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10/05/2005 11:13:25AM FILED/CERT

Send tax bills to:

Southbrook Station Inc.
c/o Phillips Edison & Company, Ltd.
11690 Grooms Road
Cincinnati, Ohio 45242

This Instrument Prepared by and
After Recording Should be Returned To:
Richard L. Johnson, Esquire
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204

REAL ESTATE FUTURE ADVANCE MORTGAGE,
SECURITY AGREEMENT AND
FIXTURE FILING

THIS INSTRUMENT (hereinafter called the "Mortgage") made as of the 30th day of September, 2005, from **SOUTHBROOK STATION INC.**, a Delaware corporation having a notice address of c/o Phillips Edison & Company, 11690 Grooms Road, Cincinnati, Ohio 45242 (hereinafter referred to as "Mortgagor"), to **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association having a notice address of 30 South Meridian Street, Suite 800, Indianapolis, Indiana 46204 (hereinafter called "Mortgagee");

WITNESSETH:

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Mortgagor hereby grants, bargains, sells, conveys, mortgages and warrants to Mortgagee, its successors and assigns, with power of sale, and grants it and them a security interest in and lien upon:

All rights, title and interests of Mortgagor in and to that certain real estate described in Exhibit A attached hereto (the "Property");

TOGETHER WITH, all rights, title, estate and interests of Mortgagor in and to any and all buildings and improvements now or hereafter erected on the Property, including, but not limited to, building materials and supplies stored on the Property, fixtures, attachments, appliances, equipment, machinery and other articles attached to said buildings and improvements (but excluding any trade fixtures, attachments, appliances, equipment, machinery and other articles of personal property owned by any tenant leasing the Property) (the "Improvements");

TOGETHER WITH, all rights, title, estate and interests of Mortgagor in and to all rents, issues, profits, royalties, income and other benefits derived from the Property and/or the Improvements (collectively the "rents"), subject to the right, power, and authority hereinafter given to Mortgagor to collect and apply such rents;

TOGETHER WITH, all estate, right, title and interest of Mortgagor in and to all leases or subleases covering the Property and/or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Mortgagor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature.

TOGETHER WITH, all right, title and interest of Mortgagor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

TOGETHER WITH, all rights, title, estate and other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Property;

TOGETHER WITH, all rights, title, estate and interests of Mortgagor in and to all easements, rights-of-way and rights used in connection with the Property, or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

TOGETHER WITH, all rights, title, estate and interests of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and gores or land adjacent to or used in connection with the Property;

TOGETHER WITH, all rights, title, estate and interests of Mortgagor in and to all tangible personal property now or hereafter owned by Mortgagor and now or at any time hereafter located on or at the Property or used in connection therewith or with the Improvements, including, but not limited to: all goods, machinery, tools, insurance proceeds, trucks, fork-lifts, equipment (including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, window or structural cleaning rigs, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage and all other equipment of every kind), lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), storage racks, hydraulic lifts, wall beds, wall safes, furnishings, appliances (including ice boxes, refrigerators, fans, heaters, stoves, water heaters and incinerators), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, Venetian blinds, curtains, lamps, chandeliers and other lighting fixtures and office maintenance and other supplies (all such personal property being referred to herein as the "Personal Property") (the Property, the Improvements and the Personal Property being referred to herein as the "Mortgaged Property");

TOGETHER WITH, all rights, title, estates, interest and any other demand or claim, which Mortgagor now has or may hereafter acquire in any permits, licenses, plans and specifications, construction contracts, construction management agreements, material purchase agreements, builder's and manufacturer's warranties with respect to the Property, the Improvements or the Personal Property; and

TOGETHER WITH, all the rights, title, estates, interests and other claims or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in the Property, the Improvements or the Personal Property, and any and all awards made for the taking by eminent domain, or by any proceedings or purchase in lieu thereof, of the whole or any part of the Property or the Improvements, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

Mortgagor covenants, represents and warrants that it is lawfully seized of the Mortgaged Property; that it has a good right to convey the same; that the Mortgaged Property is free from all liens and encumbrances except as set forth on Exhibit B; and that Mortgagor will warrant and defend the title to the Mortgaged Property against all claims made thereon.

FOR THE PURPOSE OF SECURING:

a. Performance of all of Mortgagor's obligations under that certain Letter Loan Agreement entered into by and among Phillips Edison Shopping Center Fund III LP, a Delaware limited partnership ("Phillips Edison"), Richardson Station Inc., a Delaware corporation ("Richardson"), Western Lights Station Inc., a Delaware corporation ("Western Lights"), Mortgagor (Phillips Edison, Richardson, Western Lights and Mortgagor being collectively hereinafter referred to as "Obligors") and Mortgagee of even date herewith (the "Loan Agreement") pursuant to which Mortgagee has agreed to advance to Phillips Edison the principal sum of Twenty-Four Million Four Hundred Thousand Dollars (\$24,400,000). **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED HEREBY SHALL NOT EXCEED SIX MILLION DOLLARS (\$6,000,000);**

b. Payment of indebtedness in the total principal amount of Twenty-Four Million Four Hundred Thousand Dollars (\$24,400,000) with interest (including without limitation deferred, accrued or capitalized interest, if any) thereon (the "Loan") and performance of all obligations of Obligors under that certain Promissory Note of even date herewith in the original principal amount of Twenty-Four Million Four Hundred Thousand Dollars (\$24,400,000) (the "Note") which Note has an original maturity date of September 30, 2008 (the "Maturity Date"), which has been executed by Obligors, delivered to and is payable to the order of Mortgagee and which by this reference is hereby made a part hereof; and any and all modifications, extensions and renewals thereof;

c. Payment of all amounts advanced by Mortgagee under any letter of credit issued by Mortgagee at the request of Mortgagor in favor of, or for the benefit of, Mortgagor;

c. Payment of all amounts advanced by Mortgagee under any letter of credit issued by Mortgagee at the request of Mortgagor in favor of, or for the benefit of, Mortgagor;

d. Payment of all sums advanced by Mortgagee to protect the Mortgaged Property, with interest thereon at the default rate of interest provided in the Note in effect at the time of the advance (the "Default Rate");

e. Performance of all obligations of any guarantor of any of the obligations of Obligors contained in this Mortgage, the Loan Agreement or any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby;

f. Payment of all other sums, with interest thereon, which may hereafter be lent to Obligors, or their successors or assigns, by Mortgagee, when evidenced by a promissory note or notes reciting that they are secured by this Mortgage;

This Mortgage, the Note, the Loan Agreement, any guaranty thereof and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the "Loan Instruments."

MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor hereby covenants and agrees:

1.01. **Payment of Secured Obligations.** To pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, charges, fees and all other sums as provided in the Loan Instruments, and the principal of, and interest on, any future advances secured by this Mortgage.

1.02. **Maintenance, Repair, Alterations.** To keep the Mortgaged Property in good condition and repair; not to remove, except as herein provided, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations, except as necessary to prepare the Property for the construction of the Mortgaged Property as contemplated by the Loan Agreement) any of the Improvements without the prior written consent of Mortgagee; not to erect any building or additions to existing buildings or structures on the Property unless contemplated by the Loan Agreement or approved by Mortgagee, to complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvements which may be damaged or destroyed thereon, and to pay when due, all claims for labor performed and materials furnished therefor, to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Mortgaged Property, to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to comply

with the provisions of the leases; not to commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation.

1.03. **Required Insurance.** To at all times provide, maintain and keep in force the following policies of insurance:

a. Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage", in an amount not less than the original amount of the Note or the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor); and with not more than One Thousand Dollars (\$1,000) deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph (a) shall contain the "Replacement Cost Endorsement";

b. If requested by Mortgagee, business interruption insurance and/or loss of "rental value" insurance in such amounts as are satisfactory to Mortgagee;

c. Comprehensive public liability insurance on an "occurrence basis" against claims for "personal injury" including, without limitation, bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than that required by Mortgagee with respect to personal injury or death to any one or more persons or damage to property;

d. Workmen's compensation insurance (including employer's liability insurance, if requested by Mortgagee) for all employees of Mortgagor engaged on or with respect to the Mortgaged Property in such amount as is reasonably satisfactory to Mortgagee, or, if such limits are established by law, in such amounts;

e. During the course of any construction or repair of Improvements on the Property, builder's completed value risk insurance against "all risks of physical loss", including collapse and transit coverage, during construction of such Improvements, with deductibles not to exceed One Thousand Dollars (\$1,000), in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement;

f. Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment, provided the Improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from any such breakdown, in such amounts as are reasonably satisfactory to Mortgagee;

g. Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type now known as "fire and extended coverage";

h. Such other insurance, and in such amounts, as may from time to time be required by Mortgagee against the same or other hazards;

i. All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Mortgagor.

1.04. **Delivery of Policies, Payment of Premiums.** That all policies of insurance shall be issued by companies and in amounts in each company reasonably satisfactory to Mortgagee. All policies of insurance shall have attached thereto a Mortgagee's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee with a copy of all policies of required insurance. If Mortgagee consents to Mortgagor providing any of the required insurance through blanket policies carried by Mortgagor and covering more than one location, then Mortgagor shall furnish Mortgagee with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. At least thirty (30) days prior to the expiration of each such policy, Mortgagor shall furnish Mortgagee with evidence reasonably satisfactory to Mortgagee of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be cancelled, amended, altered, changed or modified, nor shall any coverage therein be reduced, deleted, amended, modified, changed or cancelled by either the party named as the insured, or the insurance company issuing the policy without at least fifteen (15) days prior written notice to Mortgagee. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Section, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon at the Default Rate provided in the Note, shall be secured by this Mortgage. From and after the occurrence of an Event of Default and until such is cured, Mortgagor shall pay to Mortgagee, on the day monthly installments of principal and/or interest are payable under the Note, until the Note is paid in full, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage. Mortgagor further agrees in such event and upon Mortgagee's request, to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and providing Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section 1.04, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor and Mortgagor

shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.04. Mortgagee may commingle said reserve with its own funds and Mortgagor shall be entitled to no interest thereon.

1.05. **Insurance Proceeds.** That after the happening of any casualty to the Mortgaged Property or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

a. In the event of any damage or destruction of the Improvements, Mortgagee shall apply all or part of the insurance proceeds to the restoration of the Improvements, and the balance thereof, if any is remaining, shall be paid to the Mortgagor to the extent that it is entitled to the same; provided, however, in the event that: (i) such restoration cannot reasonably be expected to be completed on or before the applicable Maturity Date, as defined in the Loan Agreement; (ii) an Event of Default exists under the terms of the Loan Agreement; or (iii) the proceeds of such insurance are inadequate to complete the restoration of the Improvements and the Mortgagor fails to deposit with Mortgagee sufficient additional funds, in cash or cash equivalents (acceptable to Mortgagee), to complete such restoration of the Improvements, such proceeds may be applied by Mortgagee to reduce the outstanding indebtedness evidenced by the Note;

b. In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. Mortgagee is hereby authorized and empowered by Mortgagor, after consultation with Mortgagor and with Mortgagor's consent absent the existence of an Event of Default, to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.

1.06 **Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required by this Article with respect to the Mortgaged Property shall inure to the benefit of and pass to the successor in interest to Mortgagee or the purchaser or grantee of the Mortgaged Property.

1.07. **Indemnification; Subrogation; Waiver of Offset.**

a. If Mortgagee is made a party defendant to any litigation, other than Excluded Litigation, concerning this Mortgage or the Mortgaged Property or any part thereof or interest therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. For the purposes of this Section 1.07(a), "Excluded Litigation" shall mean

(i) any litigation to which Mortgagee is made a party as a result of its gross negligence or willful misconduct; and (ii) any litigation to which Mortgagee is made a party as a result of any act which occurs or fails to occur (but should have occurred) after the sale of the Mortgaged Property at a foreclosure sale or the transfer of the Mortgaged Property to Mortgagee or its designee or nominee by a deed in lieu of foreclosure. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any sum secured hereby, Mortgagor shall pay to Mortgagee reasonable attorneys' fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay Mortgagee reasonable attorneys' fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of breach;

b. Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage; and

c. All sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference with any use of, the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagor, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagor, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee; or (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

1.08. **Taxes and Impositions.**

a. Mortgagor agrees to pay, at least ten (10) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof, or upon any Personal Property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest;

b. If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Property in lieu of or in addition to the Impositions payable by Mortgagor pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, if Mortgagor is prohibited by law from discharging such Impositions, all obligations secured hereby together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Mortgagor shall have no obligation to pay any franchise, estate, inheritance, intangibles, income, excess profits or similar tax levied on Mortgagee or on the obligations secured hereby;

c. Subject to the provisions of subparagraph (d) of this Section 1.08, Mortgagor covenants to furnish Mortgagee within thirty (30) days after the date upon which any such Imposition is due and payable by Mortgagor, evidence of the payment thereof;

d. Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition 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 Imposition at the time and in the manner provided in this Section 1.08, unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object to an

Imposition, 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 Imposition prior to final determination of such proceedings; or (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Mortgagee; or (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;

e. At any time after the occurrence of an Event of Default under this Mortgage and during the continuance thereof, at the request of Mortgagee, Mortgagor shall pay to Mortgagee, on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, an amount equal to one-twelfth (1/12) of the annual Impositions reasonably estimated by Mortgagee to pay the installment of taxes next due on the Mortgaged Property. In such event, Mortgagor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and providing Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section 1.08, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.07. Mortgagee shall not be obliged to pay or allow any interest on any sums held by Mortgagee pending disbursement or application hereunder, and Mortgagee may impound or reserve for future payment of Impositions such portion of such payments as Mortgagee may in its absolute discretion deem proper, applying the balance on the principal of or interest on the obligations secured hereby. Should Mortgagor fail to deposit with Mortgagee (exclusive of that portion of said payments which has been applied by Mortgagee on the principal of or interest on the indebtedness secured by the Loan Instruments) sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Mortgagee as herein elsewhere provided, or at the option of Mortgagee the latter may, without making any advance whatever, apply any sums held by it upon any obligation of Mortgagor secured hereby. Should any Event of Default occur under this Mortgage, Mortgagee may, at any time at Mortgagee's option, apply any sums or amounts in its hands received pursuant hereto, or as rents or income of the Mortgaged Property or otherwise, upon any indebtedness or obligation of Mortgagor secured hereby in such manner and order as Mortgagee may elect. The receipt, use or application of any such sums paid by Mortgagor to Mortgagee hereunder shall not be

construed to affect the maturity of any indebtedness secured by this Mortgage or any of the rights or powers of Mortgagee under the terms of the Loan Instruments or any of the obligations of Mortgagor under this Loan Instrument; and

f. Mortgagor covenants and agrees not to suffer, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Mortgaged Property as a single lien.

1.09. **Utilities.** To pay when due 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 or sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

1.10. **Actions Affecting the Mortgaged Property.** To appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; and to pay all costs and expenses, including costs of evidence of title and attorney's fees, in any such action or proceeding in which Mortgagee may appear.

1.11. **Actions by Mortgagee to Preserve the Mortgaged Property.** Should Mortgagor fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, Mortgagee in its own discretion, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as may be deemed necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation, (a) to enter upon and take possession of the Mortgaged Property, (b) to make additions, alterations, repairs and improvements to the Mortgaged Property which it may consider necessary or proper to keep the Mortgaged Property in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of it may affect or appears to affect the security of this Mortgage or be prior or superior hereto; and (e) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Mortgagor shall, immediately upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and reasonable attorneys' fees.

1.12. **Survival of Warranties.** To fully and faithfully satisfy and perform the obligations of Mortgagor contained in Mortgagor's loan application and Mortgagee's loan commitment, and any such application and commitment between Mortgagor and any assignee of Mortgagee, and each agreement of Mortgagor incorporated by reference therein or herein, and any modification or amendment thereof. All representations, warranties and covenants of Mortgagor contained therein or

incorporated by reference shall survive the closing and funding of the loan evidenced by the Note and shall remain continuing obligations, warranties and representations of Mortgagor during any time when any portion of the obligations secured by this Mortgage remain outstanding.

1.13. **Eminent Domain.** That should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.

a. Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require; and

b. In the event any portion of the Mortgaged Property is so taken or damaged, Mortgagee shall have the option, in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including reasonable attorneys' fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby, or to apply all such Proceeds, after such deductions, to the restoration of the Mortgaged Property upon such conditions as Mortgagee may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

1.14. **Additional Security.** That in the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

1.15. **Successors and Assigns.** That this Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

1.16. **Inspections.** That Mortgagee, or its agents, representatives or workmen, are authorized to enter, at any reasonable time and upon 24 hours prior notice (except in the case of an emergency), upon or in any part of the Mortgaged Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments.

1.17. **Liens.** To pay and discharge any liens or encumbrances upon the Mortgaged Property in accordance with the terms of the Loan Agreement.

1.18. **Mortgagee's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Mortgage upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid obligations, Mortgagee may, from time to time and without notice (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.19. **Financial Statements.** Mortgagor will cause to be delivered to Mortgagee the financial statements provided for in the Loan Agreement.

1.20. **Tradenames.** At the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the tradenames under which Mortgagor intends to operate the Mortgaged Property, and representing and warranting that Mortgagor does business under no other tradenames with respect to the Mortgaged Property. Mortgagor shall immediately notify Mortgagee in writing of any change in said tradenames, and will, upon request of Mortgagee, execute any additional financing statements and other certificates revised to reflect the change in tradename.

ARTICLE II

SECURITY AGREEMENT

2.01. **Creation of Security Interest.** Mortgagor hereby grants to Mortgagee a security interest in and to all rights, title, estate and interest of Mortgagor in the Personal Property located on or at the Property, including, without limitation, any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Mortgagor contained in any of the Loan Instruments.

2.02. **Warranties, Representations and Covenants of Mortgagor.** Except with respect to personal property owned by tenants under any lease or sublease, Mortgagor hereby warrants, represents and covenants as follows:

a. Except for the security interest granted hereby, Mortgagor is, and, as to portions of the Personal Property to be acquired after the date hereof, will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Personal Property against all claims and demands of all persons at any time claiming the same or any interest therein;

b. Except pursuant to that certain leases between Mortgagor and tenants of Mortgagor, Mortgagor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee;

c. The Personal Property is not used or bought by Mortgagor for its personal, family or household purposes;

d. The Personal Property will be kept on or at the Property and Mortgagor will not remove the Personal Property from the Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed, replaced or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor;

e. Mortgagor is a corporation organized under the laws of the State of Delaware and Mortgagor will immediately notify Mortgagee in writing of any change in the jurisdiction in which it is formed;

f. Mortgagor authorizes Mortgagee to file a financing statement describing all personal property collateral included within the Mortgaged Property. At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Alabama in a form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable;

g. All covenants and obligations of Mortgagor contained herein relating to the Mortgaged Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein;

h. This Mortgage constitutes a Security Agreement as that term is used in the Uniform Commercial Code of Alabama; and

i. This Mortgage constitutes a Fixture Filing as that term is defined in the Uniform Commercial Code of Alabama.

2.03. **Mortgagee's Rights and Remedies.** With respect to the Mortgaged Property subject to the foregoing security interest, Mortgagee shall have all of the rights and remedies (i) of a secured party under the Uniform Commercial Code of Alabama, (ii) provided herein, including without limitation the right to cause such Mortgaged Property to be sold by Mortgagee under the power of sale granted by this Mortgage, and (iii) provided by law. In exercising its remedies, Mortgagee may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies. Upon demand by Mortgagee following an Event of Default hereunder, Mortgagor shall assemble any items of personal property and make them available to Mortgagee at the Property. Mortgagee shall give

Mortgagor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such Mortgaged Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Mortgaged Property may be sold at any one or more public or private sales as permitted by applicable law.

ARTICLE III

REMEDIES UPON DEFAULT

3.01 **Events of Default.** Any of the following events shall be deemed an event of default hereunder ("Event of Default"):

- a. Mortgagor shall fail to make any payment of principal or interest under the Note or any sum secured hereby on or before the tenth (10th) day after the same is due and payable; or
- b. Mortgagor has sold, assigned, conveyed, disposed of or otherwise transferred any part of its ownership (legal or equitable) in the Mortgaged Property or Phillips Edison Limited Partnership has transferred any of its interest in Mortgagor; or
- c. The Mortgaged Property is further encumbered by a mortgage, security instrument, lien (subject to Section 1.18) or other encumbrance; or
- d. An "Event of Default" shall occur under the Loan Agreement.

3.02 **Acceleration Upon Default, Additional Remedies.** In the event of any Event of Default, Mortgagee may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Mortgagee may:

- a. Either in person or by agent, with or without bringing any action or proceeding, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same in accordance with the terms of the Loan Documents. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of Event of Default and notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents, issues or profits,

Mortgagee shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

b. Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

c. Exercise any or all of the remedies available to a secured party under the Alabama Uniform Commercial Code, including, but not limited to:

Either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Mortgagor and all others claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor in respect to the Personal Property or any part thereof. In the event Mortgagee demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Instruments, Mortgagor promises and agrees to promptly turn over and deliver complete possession thereof to Mortgagee;

Without notice to or demand upon Mortgagor, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Personal Property, including without limitation, paying, purchasing, contesting, or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith;

Require Mortgagor to assemble the Personal Property or any portion thereof, at a place designated by Mortgagee and reasonably convenient to both parties, and promptly to deliver such Personal Property to Mortgagee, or an agent or representative designated by it. Mortgagee, and its agents and representatives shall have the right to enter upon any or all of Mortgagor's premises and property to exercise Mortgagee's rights hereunder;

Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Mortgagee may determine. Mortgagee may be a purchaser at any such sale;

Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Mortgagor at least ten (10) days prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to Mortgagor at the address set forth at the beginning of this Mortgage.

d. This Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the property affected is taken, after giving 21 days' notice by publication once a week for 3 consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in Shelby County, Alabama, to sell the Mortgaged Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of the courthouse door of such county, at public outcry, to the highest bidder for cash.

The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the property involved, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money.

At any foreclosure sale any part or all of the Mortgaged Property may be offered for sale in parcels or *en masse* for one total price, the proceeds of any such sale *en masse* to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. If the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the all indebtedness secured hereby shall have been paid in full.

The Mortgagor hereby waives any equitable rights otherwise available to it with respect to marshalling of assets hereunder.

The Mortgagor hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

The Mortgage shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring all of the all indebtedness secured hereby due. Any such sale may be made subject to the unmatured part of the all indebtedness secured hereby, and such sale, if so made, shall not in any manner affect the unmatured part of the all indebtedness secured hereby, but as to such unmatured part of the all indebtedness secured hereby this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this Section. Several sales may be made under the provisions of this Section without exhausting the right of sale for any remaining part of the all indebtedness secured hereby whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the

Mortgaged Property for any matured part of the all indebtedness secured hereby without exhausting any power of foreclosure and the power to sell the Mortgaged Property for any other part of the all indebtedness secured hereby, whether matured at the time or subsequently maturing.

The Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Property (commonly known as appraisal laws) or (ii) any extension of time for the enforcement of the collection of the all indebtedness secured hereby or any creation or extension of a period of redemption from any sale made in collecting the all indebtedness secured hereby (commonly known as stay laws and redemption laws).

In case of any sale of the Mortgaged Property as authorized by this Section 3.02.d. all prerequisites to the 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 nonpayment of any of the all indebtedness secured hereby 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.

3.03 Foreclosure; Expense of Litigation. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof, whether by suit or by non-judicial foreclosure pursuant to the power of sale granted herein and Alabama law. In any foreclosure of the lien hereof or enforcement of any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the foreclosure price or the decree for sale or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' costs and fees (including the fees and costs of paralegals), appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree or power of sale the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

3.04 Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority, subject

to applicable law: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

3.05 **Appointment of Receiver**. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property, and Mortgagor hereby consents to the appointment of such receiver. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holders of the Note may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

3.06 **Remedies Not Exclusive**. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may, in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is

intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to Mortgagee may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies.

ARTICLE IV

MISCELLANEOUS

4.01. **Governing Law.** THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF. MORTGAGOR HEREBY SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF ALABAMA AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF ALABAMA (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF MORTGAGOR'S OBLIGATIONS HEREUNDER AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATES FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE SUCH OBLIGATIONS OF MORTGAGOR. MORTGAGOR HEREBY WAIVES AND AGREES NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE (a) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE COURTS OR THAT THIS MORTGAGE MAY NOT BE ENFORCED IN OR BY THOSE COURTS OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (b) THAT THE ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (c) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER. NOTHING IN THIS SECTION 4.01 SHALL BE DEEMED TO PRECLUDE MORTGAGEE FROM FILING ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF THIS MORTGAGE IN THE STATE IN WHICH MORTGAGOR MAINTAINS ITS CHIEF EXECUTIVE OFFICE OR IN THE STATE IN WHICH THE PROPERTY IS LOCATED OR THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE IN WHICH MORTGAGOR MAINTAINS ITS CHIEF EXECUTIVE OFFICE OR IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE IN WHICH THE PROPERTY IS LOCATED.

4.02 **Mortgagor Waiver of Rights.** To the full extent Mortgagor may do so under applicable law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Property, and (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation,

stay, extension or redemption, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section 4.02 and now in force, of which Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section 4.02, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 4.02. To the full extent Mortgagor may do so under applicable law, Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Alabama pertaining to the rights and remedies of sureties.

4.03. **Limitation of Interest.** It is the intent of Mortgagor and Mortgagee in the execution of this Mortgage and the Note and all other instruments securing the Note to contract in strict compliance with the usury laws of the State of Alabama governing the loan and/or indebtedness evidenced by the Note. In furtherance thereof, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained in the Loan Instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Alabama governing the loan and/or indebtedness evidenced by the Note. Mortgagor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Alabama and the provisions of this Section 4.03 shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies which are deemed to constitute interest in excess of the maximum rate allowed by the laws of the State of Alabama, all such sums deemed to constitute interest in excess of the legal rate shall be, at Mortgagee's discretion, immediately returned to Mortgagor upon such determination, or to the extent permitted by law, applied to principal.

4.04 **Statements by Mortgagor.** Mortgagor, within ten (10) days after being given notice by mail, will furnish to Mortgagee a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Mortgage and stating whether any offset or defense exists against such principal and interest.

4.05 **Notices.** Whenever Mortgagee or Mortgagor shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Mortgage. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

4.06 **Captions.** The captions or headings at the beginning of each Section hereof are for

the convenience of the parties and are not a part of this Mortgage.

4.07 **Invalidity of Certain Provisions.** If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.

4.08 **No Merger.** If both the lessor's and lessee's estates under any lease or any portion thereof which constitutes a part of the Mortgaged Property shall at any time become vested in one owner, this Mortgage and the Lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee as to the separate estates. In addition, upon the foreclosure of the lien created by this Mortgage on the Mortgaged Property pursuant to the provisions hereof, any leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Mortgagee or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.

4.09 **Subrogation.** To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds have been or will be advanced by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights and liens owned or held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

4.10 **Intentionally Omitted.**

4.11 **Consent to Jurisdiction** TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN SHELBY COUNTY, ALABAMA. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN SHELBY COUNTY, ALABAMA, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

4.12 **WAIVER OF JURY TRIAL.** MORTGAGOR AND MORTGAGEE HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER

BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT, ANY OTHER LOAN DOCUMENT OR ANY RELATIONSHIP BETWEEN MORTGAGEE AND MORTGAGOR. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

ARTICLE V

FIXTURE FILING

It is intended that this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of the filing of this Mortgage for record with the Recorder of the county in which the Real Estate is located. The information provided in this section is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code as enacted in the State of Alabama, for a mortgage instrument to be filed as a financing statement. For this purpose the following information is set forth:

- a. The Name and Address Southbrook Station Inc.
 or Debtor is: c/o Phillips Edison & Company
 11690 Grooms Road
 Cincinnati, Ohio 45242
- b. The Name and Address of LaSalle Bank National Association
 Security Party is: 30 South Meridian Street, Suite 800
 Indianapolis, Indiana 46204
- c. This document covers goods which are or are to become fixtures;
- d. The real estate to which such fixtures are or are to be attached is that described herein,
the recorded owner of which is Mortgagor; and
- e. The Debtor's Organizational Number is: 4006532.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

**SIGNATURE PAGE OF MORTGAGOR TO REAL ESTATE MORTGAGE AND
SECURITY AGREEMENT (AND FINANCING STATEMENT)**

"MORTGAGOR"

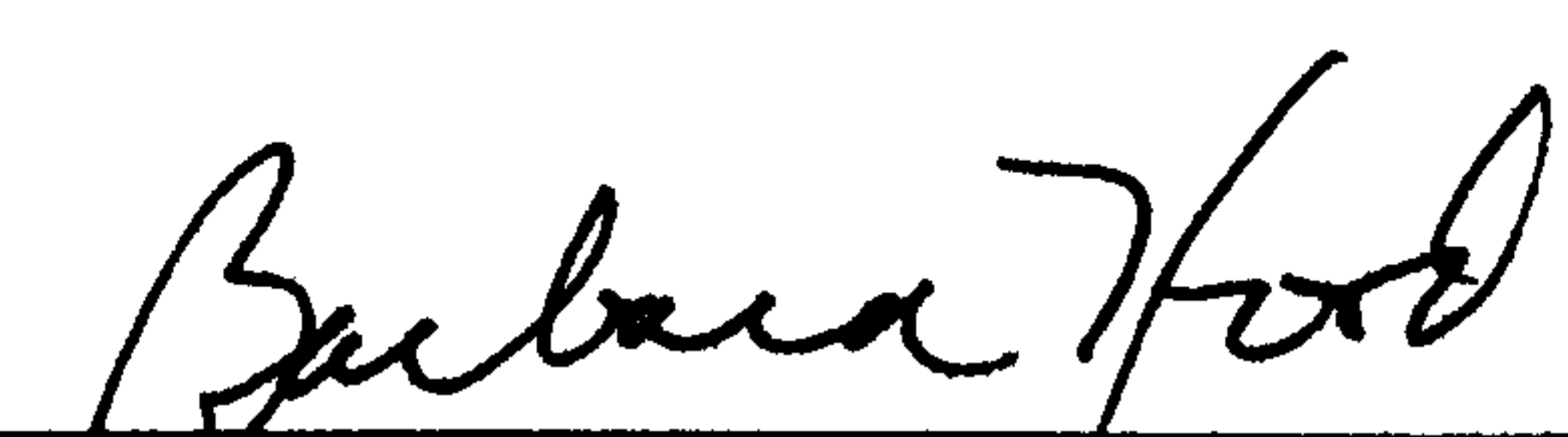
**SOUTHBROOK STATION INC., a Delaware
corporation**

By: 

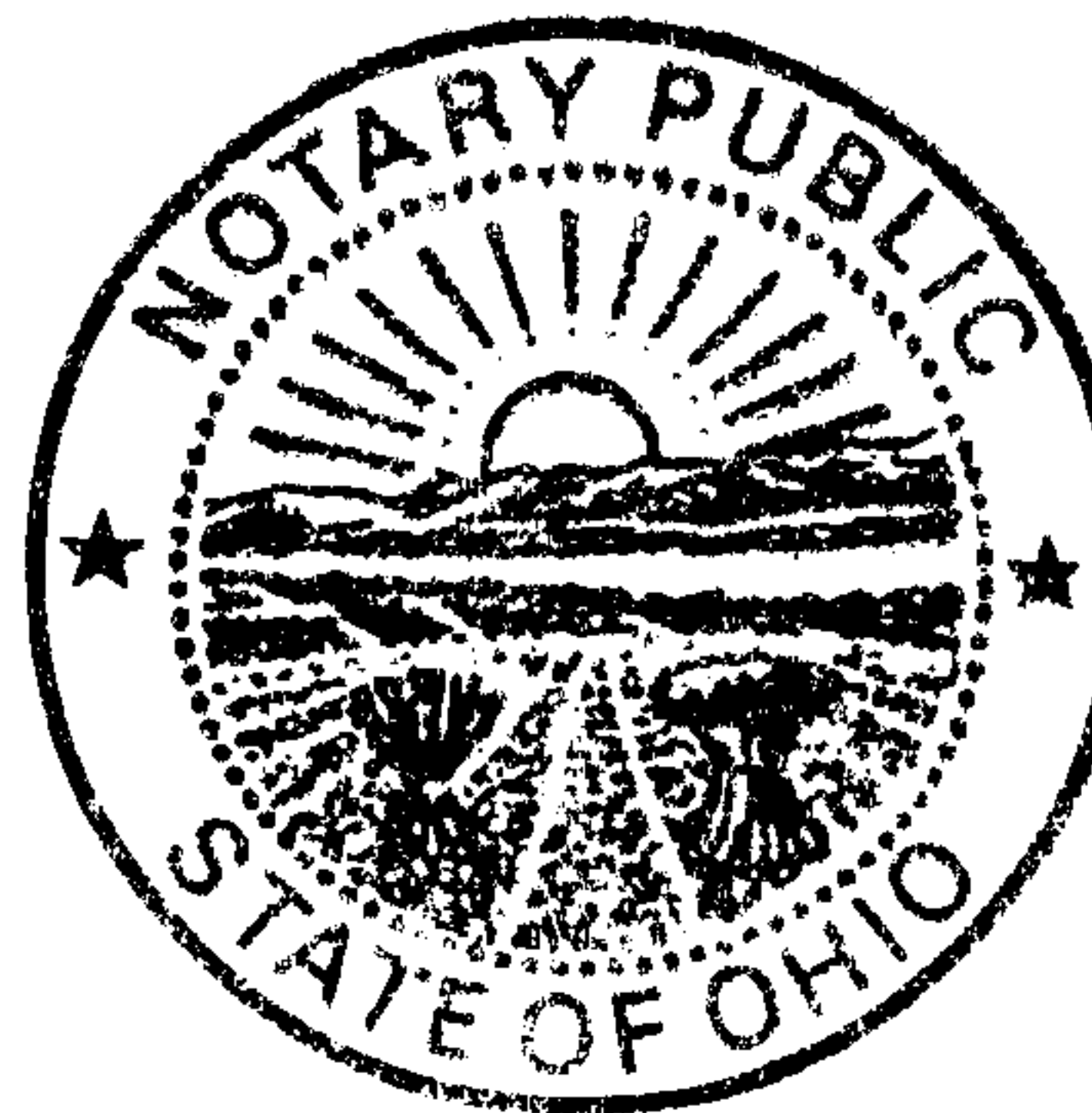
R. Mark Addy, Vice President and Secretary

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On the 16 day of September in the year 2005, before me, the undersigned, a notary public in and for said state, personally appeared R. Mark Addy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public



BARBARA HOOD
Notary Public, State of Ohio
My Commission Expires
August 2, 2008

LEGAL DESCRIPTION

PARCEL A:

All that tract or parcel of land situated, lying and being in Shelby County, and being more particularly described as follows:

Commencing at the intersection of Southwest corner of the North half of the Southwest quarter of the Northeast quarter of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama with the Northern right of way line of 6th Avenue Southwest and running thence North 90° 00' 00" East, for a distance of 500.56 feet to a point; thence run North 90° 00' 00" East for a distance of 290.15 feet to a point; thence run North 90° 00' 00" East for a distance of 342.22 feet to a point; thence run North 32° 43' 59" East for a distance of 26.54 feet to a point; thence run North 32° 44' 05" East for a distance of 281.22 feet to a point; thence run North 29° 54' 54" East for a distance of 12.92 feet to a point, said point being the True Point of Beginning; thence run North 53° 23' 53" West for a distance of 172.18 feet to a point; thence run North 38° 33' 50" East for a distance of 140.00 feet to a point; thence run South 55° 06' 03" East for a distance of 23.52 feet to a point; thence run South 53° 23' 53" East for a distance of 126.60 feet to a point; thence run South 29° 54' 59" West for a distance of 147.51 feet to a point and back to the true point of beginning.

PARCEL B:

All that tract or parcel of land situated, lying and being in Shelby County, Alabama and being more particularly described as follows:

Commencing at the intersection of Southwest corner of the North half of the Southwest quarter of the Northeast quarter of Section 2, Township 21 South, Range 3, West Shelby County, Alabama, with the Northern right of way line of 6th Avenue Southwest and running thence North 90° 00' 00" East for a distance of 500.56 feet to a point, said point being the true point of beginning; thence run North 01° 15' 30" West for a distance of 236.17 feet to a point; thence run North 51° 28' 00" West for a distance of 36.46 feet to a point; thence run North 39° 08' 41" East for a distance of 25.41 feet to a point; thence run South 51° 22' 50" East for a distance of 272.86 feet to a point; thence run South 38° 37' 11" West for a distance of 32.09 feet to a point; thence run South 51° 25' 42" East for a distance of 133.38 feet to a point; thence run South 90° 00' 00" West for a distance of 290.15 feet to a point and back to the true point of beginning.

PARCEL D:

All that tract or parcel of land situated, lying and being in Shelby County, Alabama, and being more particularly described as follows:

Commencing at the intersection of Southwest corner of the North half of the Southwest quarter of the Northeast quarter of Section 2, Township 21 South, Range 3 West Shelby County, Alabama with the Northern right of way line of 6th Avenue Southwest, and running thence North 90° 00' 00" East for a distance of 500.56 feet to a point; thence run North 90° 00' 00" East for a distance of 290.15 feet to a point; thence run North 90° 00' 00" East for a distance of 342.22 feet to a point; thence run North 32° 43' 59" East for a distance of 26.54 feet to a point, said point being the true point of beginning; thence run North 51 ° 25' 31" West for a distance of 868.78 feet to a point; thence run North 38° 22' 47" East for a distance of 178.47 feet to a point; said point being the point of a curve to the right having a radius of 314.00 feet and an arc distance of 112.64 feet; thence run along said curve to the right a chord bearing of North 50° 10' 53" East and a chord distance of 112.04 feet to a point; thence run North 58° 39' 59" East for a distance of 31.80 feet to a point, said point being the point of a curve to the right having a radius of 122.00 feet and an arc distance of 105.63 feet; thence run along said curve to the right a chord bearing of North 83° 28' 14" East and a chord distance of 102.36 feet to a point; thence run North 36° 33' 02" East for a distance of 22.95 feet to a point; thence run South 53° 26' 58" East for a distance of 90.27 feet to a point; thence run South 54° 53' 16" East for a distance of 185.79 feet to a point; thence run South 51° 26' 10" East for a distance of 215.68 feet to a point; thence run South 55° 05' 59" East for a distance of 70.52 feet to a point; thence run South 38° 33' 50" West for a distance of 140.00 feet to a point; thence run South 51 ° 26' 10" East for a distance of 172.18 feet to a point; thence run South 29° 54' 54" West for a distance of 12.92 feet to a point; thence run South 32° 44' 05" West for a distance of 281.22 feet to a point and back to the true point of beginning.

NON-EXCLUSIVE DUMPSTER PAD EASEMENT as set forth in Statutory Warranty Deed dated August 18, 2005 as recorded as Instrument No. 20050822000429940. BEING A parcel of land situated in the North half of the Southwest quarter of the Northeast quarter, Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the said North half of the Southwest quarter of the Northeast quarter and a point on the Northern right of way line of 6th Avenue Southwest; thence run in an Easterly direction along the South boundary of the said quarter-quarter line and said right of way line for a distance of 225.95 feet; thence leaving said right of way line turn an interior angle to the right of 110° 54' 58" and run in a Northeasterly direction for a distance of 294.95 feet to the point of beginning; thence turn an interior angle to the left of 92° 15' 09" and run in a Northeasterly direction for a distance of 87.51 feet; thence turn an interior angle to the left of 166° 05' 30" and run in a Southeasterly direction for a distance of 41.89 feet; thence turn an interior angle to the left of 83° 25' 38" and run in a Southwesterly direction for a distance of 20.71 feet; thence turn an interior angle to the right of 49° 57' 17" and run in an Easterly direction for a distance of 68.95 feet; thence turn an interior angle to the right of 92° 00' 48" and run in a Northeasterly direction for a distance of 26.38 feet; thence turn an interior angle to the right of 127° 25' 14" and run in a Northwesterly direction for a distance of 36.46 feet; thence turn an interior angle to the right of 90° 36' 41" and run in a Southwesterly direction for a distance of 16.85 feet; thence turn an interior angle to the left of 96° 34'

22" and run in a Northwesterly direction for a distance of 46.44 feet; thence turn an interior angle to the right $169^{\circ} 06' 38''$ and run in a Northwesterly direction for a distance of 94.78 feet; thence turn an interior angle to the right of $110^{\circ} 09' 48''$ and run in a Southwesterly direction for a distance of 32.49 feet; thence turn an interior angle to the right of $73^{\circ} 05' 36''$ and run in a Southeasterly direction for a distance of 14.94 feet to the point of beginning.

NON-EXCLUSIVE INGRESS/EGRESS EASEMENT as set forth in Statutory Warranty Deed dated August 18, 2005 as recorded as Instrument No. 20050822000429940. BEING a parcel of land situated in the North half of the Southwest quarter of the Northeast quarter, Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said North half of the Southwest quarter of the Northeast quarter and a point on the Northern right of way line of 6th Avenue Southwest; thence run in an Easterly direction along the South boundary of the said quarter-quarter line and said right of way line for a distance of 113.71 feet to the point of beginning; thence leaving said right of way line turn an interior angle to the right of $129^{\circ} 52' 07''$ and run in a Northeasterly direction for a distance of 12.41 feet; thence turn an interior angle to the right of $161^{\circ} 07' 24''$ and run in a Northeasterly direction for a distance of 199.71 feet; thence turn an interior angle to the left of $156^{\circ} 01' 06''$ and run in a Northeasterly direction for a distance of 220.58 feet; thence turn an interior angle to the right of $170^{\circ} 02' 19''$ and run in a Northeasterly direction for a distance of 48.82 feet; thence turn an interior angle to the left of $13^{\circ} 55' 59''$ and run in a Southwesterly direction for a distance of 43.80 feet; thence turn an interior angle to the right of $107^{\circ} 16' 14''$ and run in a Southeasterly direction for a distance of 20.53 feet; thence turn an interior angle to the left of $82^{\circ} 28' 59''$ and run in a Southwesterly direction for a distance of 211.68 feet; thence turn an interior angle to the right of $167^{\circ} 80' 25''$ and run in a Southwesterly direction for a distance of 23.91 feet; thence turn an interior angle to the right of $167^{\circ} 25' 31''$ and run in a Southwesterly direction for a distance of 140.04 feet; thence turn an interior angle to the right of $136^{\circ} 26' 33''$ and run in a Southeasterly direction for a distance of 43.62 feet to a point on the Northern right of way line of 6th Avenue Southwest; thence turn an interior angle to the left of $167^{\circ} 15' 08''$ and run in a Westerly direction along said right of way line for a distance of 65.54 feet to the point of beginning.

NON-EXCLUSIVE 20 FOOT UTILITY EASEMENT as set forth in Statutory Warranty Deed dated August 18, 2005 as recorded as Instrument No. 20050822000429940. BEING a parcel of land situated in the North half of the Southwest quarter of the Northeast quarter, Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows;

Commence at the Southwest corner of the said North half of the Southwest quarter of the Northeast quarter and a point on the Northern right of way line of 6th Avenue Southwest; thence run in an Easterly direction along the South boundary of the said quarter-quarter

line and said right of way line for a distance of 225.95 feet; thence leaving said right of way line turn an interior angle to the right of $110^{\circ} 54' 58''$ and run in a Northeasterly direction for a distance of 621.38 feet; thence turn a deflection angle to the right of $107^{\circ} 39' 26''$ and run in a Southeasterly direction for a distance of 86.63 feet to the point of beginning of a centerline of a 20 foot easement described as follows: thence turn an interior angle to the right of $88^{\circ} 58' 22''$ and run in a Northeasterly direction for a distance of 137.28 feet; thence turn an interior angle to the left of $179^{\circ} 41' 48''$ and run in a Northeasterly direction for a distance of 156.61 feet; thence turn an angle to the left of $136^{\circ} 40' 26''$ and run in a Northerly direction for a distance of 124.01 feet to the end of the easement described herein.

TOGETHER WITH the beneficial easements set forth in instrument recorded in Misc. Book 52, page 692; First Amendment thereto recorded in Real Volume 35, page 822; and Second Amendment thereto recorded in Real Volume 106, page 700, in the Office of the Judge of Probate of Shelby County, Alabama.

PARCELS A & D


A perimeter description of parcels A & D, containing 8.07 acres more or less, both situated, lying and being in Shelby County, AL, and being more particularly described as follows:

Commencing at the intersection of Southwest corner of the North $1/2$ of the Southwest $1/4$ of the Northeast $1/4$ of Section 2, Township 21 South, Range 3 West Shelby County, Alabama with the Northern Right of Way line of 6th Avenue Southwest, and running thence North $90^{\circ} 00' 00''$ East, for a distance of 500.56 feet to a point; thence run North $90^{\circ} 00' 00''$ East for a distance of 290.15 feet to a point; thence run North $90^{\circ} 00' 00''$ East for a distance of 342.22 feet to a point; thence run North $32^{\circ} 43' 59''$ East for a distance of 26.54 feet to a point, said point being the True Point of Beginning; thence run North $51^{\circ} 25' 31''$ West for a distance of 868.78 feet to a point; thence run North $38^{\circ} 22' 47''$ East for a distance of 178.47 feet to a point, said point being the point of a curve to the right having a radius of 314.00 feet and an arc distance of 112.64 feet; thence run along said curve to the right a chord bearing of North $50^{\circ} 10' 53''$ East and a chord distance of 112.04 feet to a point; thence run North $58^{\circ} 39' 59''$ East for a distance of 31.80 feet to a point, said point being the point of a curve to the right having a radius of 122.00 feet and an arc distance of 105.63 feet; thence run along said curve to the right a chord bearing of North $83^{\circ} 28' 14''$ East and a chord distance of 102.36 feet to a point; thence run North $36^{\circ} 33' 02''$ East for a distance of 22.95 feet to a point; thence run South $53^{\circ} 26' 58''$ East for a distance of 90.27 feet to a point; thence run South $54^{\circ} 53' 16''$ East for a distance of 185.79 feet to a point; thence run South $51^{\circ} 26' 10''$ East for a distance of 215.68 feet to a point; thence run South $55^{\circ} 05' 59''$ East for a distance of 70.52 feet to a point; thence run South $55^{\circ} 06' 03''$ East for a distance of 23.52 feet to a point; thence run South $53^{\circ} 23' 53''$ East for a distance of 126.60 feet to a point on the North ROW margin running along Alabama Highway 119; thence continue along said margin South $29^{\circ} 54' 59''$ West for a distance of 147.51 feet to a point; thence continue South $29^{\circ} 54' 54''$ West for a distance of 12.92 feet to a

point; thence continue South 32°44'05" West for a distance of 281.22 feet to a point and back to the True Point of Beginning.

Land containing 351325.45 sq. ft. and 8.07 acres

Exhibit B


20051005000519040 30/30 \$9098.00
Shelby Cnty Judge of Probate, AL
10/05/2005 11:13:25AM FILED/CERT

Those exceptions set forth in Schedule B of the Loan Policy of Title Insurance issued by First American Title Insurance Company as Policy No. MD-1105903 (MD05-00757).