

**Prepared by and
after recording return to:**

Nancy Drummond, Esq.
King, Drummond & Dabbs, P.C.
Suite 180
100 Centerview Drive
Birmingham, AL 35216

CONSTRUCTION, OPERATING AND

EASEMENT AGREEMENT

THIS CONSTRUCTION, OPERATING AND EASEMENT AGREEMENT (this "Agreement"), entered into as of the 16th day of March 2006, by and among HIGHWAY 31 ALABASTER, LLC ("Alabaster One"), an Alabama limited liability company, HIGHWAY 31 ALABASTER TWO, LLC ("Alabaster Two"), an Alabama limited liability company (Alabaster One and Alabaster Two being sometimes collectively called the "Developers" in this Agreement, it being agreed by the parties hereto that (i) each of the Developers is jointly and severally liable hereunder whether referred to in their individual or collective capacity, (ii) each of the Developers has the right to enforce each and every right and obligation under this Agreement whether such right or obligation is stated as running to, or being for the benefit of, either or both Developers, and (iii) each condition stated in this Agreement as being a condition to the performance of an obligation or covenant by either or both of the Developers shall be a condition to the performance of such obligation or covenant by each of the Developers), and J. C. PENNEY PROPERTIES, INC. ("Penney"), a Delaware corporation.

RECITALS:

- A. Alabaster One is the fee owner of those certain parcels of land (collectively, the "Alabaster One Land") more particularly described in Exhibit A-1 hereof, the Alabaster One Land being shown as such on Exhibit B (the "Site Plan") hereto.
- B. Alabaster Two is the fee owner of those certain parcels of land (collectively, the "Alabaster Two Fee Land") more particularly described in Exhibit A-2 hereof (the Alabaster Two Fee Land being shown as such on the Site Plan).

- C. Alabaster Two is also the ground lessee of that certain land (the **"Alabaster Two Leased Land"**) more particularly described in Exhibit A-3 hereto and shown as such on the Site Plan from The Commercial Development Authority of the City of Alabaster, Alabama (the **"Authority"**), under that certain Ground Lease And Option Agreement (the **"Ground Lease"**) dated as of December 1, 2005, a memorandum of which was recorded on January 11, 2006 in Instrument No. 20060111000019860 in the Office of the Judge of Probate of Shelby County, Alabama (the Alabaster Two Fee Land and Alabaster Two Leased Land being collectively called the **"Alabaster Two Land"** in this Agreement).
- D. The Alabaster One Land and the Alabaster Two Land are collectively called the **"Developer Tract"** in this Agreement (the Developer Tract being subject to modification pursuant to Section 1.4 below).
- E. Penney is the fee owner of that certain land (the **"Penney Tract"**) more particularly described on Exhibit A-4 hereto; the Penney Tract being depicted as such on the Site Plan.
- F. Target Corporation, Minnesota corporation (as used in this Agreement, the term **"Target"** means the said Target Corporation and its successors and assigns), is the fee owner of certain land (the **"Target Fee Land"**) more particularly described in Exhibit A-5 hereto and shown as the **"Target Fee Land"** on the Site Plan, and Target is the ground sub-lessee of certain land (the **"Target Leased Land"**) more particularly described in Exhibit A-6 hereto and shown as the **"Target Leased Land"** on the Site Plan.
- G. The Target Fee Land and Target Leased Land are collectively called the **"Target Tract"** in this Agreement, the Target Tract being subject to modification pursuant to Section 1.4 below.
- H. The Developer Tract, Penney Tract and Target Tract are collectively called the **"Shopping Center Site"** in this Agreement (the Shopping Center Site being subject to modification pursuant to Section 1.4 below).
- I. Alabaster Two desires to construct and cause to be operated the **"Developer Buildings"** (defined in Section 1.3 below) within the permitted building areas shown therefor on the Site Plan and in accordance with this Agreement and a separate agreement (the **"Separate Agreement"**) of even date herewith entered into by and among the Developers and Penney, with the understanding that the Separate Agreement is not to be recorded.
- J. Penney desires to construct and operate the **"Penney Building"** (defined in Section 1.3 below) on the Penney Tract within the permissible building area depicted therefor on the Site Plan in accordance with this Agreement and the Separate Agreement.

K. Developers and Penney desire to set forth herein their respective obligations to each other for the operation of the Shopping Center Site as an integrated and unified shopping center, and hereby create and grant certain easements to each other which are essential in the construction and operation of the Shopping Center.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements contained herein, the parties, for themselves and their respective successors and assigns, in consideration of the respective undertakings of the parties hereunder, covenant and agree as follows (all of the "WHEREAS" clauses set forth above being hereby incorporated herein as fully as if set forth herein):

ARTICLE I **THE SHOPPING CENTER**

1.1 **Target OEA.** Developers and Target have entered into that certain Operation And Easement Agreement (the "Target OEA") dated as of January 13, 2006, and recorded on January 17, 2006, as instrument number 20060117000026240 in the office of the Shelby County, Alabama, Judge of Probate, pertaining to the construction and operation of the "Target Building" (defined in Section 1.3 below) in the "Shopping Center" (defined in Section 1.2 below) and other matters. Developers and Penney each hereby acknowledge and agree that all of the rights, covenants, obligations, requirements, restrictions, representations, warranties, agreements and other provisions set forth in either or both this Agreement and the Separate Agreement are subject and subordinate to the Target OEA, that the Target OEA is a burden on the Developer Tract and the Penney Tract that runs with the land, that Penney has acquired the Penney Tract subject to Target OEA (including all easements granted to Target by the Target OEA), and that, notwithstanding any provision of this Agreement, to the extent that there is any conflict between either of the Target OEA and any provision of this Agreement or the Separate Agreement, or any other agreement or instrument entered into by and between either or both of Alabaster One and/or Alabaster Two and Penney, the provisions of the Target OEA shall control to the extent applicable to and enforceable by Target, but, notwithstanding the foregoing provisions of this Section 1.1, this Agreement and the Separate Agreement shall control the rights and obligations between Penney and Developers (for example, if the Target OEA requires the owner of the Penney Tract to maintain the Common Area on the Penney Tract, Developers shall, as between Developers and Penney, be responsible for maintaining the same in accordance with the terms and conditions of this Agreement and the Separate Agreement). In addition, nothing in this Agreement or in the Separate Agreement shall be deemed to impose any obligation on Target or any restriction or other limitation on the Target Tract or any portion thereof or on the rights of Target under the Target OEA. Further, Target shall not be deemed to have assumed any obligation under or pursuant to this Agreement or the Separate Agreement, and Target shall not be deemed to be a third-party beneficiary of this Agreement or any provision thereof except for the provisions of this Section 1.1. The parties hereto shall cooperate with each other in good faith in all matters pertaining to each other's compliance with the requirements of the Target OEA.

1.2 **The Shopping Center; Acquisition of Alabaster Two Leased Land.** (a) The term "Shopping Center" means the shopping center located on the Shopping Center Site and shown on the Site Plan, as the Buildings and improvements are from time to time situated upon the Shopping Center Site (the "Outparcels," defined in Section 1.4 below, not being part of the Shopping Center Site except as provided in Section 1.4 hereof), the Shopping Center Site being subject to modification from time to time pursuant to Section 1.4 hereof.

(b) If and when Alabaster Two acquires the fee title to the Alabaster Two Leased Land pursuant to its purchase option under the Ground Lease, the Alabaster Two Leased Land shall nevertheless continue to be part of the Developer Tract, as that term is used in this Agreement, and such fee title shall be subject to, and be benefited by, this Agreement.

1.3 **Buildings.** The Buildings which are permitted to be built on the Shopping Center Site pursuant to this Agreement are:

On the Developer Tract:

One-level buildings (collectively, "**Developer Buildings**") on the Developer Tract containing approximately 136,613 square feet of Floor Area, subject to Section 4.3(c) hereof, which buildings shall be constructed by Developers within the permissible building areas designated therefor on the Site Plan in accordance with this Agreement, and, subject to Section 4.3(c) hereof, the Developer Buildings shall consist of (a) those buildings (collectively, the "**Junior Anchor Buildings**") designated on the Site Plan as "JUNIOR ANCHOR", subject to Section 4.3(c) hereof, and (b) those buildings (collectively, the "**Developer Shop Buildings**") designated on the Site Plan as "SHOPS."

On the Target Tract:

The building that may be constructed by Target on the Target Tract as provided in the Target OEA. As used in this Agreement, the term "**Target Building**" means such building as well as any expansion thereof permitted by the Target OEA, the area within which such expansion may be constructed being called the "**Target Expansion Area**" in this Agreement and being shown as the "Target Building Expansion Area" on the Site Plan.

On the Penney Tract:

A one-level, retail department store building (the "**Penney Building**") containing approximately 99,079 square feet of Floor Area to be constructed

by Penney within the permissible building area
designated as "JCPENNEY" on the Site Plan.

1.4 **Other Defined Terms.** The following are, without limitation, additional definitions of terms used in this Agreement:

- Major:** Each of Target and Penney, and their respective permitted successors and assigns.
- Building:** Each of the Target Building and the Penney Building, and each of the Developer Buildings.
- Floor Area:** The area of square feet of floor covered and enclosed within Buildings, whether or not rented or rentable, including ground floor area used for storage, measured to the outside of the exterior walls of the Buildings, to the center line of party walls, and to the exterior of walls abutting exit and/or service corridors, but not including (i) Common Area, (ii) mall offices, (iii) administrative offices, (iv) mezzanines or enclosures used for mechanical, telephone, computer and electrical equipment or storage (excluding stock rooms) and not used as sales area, (v) the upper levels of any multi-deck stock areas used exclusively for the stocking and storage of merchandise, (vi) patio or outside selling or seating areas which are not heated or air conditioned, (vii) loading docks which are not heated or air conditioned, (viii) public service corridors and stairs required by fire safety codes and similar public regulations or laws, and (ix) trash rooms and trash compaction and bailing areas.
- Occupant:** Any individual, partnership, association, limited liability company, corporation or other form of legal entity from time to time (i) leasing or otherwise lawfully occupying Floor Area in the Shopping Center or (ii) owning a Tract within the Shopping Center Site (or in the case of the Developers, owning and/or leasing a Tract within the Shopping Center Site).
- Tract:** The Developer Tract, Penney Tract or Target Tract, as the context requires.
- including:** The term "including" means including without limitation.
- Outparcels:** Those parcels, collectively, designated on the Site Plan as Outparcels 1 through and including 10 and the parcel (the "Target Outlot") shown on the Site Plan as the "Target Outlot" and more

particularly described in Exhibit A-7 hereto; provided, however, that:

(a) if either of the Developers or its designee acquires the land (the “**Outparcel 5 Expansion Land**”) shown on the Site Plan as the “**Outparcel 5 Expansion Land**” and more particularly described in Exhibit A-8 hereto, then the Outparcel 5 Expansion Land shall thereupon automatically become part of the Outparcel shown on the Site Plan as “**Outparcel 5**” for purposes of this Agreement;

(b) if either of the Developers or its designee acquires the land (the “**Outparcel 6 Expansion Land**”) shown on the Site Plan as the “**Outparcel 6 Expansion Land**” and more particularly described in Exhibit A-9 hereto, then the Outparcel 6 Expansion Land shall thereupon automatically become part of the Outparcel shown on the Site Plan as “**Outparcel 6**” for purposes of this Agreement;

(c) during any and all periods that the Target Expansion Area is not usable as Common Area due to the construction, reconstruction or operation of an expansion of the Target Building or other building (i) the Target Outlot shall during all such periods automatically be deemed to be part of the “**Target Tract**” as that term is used in this Agreement, and (ii) any and all agreements, easements and restrictions made, granted and imposed by this Agreement over the Common Area of the Target Tract shall during such periods automatically attach to, and be a burden on, the Common Area located on the Target Outlot; and

(d) if and each time the Target Expansion Area is reverts to being Common Area and so long thereafter as it remains usable as Common Area (i) the Target Outlot shall thereupon automatically cease to be part of the “**Target Tract**”, no part of Target Outlot shall be deemed to be Common Area for purposes of this Agreement, and the Target Outlot shall thereupon automatically revert to being one of the “**Outparcels**” for purposes of this Agreement, (ii) all agreements, easements and restrictions made, granted and imposed by Section 1.4(c) above on the Target Outlot shall automatically cease and no longer be a burden on the Target Outlot and be of no further force or effect with respect thereto, and (iii) the provisions of this Section

1.4(d) shall continue until such time, if ever, as the Target Expansion Area is again no longer usable as Common Area, at which time the provisions of Section 1.4(c) shall again apply (it being acknowledged by the parties that the provisions of Section 1.4(c) and this Section 1.4(d) may cycle and be applicable more than once during the term of this Agreement).

1.5 Restrictions and Limitations.

- (a) All Buildings on the Shopping Center Site must be built within the respective permissible building areas shown on the Site Plan, shall contain not more than the maximum number of stories as provided in the definition of its Building in Section 1.3, and any expansion of such Buildings permitted by this Agreement must be within the permissible building area designated therefor on the Site Plan.
- (b) Except as expressly permitted in Sections 1.3, 1.4 and 3.10, no expansion of any portion of the Shopping Center is permitted.
- (c) Reasonable efforts shall be made to screen any antenna or satellite dishes installed on the roof of any Building from view so as not to be visible from Highway 31.
- (d) Penney shall maintain not less than 4.50 automobile parking spaces on the Penney Tract for each 1,000 square feet of Floor Area in the Penney Building. Provided Penney complies with the first sentence of this Section 1.5(d), Alabaster Two shall cause the greater of (x) 4.50 automobile parking spaces for each 1,000 square feet of Floor Area on the Shopping Center Site or (y) the parking required by applicable local code to be maintained on the Shopping Center Site. All standard parking spaces shall have a minimum width of nine (9) feet and minimum depth of nineteen (19) feet, except for employee parking spaces (all employee parking spaces on the Shopping Center Site shall be located in areas mutually agreeable to Alabaster Two and Penney pursuant to Section 2.7 hereof). There shall be no one-way driveway aisles between parking bays. The two-way driveway aisles between parking bays shall be not less than twenty-four (24) feet wide. A detail of the typical, minimum size parking space is shown on the Site Plan.
- (e) No multi-level parking structures (i.e., parking decks) shall be constructed on the Shopping Center Site without the prior written consent of all parties to this Agreement, which consent may be withheld in the sole and absolute discretion of each party.



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1.6. **Signs.** (a) Developers shall design and construct all pylon and/or monument signs structures shown on the Site Plan, and Penney is hereby granted the right to install its panel in the number 2 position from the top on the pylon sign structure located in the place designated as "South Pylon Sign" on the Site Plan and in the number 2 position from the top on the pylon sign structure located in the place designated as "North Pylon Sign" on the Site Plan (the said pylon sign structures being collectively called the "**Pylon Sign Structures**"); provided, however, that in the event Target consents in writing to Penney taking the top-most position on either sign, Penney shall deliver a copy of such consent to Developers and shall then have the right to place its sign panel in such position on such sign. Penney shall, at its cost, fabricate its own sign panels on the Pylon Sign Structures. Each of Penney's sign panels shall be 11 feet long by 3.4 feet high. The Pylon Sign Structures and Penney's said sign panels shall be substantially similar to those shown on the drawings attached hereto as Exhibit F. Nothing in this Section 1.6 shall apply to any of the Outparcels.

(b) Developers shall maintain, repair, replace and insure the structures of the Pylon Sign Structures, the cost of which may be included in the cost of Maintenance of the Common Areas (the parties expressly acknowledging that the Pylon Sign Structures do not include any sign panels thereon). Penney shall, at its cost, maintain, repair, replace, insure and illuminate its sign panels on the Pylon Sign Structures.

(c) Subject to the foregoing, all signs in the Shopping Center shall be in conformity with the sign restrictions contained in Section 5.3.2 of the Target OEA. In addition, there shall be no freestanding or pylon signs on the Shopping Center Site other than the pylon signs that are: (i) erected and maintained by Developer in the locations shown therefor on the Site Plan; and (ii) display only the name of the Shopping Center and the name of the occupants of the Target Building, Penney Building, and each building in the Shopping Center which exceed 20,000 square feet of Floor Area (a "**Junior Anchor**"). There shall be no signs which are installed on the roof of any building or which will project above the top of any parapet wall or above the roof line if any such sign is to be affixed to the side of a building not having a parapet wall; provided, however, that if a penthouse extends above any such wall as sign or signs not projecting above the roof line of such penthouse may be installed on any side thereof; and provided further that the foregoing shall not apply to the prototype sign of the Target Building, Penney Building or any Junior Anchor which is part of a national or regional chain typically found in first class regional shopping centers.

(d) Subject to the terms of the Target OEA, during the construction of the Penney Building, Penney may at its cost place a billboard sign at a location on the Penney Tract that is visible to traffic advertising the coming of the JC Penney department store; provided, however, that such sign shall be moved or removed so as to not interfere with any of Developers' Work, the work of any occupant or intended occupant of the Shopping Center, or the operation of the Shopping Center or any part of it.

1.7. **As-Built Survey.** On or before 120 days after completion of construction of the Shopping Center, Alabaster Two shall cause to be delivered to Penney an "as-built" survey (the "ALTA Survey") of the Shopping Center Site which shall:

- (a) Be prepared to standards of the American Land Title Association ("ALTA"), certified to the parties and sealed by a surveyor registered in the state in which the Shopping Center Site is located;
- (b) Show all of the information required to be shown by the ALTA standards applicable in the State of Alabama;
- (c) Show the exact location of all Buildings and other improvements on the Shopping Center Site (including any encroachments of buildings across any Tract line) any and all setback lines
- (d) Show the exact location of all easements, rights-of-way, drives and roads within the Shopping Center Site that can be shown on an ALTA survey, which, if existing by virtue of a recorded instrument, must be identified on the face of the survey by the recording data of the instrument creating same;
- (e) Show to Penney any variance from any ALTA Plat of Survey previously provided to Penney pursuant to its Separate Agreement or purchase and sale agreement, together with a notation setting forth the reason for such variance;
- (f) Contain, either on the face of the ALTA Survey or on a separate sheet or sheets certified and sealed by the surveyor, complete legal descriptions by metes, bounds, courses and distances of the Developer Tract, Penney Tract, Target Tract, Target Outlot and Outparcel 4.

In the event that the legal descriptions on the ALTA Survey, or any of them, vary in a material manner from the legal descriptions made a part of this Agreement as exhibits hereto or contained in the documents of conveyance of said Tracts, then (i) Alabaster Two shall, at its sole cost and expense, cause an amendment to be made to this Agreement correcting the legal descriptions hereto and following execution thereof by the parties hereto, and Alabaster Two shall cause such amendment to be filed of record, and (ii) the appropriate parties shall prepare, execute and recorded corrective instruments of conveyance, including deeds, subdivision plats and dedications which will address any discrepancy between the original legal descriptions of their respective Tracts and the corresponding legal descriptions on the ALTA Survey. In the event only of a construction error (but not advertence) resulting in an encroachment, upon request, any party upon whose Tract such encroachment has occurred (the "Burdened Party") agrees to either grant an easement over that portion of its Tract as is required to permit such encroachment to remain thereon, or, at the encroaching party's election, to convey to the encroaching party

satisfactory title to the encroached upon portion, provided the encroaching party will convey to the Burdened Party satisfactory title to an equivalent amount of acreage of real estate reasonably acceptable to the Burdened Party. The survey work (in addition to the ALTA Survey provided by Alabaster Two as required above and the cost of recording or re-recording any deeds or easements) shall be borne by the encroaching party (or if there is more than one encroaching party, such costs shall be shared equally by all encroaching parties). If the ALTA Survey discloses any conditions which are not accurately reflected on the Site Plan, Penney shall have the right to request Alabaster Two to prepare, and Alabaster Two shall prepare, at the cost of that party or those parties which caused such condition, a revised site plan (the "**Revised Encroachment Site Plan**") which shall be submitted to the parties for approval. When so approved, the parties shall confirm the substitution of the Revised Encroachment Site Plan for the Site Plan in a written instrument to be recorded by Alabaster Two at the cost of the party or parties that caused such condition. Nothing herein contained will be deemed to relieve or excuse any party from exercising all due diligence to construct its improvements within its respective Tract.

ARTICLE II **COMMON AREA**

2.1 **Common Area.** (a) "**Common Area**", as that term is used in this Agreement, shall consist of all of the following located on the Shopping Center Site: parking areas, parking decks, if any, drives, driveways, roadways, including the roadway running behind the Buildings, sidewalks, retention/detention areas, if any, planted or landscaped areas, Common Utility Facilities, and other common facilities located on the Shopping Center Site; provided, however, that the "**Common Area**" shall not include (i) any truck dock, truck unloading area or truck parking area adjacent to and for the exclusive benefit of any Major's Building now existing or hereafter constructed pursuant to this Agreement, (ii) any portion of any Building, including the doorways thereof, (iii) any portion of any driveway or other roadway from and after the date on which it is dedicated to, or acquired by, a governmental entity as a public street, driveway or road, or (iv) any part of the Common Area within the permissible building lines shown on the Site Plan from and after the date on which it is incorporated into any Building.

(b) "**Common Utility Facilities**" shall mean storm drainage facilities, detention and/or retention lakes and ponds, wetlands preservation areas, sanitary sewer systems, gas lines, water lines and systems, fire protection installations (including any booster pumps required by fire insurance rating organizations of any party), underground (except for junction boxes and transformers which need not be underground and overhead electric and telephone lines constructed in the area or areas shown therefor on the Site Plan) electric power and telephone cables and lines and cable television systems for security purposes and cable television reception, if any, and other forms of energy, signals or services that are available for service to and used by the parties or any two of them, which facilities are located on or off the Shopping Center Site, for their respective improvements and/or the Common Area; excluding, however, those facilities, if any, that are available only for the exclusive use of a party or its improvements and are located within five (5) feet from the building line of the Building of any party or located within the

Building of any party. Notwithstanding anything to the contrary herein, for purposes of Common Area cost allocations, the maintenance, repair and replacement costs for drainage facilities shall be included in Common Area costs.

2.2 Operation of Common Area. (a) Each party hereto shall keep the Common Area on its Tract, and Alabaster Two shall cause the Common Area on the Target Tract to be kept, open and operated during all periods that the Building or Buildings on such Tract is or are open for business with the general public. During any period when the Penney Building is open for business with the general public in accordance with this Agreement and the Separate Agreement, or when the Target Building is open for business with the general public, or when occupants of 75% or more of the Floor Area of the Developer Buildings are open for business and for one (1) hour before and after such business hours, each party hereto covenants and agrees that all Common Area on its Tract for which it has responsibility under this Agreement shall be open and operated.

(b) Each party hereto shall keep or cause to be kept all exterior Common Area on its Tract, and Alabaster Two will cause the Common Area on the Target Tract to be, well lighted (but not less than in accordance with the minimum requirements hereinafter specified) from dusk until 10:00 p.m. each evening that the Penney Building is open for business or when the Target Building is open for business or when 75% or more of the Floor Area of the Developer Buildings are open for business. The cost of lighting the Common Area (i.e., the electric power consumed for such purpose) of the Penney Tract shall be borne by Penney, and the electric power consumed on the remainder of the Shopping Center Site shall be borne by Alabaster Two (provided that Alabaster Two may have a separate agreement with Target as to sharing the cost of such lighting between them). If it becomes necessary or advisable, in the judgment and discretion of Penney or Alabaster Two to replace all of the lighting standards in the Shopping Center Site, the cost thereof will be borne by Penney and Alabaster Two in the proportion that the total Floor Area on each such party's Tract bears to the total Floor Area on the Shopping Center Site (the Floor Area on the Target Tract shall be included in the Alabaster Two's Floor Area for purposes of this calculation), unless otherwise provided in the Separate Agreement. If Alabaster Two, Penney or Target desires to operate after 10:00 p.m., the exterior Common Area shall be lit during such extra hours at the prior written request of Alabaster Two or Penney at the expense of Alabaster Two, if Alabaster Two is the requesting party on its own behalf or on behalf of Target, or at the expense of Penney if Penney is the requesting party; provided, that if the Target OEA requires lighting of the Penney Tract after 10:00 p.m., such additional lighting of the Penney Tract shall be at Developers' expense (and to be excluded from Penney's share of any Common Area Maintenance Cost). Notwithstanding the foregoing, regardless of the requesting party, if a party's store Building is open to the public for business during such additional store hours, such party shall share in the expense of such additional hours lighting in the proportion that the total Floor Area on such party's Tract bears to the total Floor Area of those stores open to the public for business during such hours.

2.3 Sales in Common Area. No party to this Agreement shall permit sales to be made in or conducted from, nor any merchandise to be stored upon, any Common Area except:

(a) in area shown on the Site Plan as "Target Outdoor Sales Area" (the "Outdoor Sales Area"); and (b) that Developers may conduct and permit sales from kiosks and pushcarts located on the sidewalks that are located on any portion of the Shopping Center Site other than the Penney Tract. Each of the Developers reserves the right to permit outdoor restaurant seating on the sidewalks located on any portion of the Shopping Center Site other than the Penney Tract.

2.4 Common Area Maintenance. (a) Alabaster Two shall perform or cause to be performed the following Common Area obligations, subject to the provisions of Section 2.5 herein and except as provided in the Separate Agreement. Alabaster Two shall, at no cost and expense to Penney except as provided in the Separate Agreement, manage and keep or cause to be kept all Common Area on the Shopping Center Site in a First Class (defined below) condition, operation, order and state of repair and shall continuously manage the Common Area and perform maintenance, repair, and replacement, or cause the same to be done, consistent with such obligations and the Target OEA, including (i) providing First-Class private security personnel as reasonably needed (which personnel need not have offices on the Shopping Center Site), (ii) repairing all Common Utility Facilities, including above ground and underground utility conduits and lines and sewers located on or under the Shopping Center (except within those utility easements granted to any governmental authority or utility company, which has maintenance and repair obligations with respect thereto), (iii) repairing and replacing all lighting facilities in the Common Areas subject to Section 2.2 above, (iv) maintaining and replacing as necessary the plants located within the landscaped and planted areas in the Shopping Center (provided that any plants that are installed by Penney are healthy when they were installed), (v) re-striping and re-paving parking areas as needed, (vi) performing all obligations under Section 2.5 below, (vii) repairing all holes and breaks in the parking area paving within a reasonable time after the same appear, and (viii) performing all maintenance, repairs and replacement obligations imposed by the Target OEA upon the owner of the Penney Tract, including the timely payment of any and all maintenance and other costs and expenses required by the Target OEA (all of such obligations under this clause (viii) being hereby assumed, as between Penney and Alabaster Two, by Alabaster Two; all obligations of Developers under this sentence being collectively called "Maintenance"). Alabaster Two shall not, except in the event of an emergency, make repairs to the parking areas in the period from November 1 to December 31. Alabaster Two shall use commercially reasonable and diligent efforts to maintain the Common Area in accordance with the specifications set forth in Exhibit C hereto. As used in this Agreement with respect to Maintenance, "First Class" shall mean in conformity with the standards of the majority of regional shopping centers in Alabama with anchor stores similar to those of the Shopping Center and presenting at all times the appearance of a safe, clean, well-managed, coordinated and unified shopping center.

(b) If Alabaster Two defaults in its Maintenance obligations, Penney shall have the right to exercise self-help as set forth in Section 12.2 hereof.

2.5 Common Area Cleaning. (a) Except as may be otherwise provided in the Separate Agreement and in Section 2.6 below, Alabaster Two shall at all times keep or cause to be kept all Common Area on the Shopping Center Site in a First Class clean, neat and sanitary

condition, and shall, to the extent practicable, keep all such areas exposed to the elements free from ice and snow. Without limiting the generality of the foregoing, Alabaster Two must do the following or cause the following to be done:

- (i) Empty all trash containers in Common Area as needed except for trash containers used in connection with the operation of the Penney Building (the emptying of such trash containers being the obligation of Penney);
 - (ii) Pick up paper and trash in all Common Area each day as needed and sweep all sidewalks, all drives adjacent to all Buildings, and sweep the entire parking area as needed;
 - (iii) Remove and treat ice and remove snow from the exposed areas as soon as practicable;
 - (iv) Cause all garbage receptacles of all occupants of the Developer Building and the Target Building to be emptied, and the garbage removed as needed (Penney shall empty all garbage receptacles serving the Penney Building).
- (b) Penney shall have the right, as provided in its Separate Agreement, to take over from Alabaster Two and assume the Maintenance obligations (excluding those with respect to the Common Utility Facilities) on the Penney Tract.

2.6 Operation and Maintenance of Common Area by Penney. In the event Penney assumes control of the maintenance of the Common Area on its Tract, or upon cessation of operations by Penney and continuing until termination of this Agreement as to all parties, Penney shall operate, maintain and repair the Common Area (exclusive of the Common Utility Facilities) on its Tract in accordance with the requirements imposed by (i) the standards required to be maintained by Alabaster Two under this Agreement, or (ii) the standards required to be maintained by either or both Developers under the Target OEA, whichever standards are higher. In the event none of the Shopping Center Site is being operated, then neither party hereto shall be obligated to perform Maintenance with respect to the Common Areas on any Tract, except to the extent required by applicable law.

2.7 Parking Area Obstruction. The parking areas, sidewalks, aisles, streets, roads and driveways on the Shopping Center Site shall (a) not be fenced or otherwise obstructed (except at a mutually acceptable time and as is necessary to prevent the public from obtaining rights by prescriptive use) by any party hereto, (b) be kept open at all times for the free use thereof by the persons or entities entitled thereto pursuant to this Agreement, and (c) not be used for the display or sale of merchandise or services (except as permitted by this Agreement) or for any purpose not contemplated by this Agreement. All parking areas except the Outdoor Sales Area shall be used for parking purposes only and for no other purpose or use whatsoever unless approved by Penney. The manager of the Shopping Center and the store manager of the Penney Building shall use their good faith efforts to designate certain sections of the parking areas

(including any of the parking facilities in the rear of the Developer Buildings) as "Employee Parking" for the use of employees of the stores and other establishments situated within the Shopping Center. Alabaster Two agrees that each lease or agreement hereafter executed under which space in the Developer Tract is rented to or occupied by an operator of a store or other establishment will require such operator to exert reasonable efforts to cause its employees to use only the areas so designated for parking purposes. Penney agrees to exert reasonable efforts to cause its employees to use only parking areas designated for such purposes.

2.8 **Maintenance of Buildings.** Alabaster Two shall maintain and repair the exterior of the Developer Buildings in good order, condition and state of repair in accordance with First Class standards. Penney shall maintain and repair the exterior of its Building in good order, condition and state of repair in accordance with First Class standards. Notwithstanding anything to the contrary in this Agreement, the covenants in the immediately foregoing sentence may only be enforced by Alabaster Two.

ARTICLE III **EASEMENTS**

3.1 **Utility Easements.** (a) Each party hereto hereby grants to each of the other parties hereto, for the benefit of such respective grantee and its existing and future tenants and other occupants of its Tract, such perpetual irrevocable, non-exclusive easements through, under, across and on the Common Area on its Tract (and in the case of the grant by Developers, also through, under, across and on the Common Area on the Target Tract by virtue of the easements granted to Developers and their respective successors and assigns by Target under the Target OEA) as are reasonably necessary, without interfering with the granting party's use of its Tract as provided in this Agreement (and in the case of the Target Tract, the use thereof by Target as provided in the Target OEA) to provide rights-of-way for utility services to each Tract and access to and use of the gas, electrical, communications, water, storm and sanitary sewer systems and other utilities for the benefit of each Tract and right-of-way for lines connecting therewith. The location of such easements shall be determined as set forth in Section 3.6 hereof. All easements granted by this Section 3.1 are perpetual and shall survive and extend beyond the expiration of the term of this Agreement.

(b) The easements granted by this Section 3.1 shall include the right to construct, replace, repair and maintain (but not between November 1 to January 2 nor during the forty-five (45) day period prior to Easter, except for (i) the initial construction of the Shopping Center and (ii) in the event of an emergency) such utility lines and facilities as may be reasonably necessary to enjoy the benefit of the easements granted by this Section 3.1, but nothing contained in this sentence shall in any way modify or limit any party's obligations set forth in this Agreement. All construction, replacement, repair and maintenance of such utility lines shall be performed in compliance with Section 3.6 and in such a manner as does not interfere with the normal and usual operation of any store and does not unreasonably interfere with customer parking. Alabaster Two's Maintenance obligation under Section 2.4 with respect to any Common Utility Facilities located on or under the Shopping Center shall include promptly

restoring all paving, landscaping and any other improvements disturbed thereby to its former condition at its sole cost and expense. All such Common Utility Facilities (except for the overhead lines in the areas shown therefor on the Site Plan, and except for facilities that may be located above ground in accordance with good engineering practices) shall be buried beneath the surface of the ground in conformity with good engineering practice for underground lines, conduits and facilities, shall not conflict with other Common Utility Facilities, shall not be located in, under or upon any Building, and shall have been previously reasonably approved by all owners of such Common Utility Facilities which are situated within twenty (20) feet of any point of such proposed Common Utility Facilities. The location of all Common Utility Facilities and the terms of such easements shall be disclosed to each party on whose Tract such Common Utility Facilities are to be placed, and shall be subject to the prior consent of such party, which approval shall not be unreasonably withheld, delayed or conditioned.

(c) Nothing herein contained shall restrict or prevent an owner of a Tract from granting to any public utility, public body or other public authority, or to another party hereto, easements over or under its Tract, for public utility lines and facilities, water, storm and sanitary sewer lines and conduits and facilities therefor, or for drainage or slope purposes, or for other pipe line purposes so long as such easements do not adversely affect any Tract (other than such grantor's Tract) or the parking area in, or the use of, the Common Area.

(d) Developers covenant that all easements required to bring Common Utility Facilities to the Shopping Center Site have been obtained, or, if not, that one or both of the Developers shall obtain such easements to facilitate the construction of the new improvements on the Shopping Center Site and further covenants that it will use its diligent efforts to cause such lines up to the property line of the Shopping Center Site to be maintained by the public or the appropriate utility company.

(e) In the event either of the Developers arranges for the grant of any utility easements and lines in addition to the Common Utility Facilities to the appropriate utility company or governmental authority, and such additional easement(s) and line(s) are reasonably necessary in connection with the operation of the Shopping Center, Penney shall grant such easements and lines on its Tract upon the request of Developers, respectively, in such form of easement as shall be reasonably acceptable to Penney.

3.2 **Drainage.** Each party hereby grants to each of the other parties an irrevocable, perpetual, non-exclusive easement across the respective grantor's Tract, at the approximate locations to be shown on Developers' working drawings required by the Separate Agreement, for surface water drainage and for storm drainage lines, conduits and facilities from each respective grantee's Tract to storm drainage lines and conduits on the respective grantor's Tract; provided, however, that no such easement shall be located in, under or upon any Building. No drainage lines from property other than the Shopping Center Site shall be permitted to tap into storm drainage lines, if such tap would result in exceeding the capacity of the drainage lines. The above drainage easements and facilities shall be located pursuant to Section 3.6. Such drainage

easements shall be perpetual and shall survive and extend beyond the expiration of the term of this Agreement.

3.3 Construction Easements.

(a) Each party hereby grants to the other party such easements and rights in, on and to the respective grantor's Tract (i) for the construction and maintenance of foundations, footings, floor slabs and other structural components (not exceeding three (3) feet) reasonably necessary in connection with the construction of the improvements on the respective grantee's Tract and their integration therein, and (ii) provided that same does not affect the separate insurance rating of any party's Building and does not materially and adversely affect existing construction on the respective grantor's Tract, for roof projections and/or wall projections (not in excess of three (3) feet in length) of a Building on the respective grantee's Tract extending to the Building on the respective grantor's Tract and such easement shall permit such roof projection or wall of one Building to be tied into (but not supported by) the adjoining Building. The easements granted by this Section 3.3 shall expire on the later of (A) the date that this Agreement is terminated, or (B) as to the Penney Tract, the date that neither the respective grantor's nor grantee's Building or Buildings in question shall be in existence if such Buildings are relying on said easements, excluding periods of rebuilding after damage or destruction. If reasonable alternatives are available on its Tract, a grantee shall not avail itself of this easement. After the opening of the Penney Building, Developers shall restrict their construction vehicles and those of their contractors, subcontractors and materialmen to using, as reasonably approved by Penney, specific staging areas and construction employee parking areas.

(b) Each party grants to each of the other parties and to the contractor(s) performing any work to be performed hereunder by Penney or by Developers on the grantor's Tract (the "Work"), a temporary non-exclusive license to enter upon its Tract (except that the licenses granted by this sentence do not include using those areas as staging or storage areas) for the purpose of engaging in necessary activities connected with the performing of such Work on the grantor's Tract; provided, however, that Developers and their contractors and subcontractors shall be the only persons authorized to enter upon the building pad areas of the Penney Tract. The said license granted by a respective party shall terminate when the Work on its Tract is completed. The license granted in this Section 3.3(b) will not permit the use of any portion of the Tract of any party upon which portion a Building or other improvement (including any parking area improvement) is or is to be located without the prior written approval of such party, which approval may be withheld or made subject to reasonable restrictions and regulations, if the construction of such Building or other improvement would thereby be adversely interfered with or delayed or if the operation of the Shopping Center or any part thereof would be adversely affected.

3.4 Ingress and Egress. (a) Each party hereby grants to the other party, for the use of the respective grantee and its officers, partners, directors, members, agents, employees, customers, invitees, licensees, tenants, successors and assigns, non-exclusive easements over all Common Area on the respective grantor's Tract, including all driveways on the Shopping Center

Site, for the purpose of ingress and egress to, without payment of any fee or other charge being made therefor (except for any maintenance fee or charge pursuant to the Separate Agreement), from and between the Developer Tract, the Penney Tract and any road or highway adjacent to the Shopping Center Site. The easements granted herein shall terminate concurrently with the expiration of this Agreement, except that easement in the driveway providing the most direct access between the Penney Tract and Highway 31 shall continue until such time such driveway is dedicated as a public roadway.

(b) If during periods of construction it becomes desirable to establish separate gates to the Shopping Center Site or to a party's Tract, each party shall, after consultation with the other parties to this Agreement, cooperate in requiring its contractors and subcontractors to use such designated gates. No party shall have or permit any such gates on its Tract after the Shopping Center, or any part thereof, is open for business with the general public.

3.5 Common Area and Parking Use. Developers hereby grant to Penney, and Penney hereby grants to each of the Developers, for the use of each of the respective grantee and its officers, partners, directors, members, agents, employees, customers, invitees, licensees, tenants, successors, and assigns, the full and unrestricted non-exclusive right to use all Common Area on the Tract of the grantor, including the driveways, sidewalks and parking areas therein, on the Tract of the respective grantor for their intended purposes without payment of any fee or other charge being made therefor (except for any maintenance fee or charge pursuant to the Separate Agreement), and to the same extent that the respective grantor and its officers, partners, directors, members, agents, employees, customers, invitees, licensees, tenants, successors, and assigns may use such Common Area, including the driveways, sidewalks and parking areas on such grantor's Tract. The easements granted in this Section 3.5 to each respective grantee shall expire, automatically terminate and be extinguished as to such grantee at such time after expiration of the term of this Agreement as the earliest of the following shall occur: (i) the date which is two (2) years after the date that all Buildings located on such grantee's Tract have been demolished or substantially damaged or destroyed and no on-site reconstruction of such Buildings, or the footers or foundations therefor, has commenced on or before the expiration of such two (2) year period; or (ii) in circumstances other than those provided for in the immediately preceding clause (i), the date which is ninety (90) days after the date of delivery of notice to a respective grantee by the respective grantor that no Building located on the grantee's Tract is open for business with the public and that, therefore, the easements granted in this Section 3.5 shall terminate if no such Building is reopened on or before the expiration of such ninety (90) day period, provided that if any such Building is reopened to the public on or before the expiration of such ninety (90) day period, then such easements shall continue as though such notice had not been given.

3.6 Location of Easements. Each party having an interest in the Tract burdened by any utility easement granted by or pursuant to this Agreement shall join with the grantee thereof in requesting a mutually acceptable agreement, in recordable form, appropriately identifying the type, dimensions and location of each respective utility or drainage facility, which shall in no event be located in, under or over any Building. The easements granted pursuant to Sections 3.1

and 3.2 may, from time to time, be relocated by, and at the sole expense of, the party requesting the relocation to another location on the grantor's Tract or on another party's Tract (upon the approval of such other party not to be unreasonably withheld, conditioned or delayed), provided that (a) no such relocation shall be performed during the period from November 1 through December 31 of any year except in an emergency requiring relocation to continue providing the applicable utility service or services or to prevent damage to property or injury or death to persons, and (b) there shall be no unnecessary interruption of or diminution in utility service during any relocation, there shall be no unnecessary interference with any existing or proposed improvements on another party's Tract (or on the Target Tract), and only Developers and their contractors shall be authorized to enter upon the permissible building areas. Except in the case of an emergency, no party shall conduct or permit to be conducted any utility work or other work that may adversely impact utility service to the Tract of another party (or the Target Tract), or to any improvement thereon, during hours when such other party or any of its tenants or occupants are open for business to the public or for a one hour period prior and subsequent to said business hours. If any utility work, or such other work, actually performed by a party (as opposed to a public utility) causes a disruption in utility service to another party's Tract (or the Target Tract) or to any improvement thereon, the party performing such work shall reimburse such other party for any and all damages incurred by such other party as a direct and foreseeable result of such utility disruption, but in no event consequential damages such as, but not limited to, lost profits.

3.7 Right of Repair. The rights referred to in this Article III shall include the right, on thirty (30) days' prior notice of the failure of a party to perform its obligations under this Article III given by the party exercising the right to such failing party, to construct and repair the facilities referred to in this Article III to the extent necessary to fully provide the benefits of the rights so granted, but nothing in this sentence shall in any way modify, limit or lessen the obligations of the parties hereto with respect to Maintenance or any other provision with respect to the Common Area as provided elsewhere in this Agreement. It is mutually agreed that the grants contained herein are not intended and shall not be construed as a dedication of the respective Tracts or any portion thereof, nor of the rights so granted, for public use, nor for the benefit of any third parties not specifically named in this Agreement, and the parties hereto shall take whatever steps may be necessary to avoid such dedication except as otherwise expressly provided in this Agreement. Rights of maintenance and repair of facilities on any part of the Shopping Center Site shall not be exercised unless the responsible party fails to perform such maintenance or repairs as required hereby. Any such maintenance and repairs, once commenced, shall be diligently prosecuted to completion, shall not interfere with the operation of any other party's business, and shall not unreasonably interfere with any other business being conducted in the Shopping Center, any parking facilities or any Tract, any motor vehicle or pedestrian traffic in the Shopping Center, or the visibility of any Building.

3.8 No-Additional Easements; Third Parties. The parties agree that, except those easements specifically provided for in this Agreement, no easements shall be granted over any Tract without the consent of the owner of such Tract, and such consent may be withheld in such owner's absolute discretion. Notwithstanding anything to the contrary contained in this Section 3.7 or elsewhere in this Agreement, Developers may grant access easements over the roadways

shown on the Site Plan as "Roadway B", "Ingress/Egress Easement" and "Roadway C" for vehicular ingress and egress between U. S. Highway 31 and the land shown on the Site Plan as "D&D Land" (the "D&D Land") to the owner or owners of D&D Land and to their respective successors and assigns, the said easements being for the benefit of the said D&D Land and running with such land.

3.9 **Dedications.** Any areas of the Shopping Center Site or of the Outparcels which are dedicated or otherwise conveyed to an appropriate governmental body or authority for use as a public street, driveway or roadway and/or for street widening purposes shall automatically and ipso facto be deleted from the terms, covenants and conditions of this Agreement. Penney hereby agrees that either or both of the Developers may dedicate or otherwise convey (a) all or any portion or portions of those roadways shown on the Site Plan as a "Roadway A", "Roadway B" and "Roadway C" and any or all improvements thereon, or any portion thereof, for use as public streets, driveways or roadways and related purposes (each such area of land and improvements thereon which is so dedicated or otherwise conveyed shall thereupon automatically cease to be part of the Developer Tract as that term is used in this Agreement), (b) any or all retention ponds on the Shopping Center Site, and (c) all or any portion of the utility lines on or serving improvements on the Shopping Center Site to any governmental entity. Penney shall reasonably cooperate in facilitating any and all such dedications and other conveyances. Penney shall join in any and all such dedications and conveyances to the extent necessary or required by the applicable governmental authority. No other dedication or conveyance of any portion or portions of the Shopping Center Site shall be made by either Alabaster One or Alabaster Two without the prior consent of Penney.

3.10 **Staging Areas.** Developers shall have the right to construct, restore or remodel improvements on the Developer Tract, and Penney shall have the right to construct, restore and remodel on the Penney Tract, both subject to the terms herein, within the permissible building lines shown therefor on the Site Plan and in compliance with the requirements of Section 1.5, and such construction shall be performed in accordance with the following restrictions and limitations:

(a) During all times that Alabaster Two or Penney is constructing, remodeling or restoring its Buildings or Building within the respective permissible building lines shown therefor on the Site Plan, Alabaster Two and Penney shall each have the right to utilize a staging and storage area in the Common Area on its Tract; provided that if such construction is after the initial construction of the Shopping Center, such staging and storage area shall be in such location as to not unreasonably interfere with the operation of any other party's Tract, any business being conducted in the Shopping Center, any parking facilities on any other party's Tract, any motor vehicle or pedestrian traffic in the Shopping Center, or the visibility of any Building of any other party from the nearest public road. Any party performing such construction, remodeling or restoring its Building shall, at its expense, fence off the staging and storage area, provided that, upon completion of remodeling, restoring or enlarging, as the case may be, it will promptly remove such fence and repair any damage caused by such fence or its use of such area;

(b) The party performing such construction, restoration or remodeling shall require and enforce a parking restriction requiring all persons performing work on such construction to park their motor vehicles in the staging area or in such other location (other than on the Tract of a party not performing such work) as is reasonably required by either or both of the Developers (if the work is being performed by Penney) or in such other location as is reasonably required by Penney (if the work is being performed by either or both of the Developers);

(c) The party performing such construction shall, immediately upon completion of construction, repair, or cause to be repaired, any damage to the Common Area or other improvements in the Shopping Center (including Buildings) in any way caused by or related to such construction;

(d) Prior to commencing any construction, the party desiring to perform such construction shall cause its general contractor to deliver evidence of insurance to the other parties in amounts and types required by Article V;

(e) Such construction shall be architecturally harmonious and compatible with the exterior of the parties' Buildings and with the existing construction on the Shopping Center Site, and all such work shall be performed in such a manner that it does not unreasonably interfere with the operation of the Shopping Center; and

(f) Such construction, once commenced, shall be diligently prosecuted to completion in accordance with the terms of this Agreement.

3.11 Mechanics' Liens. Each party covenants and agrees to keep or cause to be kept the Shopping Center Site and the improvements thereon free and clear of and from any and all mechanics', materialmen's and other similar liens arising out of or in connection with its operations or the activities of others claiming under it, and to pay and discharge when due any and all lawful claims upon which any such lien may or could be based, and to save and hold the other parties and their respective Tracts and the improvements thereon free and harmless from any and all such liens and any and all claims of liens and suits or other proceedings pertaining thereto. The accrual, by operation of law, of mechanics', materialmen's and similar liens shall not in and of itself be a breach of this Section 3.11. If a party desires to contest any such lien filed or threatened against the Shopping Center Site or any other party's Tract, it shall notify the other parties of its intention so to do promptly after it has actual knowledge of the filing of such lien and shall bond such lien or insure that such lien will not affect the title to the property which it covers. In the event of a final determination of the validity of any contested lien, the contesting party shall pay and discharge the same, to the extent held valid, at least 20 days prior to the date execution could be had upon the judgment rendered thereon. In the event of any such contest, the contesting party shall protect and indemnify the other parties against all loss, cost, expense and damage resulting therefrom. The foregoing requirement for bonding or insuring over such lien shall not apply if such lien is recorded only against the Tract owned by such party

provided such lien does not affect any Common Area or any easement benefiting any other Tract.

ARTICLE IV

CONSTRUCTION

4.1. **Scheduled Opening Date.**

(a) Subject to the provisions of Sections 4.1(b) and 4.1(c), as used in this Agreement the term **"Scheduled Opening Date"** means August 1, 2007.

(b) Notwithstanding Section 4.1(a), however, if and each time either of the Developers is delayed in obtaining from the Alabama Department of Transportation any permit, consent or approval for the construction or operation of the Shopping Center or for any access between Highway 31 and the Shopping Center Site or any portion thereof and either or both of the Developers in its or their good faith judgment believes such delay will delay the completion of the Developers' Work and the opening of the Shopping Center beyond the Scheduled Opening Date stated in Section 4.1(a) or as the Scheduled Opening Date has theretofore been delayed in accordance with this Section 4.1(b), the Developers shall give Penney notice (the **"Delay Notice"**) thereof prior to October 1, 2006, and the Delay Notice shall set forth the revised Scheduled Opening Date, provided that:

(i) No Scheduled Opening Date shall be set within any **"Blackout Period"** (defined below); and

(ii) No Scheduled Opening Date shall be set later than March 1, 2008.

(c) From and after the date on which each Delay Notice is given, the term **"Scheduled Opening Date"** as used in this Agreement shall mean the revised Scheduled Opening Date set forth in such Delay Notice. As used in this Agreement, the term **"Blackout Period"** means each of the following periods: (y) during any period between any November 15th and the immediately following December 31st, or (z) during the 45-day period immediately preceding any Easter; and the said periods are collectively called the **"Blackout Periods"**.

4.2. **Developers' Work.**

(a) Even though Penney shall have no right to approve or disapprove the Plans (the **"Developers' Work Plans"**) for any or all of the **"On-Site Work"** and **"Off-Site Work"** (as those terms are defined in the Separate Agreement; the said On-Site Work and Off-Site Work being collectively called the **"Developers' Work"** in this Agreement), Penney acknowledges that Developers have delivered to Penney for its information the Developers' Work Plans listed in Exhibit E hereto. Developers agree to construct, at no cost to Penney

except as may be set forth in the Separate Agreement, Developers' Work in accordance with the Separate Agreement and the Developers' Work Plans.

(b) Developers hereby agree to indemnify, defend and hold Penney harmless from and against any assessments and/or liens which arise from or relate to any Developers' Work done on the Penney Tract by, or on behalf of, either of the Developers, but excluding, however, any assessments and/or liens which arise from or relate to work performed by Penney or their respective employees, agents, representatives, contractors or subcontractors.

(c) Developers will deliver the Penney Building construction pad ("**Penney Pad**") to Penney in accordance with the Separate Agreement.

(d) The project architect is HKW Associates, PC, Two North Twentieth Street, Suite 100, Birmingham, Alabama 35203 (the "**Project Architect**"), and the project engineer is Walter Schoel Engineering Co., Inc., 1001 22nd Street South, Birmingham, Alabama 25205 (the "**Project Engineer**"). The Project Architect and Project Engineer will perform their services pursuant to contracts with either or both of the Developers. Whether or not the Project Architect will also be the architect utilized by Penney for the construction of its Building, the Project Architect will be deemed, as Project Architect, to owe an equal duty to each of the parties for any matters between the parties. The Project Engineer will be responsible for civil engineering for all On-Site Work and Off-Site Work included in the Developers' Work; the Project Architect will be responsible for the coordination of all other aspects of the Developers' Work to be performed by all consultants and contractors engaged by either of the Developers, or an agent on its behalf, in connection with the Developers' Work.

4.3. **Construction.**

(a) **Plans.**

(i) As used in this Article 4 only, the term "**Plans**" means plans and, where applicable, specifications.

(iii) Each party hereto acknowledges and agrees that neither party is responsible for the sufficiency of design or specifications for the improvements on any Tract except its own Tract. Each party shall indemnify the other parties and save them harmless from and against all claims and suits for damages to persons or property from defects in material or workmanship or from the use of unskilled labor or from any negligence caused by such party, such party's contractors, subcontractors, materialmen or by any of their employees, agents or servants during the progress of the work in constructing the Buildings on their respective Tracts, or from any faulty construction thereof.

(b) **Developers' Representations and Warranties.** Developers hereby represent and warrant to Penney as follows:

(i) The construction and operation of the Developer Buildings and other improvements constructed by Developers in the Shopping Center will not violate existing laws, ordinances, orders, rules or regulations of any governmental authority, agency, instrumentality having jurisdiction over any part of the Shopping Center Site, or any encumbrance on the Shopping Center Site, including the Target OEA or the Site Development Agreement dated January 13, 2006, made and entered into by and between Developers and Target, a memorandum of which is recorded as instrument number 20060113000022860 in the office of the Shelby County, Alabama, Judge of Probate (the Target OEA and such Site Development Agreement being collectively called the "**Target Documents**").

(ii) The Shopping Center Site is, or will be on the earlier of the date the Penney Pad is delivered to Penney, zoned in conformity with applicable laws to permit (A) the construction of the Shopping Center and its use and operation for the purposes described in this Agreement, and (B) the use and operation of the Penney Building as described in this Agreement.

(iii) Developers have obtained, or will use their reasonable commercial efforts to obtain on a timely basis, all necessary approvals, if any, (a) from all federal, state, or local environmental protection agencies required for the construction and operation of the Shopping Center as described in this Agreement, (b) from all governmental agencies required for the construction of the Developers' Work, and (c) those required under any encumbrances on the Shopping Center Site, including the Target Documents, for the construction of Developers' Work and the construction of the Developer Buildings provided, however, that failure to timely complete Developers' Work because of the inability to obtain, or any delay in obtaining, permits or approvals under any Environmental Laws for Developer's Work, including any wetlands mitigation or stream mitigation for Developer's Work, shall be a default hereunder, whether or not Developer has used commercially reasonable efforts to obtain same.

(iv) All access roads within the Shopping Center Site shown on the Site Plan and all roads between the Shopping Center Site and U. S. Highway 11 will provide legal access between the Shopping Center Site and U. S. Highway 11.

(v) All utility service on the Shopping Center Site will be underground except that electric and telephone utility lines may be installed above ground in the areas indicated therefor on the Site Plan. The capacity of such utility services will be sufficient for all activities of a shopping center nature conducted in the Shopping Center, in accordance with high standards of shopping centers similar to the Shopping Center.

(c) **Developer Buildings.** Penney hereby acknowledges that Developers have heretofore delivered to Penney exterior elevations (the "**Elevations**") for the Developer Shop Buildings (the Elevations or a list of the Elevations being attached hereto as Exhibit D), and the parties hereto agree that the architectural design of the Developer Shop Buildings shall be consistent with the Elevations. The Developer Buildings shall be located completely within

the permissible building areas on the Developer Tract and shall otherwise be constructed in accordance with this Agreement, including being consistent with the Elevations; provided, however, that, notwithstanding anything to the contrary contained in this Agreement, Alabaster Two shall have the option of constructing Developer Shop Buildings in place of any or all of the Junior Anchor Buildings shown on the Site Plan.

(d) **Compliance with Laws.** All Plans referred to in this Article shall comply with the building and zoning laws of the municipality or other governmental subdivision wherein the Shopping Center Site is situated and with all laws, ordinances, orders, rules, regulations and requirements of federal, county, state and municipal governments and the appropriate departments, commissions, boards and officers thereof, including environmental protections agencies. All construction will be performed in a good and workmanlike manner using first-class materials and in accordance with all applicable laws, ordinances and governmental rules and regulations.

(e) **Construction of Shopping Center.**

(i) Penney hereby acknowledges that Developers have commenced Developers' Work. Developers shall proceed diligently to complete the same at their expense in conformity with the requirements of the Separate Agreement and the Target OEA and in any event, except for Unavoidable Delays (including delays incurred as provided in Section 4.1(b) hereof), no later than the Scheduled Opening Date unless otherwise provided in this Agreement. Developers shall substantially complete the parking area Common Area on the Shopping Center Site not later than the date provided therefor in the Separate Agreement.

(ii) Notwithstanding anything to the contrary contained in this Agreement, without the prior written consent of all parties hereto, which consent may be withheld in the sole and absolute discretion of each such party, except as expressly shown on the Site Plan there shall be no:

(A) addition of Floor Area beyond that shown on the Site Plan, including the expansion of the Target Building;

(B) material change in the configuration of any Tract forming a part of the Shopping Center Site except as provided in Section 1.4 hereof;

(C) addition of land to, or subtraction of land from, the Shopping Center Site except as provided in Section 1.4 hereof;

(D) material change to the configuration of the Shopping Center, and all improvements thereon (including Common Areas), as reflected on the Site Plan, except for (1) the demising walls separating spaces within the Developer Shop Buildings and Junior Anchor Buildings, which walls may be moved by Alabaster Two at its sole discretion,

and (2) the construction of Developer Shop Buildings in the place of any or all of the Junior Anchor Buildings, and (3) the expansion of the Target Building as provided in this Agreement.

(iii) Subject to the terms and conditions of this Agreement, including clause (ii) immediately above, the configuration of the Shopping Center as depicted on the Site Plan, including all improvements, tabulations and notations thereon, is of the utmost importance to the parties hereto. The Site Plan is a primary inducement to the parties to enter into this Agreement, such parties are entering into this Agreement in reliance on the Site Plan, and any material deviation from the provisions of this Section 4.3(e) shall be deemed actionable and a default by the party taking such action hereunder if such deviation is not corrected on or before 90 days after notice thereof by another party hereto. In the event of a breach of this Section 4.3(e), monetary damages would be difficult, if not impossible to ascertain, and would be inadequate in any event, and, therefore, each party hereto shall each have the right to injunctive relief in the event of a breach of this Section 4.3(e).

(f) **Coordination.** Each party, as respects its respective construction, shall use all reasonable efforts to cause its architects and contractors to cooperate and coordinate its construction with the architects, contractors and construction work of the other parties to the extent reasonably practicable.

4.4 **Penney Building Design.**

(a) **Design Development Plans.** Penney will deliver to Alabaster Two for information only the design development Plans for the exterior of the Penney Building; provided, however, that (i) the materials, colors and materials of the exterior of the Penney Building are architecturally harmonious and compatible with the Developer Buildings, (ii) the Penney Building shall be located entirely within the respective permissible building areas shown therefor on the Site Plan, (iii) the Penney Building design development Plans shall include a parapet wall or other screening on all sides of the respective Building sufficient to reasonably conceal all roof top equipment on the Penney Building from view, and (iv) the design development Plans shall fix the projected electrical requirements of the Penney Building consistent with this Agreement and the Separate Agreement, and shall show the landscaping and irrigation system to be installed by Penney between its Building and the sidewalk. Penney shall not be responsible for the installation of any and all benches, lamp posts or other amenities in the sidewalk running along the curb line. Penney hereby represents and warrants to Developers that the construction and operation of the Penney Building and other improvements constructed by Penney (specifically excluding any site work required to be performed by Developers) in the Shopping Center will not violate any encumbrance on the Shopping Center Site (including the Target OEA), or any existing laws, ordinances, orders, rules or regulations of any governmental authority, agency, instrumentality having jurisdiction over any part of the Shopping Center Site.

(b) **Structural Independence.** The Penney Building shall be structurally independent from the Buildings of the other parties and shall not abut any other Building.

4.5. Penney's Construction. Penney shall construct, substantially in accordance with the terms of this Agreement, all improvements inside of the back of its curb lines that are necessary for the construction and operation of its Building in accordance with this Agreement and the Separate Agreement. Penney shall construct a one-story Penney Building (which shall contain approximately 99,079 square feet of Floor Area) having an overall height not greater than twenty-nine feet (29') above finished floor elevation except for architectural features which may extend to, but not exceed, thirty-four feet (34') above finished floor elevation. Penney's construction shall also include, without limitation, the following improvements between the back of its curb lines and its Building: (i) all sidewalks and walkways, and (ii) the concrete portion of any and all service areas on its Tract. Penney shall commence and complete the construction of its Building and other construction required by this Section 4.5 in sufficient time to enable Penney to commence operation of its business in its Building in accordance with its opening covenant in its Separate Agreement on or before the Scheduled Opening Date, as such Scheduled Opening Date may be revised pursuant to Section 4.1. All landscaping and irrigation systems on the Penney Tract (except for inside the curb line adjacent to the Penney Building) shall be installed, maintained, and replaced by Developers. Subject to Developers performing their obligations set forth in the immediately preceding sentence, all landscaping and irrigation on the Penney Tract inside the curb line adjacent to the Penney Building shall be installed, maintained, and replaced by Penney.

ARTICLE V **DESTRUCTION**

5.1 Damage to Penney Building. Except for the agreement provided for in Section 5.2 below, Penney shall have no obligation to repair or restore its Building irrespective of the extent of the damage thereto, and if such Building is not repaired or restored, the Penney Tract shall remain subject to the restrictions contained in Section 12.19 during the remaining term of this Agreement.

5.2 Damage to Developer Buildings. If any of the Developer Buildings located between the Target Building and the Penney Building or any Common Area improvements on the Alabaster Two Fee Land or on the Target Tract or on the Penney Tract other than those required to be constructed by Penney pursuant to Section 4.5 above (collectively, the "Developer Reconstruction Improvements") are damaged by fire or other casualty, whether insured or uninsured, Alabaster Two shall promptly commence and diligently prosecute to completion repair of all such damage and shall restore and replace the Developer Reconstruction Improvements to not less than their condition prior to such damage or destruction; provided, however, that: (a) neither Alabaster One nor Alabaster Two shall be obligated to repair or restore the Developer Reconstruction Improvements unless Penney agrees in writing with Alabaster Two that the Penney Building will be open and operating as a department store under the name "Penney" or "JCPenney" or under the name under which a majority of Penney's retail department stores (other than catalog or outlet stores) are then being operated on the date Alabaster Two completes the restoration of the Developer Reconstruction Improvements; and (b)

Penney shall reimburse Developers for their out-of-pocket cost of all such repair, restoration and replacement of the Common Area on the Penney Tract, such reimbursement to be made in monthly installments in an amount equal to the percentage of the total of such work that is to be done that was completed in the immediately preceding month. Each such monthly installment shall be paid to the Developers on or before ten (10) days after written request therefor accompanied by a certificate from Developers describing the work done in the immediately preceding month and certifying the aforesaid percentage.

5.3 **Quality of Reconstruction.** Each party agrees that all work or repair or reconstruction on any Building or other improvements that such party is required to effect pursuant to this Agreement shall, subject to Sections 5.1 and 5.2, be commenced promptly following any loss or destruction (and in any event, except for Unavoidable Delays, within 90 days thereafter) and be carried through diligently to conclusion by the party required to so rebuild or repair (and in any event, except for Unavoidable Delays, within eighteen (18) months after the time when the loss or destruction occurred); provided, however, that if such restoration is delayed by reason of Unavoidable Delays, as hereinafter defined, then the party so delayed shall be entitled to an extension of time for a period equal to the time between the date that the party so delayed notifies the other parties that it claims a permitted extension of time until the event causing such delay is terminated. All such repaired and rebuilt Buildings and improvements shall be to as good a condition, to the same general appearance and on the same level or story as the Buildings were immediately prior to such damage or destruction.

5.4 **Restoration of Tracts.** If Buildings or any other improvements on a party's Tract are damaged or destroyed at a time when, or under conditions which, the party is not obligated to rebuild as in this Article V required, and such party elects not to rebuild, then (subject to Alabaster Two's obligation in Section 5.2 above with respect to Penney's obligations under this Section 5.4, and subject to Penney's obligations in Section 5.1 with respect to Alabaster Two's obligations under this Section 5.4) said party shall within a reasonable time after such damage or destruction raze such Buildings or other improvements or such part thereof as has been so damaged or destroyed, clear its Tract of all debris, and all areas not restored to their original use shall be leveled, cleared and left in a sightly and safe condition, and, during the term of this Agreement, so long as the Tract of any other party bound by this Agreement is used for retail purposes, at its option, either (a) pave and stripe same so that it is suitable as a parking area for the Shopping Center, or (b) use its Tract for a use which shall be compatible with the operation of the then-existing Shopping Center (provided that no building or other structure shall be constructed outside of the applicable permissible building lines shown on the Site Plan).

ARTICLE VI **INSURANCE**

6.1 **Property Insurance.** Each party shall, at all times during the term of this Agreement, maintain insurance on its Building or Buildings, and on all improvements, alterations, additions and changes made thereon, with coverage for perils at least as broad as Insurance Services Office form CP 1030 (Causes of Loss-Special Form), including fire, flood

and earthquake coverage. Such insurance shall, during any periods of construction, be "builders risk" insurance and thereafter shall be not less than 100% of the full insurable replacement cost (i.e., total cost less value of land and non-destructibles such as, but not limited to, foundations and utilities) with a maximum deductible of 2% of the full insurable value and shall provide that any loss payable shall be ascertained without deduction for depreciation, however caused, and shall further provide debris removal coverage at the lesser of five percent (5%) of the limit of coverage or Five Million Dollars (\$5,000,000), a waiver of subrogation endorsement to the extent of the insured's right of recovery, and proper allowance for any increased cost of repair, reconstruction or replacement by reason of any ordinance or law regulating construction or repair. Such insurance shall be carried with insurance companies rated "A-/X" or better by the then current edition of *Best's Insurance Reports* published by A.M. Best Co. (or its equivalent, if *Best's* is no longer published). Any party's mortgagee may be named as a mortgagee or as an additional insured on the party's policies provided that, prior to any such naming, such party's mortgagee has entered into a written agreement with each party hereto or provided in its mortgage or deed of trust that any insurance monies collected shall be used to repair, reconstruct or replace the damaged property as required in this Agreement. Each policy of insurance shall provide that notice of any material change or cancellation shall be given not less than ten (10) days in advance thereof to each party hereto.

6.2 Payment of Property Insurance Proceeds. Any loss covered by the insurance required under Section 6.1 shall be adjusted by the party suffering such loss, and the proceeds shall be paid directly to the party to be used in restoration as provided in Article V; provided, however, that the policies of insurance required under Section 6.1 may provide that the proceeds thereof be payable to the holder of any first mortgage on the Tract insured under a standard mortgagee clause, provided such mortgagee will hold the proceeds and agrees that it will, in the event of damage or destruction, apply the proceeds first in accordance with this Agreement.

6.3 Developers' Indemnities. Each of the Developers shall indemnify, defend and save harmless each of the other parties hereto and its partners, officers, directors, members and employees from and against all loss, cost (including reasonable attorneys' fees), damage, expense and liability as a result of injury or death of any person, or property damage to any property, (A) irrespective of the cause of such claim (other than acts of God and the sole negligence or intentional misconduct of the indemnified party, its officers, directors, agents, representatives, contractors, subcontractors, materialmen, suppliers or employees) occurring at any time (i) in any Developer Building or (ii) on any portion of the Common Area during any and all periods in which Developers are required to maintain such portion of the Common Area, or (B) occurring on the indemnified party's Tract resulting from the sole negligence or intentional misconduct of such indemnitor, its officers, directors, agents, representatives, contractors, subcontractors, materialmen, suppliers or employees. Each such indemnitor shall indemnify, defend and hold harmless each of the other parties hereto and its officers, directors and employees against liability, loss, damage, costs or expenses, including reasonable attorneys' fees, arising on account of on-site and off-site injuries to the person or property of third parties resulting from the construction activities of such indemnitor to the extent caused by such indemnitor's negligent or intentional misconduct or that of any of its contractors, subcontractors, materialmen, agents,

representatives or employees. Such indemnitor shall, prior to commencing any work on the Shopping Center Site and thereafter throughout the term of this Agreement procure, maintain, and pay, at its sole cost and expense, the premiums on a policy of commercial general liability insurance insuring such indemnitor's operations with respect to injury or damage occurring on the Shopping Center Site, which insurance shall name each of the other parties hereto as an additional insured and shall contain a special endorsement recognizing and insuring any liability to such other party accruing because of the indemnity set forth in this Section 6.3. Such insurance shall be issued on an occurrence basis, shall have a minimum combined single limit liability coverage of \$5,000,000 per occurrence and \$10,000,000 annual aggregate for injury, death, and property damage and a maximum deductible of \$100,000. Each of the Developers shall indemnify, defend and save harmless Penney and its officers, directors and employees from and against all loss, cost (including reasonable attorneys' fees), damage, expense and liability arising as a result of a violation of Environmental Laws governing work performed or required to be performed by either or both of the Developers under this Agreement and the Separate Agreement, including (A) the failure to obtain and issue to the appropriate party or parties the permits required to perform the Developers' Work or any Maintenance of the Common Area, or any permits required for the Shopping Center Site to be used as a retail center, and (B) the failure to obtain, issue and convey to the appropriate party or parties any wetland mitigation credits (the "Environmental Indemnification"). "Environmental Laws" shall mean and include all federal, state and local environmental, wetlands, health and safety statutes, regulations, ordinances, codes, rules, decrees and other governmental restrictions and requirements relating to or regulating the waters of the United States, stream realignment or relocation, water quality or relating to the existence, treatment, generation, storage, release, transportation, remediation management, regulation or disposal of pollutants, water pollutants or process waste water, oil and gasoline products, or otherwise relating in any way to the environment or any hazardous substance, including: (i) CERCLA; (ii) the Resource Conservation and Recovery Act of 1976 (42 USC Sec. 6901, et seq.); (iii) the Hazardous Materials Transportation Act (49 USC Sec. 1801, et seq.); (iv) the Clean Air Act (42 USC Sec. 7401, et seq.); (v) the Safe Drinking Water Act (21 USC Secs. 201 and 300, et seq.), and the Clean Water Act (33 USC Sec. 1251, et seq.); (vi) the National Environmental Policy Act of 1969 (42 USC Sec. 4321); (vii) the Superfund Amendment and RE-Authorization Act of 1986 (42 USC Sec. 960, et seq.); (viii) all rules and regulation of the United States Environmental Protection Agency; and (ix) all rules and regulations of any other federal, state or local department, board, agency or entity having jurisdiction over the Shopping Center Site with regard to environmental, wetlands, health and safety matters, the waters of the United States, stream realignment or relocation, or water quality, as any of the foregoing have been, or are hereafter, amended.

6.4 Penney Indemnity. Penney covenants and agrees to indemnify, defend and save harmless each of the Developers and its respective partners, officers, directors, members and employees from and against all loss, cost (including reasonable attorneys' fees), damage, expense and liability as a result of injury or death of any person, or property damage to any property, (A) irrespective of the cause of such claim (other than acts of God and the sole negligence or intentional misconduct of the indemnified party, its officers, directors, agents, representatives, contractors, subcontractors, materialmen, suppliers or employees) occurring at any time (i) in its

Building or (ii) on the Common Area of its Tract during any and all periods in which Penney is required to maintain such Common Area, or (B) occurring on the indemnified party's Tract resulting from the sole negligence or intentional misconduct of Penney, its officers, directors, agents, representatives, contractors, subcontractors, materialmen, suppliers or employees. Subject to the right to self-insure pursuant to Section 6.6, Penney covenants and agrees to carry liability insurance with respect to its obligations to the indemnified party pursuant to this Section 6.4, such insurance to afford protection with the same limits as set forth in Section 6.3. Penney shall indemnify, defend and hold harmless each of the Developers and its respective officers, directors and employees against liability, loss, damage, costs or expenses, including reasonable attorneys' fees, arising on account of on-site and off-site injuries to the person or property of third parties resulting from the construction activities of Penney to the extent caused by Penney's negligent or intentional misconduct or that of any of its contractors, subcontractors, materialmen, agents, representatives or employees.

6.5 Insurance Certificate. The insurance policies required pursuant to Sections 6.3 and 6.4 shall contain an endorsement to the effect that such insurance will not be terminated or materially altered or the amount thereof reduced except on not less than 10 days' prior notice to the other parties. In the event that any party fails, within 10 days after demand therefor, to supply such evidence of insurance required to be obtained by it, the requesting party may (but shall not be obligated to) obtain such insurance in its own name, and the failing party shall reimburse the requesting party for all premiums and costs and expenses incurred by the requesting party in connection therewith upon demand accompanied by reasonable substantiation of such premiums, costs and expenses. The party so obtaining such insurance may pursue any remedy available to it to collect the amount of the premiums on such insurance, together with interest per annum at the highest legal rate, from the party failing to obtain such insurance. The parties hereby agree that the said requesting party shall be deemed to have an insurable interest in the property being so insured.

6.6 Self Insurance and Blanket Coverage. Provided a party's tangible net worth is \$200,000,000 or more, or the tangible net worth of an Affiliated guarantor of such party's obligations under this Article VI is \$200,000,000 or more, such party may carry any insurance required to be maintained under this Article VI, either in whole or in part, under any plan of self insurance which such party or Affiliated guarantor may have in effect. Any party may carry any insurance under a policy or policies covering other liabilities and locations of such party and covering other liabilities and locations of any subsidiary, successor, affiliate or controlling corporation of such party, provided the policy limits apply separately to each location. The last published annual report of any such party or guarantor shall be sufficient evidence of its net worth. The statement from a party or guarantor that it has elected to be a self-insurer of the risk and in the amount specified in such statement, may be supplied in lieu of the appropriate insurance certificate otherwise required under Section 6.5. Any party electing to self-insure shall, in the event of a loss which would otherwise be insured under this Article VI, pay the amount of such loss up to the limit of insurance under this Article VI, as provided and in the same manner as set forth in Section 6.2, and no self-insurer shall be entitled to claim that its liability for such loss has in any way been limited by Section 12.1 hereof or otherwise exculpated

hereunder. The amount of any deductible, including any election of a party to carry less than full replacement cost coverage, shall be included in such party's self-insurance. Notwithstanding anything contained in the Target OEA, Penney shall have no obligation to name Developer as an additional insured under any required policy of commercial general liability insurance, and Developer shall have no obligation to name Penney as an additional insured under any required policy of commercial general liability insurance.

6.7 **Insurance Review.** Each party may, at any time, but not more than one (1) time each five (5) years, require a joint review by all of the parties of the insurance coverage and limits of liability for property insurance set forth in Section 6.1 and liability insurance set forth in Sections 6.3 and 6.4 to determine whether the coverage and the limits are reasonable and adequate in the then existing circumstances. The review shall be undertaken on a week day and at a time during normal business hours set forth in a party's notice requesting a review and shall be conducted via conference call. If the parties are, after a review, unable to agree on either the coverage or the limits, then the parties shall submit the question of coverage and limits to an arbitrator appointed by the senior judge of the court of original jurisdiction of the county or district in which the Shopping Center Site is located. In such arbitration each party shall state its position as to required coverage and/or limits, and the arbitrator, after hearing evidence, shall adopt, as the arbitrator's decision, the position stated by one party or the other, and there shall be no compromise. The arbitrator shall set the rules of arbitration and the arbitrator's decision shall constitute an amendment to this Agreement. The cost of the arbitrator shall be shared 50% by Developers and 50% by Penney. In rendering his decision the arbitrator shall consider, without limitation, the requirements of this Article VI, inflation, changes in condition, and the insurance then being carried by other First Class Shopping Centers.

6.8 **Waiver of Subrogation.** Each party hereby releases each of the other parties and their respective officers, directors and employees, from liability or responsibility for any loss or damage to property covered by or required to be covered hereunder by the insurance required to be carried under Section 6.1 or covered under such party's plan of self-insurance as such self-insurance pertains to Section 6.1 coverage. This release shall apply not only to liability and responsibility of the parties to each other, but shall also extend to liability and responsibility for anyone claiming through or under the parties by way of subrogation or otherwise. This release shall apply even if the fire or other casualty shall have been caused by the fault or negligence of a party or anyone for whom a party may be responsible. However, this release shall apply only with respect to the dollar amount of the loss or damage actually recovered from an insurance company, and each party hereto expressly reserves the right to bring an action for any "deductible" amount contained in such party's insurance policy. Any party electing to self-insure pursuant to the terms of Section 6.6 shall be deemed to have waived any rights it may have against the other parties and their insurers in the same manner and to the same extent as such party's insurer would have done pursuant to the requirements of this Section 6.8 if such party had not elected to self-insure.

ARTICLE VII
CONDEMNATION

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7.1 **Condemnation.** In the event that as a result of condemnation or deed in lieu thereof (a) 20% or more of parking area on the Penney Tract, or 20% or more of the parking area on the aggregate of the Developer Tract and Target Tract, is taken, (b) the parking ratio on the Shopping Center Site is reduced below 4.0 parking spaces for each 1,000 square feet of Floor Area in the Shopping Center and neither of the Developers provides substitute parking, including multi-deck parking, reasonably satisfactory to the other parties within eighteen (18) months thereafter, (c) any part of the Penney Building is taken, (d) any part of the land under the Penney Building is taken, or (e) the Penney Tract is separated from and no longer contiguous to the Developer Tract, the party whose Tract or portion thereof shall have been so condemned or sold, may, in any such event and at its option, exercisable by written notice to the other parties, within the period from ninety (90) days before to thirty (30) days after the taking or sale, terminate this Agreement as to its Tract and it shall thereupon be released any further liability hereunder (including in the case of Alabaster Two, any further liability under its operating covenant), except as provided in Section 12.19.

7.2 **Separate Awards.** If all or any part of a Tract is condemned or taken (instead of being sold under threat of condemnation), each party agrees, if permitted by law, to seek separate awards from the condemning authority for the taking of such Tract, and the parties further agree that in such event none shall have any right to any part of any award made to the other. In the event of condemnation of a part of any Tract which does not result in termination of this Agreement as to such Tract, then the owner of such Tract shall, to not less than the extent of such condemnation award, restore the Building and Common Area on its Tract so as to provide a Building and Common Area of the same general appearance as prior to such condemnation.

7.3 **Substitute Parking.** Notwithstanding the foregoing provisions of this Article VII, if any Tract or any portion thereof is condemned or under threat of condemnation, either or both of the Developers may, but shall not be required to, provide substitute parking spaces on or contiguous to the subject Tract or on the Outparcels in locations and of a design subject to the reasonable approval of the other parties.

ARTICLE VIII

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ARTICLE IX
DEVELOPER OPERATING COVENANT

9.1 **Developer Covenant to Operate.** Alabaster Two hereby agrees and covenants to Penney that, subject to Unavoidable Delays and provided that Penney is open for business in the

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Shopping Center, beginning on the Scheduled Opening Date and so long thereafter as Penney is operating a department store on its Tract in compliance with this Agreement and the Separate Agreement, Alabaster Two shall (a) use reasonable commercial efforts to keep all Floor Area in the Developer Buildings leased to the end that the Developer Tract is fully leased and utilized for retail and other uses (including restaurants and ice cream parlors) consistent with First Class Shopping Centers using the best practices of operators of such centers, and (b) operate the Shopping Center under the name "Colonial Promenade Alabaster." All operations by Alabaster Two shall be in accordance with this Agreement, and Alabaster Two shall use diligent reasonable commercial efforts to cause its tenants in the Shopping Center to operate in accordance with this Agreement; provided, however, that neither Alabaster Two nor any such tenants are permitted to operate in a manner that would violate Section 12.19 hereof.

9.2 **Enforcement.** Alabaster Two agrees that in the event of a breach of Section 9.1, monetary damages would be difficult, if not impossible to ascertain, would be inadequate in any event and that continued operation of its Tract by each party as required in this Agreement and its respective Separate Agreement enhances and contributes to the overall success of the Shopping Center. Consequently, Alabaster Two agrees that the covenants in Section 9.1 shall be specifically enforceable by Penney.

ARTICLE X **TERMINATION**

10.1 **Termination.** This Agreement shall terminate on the earlier of the following dates (the "Termination Date"):

- (i) Fifty (50) years from the Scheduled Opening Date;
- (ii) Such earlier termination as provided pursuant to and in accordance with this Agreement.

10.2 **Recordation of Termination Date.** When the Termination Date is known, any party may request the other parties to mutually execute and legally deliver a recordable instrument setting forth the date of the grand opening of the Shopping Center and the Termination Date. The requesting party may record such instrument at its cost in the appropriate public records of the county in which the Shopping Center Site is located.

10.3 **Survival.** All easements granted in Article III, except those which by their terms survive the termination of this Agreement, shall terminate on the termination of this Agreement. The Environmental Indemnification and all other indemnities hereunder shall survive the termination of this Agreement.

ARTICLE XI
UTILITIES AND TAXES

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11.1 **Utilities.** Each party shall make arrangements, and pay, for or cause to be paid all charges for utility services supplied to the Building(s) and Common Area on its Tract, unless otherwise provided herein or in the Separate Agreement. Each party's utilities shall be separately metered, and the cost of such metering and utility service shall be paid by the respective party.

11.2 **Real Estate Taxes.**

(a) Each party shall have the right, at its own cost and expense, to contest any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) by appropriate proceedings, and nothing contained in this Section 11.2 shall require such party to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith, and in the reasonable opinion of counsel for such party, the party's Tract shall not thereby be in danger of being forfeited.

(b) Any assessment for public improvements levied against the Shopping Center in connection with the development of the Shopping Center shall be paid by Alabaster One or Alabaster Two, respectively. Any other assessment for public improvements levied against the Shopping Center, except for assessments levied in connection with any permitted expansion on a party's Tract shall be paid by each respective party in the ratio that the Floor Area then in existence on such party's Tract bears to the Floor Area on the Tracts of the parties hereto; provided, however, that any such assessment benefiting only one party shall be borne solely by the benefited party.

ARTICLE XII
GENERAL

12.1 **Limited Liability of Developers.** The date when the following condition has been completed is called the "Release Date" in this Agreement: completion of the Developers' Work and construction of the Developer Shop Buildings as required by this Agreement and by any applicable provisions of the Separate Agreement. Notwithstanding anything contained in this Agreement to the contrary, if after the Release Date either Alabaster One or Alabaster Two shall fail to perform or pay any covenant or obligation on its part to be performed or paid hereunder or shall breach any warranty or otherwise incur any liability for damages hereunder and as a consequence thereof Penney or its respective successors and assigns shall recover a money judgment against Alabaster One or Alabaster Two or both, such judgment shall (subject to the rights of any mortgagee or deed of trust holder whose lien predates the filing of the complaint which results in such judgment and whose lien has not been subordinated) be enforced against and satisfied only out of (i) the proceeds of sale produced upon execution of such judgment and levy thereon against the Developers' respective interests in the Developer Tract, (ii) the rent, issues or other income from the Developer Tract which have been received from the

Developer Tract and are in the actual or constructive possession of Developers or either of them or which are receivable by the Developers or either of them from the Developer Tract, (iii) the consideration received by the Developers or either of them from the Transfer of all or any part of the Developers' respective interests in the Developer Tract which is held by the Developers at the time such satisfaction of judgment is sought to the extent that the value of the same does not exceed the proceeds of such sale, which consideration shall be deemed to include any asset at any given time held by the Developers or either of them having a value not exceeding the proceeds of such Transfer, (iv) any insurance proceeds or condemnation award payable to the Developers or either of them as the result of any casualty to or condemnation of the Developer Tract which have not been used or required to be used for the restoration of the improvements on the Developer Tract, (v) amounts due and payable to Developers or either of them under this Agreement or the Separate Agreement, and (vi) any insurance proceeds paid to Developers or either of them under any liability insurance policy of the Developers or either of them with respect to a claim which Penney is entitled to enforce against, or seek reimbursement or indemnification from the Developers or such liability insurance carrier. The provisions of this Section 12.1 are not intended to relieve either of the Developers from the performance of any of its obligations hereunder, but rather after the Release Date, to limit the Developers' liability as aforesaid; nor shall any of the provisions of this Section 12.1 be deemed to limit or otherwise affect Penney's right to: (A) obtain injunctive relief necessary to enforce other rights specifically granted to Penney in this Agreement; (B) make a deduction from any sums due either of the Developers as provided in this Agreement or the Separate Agreement; (C) utilize the self-help rights and remedies granted to Penney under this Agreement; (D) avail itself of any other right or remedy available in law or equity under this Agreement against the then-owner of the Developer Tract (not involving a personal liability of the Developers in excess of the limits of personal liability fixed by this Section 12.1 or the personal liability of any member in either of the Developers); or (E) avail itself of any other right or remedy (not involving a personal liability of either of the Developers in excess of the limits of personal liability fixed by this Section 12.1 or the personal liability of any member in either of the Developers) which may be awarded to Penney by law or under the terms of this Agreement by reason of the Developers' failure to perform their obligations hereunder, or (F) proceed against either or both Developers for any liability arising from either or both of their actions, each of the Developers being jointly and severally liable hereunder, and this paragraph shall not be construed to limit such joint and several liability. Subject to the provisions of Section 12.3(b), the provisions of this Section 12.1 shall also inure to the benefit of the respective Developers' partners, members, directors, officers, agents, representatives, employees, successors and assigns, and in the event of any sale or other transfer of all or part of the Developer Tract, Developers shall be entirely freed and relieved of all of its obligations set forth in this Agreement thereafter arising as to the portion of the Developer Tract or interest therein so transferred.

Notwithstanding the foregoing, each of the Developers shall be fully, jointly and severally liable to Penney to the same extent it would be liable absent the foregoing provisions of this Section for: (i) fraud or willful misrepresentations of the Developers; (ii) the misapplication by Developers or either of them of (A) any proceeds paid to either of the Developers under any insurance policies by reason of damage, loss or destruction to any portion of the Shopping

Center, or (B) any proceeds or awards paid to either of the Developers resulting from the condemnation of all or any part of the Shopping Center; (iii) failure by either of the Developers to obtain the insurance required under Sections 6.1 or 6.3 hereof unless the Developers are self-insured in accordance with Section 6.6; and (iv) the Environmental Indemnification.

12.2 Curing of Default. (a) Except with respect to any default which constitutes an emergency that threatens immediate damage or destruction of property or injury to or the death of any person, no party hereunder may exercise any remedy under this Agreement unless and until such party has given the defaulting party twenty (20) days prior written notice of such default and such default continues past such twentieth (20th) day or such later date as may reasonably be necessary if such default cannot be cured within such twenty (20) day period, provided that the defaulting party commences to cure such default with such twenty (20) day period and diligently prosecutes same to completion. If any party shall default in the performance of any covenant contained herein, the non-defaulting parties may, after giving the defaulting party the aforesaid twenty (20) day prior notice and cure period (including the extension thereof as aforesaid) has run without the default being cured, cure the same and charge the cost of such curing to the defaulting party. In addition, the non-defaulting parties shall have the right, in lieu of charging the defaulting party, to deduct the cost of curing from any sums payable hereunder or under the applicable Separate Agreement. Provided that the foregoing notice has been given and cure period (including the extension thereof as aforesaid) has run without the default being cured, nothing herein contained shall prevent either party from proceeding to collect any amounts expended by it in curing the other party's defaults by any other means available to it and without waiting for offsets to occur. Except for events provided for in Section 12.2(b) below, a mortgagee of a party shall have the right to cure any default under this Agreement by its mortgagor and shall have the same right to cure such default as its mortgagor, concurrent with the cure rights of its mortgagor hereunder. Mortgagees that have furnished notice addresses to the parties pursuant to Section 12.8 shall be furnished with copies of notices given pursuant to this Section 12.2.

(b) If a non-defaulting party shall reasonably and in good faith deem that an emergency situation threatening personal injury, death or property damage exists or that a material interference with its business is occurring or has occurred, so that the default requires immediate curing, then, in any such case, no notice shall be required and the non-defaulting party may act promptly without having given such twenty (20) day notice as a condition to doing such work (but the non-defaulting party shall use its best efforts to give at least oral notice prior to acting). Such action shall be taken only to the extent necessary to cure the emergency situation or the material interference with the non-defaulting party's business to the minimum extent possible in light of the circumstances at hand. With reasonable promptness after so acting, the non-defaulting party shall give notice to the defaulting party of the doing of such work and the claimed failure. The non-defaulting party shall prosecute any work performed by it under the provisions of this Section 12.2 to completion in a commercially reasonable manner.

(c) Each party grants to each other party and its respective employees, agents and contractors a license to enter upon grantor's Tract (except the Building(s) constructed thereon) for the purpose of exercising its right of self-help as provided herein.

12.3 Transfer of Ownership or Interest.

12.3: (a) The following capitalized terms have the meanings stated in this Section

"Affiliate" means with respect to any Person, another Person controlled by, or controlling, or under common control with the Person in question ("control" for this purpose means, in the case of a corporation, partnership, limited liability company, or other legal entity, the legal or beneficial ownership of in excess of 50% of the voting securities or interests of the Person controlled).

"Mortgage" means a mortgage, deed of trust, deed to secure debt, security deed, Sale-Leaseback or other instrument recorded against any Tract securing a loan.

"Person" means each individual, partnership, limited liability company, firm, association, corporation, governmental agency or authority, or any other form of legal entity.

"Sale-Leaseback" means a financing transaction in which a party conveys its Tract and leases it back; provided, however, the terms of such lease back shall enable the said party to discharge its obligations under this Agreement and the Separate Agreement, including its opening and operating covenants.

"Transfer" means a sale, assignment, grant or other conveyance (other than a condemnation) of any interest in a Tract, excluding the making of a Mortgage and the granting of easements permitted by this Agreement.

"Transferee" means the purchaser, assignee, grantee or transferee in a particular Transfer.

"Transferor" means the seller, assignor, grantor or transferor in a particular Transfer.

"Accommodator" means a single purpose limited liability company formed by a Qualified Intermediary, as defined in Internal Revenue Code Reg. 1.103(k)-1(g)(4), for the purpose of acquiring a Party's Parcel and/or constructing a Party's store building.

"1031 Exchange" means an exchange (rather than a purchase) of a Party's Parcel and the improvements constructed thereon for other property of a like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended and the Regulations promulgated thereunder and Revenue Procedure 2000-37.

"Relinquished Property" means the property being sold by a party pursuant to a 1031 Exchange in exchange for such Party's Parcel.

(b) Each of the Developers shall have the right at any time, and from time to time, (x) to Transfer its portion of the Developer Tract and/or (y) place a Mortgage on its portion of the Developer Tract, but subject and subordinate to this Agreement and subject further to the following:

There shall be no Transfer by either of the Developers prior to the date: (1) of substantial completion (that is, completed except for minor punch-list items which can be completed within thirty (30) days) by Developers of the Developers' Work in accordance with this Agreement; provided however, that the foregoing shall not prohibit a Transfer as a result of the sale of all or substantially all of the assets of the Transferor or as a result of a merger or consolidation of or by the Transferor. On or before any Transfer by either of the Developers, the Developers shall certify to the other parties that the conditions set forth in the immediately preceding sentence have been satisfied. With respect to any Transfer by either of the Developers permitted by the foregoing, the Transferee shall be a national or regional shopping center development company, an institutional investor or other entity of good repute, and shall either be experienced in the operation of First Class Shopping Centers or shall agree to employ experienced professional management for the Shopping Center. As used in the immediately preceding sentence, the term **"experienced"** shall mean that such management entity has managed for at least five full years at least three First Class Shopping Centers. The provisions of this Section 12.3 shall not, however, prevent or apply to any Transfer to a governmental entity for purposes of dedicating or otherwise conveying property for public roadways, retention or detention ponds, or related purposes nor shall they prevent or apply to any Transfer of any utility line to any governmental entity.

(c) Prior to substantial completion of construction of the Penney Building and its initial opening for business with the general public, Penney shall not Transfer its ownership interest in the Penney Tract (except (i) as otherwise provided in its Separate Agreement, (ii) as a result of any merger, sale of substantially all of its assets, or consolidation, or (iii) in connection with a Section 1031 exchange or as more particularly set forth in Section 12.3(j) hereof). Penney shall thereafter have the right to Transfer its interest in the Penney Tract at any time. In the event of any such Transfer by Penney to a Transferee that expressly assumes the obligations of Penney under this Agreement for the benefit of Developers and Penney, the Transferor shall be released and discharged from all of its obligations under this Agreement, except any obligations that have

accrued prior to the effective date of such Transfer, which obligations shall survive the closing of any such Transfer; and Developers shall look solely to such Transferee for the performance of any such obligations which accrue after the effective date of any such Transfer.

(d) Except as otherwise provided in this Section 12.3, in the event of a Transfer of all or any portion of the fee of a Tract, it shall be deemed and construed, without further agreement between the parties hereto and the Transferee, that the Transferee has expressly assumed and covenanted with each of the non-Transferor parties, effective upon the making of such Transfer, to perform and be bound by all the terms, covenants and conditions under this Agreement to be performed by the Transferor; however, if such Transfer is of less than the entire interest in such Tract, such Transferee shall be deemed to be jointly and severally liable with all other owners of interests in such Tract in connection with all terms, covenants and conditions under this Agreement binding the owner(s) of such Tract except for the operating covenant of the Transferor, and the other parties shall only be required to give Notices required or permitted by this Agreement to the Transferor. Upon any Transfer, the Transferee shall enter into an assumption agreement covering the foregoing matters, which assumption agreement shall be in form and content reasonably satisfactory to the other parties hereto and shall run to the benefit of such other parties.

(f) In the case of a Sale-Leaseback, the Transferee, and its successors and assigns, notwithstanding the provisions of subsection (b) hereof, shall not: (i) be deemed to have assumed the terms, covenants and conditions under this Agreement to be performed by the Transferor, or (ii) be personally liable to the other parties for default in performance of any of the terms, covenants and conditions under this Agreement to be performed in respect of the Tract being Transferred; but the Transferor (or an Affiliate thereof, as the case may be), or successor, assignee or sublessee thereof, as holder of the leasehold interest under the lease which is a part of such Sale and Leaseback, shall be deemed to have agreed to be bound hereby and shall, if requested by the other parties, execute a recordable instrument binding itself hereby (if it is not otherwise liable therefor on any other basis) for the benefit of the other parties to this Agreement; however, the Transferee, or its successors at such time as owner of such Tract shall, without further act, become (and shall be deemed to have agreed so to become) liable upon such terms, covenants and conditions, to the extent thereafter to be performed (but shall not be liable for the performance of any such term, covenant or condition as to any matter which arose prior thereto), with respect to such Tract on the date when such lease is terminated for default or is surrendered or when the demised term thereunder expires, but only if and as long as such Transferee, or its successors at such time as owner thereof, has not entered into another lease, in which case the tenant thereunder shall be deemed and construed to have assumed the terms, covenants and conditions under this Agreement and the respective Separate Agreement to be performed by the Transferor with the same effect as if it had been the Transferee in a Transfer as provided in subsection (b) hereof.

(g) In the event of the making of any Mortgage, the holder of such Mortgage shall take its interest subject to this Agreement, provided that nothing in this Agreement shall be deemed to make the holder thereof liable for the performance of any term, covenant or condition

under this Agreement to be performed by the owner of such mortgaged Tract; provided, however, that if and when title to such Tract becomes vested in any Person as a result of a foreclosure under said Mortgage or by deed in lieu of foreclosure or the holder of the Mortgage becomes a mortgagee in possession of such Tract, then such Person or mortgagee shall so become liable for the performance of any such term, covenant and condition thereafter to be performed except as provided in the respective Separate Agreements (but shall not be liable for the performance of any such term, covenant or condition as to any matter which arose prior thereto), and it shall remain so liable only for the performance of such terms, covenants or conditions to be performed during the period when such title to such Tract is vested in it or it has become a mortgagee in possession of such Tract. Neither the making of such Mortgage nor its foreclosure shall release the maker thereof from any liability it would have had under this Agreement had such Mortgage not been made. No mortgagee shall be deemed a mortgagee in possession if such mortgagee cures any default under said Mortgage or this Agreement or cures any default or exercises any right of self-help under said Mortgage or under law. The parties hereto recognize and agree that the failure of any party to perform any of its obligations, duties, agreements or covenants hereunder may constitute a default under any Mortgage of the defaulting party.

(h) Upon the consummation of a Transfer, unless such Transfer is a Sale-Leaseback or is a Transfer in connection with foreclosure by a mortgagee or acceptance of a deed in lieu of foreclosure, where the Transferor Transfers its entire interest in such Tract, the Transferor shall, provided it has delivered notice of such Transfer to the other parties and provided the Transferee specifically assumes in writing the obligations of the Transferor under this Agreement and agrees to be bound thereby, be released from any and all liability which would thereafter arise from or in connection with any term, covenant or condition under this Agreement to be performed after the Transfer, but the Transferor shall remain liable for all such liability in respect of events theretofore occurring and shall remain primarily obligated under this Agreement until the date of such Transfer. Except as set forth in the permitted transfer provisions of the Separate Agreements, no Transfer by Penney shall relieve it of its obligations under Article IX.

(i) Nothing in this Section 12.3 shall be construed to limit the enforcement of any rights of a mortgagee under a Mortgage.

(j) (i) Any party may elect, in its sole and absolute discretion, to exchange (rather than initially purchase) its Tract for other property of a like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended and the Regulations promulgated thereunder (the "Code"). Therefore, each party expressly reserves the right to assign its rights, but not its obligations, hereunder. A party may further elect to cause the improvements to be constructed on its Tract to be performed by the Accommodator as owner of the Tract.

(ii) No 1031 Exchange by any party of, or election to have an Accommodator acquire title to, all or any part of its Tract, including the improvements to

be constructed thereon, shall be deemed to release such party from any of its obligations hereunder. Further in the event a party has elected to acquire title to its Tract through an Accommodator and/or to have the improvements on its Tract constructed by the Accommodator, such party may lease its Tract from the Accommodator during the time period title to its Tract is held by the Accommodator; provided, however, that such party must acquire fee simple title to its Tract, including the improvements thereon, in its own name and have its rights hereunder reassigned within 180 days following the date on which the Party's Relinquished Property is sold.

(iii) To exercise its right under this Section 12.3 to exchange, rather than purchase, its Tract, the electing party shall provide the other parties with a written statement stating its intent to enter into an exchange prior to the date on which title to such party's Tract is to be acquired by an Accommodator. Such notice shall also include an appropriate document executed by the electing party affirming to all other parties hereunder that the electing party shall remain fully liable under the terms of this Agreement and the Separate Agreement and that any warranties and representations of the electing party set forth in this Agreement or the Separate Agreement or required pursuant to this Agreement or the Separate Agreement shall remain the representations and warranties of the electing party. Such notice shall be sent to the addresses set forth in Section 12.8 hereof.

(iv) Notwithstanding anything to the contrary herein contained, if any party shall have, prior to the date of execution of this Agreement entered into a 1031 Exchange of its Tract, then in no event shall the Accommodator under such 1031 Exchange be deemed to have assumed or be bound to perform any of such electing party's obligations hereunder and such obligations shall continue to remain those of such electing party.

12.4 Exhibits. All exhibits to this Agreement are by this reference made a part of this Agreement to the same extent as if the same had been written directly within the body of this Agreement.

12.5 Rights Cumulative. All rights, powers and privileges conferred hereunder shall be cumulative and not restricted to those given by law. The rights and remedies of each party shall, unless otherwise expressly provided in a particular provision, be deemed to be cumulative and none of such rights or remedies at law or in equity which any party might otherwise have from a default under this Agreement and no exercise of any right or remedy by a party shall impair any such party's standing to exercise any other right or remedy. Furthermore, unless otherwise expressly specifically noted in this Agreement to the contrary, any remedies of a party specifically provided for shall be deemed additional to any and all other remedies to which it may be entitled in law or equity, and shall include the right to restrain by injunction any violation or threatened violation by a party of any of the terms, covenants or conditions of this Agreement and by decree to compel performance of any such terms, it being agreed that the remedy at law for any breach of any such term is not adequate.

12.6 Sole Agreement. This Agreement shall constitute the sole agreement among the parties with respect to the Shopping Center Site and the Outparcels, and all prior negotiations are merged herein; provided, however, that this Agreement (except for the provisions of Section 1.1 of this Agreement) may be supplemented and modified as provided in the Separate Agreement. Except for the Separate Agreement, this Agreement may not be amended or modified except by a writing executed by all of the parties hereto with the formalities required at the execution of this Agreement.

12.7 Applicable Law. This Agreement shall be governed and construed in accordance with the law of the State in which the Shopping Center Site is located. If any provision of this Agreement shall, to any extent, be invalid under such law, the remaining provisions of this Agreement shall not be affected thereby. The titles of the various Articles, Sections and subsections of this Agreement are for convenience only and shall not be considered in construing this Agreement.

12.8 Notice. Every notice, demand, consent, request, approval or other document or instrument required or permitted to be served upon any of the parties hereto and their mortgagees shall be in writing in the English language and shall be deemed to have been duly served on the date on which the addressee thereof has received or is deemed to have received the same, as hereinafter set forth, and shall be sent by registered or certified United States Mail, postage prepaid, return receipt requested, or by an independent, nationally recognized overnight express delivery service that provides receipts to indicate delivery, addressed, if to a party's mortgagee at the address last designated by such mortgagee, by notice given to the parties hereto, and if to a party hereto, to the respective parties at the address stated below:

(i) If to either of the Developers:

Colonial Realty Limited Partnership
Colonial Center Blue Lake
3500 Blue Lake Drive, Suite 100
Birmingham, Alabama 35243
Attention: President

with a copy to:

David L. Huprich
Griffin Fletcher, LLP
3500 Red Bank Road
Cincinnati, Ohio 45227

(ii) If to Penney:

If by U.S. Postal Service:

J.C. Penney Properties, Inc.

P.O. Box 10001
Dallas, Texas 75301-1104
Attention: Real Estate Counsel

If by overnight delivery service:

J.C. Penney Properties, Inc.
6501 Legacy Drive, m/s 1104
Plano, Texas 75024-3698
Attention: Real Estate Counsel

Any party may change the place for serving of notices upon it to another address within the continental United States by notice informing the other parties of the change in address to which notices shall be sent. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given shall be deemed to be the receipt of the notice or request.

12.9 Successors and Assigns. All the terms, conditions and provisions of this Agreement shall extend to and be binding upon each party and its respective successors and assigns and upon any person, persons, entity or entities coming into ownership or possession of any interest in the Shopping Center Site by operation of law or otherwise.

12.10 Time of Essence. Time is of the essence in the performance of the terms and conditions of this Agreement.

12.11 Estoppel Certificate. Each party severally covenants that within thirty (30) days after request of another party, but not more than twice in any twelve (12) month period, it will issue to such other party, to a prospective purchaser or to any mortgagee of such party, an estoppel certificate stating: (i) whether to the best knowledge of the party to whom the request has been directed, a notice of default has been given by or to such party, and if there are noticed defaults, specifying the nature thereof; (ii) whether to its knowledge this Agreement has been assigned by such certifying party, (iii) whether to its knowledge this Agreement has been modified or amended in any way (or if it has, then stating the nature thereof); and (iv) that to the party's knowledge this Agreement is, as of that date, in full force and effect.

12.12 Superiority of Agreement. This Agreement and all amendments hereafter entered into shall be prior and superior to the title, lien or encumbrance of any Mortgage, it being expressly acknowledged by the parties hereto that the Target OEA is not a "Mortgage" as that term is used in this Agreement.

12.13 No Joint Venture; Developers' Joint and Several Liability. Nothing contained in this Agreement shall be construed to make the parties hereto partners or joint

venturers or to render any party liable for the debts or obligations of any other party, except as this Agreement may expressly provide.

12.14 Agreement for Benefit of Parties Only. Except as otherwise expressly provided in Article III and in Section 12.9, this Agreement shall in no way constitute or create rights in Persons not parties hereto, except for the respective successors and assigns of such parties, or create obligations or responsibilities to any Person not a party hereto except for the respective successors and assigns of the parties hereto. This Agreement is not intended, and shall not be construed, to dedicate or otherwise convey any rights or easements to the general public, but this provision shall not prohibit Developers from dedicating or otherwise conveying property or utility lines as provided elsewhere in this Agreement. Each party shall have the right to close its Tract to the public as often, but only as often, as legally necessary to prevent the acquisition of any prescriptive or other rights by the public.

12.15 Conflicts. (a) Where any irreconcilable conflict appears between the terms and conditions of this Agreement and the provisions or illustrations of any Exhibit forming a part of this Agreement, the terms of this Agreement shall control.

(b) The parties hereto acknowledge that they are entering into the Separate Agreement which supplements the terms and provisions of this Agreement, and that the terms and provisions of such Separate Agreements shall control if in conflict between the Separate Agreement and the provisions of this Agreement, except that nothing in the Separate Agreement shall be deemed to amend or in any way reduce or abrogate any of the provisions of Section 1.1 hereof.

12.16 Unavoidable Delays. Whether or not expressly provided in any particular provision of this Agreement, each party hereto shall be excused from performing any of its obligations or undertakings provided in this Agreement, except any of its obligations to pay any sums of money under the applicable provisions hereof, as long as the performance of such obligations is prevented or delayed by any cause which is beyond the control of such party (other than the financial condition of such party or the failure of such party to fund its obligations hereunder), including the forces of nature, fire, earthquake, floods, explosion, actions of the elements (including abnormal rainfall), war, invasion, insurrection, riot, violence, sabotage, terrorism, malicious mischief, failure of transportation, shortages of or limitations on the availability of energy or water, strikes, lockouts, picketing, action of labor unions, condemnation, requisition, order of government or civil or military authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the control of such party, including delays provided for in Section 4.1(b) hereof (if either or both of the Developers experience a delay provided for under Section 4.1(b), such delay shall not also be deemed to allow Developers to also have a delay separate from or in addition to the delay provided for under Section 4.1(b)); provided, however, if such party shall not have given the other party notice of such event, the nature thereof and the delay reasonably expected to be caused thereby within thirty (30) days after the occurrence of such event, the period of time between the expiration of said thirty (30) day period and the giving of such notice shall be excluded from the period of Unavoidable

Delay. Any delay or cause excusing performance pursuant to the terms of this Section is referred to herein as "**Unavoidable Delay.**"

12.17 **No Termination of Agreement.** Except as herein expressly provided, no breach of this Agreement or default by any party shall entitle any other party to terminate or cancel this Agreement.

12.18 **Covenants Running With the Land.** Except as herein otherwise expressly provided, all covenants, conditions, restrictions and agreements contained herein binding and benefiting the parties, respectively, shall be deemed to be and shall be construed as covenants running with the land. Wherever a covenant, condition or agreement refers to a specific Tract, such covenant, condition or agreement shall be deemed to have been made by the fee owner of such Tract unless otherwise provided herein.

12.19 **Compatible Uses.** During the term hereof, and also in the event this Agreement is terminated as to the Tract of one or more parties prior to the expiration of the term of this Agreement, so long as either of the Developers (or any of its tenants), Target or Penney continues to operate on its respective Tract, the provisions of Section 5.1.2 of the Target OEA shall be applicable to the Shopping Center Site and are hereby incorporated herein as fully as if set forth herein. Alabaster Two agrees that none of its leases or other agreements with occupants of the Developer Buildings will permit uses prohibited by this Section 12.19. Penney agrees that no lease, sale or other Transfer agreement regarding its Tract or its Building will permit uses prohibited by this Section 12.19.

12.20 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original and all of which shall together constitute one and the same agreement, and shall be binding on the parties hereto; and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

12.21 **Indemnification of Related Parties.** Whenever a party has agreed in this Agreement to indemnify, defend and hold harmless another party, such agreement shall include the indemnified party's respective officers, directors, shareholders, members, partners, agents, employees, representatives, contractors, consultants, materialmen and subcontractors.

12.22 **Authority Joinder.** The Authority, as the fee owner of the Alabaster Two Leased Land and the lessor under the Ground Lease, by execution of its joinder hereto hereby (a) ratifies and affirms this Agreement, (b) joins in all grants and conveyances, if any, made by a party with respect to the Alabaster Two Leased Land, and (c) subjects its interest in the Alabaster Two Leased Land to all of the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained herein, the parties hereto and the Authority acknowledge that (i) the Authority is not a party to this Agreement, (ii) this Agreement may be modified, amended and/or terminated without the Authority's consent, (iii) during the period in which the Alabaster Two Leased Land is owned by the Authority, Alabaster Two shall be deemed to be the "owner" of

such property for the purposes of this Agreement, and (iv) except as other wise expressly set forth herein, the Authority shall not have any obligations under this Agreement.

12.23 Termination of Alabaster One as a Party. It is acknowledged by Penney and Alabaster Two that the Alabaster One Land consists entirely of land that may be dedicated or otherwise conveyed by Alabaster One to one or more governmental entities for public purposes such as roadways and detention or retention ponds and related purposes. If and when such dedication or other conveyance occurs and Alabaster One no longer owns any part of the Alabaster One Land, Alabaster One shall thereupon automatically (a) cease to be a party to this Agreement and (b) be deemed released from all obligations under this Agreement whether made only by Alabaster One or jointly and severally by Alabaster One and Alabaster Two (provided, however, that such release shall not release Alabaster One from any liability that has theretofore accrued to Alabaster One under this Agreement), and all references to "Alabaster One", or "Developers" in this Agreement shall thereafter mean Alabaster Two. The operation of the provisions of the immediately preceding sentence shall not operate to release Alabaster Two or Penney from any of their respective obligations under this Agreement, and this Agreement shall continue in accordance with its terms and conditions regardless of such termination as to Alabaster One. No governmental entity shall become a party to this Agreement by virtue of any such dedication or other conveyance or otherwise, nor shall any easement granted to Alabaster One under this Agreement for parking on or access to the Penney Tract or the Alabaster Two Land be deemed to run to such governmental entity or to the public. While the provisions of this Section 12.23 are self-operative, if written request is made, after the self-operation of the provisions of this Section has occurred, to Penney, Alabaster One or Alabaster Two that it execute and deliver a written, recordable instrument confirming that the self-operation of this Section has occurred and that Alabaster One is no longer a party to this Agreement, then, if such is the case, the entity receiving such request shall execute and deliver such confirmation to the requestor within ten (10) days after receipt of such request, the form and content of such confirmation being subject to the reasonable approval of the entity that is executing and delivering such confirmation (which confirmation shall include a statement of the remaining liabilities, if any, of Alabaster One under this Agreement that have survived such termination as to Alabaster One).

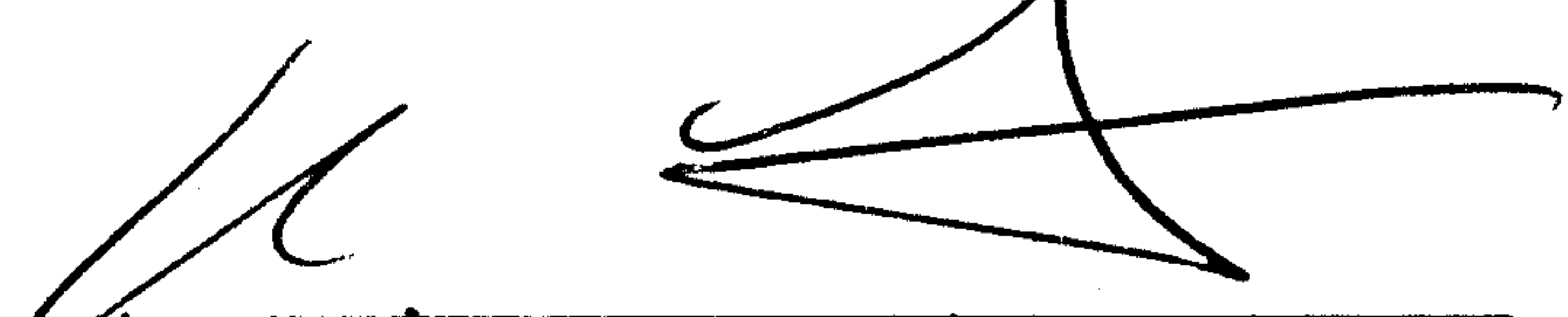
IN WITNESS WHEREOF, the parties have caused this instrument to be executed and delivered in multiple counterparts, each counterpart being deemed an original, to be effective as of the date first set forth above.

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INTENTIONALLY BLANK. SIGNATURES ARE ON FOLLOWING PAGES.]



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HIGHWAY 31 ALABASTER, LLC,
an Alabama limited liability company

By: 

Name: William Leithner
Delegated Authorized Signatory

THE STATE OF ALABAMA

COUNTY Jefferson

I, a Notary Public, in and for said County in said State, hereby certify that
William Leithner whose name as a Delegated Authorized
Signatory for HIGHWAY 31 ALABASTER, LLC, an Alabama limited liability company, is
signed to the foregoing instrument or conveyance and who is known to me, acknowledged before
me on this day that, being informed of the contents of the conveyance, he, as such Delegated
Authorized Signatory and with full authority, executed the same voluntarily for and as the act of
said trust and for and as the act of said limited liability company.

Given under my hand this the 14th day of March, 2006.

Lisa A. Morrison

Notary Public

Print Name Lisa A. Morrison

My commission expires: _____
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 7, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS



20060316000123780 48/75 \$233.00
Shelby Cnty Judge of Probate, AL
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HIGHWAY 31 ALABASTER TWO, LLC,
an Alabama limited liability company

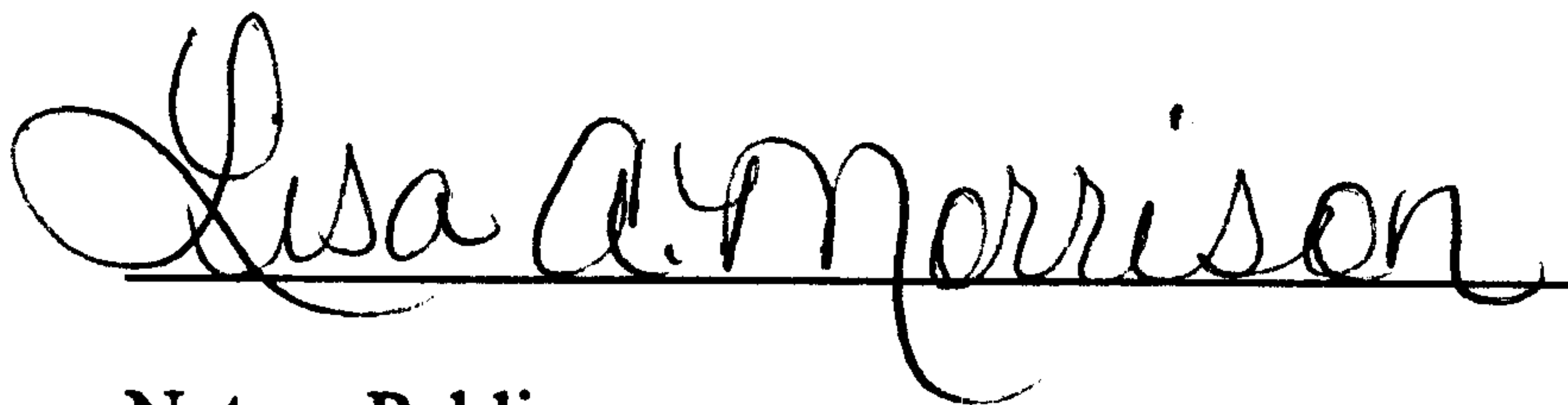
By: 
Name: William Leitner
Delegated Authorized Signatory

THE STATE OF ALABAMA

COUNTY Jefferson

I, a Notary Public, in and for said County in said State, hereby certify that
William Leitner whose name as a Delegated Authorized
Signatory for HIGHWAY 31 ALABASTER TWO, LLC, an Alabama limited liability company,
is signed to the foregoing instrument or conveyance and who is known to me, acknowledged
before me on this day that, being informed of the contents of the conveyance, he, as such
Delegated Authorized Signatory and with full authority, executed the same voluntarily for and as
the act of said trust and for and as the act of said limited liability company.

Given under my hand this the 14th day of March, 2006.



Notary Public

Print Name Lisa A. Morrison

My commission expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 7, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS



J. C. PENNEY PROPERTIES, INC.
a Delaware corporation

By: [Signature]
Name: Paul W. Fredbo
Title: President

THE STATE OF TEXAS

COUNTY Collins

I, a Notary Public, in and for said County in said State, hereby certify that
Paul W. Fredbo whose name as President of
J. C. PENNEY PROPERTIES, INC., a Delaware corporation, is signed to the foregoing
instrument or conveyance and who is known to me, acknowledged before me on this day that,
being informed of the contents of the conveyance, he, as such officer and with full authority,
executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 10th day of MARCH, 2006.

[Signature]

Notary Public

Print Name Sherrie Fortier

My commission expires:

8-2-08



CONSENT AND JOINDER OF
THE COMMERCIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALABASTER
TO
CONSTRUCTION, OPERATING AND EASEMENT AGREEMENT (the "Penney REA")
AMONG
J.C. PENNEY CORPORATION, INC.,
HIGHWAY 31 ALABASTER, LLC
AND
HIGHWAY 31 ALABASTER TWO, LLC

The Commercial Development Authority of the City of Alabaster, Alabama, as the fee owner of the Alabaster Two Leased Land and the lessor under the Ground Lease (as those terms are defined in the Penney REA, hereby joins the REA for the purposes set forth in Section 12.22 of the Penney REA. The terms, covenants and conditions contained herein shall bind the Commercial Development Authority of the City of Alabaster, Alabama, and its successors and assigns.

THE COMMERCIAL DEVELOPMENT AUTHORITY
OF THE CITY OF ALABASTER, an Alabama municipal
corporation

By: Dennis Rother
Name: DENNIS ROTHER
Title: CHAIRMAN

THE STATE OF ALABAMA

COUNTY OF SHELBY

I, a Notary Public, in and for said County in said State, hereby certify that
Dennis Rother whose name as Chairman of
The Commercial Development Corporation of the City of Alabaster, an Alabama municipal
corporation, is signed to the foregoing instrument or conveyance and who is known to me,
acknowledged before me on this day that, being informed of the contents of the conveyance,
he/she, as such officer and with full authority, executed the same voluntarily for and as the act of
said entity.

Given under my hand this the 15th day of March, 2006.

Lori L Conklin, Notary Public

Print Name Lori L. Conklin

MY COMMISSION EXPIRES NOV. 5, 2007

My commission expires: _____

3-10-06 DLH

List of Exhibits

- Exhibit A-1: Legal Description of Alabaster One Land
- Exhibit A-2: Legal Description of Alabaster Two Fee Land
- Exhibit A-3: Legal Description of Alabaster Two Leased Land
- Exhibit A-4: Legal Description of Penney Tract
- Exhibit A-5: Legal Description of Target Fee Land
- Exhibit A-6: Legal Description of Target Leased Land
- Exhibit A-7: Legal Description of Target Outlot
- Exhibit A-8: Legal Description of Outparcel 5 Expansion Land
- Exhibit A-9: Legal Description of Outparcel 6 Expansion Land
- Exhibit B: Site Plan
- Exhibit C: Common Area Maintenance Specifications
- Exhibit D: Elevations
- Exhibit E: List of Developers' Work Plans
- Exhibit F: Pylon Sign



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EXHIBIT A-1

LEGAL DESCRIPTION OF ALABASTER ONE LAND

DEVELOPER PARCEL 3: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in the Southwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section; thence run North 02 degrees 27 minutes 46 seconds West along the East line thereof for a distance of 36.91 feet; thence run North 41 degrees 36 minutes 27 seconds East for a distance of 23.06 feet; thence run North 14 degrees 14 minutes 05 seconds East for a distance of 196.57 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2411.83 feet, a central angle of 09 degrees 27 minutes 33 seconds, a chord bearing of North 30 degrees 50 minutes 31 seconds West for a chord distance of 397.72 feet; thence run along arc of said curve and along said right of way for a distance of 398.17 feet to the POINT OF BEGINNING and a point on a curve to the right, leaving said right of way, said curve having a radius of 337.00 feet, a central angle of 44 degrees 47 minutes 15 seconds, a chord bearing of North 77 degrees 13 minutes 34 seconds West for a chord distance of 256.77 feet; thence run along arc of said curve for a distance of 263.43 feet; thence run North 35 degrees 10 minutes 03 seconds East for a distance of 50.00 feet to the point of commencement of a curve to the left, said curve having a radius of 287.00 feet, a central angle of 41 degrees 55 minutes 12 seconds, a chord bearing of South 75 degrees 47 minutes 59 seconds East for a chord distance of 205.33 feet; thence run along arc of said curve for a distance of 209.98 feet to a point on said Westernmost right of way line of U.S. Highway 31 and the point of commencement of a curve to the left, said curve having a radius of 2411.83 feet, a central angle of 01 degrees 14 minutes 41 seconds, a chord bearing of South 25 degrees 29 minutes 24 seconds East for a chord distance of 52.40 feet; thence run along arc of said curve and along said right of way for a distance of 52.40 feet to the POINT OF BEGINNING. Said parcel contains 1,840 square feet or 0.27 acres more or less.

DEVELOPER PARCEL 4: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in part of the Southwest one-quarter of the Northeast one-quarter, the Northwest one-quarter of the Northeast one-quarter, the Southeast one-quarter of the Northwest one-quarter and the Northeast one-quarter of the Northwest one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Northwest one-quarter of the Northeast one-quarter of said Section; thence run South 87 degrees 31 minutes 35 seconds East along the South line for a distance of 174.79 feet to the POINT OF BEGINNING; thence run a long last described course for a distance of 155.59 feet; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 234.01 feet to the



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point of commencement of a curve to the right, said curve having a radius of 330.92 feet, a central angle of 38 degrees 45 minutes 12 seconds, a chord bearing of North 89 degrees 41 minutes 18 seconds West for a chord distance of 219.59 feet; thence run along arc of said curve for a distance of 223.83 feet; thence run South 38 degrees 23 minutes 35 seconds West for a distance of 214.72 feet to a point on the Easternmost right of way line of Interstate 65 (right of way varies) and the point of commencement of a curve to the right, said curve having a radius of 3669.72 feet, a central angle of 10 degrees 59 minutes 37 seconds, a chord bearing of North 19 degrees 07 minutes 40 seconds West for a chord distance of 703.05 feet; thence run along arc of said curve and along said right of way for a distance of 704.13 feet; thence run North 01 degrees 24 minutes 20 seconds East along said right of way for a distance of 151.25 feet; thence leaving said right of way, run South 89 degrees 27 minutes 02 seconds East for a distance of 194.06 feet; thence run South 00 degrees 34 minutes 03 seconds West for a distance of 342.40 feet; to the point of commencement of a curve to the left, said curve having a radius of 275.00 feet, a central angle of 99 degrees 51 minutes 21 seconds, a chord bearing of South 49 degrees 20 minutes 20 seconds East for a chord distance of 420.88 feet; thence run along arc of said curve for a distance of 479.27 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 142.65 feet to the POINT OF BEGINNING. Said parcel contains 149,679 square feet or 3.44 acres more or less.

DEVELOPER PARCEL 5: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in the Southwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Northwest one-quarter of the Northeast one-quarter of said Section; thence run South 87 degrees 31 minutes 35 seconds East along the South line for a distance of 621.77 feet to the POINT OF BEGINNING; thence leaving said South line, run South 87 degrees 31 minutes 35 seconds East for a distance of 51.30 feet; thence run South 69 degrees 46 minutes 25 seconds West for a distance of 50.00 feet; thence run North 20 degrees 13 minutes 35 seconds West for a distance of 19.80 feet to the POINT OF BEGINNING. Said parcel contains 468 square feet or 0.01 acres more or less.



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EXHIBIT A-2

LEGAL DESCRIPTION OF ALABASTER TWO FEE LAND

DEVELOPER PARCEL 1: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in the Southwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of said Southwest one-quarter of the Northeast one-quarter and run North 87 degrees 51 minutes 24 seconds West along the South line of said quarter-quarter for a distance of 716.00 feet; thence leaving said South line, run North 22 degrees 00 minutes 08 seconds West for a distance of 295.00 feet to the POINT OF BEGINNING; thence run North 89 degrees 10 minutes 01 seconds West for a distance of 297.23 feet to a point on the Easternmost right of way line of Interstate 65 (right of way varies); thence run North 24 degrees 39 minutes 45 seconds West along said right of way for a distance of 303.47 feet; thence leaving said right of way, run North 69 degrees 47 minutes 27 seconds East for a distance of 169.72 feet; thence run North 20 degrees 12 minutes 33 seconds West for a distance of 30.00 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 273.86 feet; thence run North 58 degrees 46 minutes 41 seconds East for a distance of 30.56 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 343.11 feet; thence run South 20 degrees 13 minutes 35 seconds East for a distance of 82.05 feet to the point of commencement of a curve to the left, said curve having a radius of 287.00 feet, a central angle of 10 degrees 14 minutes 21 seconds, a chord bearing of South 25 degrees 20 minutes 31 seconds East for a chord distance of 51.09 feet; thence run along arc of said curve for a distance of 51.16 feet; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 145.77 feet; thence run South 20 degrees 12 minutes 33 seconds East for a distance of 20.00 feet; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 241.45 feet; thence run South 20 degrees 12 minutes 33 seconds East for a distance of 207.90 feet; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 135.72 feet; thence run South 22 degrees 00 minutes 08 seconds East for a distance of 84.31 feet to the POINT OF BEGINNING. Said parcel contains 208,998 square feet or 4.80 acres more or less.

DEVELOPER PARCEL 2: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in part of the Northeast one-quarter of the Northwest one-quarter, the Southeast quarter of the Northwest quarter, the Northwest one-quarter of the Northeast one-quarter and the Southwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southeast corner of the Northeast one-quarter of the Northwest one-quarter of said Section; thence run South 87 degrees 31 minutes 35 seconds East along the South line of said quarter-quarter for a distance of 174.79 feet; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 142.65 feet to the point of commencement of a curve to the right, said curve having a radius of 275.00 feet, a

central angle of 28 degrees 15 minutes 58 seconds, a chord bearing of North 85 degrees 08 minutes 01 seconds West for a chord distance of 134.30 feet; thence run along arc of said curve for a distance of 135.67 feet to the point of commencement of a curve to the left, said curve having a radius of 40.00 feet, a central angle of 117 degrees 39 minutes 27 seconds, a chord bearing of North 50 degrees 10 minutes 15 seconds East for a chord distance of 68.45 feet; thence run along arc of said curve for a distance of 82.14 feet; thence run North 08 degrees 39 minutes 29 seconds West for a distance of 210.88 feet; thence run North 05 degrees 08 minutes 18 seconds East for a distance of 343.64 feet; thence run South 89 degrees 27 minutes 02 seconds East for a distance of 46.08 feet; thence run South 00 degrees 28 minutes 59 seconds West for a distance of 548.72 feet to the POINT OF BEGINNING. Said parcel contains 41,471 square feet or 0.95 acres more or less.

OUTPARCEL 4-2: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in part of the Southwest one-quarter of the Northeast one-quarter and the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the said Southwest one-quarter of the Northeast one-quarter of said Section; thence run North 02 degrees 27 minutes 46 seconds West along the East line thereof for a distance of 36.91 feet; thence run North 41 degrees 36 minutes 27 seconds East for a distance of 23.06 feet; thence run North 14 degrees 14 minutes 05 seconds East for a distance of 196.57 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2411.83 feet, a central angle of 10 degrees 42 minutes 14 seconds, a chord bearing of North 30 degrees 13 minutes 11 seconds West for a chord distance of 449.92 feet; thence run along arc of said curve and along said right of way for a distance of 450.57 feet; thence run North 68 degrees 29 minutes 48 seconds East for a distance of 9.96 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and the point of commencement of a curve to the right, said curve having a radius of 2401.83 feet, a central angle of 04 degrees 34 minutes 11 seconds, a chord bearing of North 24 degrees 09 minutes 33 seconds West for a chord distance of 191.51 feet; thence run along arc of said curve and along said right of way for a distance of 191.57 feet to the point of commencement of a spiral curve; thence run North 21 degrees 04 minutes 52 seconds West for a chord distance of 71.75 feet to a point on a spiral curve; thence run North 19 degrees 05 minutes 03 seconds West for a chord distance of 182.06 feet to a point on a spiral curve; thence run North 18 degrees 10 minutes 10 seconds West for a chord distance of 53.16 feet; thence leaving said spiral curve, run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 197.87 feet to the POINT OF BEGINNING; thence leaving said right of way, run South 69 degrees 47 minutes 27 seconds West for a distance of 202.12 feet to the point of commencement of a curve to the right, said curve having a radius of 20.00 feet, a central angle of 89 degrees 58 minutes 58 seconds, a chord bearing of North 65 degrees 13 minutes 04 seconds West for a chord distance of 28.28 feet; thence run along arc of said curve for a distance of 31.41 feet; thence run North 20 degrees 13 minutes 35 seconds West for a distance of 86.90 feet to a point on the North line of the Southwest one-quarter of the Northeast one-quarter of said Section; thence run South 87 degrees 31 minutes 35 seconds East along said North line for a distance of 240.81 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies); thence run South 20 degrees 02 minutes 14 seconds East along said right of way for a distance of 14.03 feet to the POINT OF BEGINNING. Said parcel contains 13,346 square feet or 0.31 acres more or less.

EXHIBIT A-3


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LEGAL DESCRIPTION OF ALABASTER TWO LEASED LAND

GROUND LEASE PARCEL: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of the said Northwest one-quarter of the Northeast one-quarter and run North 00 degrees 28 minutes 59 seconds East along the West line for a distance of 1264.19 feet to a point on the Southwesternmost right of way line of U.S. Highway 31 (right of way varies); thence run South 50 degrees 58 minutes 28 seconds East along said right of way for a distance of 290.23 feet to the point of commencement of curve to the right, said curve having a radius of 2192.01 feet, a central angle of 14 degrees 27 minutes 05 seconds, a chord bearing of South 40 degrees 48 minutes 44 seconds East for a chord distance of 551.41 feet; thence run along arc of said curve and along said right of way for a distance of 552.88 feet; thence run South 56 degrees 37 minutes 09 seconds West along said right of way for a distance of 29.99 feet to the point of commencement of a curve to the right, said curve having a radius of 2162.01 feet, a central angle of 09 degrees 55 minutes 58 seconds, a chord bearing of South 28 degrees 40 minutes 35 seconds East for a chord distance of 374.33 feet; thence run along arc of said curve and along said right of way for a distance of 374.80 feet; thence run North 64 degrees 12 minutes 56 seconds East along said right of way for a distance of 28.61 feet; thence run South 20 degrees 39 minutes 53 seconds East along said right of way for a distance of 317.62 feet; thence run South 20 degrees 02 minutes 14 seconds East along said right of way for a distance of 78.74 feet to a point on the South line of said quarter-quarter; thence leaving said right of way, run North 87 degrees 31 minutes 35 seconds West along said South line for a distance of 916.78 feet to the POINT OF BEGINNING. Said parcel contains 711,462 square feet or 16.33 acres more or less.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCELS:

OUTPARCEL 5: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section; thence run North 02 degrees 27 minutes 46 seconds West along the East line thereof for a distance of 36.91 feet; thence run North 41 degrees 36 minutes 27 seconds East for a distance of 23.06 feet; thence run North 14 degrees 14 minutes 05 seconds East for a distance of 196.57 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the



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right, said curve having a radius of 2411.83 feet, a central angle of 10 degrees 42 minutes 14 seconds, a chord bearing of North 30 degrees 13 minutes 11 seconds West for a chord distance of 449.92 feet; thence run along arc of said curve and along said right of way for a distance of 450.57 feet; thence run North 68 degrees 29 minutes 48 seconds East for a distance of 9.96 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and the point of commencement of a curve to the right, said curve having a radius of 2401.83 feet, a central angle of 04 degrees 34 minutes 11 seconds, a chord bearing of North 24 degrees 09 minutes 33 seconds West for a chord distance of 191.51 feet; thence run along arc of said curve and along said right of way for a distance of 191.57 feet to the point of commencement of a spiral curve; thence run North 21 degrees 04 minutes 52 seconds West for a chord distance of 71.75 feet to a point on a spiral curve; thence run North 19 degrees 05 minutes 03 seconds West for a chord distance of 182.06 feet to a point on a spiral curve; thence run North 18 degrees 10 minutes 10 seconds West for a chord distance of 53.16 feet; thence leaving said spiral curve, run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 197.87 feet; thence run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 92.77 feet; thence run North 20 degrees 39 minutes 53 seconds West along said right of way for a distance of 127.40 feet; thence run along last described course along said right of way for a distance of 100.00 feet to the POINT OF BEGINNING; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 204.58 feet to the point of commencement of a curve to the right, said curve having a radius of 20.00 feet, a central angle of 86 degrees 44 minutes 28 seconds, a chord bearing of North 66 degrees 50 minutes 19 seconds West for a chord distance of 27.47 feet; thence run along arc of said curve for a distance of 30.28 feet; thence run North 23 degrees 28 minutes 05 seconds West for a distance of 186.43 feet; thence run North 66 degrees 31 minutes 55 seconds East for a distance of 223.66 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2192.01 feet, a central angle of 03 degrees 20 minutes 45 seconds, a chord bearing of South 25 degrees 12 minutes 02 seconds East for a chord distance of 127.99 feet; thence run along arc of said curve and along said right of way for a distance of 128.00 feet; thence run South 20 degrees 39 minutes 53 seconds East along said right of way for a distance of 90.21 feet to the POINT OF BEGINNING. Said parcel contains 47,751 square feet or 1.10 acres more or less.

OUTPARCEL 6: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section; thence run North 02 degrees 27 minutes 46 seconds West for a distance of 36.91 feet; thence run North 41 degrees 36 minutes 27 seconds East for a distance of 23.06 feet; thence run North 14 degrees 14 minutes 05 seconds East for a distance of 196.57 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2411.83 feet, a central angle of 10 degrees 42 minutes 14 seconds, a chord bearing of North 30 degrees 13 minutes 11 seconds West for a chord distance of 449.92 feet; thence run along arc of said curve and along said right of way for a distance of 450.57 feet; thence run North 68 degrees 29 minutes 48 seconds East for a distance of 9.96 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and the point of commencement of a curve to the right, said curve having a radius of 2401.83 feet, a central angle of 04 degrees 34 minutes 11 seconds, a chord bearing of North 24 degrees 09 minutes 33 seconds West for a chord distance of 191.51 feet; thence run along arc of said curve and along said

right of way for a distance of 191.57 feet to the point of commencement of a spiral curve; thence run North 21 degrees 04 minutes 52 seconds West for a chord distance of 71.75 feet to a point on a spiral curve; thence run North 19 degrees 05 minutes 03 seconds West for a chord distance of 182.06 feet to a point on a spiral curve; thence run North 18 degrees 10 minutes 10 seconds West for a chord distance of 53.16 feet; thence leaving said spiral curve, run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 197.87 feet; thence run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 92.77 feet; thence run North 20 degrees 39 minutes 53 seconds West along said right of way for a distance of 127.40 feet; thence run along last described course along said right of way for a distance of 100.00 feet; thence run North 20 degrees 39 minutes 53 seconds West along said right of way for a distance of 90.21 feet to the point of commencement of a curve to the left, said curve having a radius of 2192.01 feet, a central angle of 03 degrees 20 minutes 45 seconds, a chord bearing of North 25 degrees 12 minutes 02 seconds West for a chord distance of 127.99 feet; thence run along arc of said curve and along said right of way for a distance of 128.00 feet to the POINT OF BEGINNING; thence leaving said right of way, thence run South 66 degrees 31 minutes 55 seconds West for a distance of 223.66 feet; thence run North 23 degrees 28 minutes 05 seconds West for a distance of 243.56 feet; thence run North 66 degrees 28 minutes 59 seconds East for a distance of 164.96 feet; thence run North 56 degrees 37 minutes 09 seconds East for a distance of 29.99 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2192.01 feet, a central angle of 06 degrees 33 minutes 11 seconds, a chord bearing of South 30 degrees 09 minutes 00 seconds East for a chord distance of 250.57 feet; thence run along arc of said curve and along said right of way for a distance of 250.70 feet to the POINT OF BEGINNING. Said parcel contains 51,696 square feet or 1.19 acres more or less.

OUTPARCEL 7: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section; thence run North 02 degrees 27 minutes 46 seconds West along said East line thereof for a distance of 36.91 feet; thence run North 41 degrees 36 minutes 27 seconds East for a distance of 23.06 feet; thence run North 14 degrees 14 minutes 05 seconds East for a distance of 196.57 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2411.83 feet, a central angle of 10 degrees 42 minutes 14 seconds, a chord bearing of North 30 degrees 13 minutes 11 seconds West for a chord distance of 449.92 feet; thence run along arc of said curve and along said right of way for a distance of 450.57 feet; thence run North 68 degrees 29 minutes 48 seconds East for a distance of 9.96 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and the point of commencement of a curve to the right, said curve having a radius of 2401.83 feet, a central angle of 04 degrees 34 minutes 11 seconds, a chord bearing of North 24 degrees 09 minutes 33 seconds West for a chord distance of 191.51 feet; thence run along arc of said curve and along said right of way for a distance of 191.57 feet to the point of commencement of a spiral curve; thence run North 21 degrees 04 minutes 52 seconds West for a chord distance of 71.75 feet to a point on a spiral curve; thence run North 19 degrees 05 minutes 03 seconds West for a chord distance of 182.06 feet to a point on a spiral curve; thence run North 18 degrees 10 minutes 10 seconds West for a chord distance of 53.16 feet; thence leaving said spiral curve, run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 197.87 feet; thence run

North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 92.77 feet; thence run North 20 degrees 39 minutes 53 seconds West along said right of way for a distance of 127.40 feet; thence run along last described course along said right of way for a distance of 100.00 feet; thence run North 20 degrees 39 minutes 53 seconds West along said right of way for a distance of 90.21 feet to the point of commencement of a curve to the left, said curve having a radius of 2192.01 feet, a central angle of 03 degrees 20 minutes 45 seconds, a chord bearing of North 25 degrees 12 minutes 02 seconds West for a chord distance of 127.99 feet; thence run along arc of said curve and along said right of way for a distance of 128.00 feet to the point of commencement of a curve to the left, said curve having a radius of 2192.01 feet, a central angle of 06 degrees 33 minutes 11 seconds, a chord bearing of North 30 degrees 09 minutes 00 seconds West for a chord distance of 250.57 feet; thence run along arc of said curve and along said right of way for a distance of 250.70 feet to the POINT OF BEGINNING; thence leaving said right of way, run South 56 degrees 37 minutes 09 seconds West for a distance of 29.99 feet; thence run South 66 degrees 28 minutes 59 seconds West for a distance of 164.96 feet; thence run North 23 degrees 28 minutes 05 seconds West for a distance of 85.29 feet to the point of commencement of a curve to the right, said curve having a radius of 227.00 feet, a central angle of 22 degrees 10 minutes 44 seconds, a chord bearing of South 12 degrees 22 minutes 43 seconds East for a chord distance of 87.32 feet; thence run along arc of said curve for a distance of 87.87 feet to the point of commencement of a curve to the right, said curve having a radius of 227.00 feet, a central angle of 34 degrees 22 minutes 00 seconds, a chord bearing of North 15 degrees 53 minutes 39 seconds East for a chord distance of 134.13 feet; thence run along arc of said curve for a distance of 136.16 feet to the point of commencement of a curve to the right, said curve having a radius of 20.00 feet, a central angle of 106 degrees 12 minutes 46 seconds, a chord bearing of North 86 degrees 18 minutes 25 seconds East for a chord distance of 31.99 feet; thence run along arc of said curve for a distance of 37.08 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and the point of commencement of a curve to the right, said curve having a radius of 2192.01 feet, a central angle of 06 degrees 57 minutes 26 seconds, a chord bearing of South 37 degrees 03 minutes 54 seconds East for a chord distance of 266.01 feet; thence run along arc of said curve and along said right of way for a distance of 266.17 feet to the POINT OF BEGINNING. Said parcel contains 39,590 square feet or 0.91 acres more or less.

OUTPARCEL 8: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Southwest one-quarter of the Northeast one-quarter of said Section; thence run North 02 degrees 27 minutes 46 seconds West for a distance of 36.91 feet; thence run North 41 degrees 36 minutes 27 seconds East for a distance of 23.06 feet; thence run North 14 degrees 14 minutes 05 seconds East for a distance of 196.57 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2411.83 feet, a central angle of 10 degrees 42 minutes 14 seconds, a chord bearing of North 30 degrees 13 minutes 11 seconds West for a chord distance of 449.92 feet; thence run along arc of said curve and along said right of way for a distance of 450.57 feet; thence run North 68 degrees 29 minutes 48 seconds East for a distance of 9.96 feet to the point of commencement of a curve to the right, said curve having a radius of 2401.83 feet, a central angle of 04 degrees 34 minutes 11 seconds, a chord bearing of North 24 degrees 09 minutes 33 seconds West for a chord distance of 191.51 feet; thence run along arc of said curve and along said right of way for a distance of 191.57 feet to the point of commencement of a spiral curve;

thence run North 21 degrees 04 minutes 52 seconds West for a chord distance of 71.75 feet to a point on a spiral curve; thence run North 19 degrees 05 minutes 03 seconds West for a chord distance of 182.06 feet to a point on a spiral curve; thence run North 18 degrees 10 minutes 10 seconds West for a chord distance of 53.16 feet; thence leaving said spiral curve, run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 197.87 feet; thence run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 92.77 feet; thence run North 20 degrees 39 minutes 53 seconds West along said right of way for a distance of 127.40 feet; thence run along last described course along said right of way for a distance of 100.00 feet; thence run North 20 degrees 39 minutes 53 seconds West along said right of way for a distance of 90.21 feet to the point of commencement of a curve to the left, said curve having a radius of 2192.01 feet, a central angle of 03 degrees 20 minutes 45 seconds, a chord bearing of North 25 degrees 12 minutes 02 seconds West for a chord distance of 127.99 feet; thence run along arc of said curve and along said right of way for a distance of 128.00 feet to the point of commencement of a curve to the left, said curve having a radius of 2192.01 feet, a central angle of 06 degrees 33 minutes 11 seconds, a chord bearing of North 30 degrees 09 minutes 00 seconds West for a chord distance of 250.57 feet; thence run along arc of said curve and along said right of way for a distance of 250.70 feet to the point of commencement of a curve to the left, said curve having a radius of 2192.01 feet, a central angle of 06 degrees 57 minutes 26 seconds, a chord bearing of North 37 degrees 03 minutes 54 seconds West for a chord distance of 266.01 feet; thence run along arc of said curve and along said right of way for a distance of 266.17 feet to the point of commencement of a curve to the left, said curve having a radius of 2192.01 feet, a central angle of 02 degrees 25 minutes 58 seconds, a chord bearing of North 41 degrees 45 minutes 37 seconds West for a chord distance of 93.07 feet; thence run along arc of said curve and along said right of way for a distance of 93.07 feet to the POINT OF BEGINNING said point also being the point of commencement of a curve to the right, said curve having a radius of 20.00 feet, a central angle of 80 degrees 42 minutes 17 seconds, a chord bearing of North 02 degrees 37 minutes 27 seconds West for a chord distance of 25.90 feet; thence run along arc of said curve for a distance of 28.17 feet to the point of commencement of a curve to the left, said curve having a radius of 277.00 feet, a central angle of 18 degrees 42 minutes 39 seconds, a chord bearing of South 28 degrees 22 minutes 22 seconds West for a chord distance of 90.06 feet; thence run along arc of said curve for a distance of 90.46 feet; thence run South 86 degrees 40 minutes 50 seconds West for a distance of 114.63 feet; thence run North 03 degrees 19 minutes 10 seconds West for a distance of 23.96 feet; thence run South 86 degrees 40 minutes 50 seconds West for a distance of 209.99 feet; thence run North 00 degrees 28 minutes 59 seconds East for a distance of 418.41 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies); thence run South 50 degrees 58 minutes 28 seconds East along said right of way for a distance of 290.23 feet to the point of commencement of a curve to the right, said curve having a radius of 2192.01 feet, a central angle of 05 degrees 03 minutes 40 seconds, a chord bearing of South 45 degrees 30 minutes 26 seconds East for a chord distance of 193.57 feet; thence run along arc of said curve for a distance of 193.63 feet to the POINT OF BEGINNING. Said parcel contains 96,101 square feet or 2.21 acres more or less.

OUTPARCEL 4: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in part of the Southwest one-quarter of the Northeast one-quarter and the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the said Southwest one-quarter of the Northeast one-quarter of said Section; thence run North 02 degrees 27 minutes 46 seconds West along the East line thereof for a



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distance of 36.91 feet; thence run North 41 degrees 36 minutes 27 seconds East for a distance of 23.06 feet; thence run North 14 degrees 14 minutes 05 seconds East for a distance of 196.57 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2411.83 feet, a central angle of 10 degrees 42 minutes 14 seconds, a chord bearing of North 30 degrees 13 minutes 11 seconds West for a chord distance of 449.92 feet; thence run along arc of said curve and along said right of way for a distance of 450.57 feet; thence run North 68 degrees 29 minutes 48 seconds East for a distance of 9.96 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and the point of commencement of a curve to the right, said curve having a radius of 2401.83 feet, a central angle of 04 degrees 34 minutes 11 seconds, a chord bearing of North 24 degrees 09 minutes 33 seconds West for a chord distance of 191.51 feet; thence run along arc of said curve and along said right of way for a distance of 191.57 feet to the point of commencement of a spiral curve; thence run North 21 degrees 04 minutes 52 seconds West for a chord distance of 71.75 feet to a point on a spiral curve; thence run North 19 degrees 05 minutes 03 seconds West for a chord distance of 182.06 feet to a point on a spiral curve; thence run North 18 degrees 10 minutes 10 seconds West for a chord distance of 53.16 feet; thence leaving said spiral curve, run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 197.87 feet to the POINT OF BEGINNING; thence leaving said right of way, run South 69 degrees 47 minutes 27 seconds West for a distance of 202.12 feet to the point of commencement of a curve to the right, said curve having a radius of 20.00 feet, a central angle of 89 degrees 58 minutes 58 seconds, a chord bearing of North 65 degrees 13 minutes 04 seconds West for a chord distance of 28.28 feet; thence run along arc of said curve for a distance of 31.41 feet; thence run North 20 degrees 13 minutes 35 seconds West for a distance of 180.16 feet to the point of commencement of a curve to the right, said curve having a radius of 20.00 feet, a central angle of 90 degrees 01 minutes 02 seconds, a chord bearing of North 24 degrees 46 minutes 56 seconds East for a chord distance of 28.29 feet; thence run along arc of said curve for a distance of 31.42 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 201.44 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies); thence run South 20 degrees 39 minutes 53 seconds East along said right of way for a distance of 127.40 feet; thence run South 20 degrees 02 minutes 14 seconds East along said right of way for a distance of 92.77 feet to the POINT OF BEGINNING. Said parcel contains 48,721 square feet or 1.19 acres more or less. Less and except:

OUTPARCEL 4-2: (as shown on the survey dated February 10, 2006, prepared by Gonzalez-Strength & Associates, Inc.)

A parcel of land situated in part of the Southwest one-quarter of the Northeast one-quarter and the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the said Southwest one-quarter of the Northeast one-quarter of said Section; thence run North 02 degrees 27 minutes 46 seconds West along the East line thereof for a distance of 36.91 feet; thence run North 41 degrees 36 minutes 27 seconds East for a distance of 23.06 feet; thence run North 14 degrees 14 minutes 05 seconds East for a distance of 196.57 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the right, said curve having a radius of 2411.83 feet, a central angle of 10 degrees 42 minutes 14 seconds, a chord bearing of North 30 degrees 13 minutes 11 seconds West for a chord distance of 449.92 feet; thence run along arc of said curve and along said right of way for a distance of 450.57 feet; thence run North 68 degrees 29 minutes 48 seconds East for a distance of 9.96 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and the point of commencement of a curve to the right, said curve having a radius of 2401.83 feet, a central angle of 04 degrees 34 minutes 11 seconds, a chord



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bearing of North 24 degrees 09 minutes 33 seconds West for a chord distance of 191.51 feet; thence run along arc of said curve and along said right of way for a distance of 191.57 feet to the point of commencement of a spiral curve; thence run North 21 degrees 04 minutes 52 seconds West for a chord distance of 71.75 feet to a point on a spiral curve; thence run North 19 degrees 05 minutes 03 seconds West for a chord distance of 182.06 feet to a point on a spiral curve; thence run North 18 degrees 10 minutes 10 seconds West for a chord distance of 53.16 feet; thence leaving said spiral curve, run North 20 degrees 02 minutes 14 seconds West along said right of way for a distance of 197.87 feet to the POINT OF BEGINNING; thence leaving said right of way, run South 69 degrees 47 minutes 27 seconds West for a distance of 202.12 feet to the point of commencement of a curve to the right, said curve having a radius of 20.00 feet, a central angle of 89 degrees 58 minutes 58 seconds, a chord bearing of North 65 degrees 13 minutes 04 seconds West for a chord distance of 28.28 feet; thence run along arc of said curve for a distance of 31.41 feet; thence run North 20 degrees 13 minutes 35 seconds West for a distance of 86.90 feet to a point on the North line of the Southwest one-quarter of the Northeast one-quarter of said Section; thence run South 87 degrees 31 minutes 35 seconds East along said North line for a distance of 240.81 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies); thence run South 20 degrees 02 minutes 14 seconds East along said right of way for a distance of 14.03 feet to the POINT OF BEGINNING. Said parcel contains 13,346 square feet or 0.31 acres more or less.

EXHIBIT A-4

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LEGAL DESCRIPTION OF PENNEY TRACT

A parcel of land situated in part of the Southeast one-quarter of the Northeast one-quarter and the Southwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southeast corner of said Southwest one-quarter of the Northeast one-quarter and run North 87 degrees 51 minutes 24 seconds West along the South line of said quarter-quarter for a distance of 716.00 feet; thence leaving said South line, run North 22 degrees 00 minutes 08 seconds West for a distance of 379.31 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 135.72 feet; thence run North 20 degrees 12 minutes 33 seconds West for a distance of 207.90 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 241.45 feet; thence run North 20 degrees 12 minutes 33 seconds West for a distance of 20.00 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 145.77 feet to a point on a curve to the left, said curve having a radius of 287.00 feet, a central angle of 24 degrees 23 minutes 29 seconds, a chord bearing of South 42 degrees 38 minutes 39 seconds East for a chord distance of 121.26 feet; thence run along arc of said curve for a distance of 122.18 feet; thence run South 35 degrees 10 minutes 03 seconds West for a distance of 50.00 feet to the point of commencement of a curve to the left, said curve having a radius of 337.00 feet, a central angle of 44 degrees 47 minutes 15 seconds, a chord bearing of South 77 degrees 13 minutes 34 seconds East for a chord distance of 256.77 feet; thence run along arc of said curve for a distance of 263.43 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies) and a point on a curve to the left, said curve having a radius of 2411.83 feet, a central angle of 00 degrees 27 minutes 46 seconds, a chord bearing of South 26 degrees 20 minutes 38 seconds East for a chord distance of 19.48 feet; thence run along arc of said curve and along said right of way for a distance of 19.48 feet; thence run South 63 degrees 25 minutes 29 seconds West for a distance of 37.52 feet; thence run South 02 degrees 07 minutes 39 seconds West for a distance of 297.41 feet to the point of commencement of a curve to the left, said curve having a radius of 25.00 feet, a central angle of 90 degrees 00 minutes 22 seconds, a chord bearing of South 42 degrees 52 minutes 33 seconds East for a chord distance of 35.36 feet; thence run along arc of said curve for a distance of 39.27 feet; thence run South 87 degrees 52 minutes 44 seconds East for a distance of 209.94 feet; thence run South 14 degrees 14 minutes 05 seconds West for a distance of 172.16 feet; thence run South 41 degrees 36 minutes 27 seconds West for a distance of 23.06 feet; thence run South 02 degrees 27 minutes 46 seconds East for a distance of 36.91 feet to the POINT OF BEGINNING. Said parcel contains 440,425 square feet or 10.11 acres more or less.

EXHIBIT A-5

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LEGAL DESCRIPTION OF TARGET FEE LAND

A parcel of land situated in part of the Southwest one-quarter of the Northeast one-quarter, Southeast one-quarter of the Northwest one-quarter and the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of said Southwest one-quarter of the Northeast one-quarter and run North 87 degrees 51 minutes 24 seconds West along the South line of said quarter-quarter for a distance of 716.00 feet; thence leaving said South line, run North 22 degrees 00 minutes 08 seconds West for a distance of 295.00 feet; thence run North 89 degrees 10 minutes 01 seconds West for a distance of 297.23 feet to a point on the Easternmost right of way line of Interstate 65 (right of way varies); thence run North 24 degrees 39 minutes 45 seconds West along said right of way for a distance of 303.47 feet to the POINT OF BEGINNING; thence run along last described course and along said right of way for a distance of 142.09 feet; thence run North 64 degrees 14 minutes 34 seconds West along said right of way for a distance of 126.44 feet; thence run North 24 degrees 35 minutes 31 seconds West along said right of way for a distance of 344.56 feet; thence leaving said right of way, run North 38 degrees 23 minutes 35 seconds East for a distance of 214.72 feet to the point of commencement of a curve to the left, said curve having a radius of 330.92 feet, a central angle of 38 degrees 45 minutes 12 seconds, a chord bearing of South 89 degrees 41 minutes 18 seconds East for a chord distance of 219.59 feet; thence run along arc of said curve for a distance of 223.83 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 491.83 feet; thence run South 20 degrees 12 minutes 33 seconds East for a distance of 20.00 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 11.01 feet; thence run South 20 degrees 13 minutes 35 seconds East for a distance of 112.17 feet; thence run North 69 degrees 46 minutes 25 seconds East for a distance of 50.00 feet; thence run South 20 degrees 13 minutes 35 seconds East for a distance of 443.01 feet; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 343.11 feet; thence run South 58 degrees 46 minutes 41 seconds West for a distance of 30.56 feet; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 273.86 feet; thence run South 20 degrees 12 minutes 33 seconds East for a distance of 30.00 feet; thence run South 69 degrees 47 minutes 27 seconds West for a distance of 169.72 feet to the POINT OF BEGINNING. Said parcel contains 528,285 square feet or 12.13 acres more or less.

Less and Except (Target Sublease Parcel):

A parcel of land situated in the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said quarter-quarter and run South 87 degrees 31 minutes 35 seconds East along the South line for a distance of 330.38 feet to the POINT OF BEGINNING; thence leaving said South line, run North 69 degrees 47 minutes 27 seconds East for a distance of 257.82 feet; thence run South 20 degrees 12 minutes 33 seconds East for a distance of 20.00 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 11.01 feet; thence run South 20 degrees 13 minutes



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35 seconds East for a distance of 92.37 feet to a point on said South line of quarter-quarter; thence run North 87 degrees 31 minutes 35 seconds West for a distance of 291.39 feet to the POINT OF BEGINNING. Said parcel contains 14,884 square feet or 0.34 acres more or less.

EXHIBIT A-6

LEGAL DESCRIPTION OF TARGET LEASED LAND

A parcel of land situated in the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said quarter-quarter and run South 87 degrees 31 minutes 35 seconds East along the South line for a distance of 330.38 feet to the POINT OF BEGINNING; thence leaving said South line, run North 69 degrees 47 minutes 27 seconds East for a distance of 257.82 feet; thence run South 20 degrees 12 minutes 33 seconds East for a distance of 20.00 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 11.01 feet; thence run South 20 degrees 13 minutes 35 seconds East for a distance of 92.37 feet to a point on said South line of quarter-quarter; thence run North 87 degrees 31 minutes 35 seconds West for a distance of 291.39 feet to the POINT OF BEGINNING. Said parcel contains 14,884 square feet or 0.34 acres more or less.



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EXHIBIT A-7

LEGAL DESCRIPTION OF TARGET OUTLOT

A parcel of land situated in the Southwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of said Southwest one-quarter of the Northeast one-quarter and run North 87 degrees 51 minutes 24 seconds West along the South line of said quarter-quarter for a distance of 716.00 feet; thence leaving said South line, run North 22 degrees 00 minutes 08 seconds West for a distance of 379.31 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 135.72 feet; thence run North 20 degrees 12 minutes 33 seconds West for a distance of 207.90 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 241.45 feet; thence run North 20 degrees 12 minutes 33 seconds West for a distance of 20.00 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 145.77 feet to a point on a curve to the right, said curve having a radius of 287.00 feet, a central angle of 07 degrees 01 minutes 01 seconds, a chord bearing of North 26 degrees 56 minutes 38 seconds West for a chord distance of 35.13 feet; thence run along arc of said curve for a distance of 35.15 feet to the point of commencement of a curve to the right, said curve having a radius of 287.00 feet, a central angle of 03 degrees 11 minutes 45 seconds, a chord bearing of North 21 degrees 49 minutes 28 seconds West for a chord distance of 16.01 feet; thence run along arc of said curve for a distance of 16.01 feet; thence run North 20 degrees 13 minutes 35 seconds West for a distance of 136.04 feet to the POINT OF BEGINNING; thence run along last described course for a distance of 301.00 feet to the point of commencement of a curve to the left, said curve having a radius of 20.00 feet, a central angle of 89 degrees 58 minutes 58 seconds, a chord bearing of South 65 degrees 13 minutes 04 seconds East for a chord distance of 28.28 feet; thence run along arc of said curve for a distance of 31.41 feet; thence run North 69 degrees 47 minutes 27 seconds East for a distance of 202.12 feet to a point on the Westernmost right of way line of U.S. Highway 31 (right of way varies); thence run South 20 degrees 02 minutes 14 seconds East for a distance of 197.87 feet to the point of commencement of a spiral curve; thence run South 18 degrees 10 minutes 10 seconds East for a chord distance of 53.16 feet; thence leaving said right of way, run South 69 degrees 47 minutes 27 seconds West for a distance of 189.54 feet to the point of commencement of a curve to the left, said curve having a radius of 30.00 feet, a central angle of 90 degrees 01 minutes 02 seconds, a chord bearing of South 24 degrees 46 minutes 56 seconds West for a chord distance of 42.43 feet; thence run along arc of said curve for a distance of 47.13 feet to the POINT OF BEGINNING. Said parcel contains 55,879 square feet or 1.28 acres more or less.



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EXHIBIT A-8

LEGAL DESCRIPTION OF OUTPARCEL 5 EXPANSION LAND

A parcel of land situated in the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of said quarter-quarter and run South 00 degrees 28 minutes 59 seconds West along the West line for a distance of 59.73 feet to a point on the Southwesternmost right of way line of U.S. Highway 31 (200' right of way); thence run South 50 degrees 58 minutes 28 seconds East along said right of way for a distance of 290.23 feet to the point of commencement of a curve to the right; said curve having a radius of 2192.01 feet, a central angle of 14 degrees 27 minutes 05 seconds, a chord bearing of South 40 degrees 48 minutes 44 seconds East for a chord distance of 551.41 feet; thence run a long arc of said curve and a long said right of way for a distance of 552.88 feet to the point of commencement of a curve to the right, said curve having a radius of 2192.01 feet, a central angle of 06 degrees 33 minutes 11 seconds, a chord bearing of South 30 degrees 09 minutes 00 seconds East for a chord distance of 250.57 feet; thence run along arc of said curve and along said right of way for a distance of 250.70 feet to the POINT OF BEGINNING and a point on a curve to the right, said curve having a radius of 2192.01 feet, a central angle of 03 degrees 20 minutes 45 seconds, a chord bearing of South 25 degrees 12 minutes 02 seconds East for a chord distance of 127.99 feet; thence run along arc of said curve and along said right of way for a distance of 128.00 feet; thence leaving said right of way, run South 64 degrees 12 minutes 56 seconds West for a distance of 28.61 feet to the point of commencement of a curve to the left, said curve having a radius of 2183.16 feet, a central angle of 03 degrees 23 minutes 25 seconds, a chord bearing of North 25 degrees 27 minutes 12 seconds West for a chord distance of 129.16 feet; thence run along arc of said curve for a distance of 129.18 feet; thence run North 66 degrees 31 minutes 55 seconds East for a distance of 29.19 feet to the POINT OF BEGINNING. Said parcel contains 3,712 square feet or less.0.09 acre more or less.

EXHIBIT A-9


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LEGAL DESCRIPTION OF OUTPARCEL 6 EXPANSION LAND

A parcel of land situated in the Northwest one-quarter of the Northeast one-quarter of Section 12, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of said quarter-quarter and run South 00 degrees 28 minutes 59 seconds West along the West line for a distance of 59.73 feet to a point on the Southwesternmost right of way line of U.S. Highway 31 (200' right of way); thence run South 50 degrees 58 minutes 28 seconds East along said right of way for a distance of 290.23 feet to the point of commencement of a curve to the right; said curve having a radius of 2192.01 feet, a central angle of 14 degrees 27 minutes 05 seconds, a chord bearing of South 40 degrees 48 minutes 44 seconds East for a chord distance of 551.41 feet; thence run along arc of said curve and along said right of way for a distance of 552.88 feet to the POINT OF BEGINNING and the point of commencement of a curve to the right, said curve having a radius of 2192.01 feet, a central angle of 06 degrees 33 minutes 11 seconds, a chord bearing of South 30 degrees 09 minutes 00 seconds East for a chord distance of 250.57 feet; thence run along arc of said curve and along said right of way for a distance of 250.70 feet; thence leaving said right of way, run South 66 degrees 31 minutes 55 seconds West for a distance of 29.19 feet to a point on a curve to the left, said curve having a radius of 2183.16 feet, a central angle of 06 degrees 26 minutes 45 seconds, a chord bearing of North 30 degrees 22 minutes 17 seconds West for a chord distance of 245.48 feet; thence run along arc of said curve for a distance of 245.61 feet; thence run North 56 degrees 37 minutes 09 seconds East for a distance of 29.99 feet to the POINT OF BEGINNING. Said parcel contains 7,342 square feet or 0.17 acre more or less.

EXHIBIT C


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Common Area Maintenance Specifications

The following Common Area Maintenance specifications shall complement the requirements set forth in the Construction, Operating And Easement Agreement of which this Exhibit is a part, but such specifications shall not be deemed to be an exhaustive recital of the Maintenance obligations thereunder.

Snow Removal

- * Snow plowing of street entrances, loading docks, entrance drives, parking lots and sidewalks upon any two-inch (2") snowfall. If a two-inch (2") snowfall occurs during business hours, the snow removal contractor shall plow fire lanes, loading docks, main arteries, and parking lot access drives.
- * All snowfalls under one inch (1") shall be salted.
- * Hand-shoveling shall include the main entrances to the Parisian Building and the Penney Building, private front entrances and exits, fire exits, utility doors, dock area and installation areas.
- * Snow will be removed from the Common Areas prior to December 25. After such date, snow may be moved to areas within the Common Area that will not obstruct vehicular traffic, impede pedestrian traffic, or decrease available parking.
- * All snow removal operations will be completed by 6:30 a.m.

Landscaping

- * Any landscaping that is damaged or dying shall be replaced within a timely manner.
- * All grass areas shall be mowed as needed and kept at a maximum of three inches (3") high from ground level.
- * Maintain, repair, and replacement of irrigation systems in a timely manner.

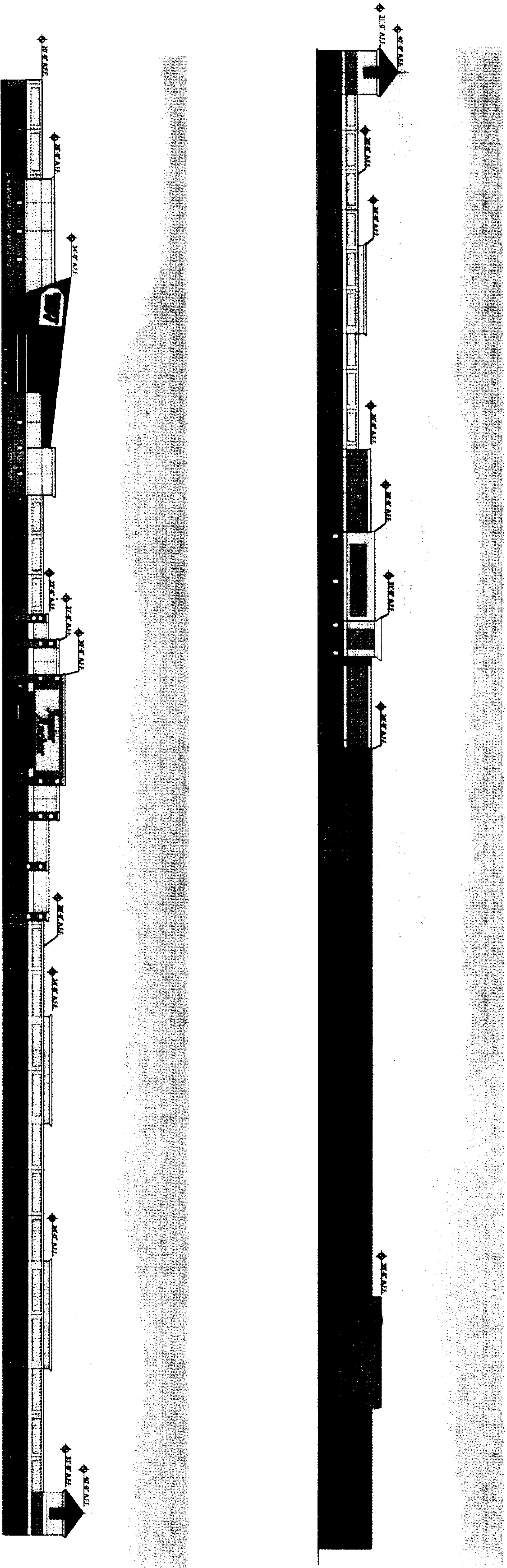
Sweeping

- * Debris and rubbish shall be cleared out of the parking areas, landscaping and planters, and parking islands at reasonable times.
- * Sweeping shall be performed every other week.

Exhibit D



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Colonial Promenade Alabaster
Alabaster, AL
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COLONIAL
PROPERTIES TRUST



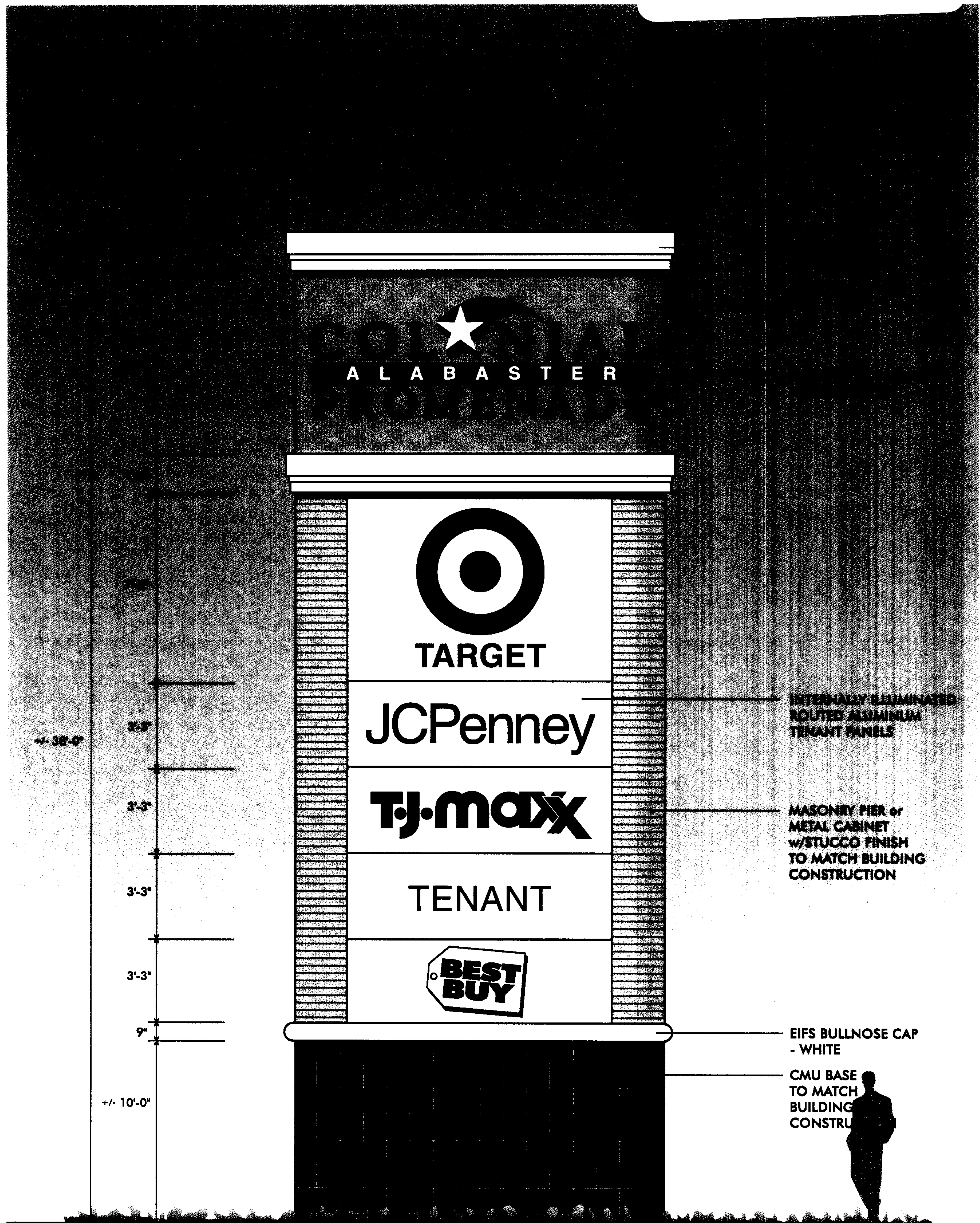
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**REVISION
DATE**

SHEET#

**INDEX OF
DRAWINGS**

12/22/05		COVER SHEET
12/14/05	S1	ALTA/ACSM LAND TITLE BOUNDARY SURVEY
12/14/05	S2	ALTA/ACSM LAND TITLE BOUNDARY SURVEY
12/12/05	C0-R1	PROJECT OVERALL PLAN
12/12/05	C1A-R1	SITE LAYOUT PLAN
12/12/05	C1B-R1	SITE LAYOUT PLAN
12/12/05	C2A-R1	SITE GRADING PLAN
12/12/05	C2B-R1	SITE GRADING PLAN
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12/12/05	C4C-R1	STORM SEWER PROFILES
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12/12/05	C6A-R1	SITE SANITARY SEWER PLAN
12/12/05	C6B-R1	SITE SANITARY SEWER PLAN
12/12/05	C6C-R1	SANITARY SEWER PROFILES
12/12/05	C6D-R1	SANITARY SEWER PROFILES
12/12/05	C7A-R0	SITE GAS AND POWER SERVICE PLAN
12/12/05	C7B-R0	SITE GAS AND POWER SERVICE PLAN
12/12/05	C8A-R1	ALABASTER BOULEVARD PLAN AND PROFILE
12/12/05	C8B-R1	COLONIAL PROMENADE PARKWAY PLAN AND PROFILE
12/12/05	C9A-R1	SECTIONS AND DETAILS
12/12/05	C9B-R1	SECTIONS AND DETAILS
12/12/05	C10-R0	SPOT ELEVATION PLAN



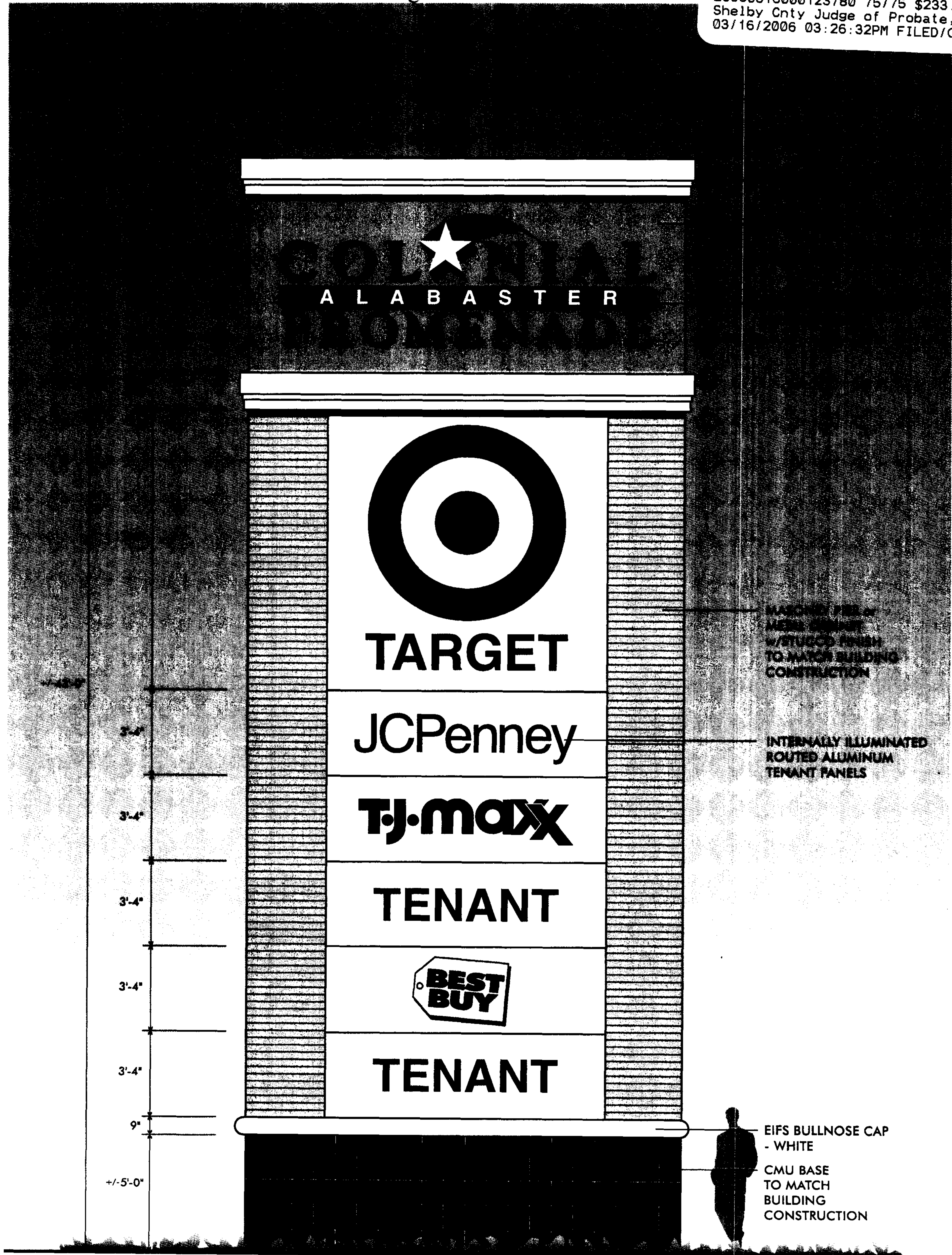
FRONT / BACK

PROPOSED PYLON SIGN
at SOUTH ENTRANCE

3/16"=1'-0"

12/7/05

20060316000123780 75/75 \$233.00
Shelby Cnty Judge of Probate, AL
03/16/2006 03:26:32PM FILED/CERT



FRONT / BACK

NORTH PYLON SIGN
3/16"=1'-0"
12/12/05