will keep the Mortgaged Property insured in the types and at the levels required pursuant to the terms of the Loan Agreement. Such insurance shall be placed with companies acceptable to Mortgagee, shall name the Mortgagee as an additional insured, and the policies shall expressly prohibit cancellation or modification of such insurance without thirty (30) days' written notice to Mortgagee. Due proof of payment of the premiums for all such insurance shall be furnished by Mortgagor promptly after each such payment is made and in any case before payment shall become delinquent. The proceeds of any and all insurance upon the Mortgaged Property shall be collected by Mortgagee, and Mortgagee shall have the option, in Mortgagee's reasonable discretion, to apply any proceeds so collected either to the restoration of the Mortgaged Property (but only if economically feasible), in the amounts, manner, method and pursuant to such

requirements and documents as Mortgagee may require, or to the liquidation of the Obligations in accordance with the following provisions: (1) to the payment of all expenses, including, without limitation, reasonable attorney's fees, incurred by Mortgagee in collecting all proceeds, premiums, or other sums; (2) to the remainder of the indebtedness evidenced by the Note as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the indebtedness evidenced by the Note, and third, to prepayment of the unmatured portion, if any, of principal of such indebtedness applied to installments of principal in inverse order of maturity; (3) to the outstanding balance of any other Obligations; (4) the balance, if any and to the extent applicable, remaining after the full and final payment of the indebtedness evidenced by the Note and any other unpaid Obligations, to the holder or Mortgagee of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens; and (5) the cash balance, if any, to the Mortgagor. The balance of the Obligations that remain unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note and the other Loan Documents.

(n) Compliance with Laws. Comply with all Laws applicable to the Mortgaged Property and its ownership, use and operation, including, without limitation, Environmental Laws. Mortgagor will promptly notify Mortgagee in writing of any request from any Tribunal for information on releases of Hazardous Substances from, affecting or relating to the Mortgaged Property; notify Mortgagee of any actual, proposed or threatened testing or other investigation by any Tribunal concerning the environmental condition of the Mortgaged Property; and provide to Mortgagee such information as Mortgagee shall request concerning the generation, storage, disposal, transportation or other management, if any, of any Hazardous Substances. Mortgagor will not place nor permit to be placed any Hazardous Substances on any of Mortgagor's property in violation of applicable Environmental Laws. In the event Mortgagor should discover any Hazardous Substances on any of Mortgagor's property which results in a breach of the foregoing covenant, Mortgagor shall notice Mortgagee within three (3) days after such discovery. Mortgagor shall dispose of all material amounts of Hazardous Substances generated by the Mortgagor only at facilities and/or with carriers that maintain valid governmental permits under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901. In the event of any notice or filing of any complaint or commencement of any administrative hearing or procedure (an "**Environmental Proceeding**") against the Mortgagor alleging a violation of an Environmental Law, Mortgagor shall give notice to Mortgagee within fifteen (15) business days after Mortgagor has received notice of such notice or filing. Mortgagor agrees to indemnify and hold Mortgagee and its officers, directors and owners harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions, requirements and enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, without limitation, attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of the presence of any Hazardous Substances on, under or from the Mortgaged Property, whether prior

to or during the term of this Mortgage, and whether by Mortgagor or any predecessor in title or any employees, agents, contractors or subcontractors of Mortgagor or any predecessor in title, or any third Persons at any time occupying or present on the Mortgaged Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Substances at any time located or present on or under the Mortgaged Property. The indemnity provided in this Section 2.2(n) shall further apply to any residual contamination on or under the Mortgaged Property and to any contamination of any property arising in connection with the generation, use, handling, storage, transport or disposal of any Hazardous Substances, irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, including, without limitation, Environmental Laws.

(o) Additional Reports. From time to time, upon request of Mortgagee, promptly furnish to Mortgagee such financial statements and reports relating to the Mortgaged Property as Mortgagee may request.

(p) Sales of Mortgaged Property. Not, without the prior written consent of Mortgagee, such consent not to be unreasonably withheld, conditioned or delayed, sell, trade, transfer, convey, assign, exchange, pledge, encumber, create any Lien (except a Permitted Exception) with respect to or otherwise dispose of the Mortgaged Property, or any part thereof, or any interest therein, except as otherwise consented to in writing by Mortgagee.

(q) Principal Office. Maintain the principal office and place of business of Mortgagor with all of Mortgagor's records and files relating to the Mortgaged Property at 4055 International Plaza, Suite 450, Fort Worth, Texas 76109, except for those customarily maintained at the Mortgaged Property or at 203 Colorado Street, Austin, Texas 78701.

(r) Mortgage Registration Taxes and Recording Fees. Promptly pay any mortgage registration or similar Taxes, recording fees and filing fees which may be required to be paid with respect to or in connection with the filing and recordation of this Mortgage.

ARTICLE THREE

DEFAULTS AND REMEDIES

Section 3.1 Defaults. The term "Default" or "Event of Default," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

- (a) If Mortgagor shall fail, refuse, or neglect to pay, in full, any installment or portion of the indebtedness evidenced by the Note as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise and such failure, refusal or neglect continues for a period of ten (10) days.
- (b) If Mortgagor shall fail, refuse or neglect or cause the failure, refusal, or neglect to comply with, perform and discharge fully and timely any of the Obligations as and when called for, other than repayment of the indebtedness evidenced by the Note, and such failure, refusal or neglect continues for a period of thirty (30) days after delivery to Mortgagor of written notice from Mortgagee of such failure, refusal or neglect (such period to be increased for an additional period not to exceed sixty (60) days, if Mortgagor is diligently pursuing the cure of the matter(s) in question, upon Mortgagor's delivery to Mortgagee of appropriate bonds or additional collateral, the form of same to be acceptable to Mortgagee in its reasonable discretion).
- (c) If any representation, warranty, or statement made by Mortgagor or Guarantor in, under, or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Obligations is determined by Mortgagee to be false or misleading in any material respect as of the date hereof or thereof or shall become so at any time prior to the repayment in full of the Obligations.
- (d) If Mortgagor (i) shall execute an assignment for the benefit of creditors or an admission in writing by Mortgagor of Mortgagor's inability to pay, or Mortgagor's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty (60) days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Mortgagor or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty (60) days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks of the benefit or benefits of any debtor relief law, or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Mortgagee granted herein, in the Note, or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Mortgagor as a debtor under any debtor relief law or seeks appointment of a receiver, trustee, custodian or liquidator of Mortgagor or of the Mortgaged Property, or any part thereof, or of any significant portion of Mortgagor's other property; and (A) Mortgagor admits, acquiesces in or fails to contest diligently the material allegations thereof, or (B) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Mortgagor, or (C) the petition, case, proceeding or other action is not permanently dismissed or

discharged on or before the earlier of trial thereon or sixty (60) days next following the date of filing.

(e) If Mortgagor shall dissolve, terminate, liquidate, or merge with or be consolidated into any other entity or the Guarantor shall die.

(f) If Mortgagor creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any subordinate mortgage, regardless of whether such subordinate mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions, which has not been consented to or approved by Mortgagee. If any levy or attachment is issued, or if any lien for the performance of work or the supply of materials is filed, against any part of the Mortgaged Property and remains unsatisfied or unbonded following thirty (30) days after the date of filing thereof or such later period of time if Mortgagor is unaware of such matter; subject to the right of Mortgagor to contest the validity thereof as provided in this Mortgage.

(g) If Mortgagor makes a Disposition, without the prior written consent of Mortgagee, such consent not to be unreasonably withheld, conditioned or delayed. For purposes of this Mortgage, the term "**Disposition**" shall mean any sale, lease, exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest in Mortgagor (if Mortgagor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity).

(h) If the Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Mortgagee's reasonable judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.

(i) If Mortgagor executes any conditional bill of sale, chattel mortgage or other security instrument covering any materials, fixtures or articles intended to be incorporated in the improvements situated on the Land or the appurtenances thereto, or covering articles of personal property placed in the improvements situated on the Land, or files a financing statement publishing notice of such security instrument, or if any of such materials, fixtures or articles are not purchased in such a manner that the ownership thereof vests unconditionally in Mortgagor, free from encumbrances, on delivery at the Land, or if Mortgagor does not produce to Lender upon reasonable demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which Mortgagor claims title to such materials, fixtures and articles.

(j) If Mortgagor abandons all or any portion of the Mortgaged Property.

(k) The occurrence of any event referred to in Section 3.1(d) hereof with respect to Guarantor.

(l) The occurrence of an Event of Default as defined in any of the other Loan Documents.

Section 3.2 Remedies. If a Default shall occur and be continuing, Mortgagee may, at its option, do any one or more of the following to the extent permitted by applicable law:

(a) Payment or Performance by Mortgagee. If Mortgagor has failed to keep or perform any covenant whatsoever contained in this Mortgage, Mortgagee may, but shall not be obligated to any Person to do so, perform or attempt to perform such covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be a part of the Obligations, and Mortgagor promises, upon demand, to pay to Mortgagee, at the place where the Note is payable, or at such other place as Mortgagee may direct by written notice, all sums so advanced or paid by Mortgagee, with interest at the Highest Lawful Rate permitted under applicable law from the date when paid or incurred by Mortgagee until paid by Mortgagor. No such payment by Mortgagee shall constitute a waiver of any Default. In addition to the Liens hereof, Mortgagee shall be subrogated to all Rights and Liens securing the payment of any debt, claim, Tax, or assessment for the payment of which Mortgagee may make any advance, or which Mortgagee may pay.

(b) Acceleration. Mortgagee may, at its option, declare the aggregate unpaid principal amount of and interest on the Note and all other parts of the Obligations to be, and the same shall thereupon become, immediately due and payable without presentment, demand, protest, notice of acceleration, notice of intent to accelerate, notice of protest or notice of dishonor, or any other notice of any kind, all of which are expressly waived by Mortgagor.

(c) Foreclosure. Mortgagee is hereby authorized and empowered, and to the extent permitted by applicable Law, to sell all or any part of the Mortgaged Property at one or more sales, as an entirety or in parcels, at such place or places and otherwise in such manner and upon such notice as may be required by applicable Law, or in the absence of any such requirement, as Mortgagee may deem appropriate, and to make conveyance to the purchaser or purchasers thereof. Any sale of any part of the Mortgaged Property shall be made to the highest bidder or bidders for cash, at the courthouse door of, or at such other place as may be required or permitted by applicable Law in, the county where the Land is situated; provided that if the Land is situated in more than one county, such sale of the Mortgaged Property, or any part thereof, may be made in any county wherein any part of the Land included within the Mortgaged Property to be sold is situated. Any such sale shall be made at public outcry, at the front door of the Courthouse of the County wherein said Land is located, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of sale in some newspaper in the County wherein such Land is located; and nothing herein shall be deemed to require Mortgagee to do, and Mortgagee shall

not be required to do, any act other than as required by applicable Law in effect at the time of such sale. Any such sale may be as a whole or in such parcels as Mortgagee may select. After such sale, Mortgagee shall make the purchaser or purchasers thereunder good and sufficient deeds and assignments, in the name of Mortgagor, conveying the Mortgaged Property, or part thereof, so sold to the purchaser or purchasers with statutory warranty of title (subject to Permitted Exception) by Mortgagor. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, but sales may be made from time to time until the Obligations are paid and performed in full. It shall not be necessary to have present or to exhibit at any such sale any of the Collateral. In addition to the Rights and powers of sale granted under the preceding provisions of this Section 3.2(c), if default is made in the payment of any installment of the Obligations, Mortgagee, at its option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Obligations to be due and payable may enforce this mortgage and sell the Mortgaged Property subject to such unmatured Obligations and the Liens securing its payment, in the same manner, on the same terms, at the same place and time, and after having given notice in the same manner, all as provided in the preceding provisions of this Section 3.2(c). After such sale, Mortgagee shall make due conveyance to the purchaser or purchasers. Sales made without maturing the Obligations may be made hereunder whenever there is a default in the payment of any installment of the Obligations without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this Section 3.2(c) on the unmatured balance of the Obligations (except as to any proceeds of any sale which Mortgagee may apply as a prepayment on the Obligations) or the Liens securing payment of the Obligations. It is intended by each of the foregoing provisions of this Section 3.2(c) that Mortgagee may sell all items constituting a part of the Mortgaged Property, or any part thereof, along with the Land, or any part thereof, included within the Mortgaged Property all as a unit and as a part of a single sale, or may sell any part of the Mortgaged Property separately from the remainder of the Mortgaged Property. It is agreed that, in any deed or assignment given by Mortgagee, any and all statements of fact or other recitals therein made as to the occurrence or existence of any Default, or as to the acceleration of the maturity of the Obligations, or as to the request to sell, notice of sale, time, place, terms and manner of sale, and the receipt, distribution and application of the money realized therefrom, and, without being limited by the foregoing, as to any other act or thing having been duly done by Mortgagee, shall be taken by all courts of law and equity as prima facie evidence that the said statements or recitals state facts and are without further question to be so accepted, and Mortgagor does hereby ratify and confirm any and all acts that Mortgagee may lawfully do in the premises by virtue hereof.

(d) Suit. Mortgagee may proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligations in accordance with the terms hereof, the Loan Agreement, the Note or other documents and/or writing securing and/or evidencing the Obligations, to foreclose the Liens of this



Mortgage as against all or any part of the Mortgaged Property and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction.

(e) Appointment of Receiver. Mortgagee as matter of right and without regard to the sufficiency of the security, and without any showing of insolvency, fraud or mismanagement on the part of Mortgagee, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver shall be entitled to the appointment of receiver or receivers of the Mortgaged Property, or any part thereof, and of the income, rents, issues and profits thereof.

(f) Possession of Mortgaged Property. Mortgagee may enter upon the Land included within the Mortgaged Property, take possession of the Mortgaged Property, and remove the personal property included within the Mortgaged Property, or any part thereof, with or without judicial process, and, in connection therewith, without any responsibility or liability on the part of the Mortgagee, take possession of any property located on or in the Mortgaged Property which is not a part of the Mortgaged Property and hold or store such property at Mortgagee's expense.

(g) Assemble Collateral. Mortgagee may require Mortgagor to assemble the Collateral included within the Mortgaged Property, or any part thereof, and make it available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to Mortgagor and Mortgagee.

(h) Disposition of Collateral. After notification, if any, as hereafter provided in this Section 3.2(h), Mortgagee may sell, lease or otherwise dispose of, at the office of Mortgagee, or on the Land, or elsewhere, as chosen by Mortgagee, all or any part of the Collateral included within the Mortgaged Property, in its then condition, or following any commercially reasonable preparation or processing, and each Sale (as used in this Section 3.2(h), the term "Sale" means any such sale, lease, or other disposition made pursuant to this Section 3.2(h)) may be as a unit or in parcels, by public or in private proceedings, and by way or one or more contracts, and, at any Sale, it shall not be necessary to exhibit the Collateral, or part thereof, being sold, leased or otherwise disposed of. The Sale of any part of the Collateral shall not exhaust Mortgagee's power of Sale, but Sales may be made from time to time until the Obligations are paid and performed in full. Reasonable notification of the time and place of any public Sale pursuant to this Section 3.2(h), or reasonable notification of the time after which any private Sale is to be made pursuant to this Section 3.2(h), shall be sent to Mortgagor and to any other Person entitled under the Code to notice. It is agreed that notice sent or given not less than 21 calendar days prior to the taking of the action to which the notice relates is reasonable notification and notice for such purposes of this Section 3.2(h)

(i) Surrender of Insurance Policies. Mortgagee may surrender the insurance policies maintained pursuant to Section 2.2(m) hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Obligations, and, in connection therewith, Mortgagor hereby appoints Mortgagee as the agent and attorney-in-fact for Mortgagor to collect such premiums.

Section 3.3 Purchase of Mortgaged Property by Mortgagee. If Mortgagee is the purchaser of the Mortgaged Property, or any part thereof (and it is specifically agreed that Mortgagee may be the purchaser of the Mortgaged Property, or any part thereof, if permitted by applicable Law), at any sale thereof, whether such sale be under the power of sale hereinabove vested in Mortgagee, or upon any other foreclosure of the Liens hereof, or otherwise, Mortgagee shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the Liens of these presents.

Section 3.4 Operation of Properties by Mortgagee. Should any part of the Mortgaged Property come into the possession of Mortgagee, whether before or after Default, Mortgagee may use or operate the Mortgaged Property for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction, or in accordance with any other Rights held by Mortgagee in respect of the Mortgaged Property. Mortgagor covenants promptly to reimburse and pay to Mortgagee, at the place where the Note is payable, or at such other place as may be designated by Mortgagee in writing, the amount of all reasonable expenses (including the cost of any insurance, Taxes, attorneys' fees and other charges) incurred by Mortgagee in connection with its custody, preservation, use or operation of the Mortgaged Property, together with interest thereon from the date incurred by Mortgagee at the Highest Lawful Rate, and all such expenses, cost, Taxes, interest and other charges shall be a part of the Obligations. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Mortgagor, and Mortgagee shall have no liability whatever for decline or diminution in value of the Mortgaged Property, nor for failure to obtain or maintain insurance, nor for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

Section 3.5 Possession of Property After Foreclosure. In case the Liens hereof shall be foreclosed by Mortgagee's sale, or by other judicial or non-judicial action, the purchaser at any such sale shall receive, as an incident to its ownership, immediate possession of the Mortgaged Property, or any part thereof so conveyed, and, subsequent to foreclosure, Mortgagor and Mortgagor's Successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale, and anyone occupying the property after demand made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible, or otherwise, with or without process of Law, and all damages by reasons thereof are hereby expressly waived.

Section 3.6 Application of Proceeds. The proceeds from any sale, lease or other disposition made pursuant to this Article Three, the proceeds from surrendering any insurance policies pursuant to Section 3.2(l), and sums received pursuant to Section 4.5 shall be applied by Mortgagee, to the payment or prepayment of the Obligations, whether or not matured, as may be determined by Mortgagee in its sole discretion until the Obligations are paid in full.

Section 3.7 Abandonment of Sale. In the event of a foreclosure hereunder should be commenced by Mortgagee in accordance with Subsection 3.2(c), Mortgagee may at any time before the sale abandon the sale, and may then institute suit for the collection of the Obligations, and/or for the foreclosure of the Liens hereof. If Mortgagee should institute a suit for the collection of the Obligations, and/or for a foreclosure of the Liens hereof, it may at any time before the entry of a final judgment in said suit dismiss the same, and sell the Mortgaged Property, or any part thereof, in accordance with the provisions of this Mortgage.

Section 3.8 Waiver of Appraisalment and Redemption. To the full extent Mortgagor may lawfully do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any appraisalment, valuation, stay, execution or redemption Laws, nor or hereafter in force, in order to prevent or hinder the enforcement of this Mortgage or the absolute sale of the Mortgaged Property, or any part thereof, or the possession thereof by any purchaser at any such sale, but Mortgagor, insofar as Mortgagor now or hereafter may lawfully do so, hereby waives the benefit of all such Laws; provided, however, that the appraisalment of any of the Mortgaged Property is hereby expressly waived or not waived at the option of Mortgagee, such option to be exercised prior to or at the time judgment is rendered in any foreclosure of this mortgage. Mortgagor also expressly waives, to the extent Mortgagor may lawfully do so, all Rights to have the Mortgaged Property marshaled upon any foreclosure of this Mortgage.

ARTICLE FOUR

MISCELLANEOUS

Section 4.1 Release.

(a) If the Obligations are paid and performed in full in accordance with the terms of the Mortgage and the Note and the other documents and writings, if any, evidencing or securing all or any part of the Obligations, including, without limitation, the Loan Agreement, and if Mortgagor shall well and truly perform all of Mortgagor's covenants contained in this Mortgage and in the Loan Agreement, then this conveyance shall be released at Mortgagor's request and expense; provided, however, Mortgagor's warranties and indemnities contained in this Mortgage shall survive the payment and performance of the Obligations and the release of this Mortgage.

(b) Mortgagee shall release its lien and security interests on the Mortgaged Property upon receipt of one hundred percent (100%) of the net proceeds from a commercially reasonable sale of the Mortgaged Property, provided such proceeds are sufficient to pay: (a) a portion of the Obligations equal to the value allocated in the Loan Agreement to the Mortgaged Property; (b) all other amounts owed by Mortgagor to the Mortgagee under this Mortgage or any other Loan Document in connection with a then existing, uncured Event of Default; and (c) all costs, expenses and fees incurred by Mortgagor in connection with such release.

Section 4.2 Rights Cumulative. All Rights and Liens herein expressly conferred are cumulate of all other Rights and Liens herein, or by Law or in equity provided, and shall not be

deemed to deprive Mortgagee of any such other legal or equitable Rights and Liens by judicial proceedings, or otherwise, appropriate to enforce the conditions, covenants and terms of this Mortgage and the employment or enforcement of any Rights hereunder, or otherwise, shall not prevent the concurrent or subsequent employment or enforcement of any other Rights.

Section 4.3 Waivers Any and all covenants in this Mortgage may from time to time, by instrument in writing signed by Mortgagee and delivered to Mortgagor, be waived to such extent and in such manner as Mortgagee may desire, but no such waiver shall ever effect or impair Mortgagee's Rights or Liens hereunder, except to the extent specifically stated in such written instruments.

Section 4.4 Sale of Mortgaged Property. In the event Mortgagor or any of Mortgagor's Successors conveys any interest in the Mortgaged Property, or in any part thereof, to any other Person, Mortgagee may, without notice to Mortgagor or Mortgagor's Successors, deal with any owner of any part of the Mortgaged Property with reference to this Mortgage and the Obligations, either by way of forbearance on the part of Mortgagee, or extension of time of payment of the Obligations, or release of all or any part of the Mortgaged Property, or any other property securing payment and performance of the Obligations, without in any way modifying or affecting Mortgagee's Rights and Liens hereunder or the liability of Mortgagor or any other party liable for payment and performance of the Obligations, in whole or in part, provided, that no action taken or omitted to be taken by Mortgagee under this Section 4.6 shall be deemed a waiver of any Default occurring by reason of any such conveyance.

Section 4.5 Condemnation Sale. Mortgagee shall be entitled to receive any and all sums which may be warded or become payable to Mortgagor for the condemnation of the Mortgaged Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Mortgagee, and Mortgagor shall, upon request of Mortgagee, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Mortgagee to collect and receipt for any such sums. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such sums.

Section 4.6 Renewals of Obligations. It is understood and agreed that the proceeds of the Note or of any further loans or advances, to the extent the same are utilized to renew or extend any indebtedness or take up any outstanding Liens against the Mortgaged Property, or any portion thereof, have been advanced by Mortgagee at the request and upon the representation of Mortgagor, as the case may be, that such amounts are due and payable. Mortgagee shall be subrogated to any and all Rights and Liens owned or claimed by any owner or holder of such outstanding Rights and Liens, however, remote, regardless of whether such Rights and Liens are acquired by assignment or are released by the holder thereof upon payment.

Section 4.7 Waiver of Marshaling. Mortgagor hereby waives all rights of marshaling in event of any foreclosure of the Liens hereby created.

Section 4.8 Number and Gender of Words, Etc. Whenever herein the singular is used, the same shall include the plural where appropriate, and vice versa, and words such as "herein," "hereof," hereinafter' and other words of similar import shall refer to this Mortgage and not to any particular section or portion hereof, and words of any gender shall include each other gender where appropriate.

Section 4.9 Headings. The captions, headings, and arrangements used in this Mortgage are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

Section 4.10 Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given (a) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (b) by delivering same in person to the intended addressee, or (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective two (2) days after its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

If to Mortgagor: Schlotzsky's Real Estate Holdings, Ltd.
4055 International Plaza, Suite 450
Fort Worth, Texas 76109
Attn: Bobby D. Cox

With a copy to: Schlotzsky's Real Estate Holdings, Ltd.
203 Colorado Street
Austin, Texas 78701
Attn: Legal Department

If to Mortgagee: First American Bank, SSB
4900 E. 42nd Street
Odessa, Texas 79762
Attention: Guy Farmer

Section 4.11 Governing Law. THIS MORTGAGE IS INTENDED TO BE PERFORMED IN THE STATE OF ALABAMA, AND THE SUBSTANTIVE LAWS OF SUCH STATE AND OF THE UNITED STATES OF AMERICA SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT, AND INTERPRETATION OF THIS MORTGAGE.

Section 4.12 Invalid Provisions. If any provision of this Mortgage is invalid or unenforceable, then, to the extent permitted by Law, the other provisions hereof shall remain in full force and effect and shall be liberally construed in favor of Mortgagee in order to carry out the intentions of the parties hereto as nearly as may be possible. If the Rights and Liens created by this Mortgage shall be invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Obligations, and all payments made on the Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligations.

Section 4.13 Definitions. In addition to the terms defined elsewhere herein, as used herein, the following terms shall have the meanings indicated:

"Code" means the Alabama Uniform Commercial Code, Title 7, Code of Alabama, 1975, as the same may be amended from time to time.

"Collateral" has the meaning given such term on page 2 hereof.

"Default" or "Event of Default" has the meaning given such term in Section 3.1 hereof.

"Environmental Laws" shall mean, collectively and each individually, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Superfund Amendment and Reauthorization Act of 1986, the Resource Conservation and Recovery Act ("RCRA"), the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, any other "Superfund" or "Superlien" law and all other federal, state and local and foreign environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, in each case, as amended, and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of any Tribunal with respect thereto.

"Hazardous Substance" shall mean, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in or subject to any applicable Environmental Law.

"Highest Lawful Rate" means the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Note or on other indebtedness owed to Mortgagee, as the case may be, under Laws applicable to the Note or other indebtedness owing to the Mortgagee which are presently in effect or, to the extent allowed by applicable Law, under such applicable Laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable Laws now allow.

"Holder" means any present or future holder of the Obligations or any part thereof.

"Land" has the meaning given to such term in Paragraph I hereof.

"Laws" means all applicable constitutions, treaties, statutes, laws, ordinances, regulations, orders, writs, injunctions or decrees of the United States or of any state, commonwealth, country, parish, municipality or Tribunal.

"Lien" means any lien, mechanic's lien, materialman's lien, pledge, conditional sale agreement, title retention agreement, financing lien, production payment, security interest, mortgage, deed of trust or other encumbrance, whether arising by agreement or under Law.

"Loan Agreement" has the meaning given to such term in Section 1.2 hereof.

"Mortgage" has the meaning given such term in Article One hereof.

"Mortgaged Property" has the meaning given such term on page 1 hereof.

"Mortgagee" means First American Bank, SSB, a Texas state savings bank, and any future Holder.

"Mortgagor" means Schlotzsky's Real Estate Holdings, Ltd., a Texas limited partnership.

"Mortgagor's Successors" means each and all of the immediate and remote successors, assigns, heirs, executors, administrators, and legal representatives of Mortgagor.

"Note" has the meaning given such term in Section 1.1 hereof.

"Obligations" has the meaning given such term in Article One hereof.

"Permitted Exceptions" shall have the meaning given to such term on page 2 hereof.

"Person" means any individual, firm, corporation, association, partnership, joint venture, company, trust, Tribunal or other entity.

"Rights" means rights, remedies, powers, and privileges.

"Sale" has the meaning given such term in Section 3.2(h) hereof.

"Section" means a Section of this Mortgage, unless specifically indicated otherwise.

"Taxes" means all taxes, assessments, fees, levies, imports, duties, deductions, withholdings or other similar charges from time to time or at any time imposed by any Law or any Tribunal.

"Tribunal" means any court or any governmental department, commission, board, bureau, agency or instrumentality of the United States or of any state, commonwealth, nation, territory, possession, country, parish or municipality, whether now or hereafter constituted and/or existing.

Section 4.14 Form of Mortgage. This instrument may be construed and enforced from time to time as a mortgage, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them as may be appropriate under applicable Laws, in order fully to effectuate the Lien hereof and the purposes and agreements herein set forth. Insofar as this instrument is a security agreement and financing statement, Mortgagor is the debtor and Mortgagee is the secured party. The addresses shown in Section 4.10 are the addresses of the debtor and secured party and information concerning the security interest granted hereby may be obtained from the secured party at such address. This instrument, when filed of record in the real estate records in the counties in which any portion of the Mortgaged Property is situated, shall constitute a financing statement filed as a "fixture filing" within the meaning of the Code, but the failure to do so will not otherwise affect the validity or enforceability of this instrument.

Section 4.15 Multiple Counterparts. This Mortgage has simultaneously been executed in a number of identical counterparts, each of which shall be deemed an original, and all of which are identical, except that in order to facilitate recordation, portions of Exhibit A hereto which describe Mortgaged Property situated in counties other than the particular county in which a counterpart hereof is being recorded may be omitted from such counterpart.

Section 4.16 Binding Effect. This Mortgage is binding upon Mortgagor and Mortgagor's Successors and shall inure to the benefit of Mortgagee and its successors and assigns, and the provisions hereof shall likewise be covenants running with the land. The duties, covenants, conditions, obligations, and warranties of Mortgagor in this Mortgage shall be joint and several obligations of Mortgagor and Mortgagor's Successors. Each and every party who signs this Mortgage, other than Mortgagee, and each and every subsequent owner of the Mortgaged Property, or any part thereof, jointly and severally covenants and agrees that he or it will perform, or cause to be performed, each and every condition, term, provision, and covenant of this Mortgage.

[Signatures on Following Page]

Effective as of the 21st day of March 2005.

20050331000146660 20/23 \$2477.00
Shelby Cnty Judge of Probate, AL
03/31/2005 09:47:46AM FILED/CERT

SCHLOTZSKY'S REAL ESTATE HOLDINGS, LTD.,
a Texas limited partnership

By: Schlotsky's General Partner, LLC,
a Texas limited liability company,
its sole general partner

By: Bobby D. Cox
Bobby D. Cox, Member

FIRST AMERICAN BANK, SSB,
a Texas state savings bank

By: Guy Farmer
Guy Farmer
Senior Vice President

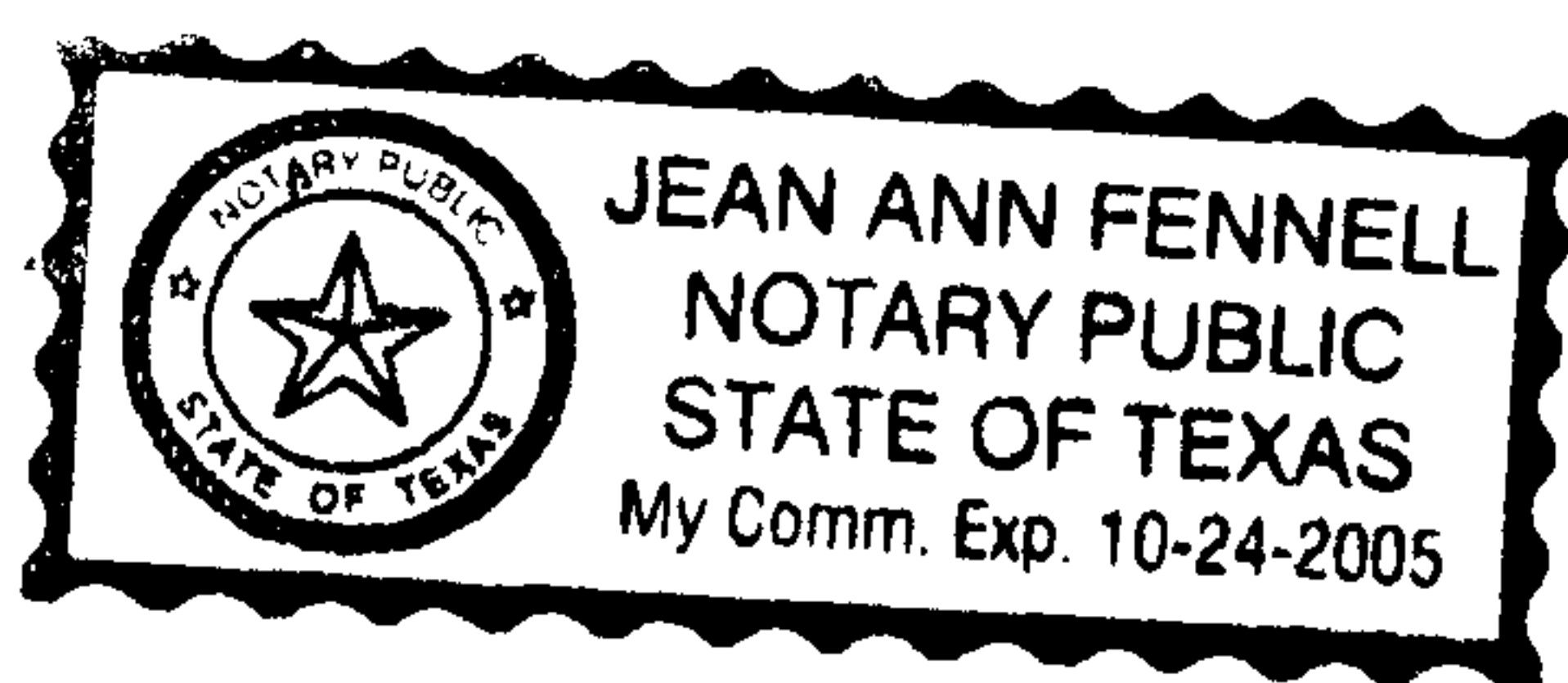
TEXAS

~~ALABAMA~~ ACKNOWLEDGMENTS

STATE OF Texas §
COUNTY OF Travis §

I, the undersigned authority, a Notary public in and for said County in said State, hereby certify that Bobby D. Cox, whose name as a member of Schlotsky's General Partner, LLC, a Texas limited liability company, the sole general partner of Schlotsky's Real Estate Holdings, Ltd., a Texas limited partnership, is signed in the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the 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 4 day of March, 2005.



Jean Ann Fennell
Notary Public
My Commission Expires: 10-24-05

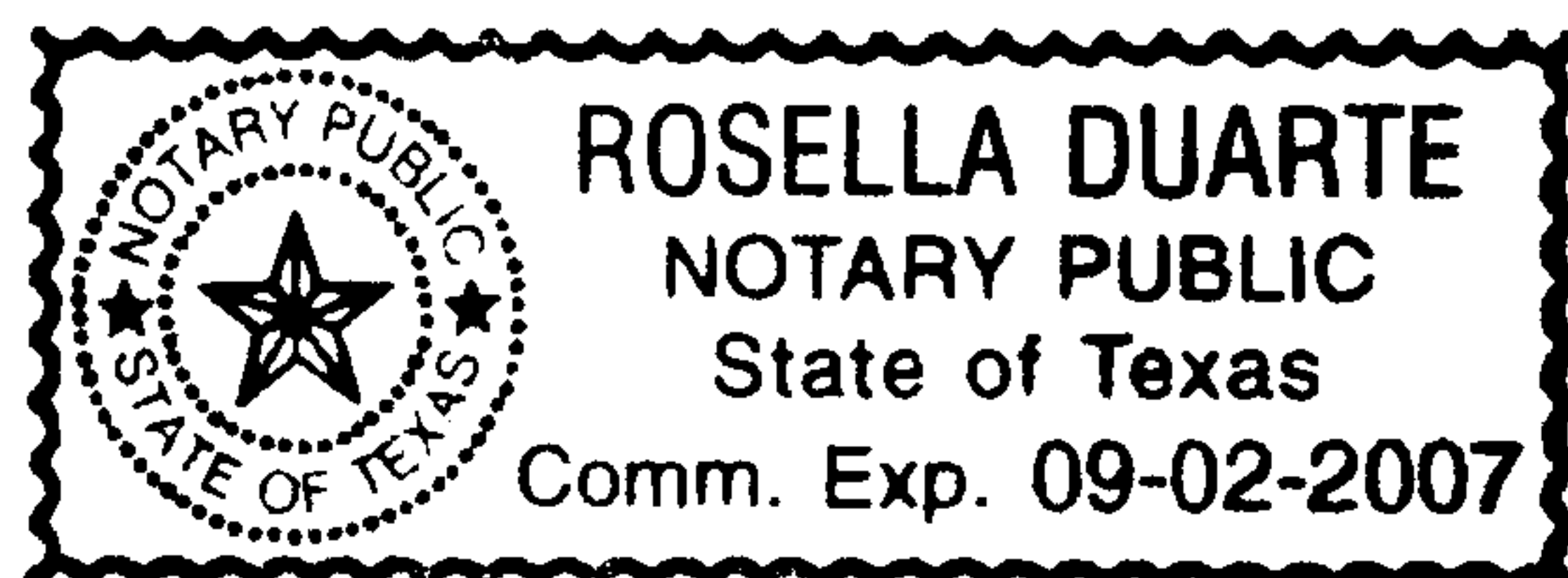
20050331000146660 21/23 \$2477.00
Shelby Cnty Judge of Probate, AL
03/31/2005 09:47:46AM FILED/CERT

(AFFIX NOTARIAL SEAL)

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

I, the undersigned authority, a Notary public in and for said County in said State, hereby certify that Guy Farmer, whose name as Senior Vice President, of First American Bank, SSB, a Texas state savings bank, 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 the instrument, he, as such officer, and will with full authority, executed the same voluntarily for and as the act of said association.

Given under my and official seal this the 9th day of March, 2005





Notary Public

My Commission Expires: 09-02-2007


This instrument prepared by:

Josh Ham
Lynch, Chappell & Alsup, P.C.
300 N. Marienfeld, Suite 700
Midland, Texas 79701

MAIL TO:

STEWART TITLE COMPANY
2 N. LaSALLE STREET
SUITE 1400
CHICAGO, ILLINOIS 60602

EXHIBIT "A"


20050331000146660 22/23 \$2477.00
Shelby Cnty Judge of Probate, AL
03/31/2005 09:47:46AM FILED/CERT

Description of the Land

Out Parcel "B", according to the Final Plat of Inverness Corners/Out Parcel "B", as recorded in Map Book 21, Page 30, in the Probate Office of Shelby County, Alabama, together with the easement rights as set out in instrument recorded as Instrument No. 1997-05888, in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

Permitted Exceptions

1. Right of Way Deed for Public Road as set out in instrument recorded in Deed Book 179, page 278.
2. Pole Line Permit in favor of Alabama Power Company as set out in deed Book 180, Page 43.
3. Easements to Alabama Power Company as described in Deed Book 126, page 189; Real Book 70, page 278; Real Book 93, page 210; Real Book 365, page 830; and Instrument No. 1993-30343.
4. Agreement with the City of Hoover, Alabama, for non-exclusive easements for sanitary sewers and easements for lift stations as set out in that certain instrument recorded in Real Book 365, page 877, in said Probate Office.
5. Easement Agreement with Pier Group, Inc. for a non-exclusive access easement as described in Instrument No. 1996-14794, in said Probate Office.
6. Declaration of Protective Covenants as set out in instrument recorded as Instrument No. 1997-05886, in said Probate Office.
7. Common Area Maintenance Agreement as set out in Instrument No. 1997-05887, in said Probate Office.
8. Easement Agreement as set out in Instrument No. 1997-05888, in said Probate Office.
9. Building setback lines, easements and private access road as set out on plat recorded in Map Book 21, page 30, in said Probate Office.