20060424000190020 1/13 \$49.00 Shelby Cnty Judge of Probate, AL 04/24/2006 12:42:04PM FILED/CERT

License Agreement: Parking & Utilities

SUBJECT: Lay Dam – Bessemer 115 KV TL

This Instrument Prepared By:

Felton W. Smith
Balch & Bingham LLP
Post Office Box 306
Birmingham, AL 35201

STATE OF ALABAMA

COUNTY OF SHELBY

THIS AGREEMENT, made and entered into between ALABAMA POWER COMPANY, an Alabama corporation, (hereinafter referred to as "Licensor"), HIGHWAY 31 ALABASTER, LLC, an Alabama limited liability company ("Developer I"), HIGHWAY 31 ALABASTER TWO, LLC ("Developer II"), an Alabama limited liability company, J.C. PENNEY PROPERTIES, INC. ("Penney"), a Delaware corporation, TARGET CORPORATION ("Target"), a Minnesota corporation, and THE COMMERCIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALABASTER, ALABAMA (the "Authority"), an Alabama municipal corporation organized under the laws of the State of Alabama (Developer I, Developer II, Penney, Target and the Authority each being sometimes hereinafter referred to as a "Licensee" and being sometimes hereinafter referred to collectively as the "Licensees").

#### WITNESSETH:

WHEREAS, Licensor is the holder of an easement or right-of-way (the "Old Easement") for electric transmission lines and related facilities which burdens certain property of Developer II, Penney, Target and the Authority (collectively, the "Owner Licensees") and Developer I and the Owner Licensees desire to develop their such property as a shopping center (the "Shopping Center") and have requested that Licensor agree to relocate its easement and facilities in connection therewith and, subject to the terms and conditions of this Agreement, Licensor has agreed to such relocation; and

WHEREAS, in consideration of such relocation, pursuant to the Deed described in the second succeeding paragraph, each Owner Licensee has granted to Licensor an easement or right of way (the "New Easement") over a portion (such portion being called a "Strip Segment") of the property such Owner Licensee owns within the land (the "Shopping Center Land") upon which the Shopping Center is to be developed; and

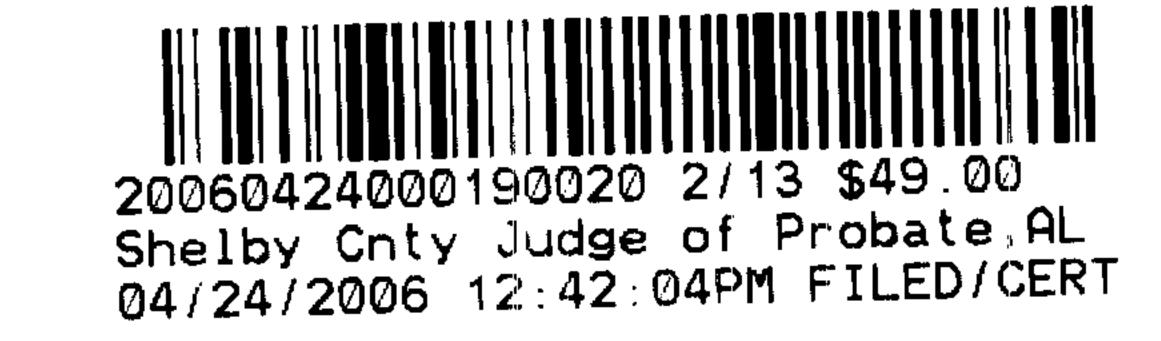
WHEREAS, subject to certain conditions precedent, Licensor has agreed to quit-claim to each respective Owner Licensee all of Licensor's rights, title and interest in and to the portion of the Old Easement that encumbers such respective Owner Licensee's land except for those portions of the Old Easement that encumber the 100 foot wide strip of land (the "Penney Stub") described in Exhibit B-1, which land is owned by Penney, and the 100 foot wide strip of land (the "Authority Stub") described in Exhibit B-2, which land is owned by the Authority, the two said surviving portions of the Old Easement being herein called the "Surviving Old Easement Portions" (the New Easement and Licensor's rights under the Old Easement with respect to the Surviving Old Easement Portions being sometimes hereinafter collectively called the "Easement"); and

WHEREAS, the Easement embraces, among other rights, the right to construct, operate and maintain electric transmission lines and all communication lines, towers, poles and appliances necessary or convenient in connection therewith upon, under, over and across a strip of land 100 feet in width across the Shopping Center Land, the Easement being situated in the City of Alabaster, Shelby County, Alabama, the New Easement being more particularly described in that certain easement deed (the "Deed") executed by the Owner Licensees and joined in by Developer I dated April 17, 2006, recorded in in the Office of the Judge of Probate, Shelby County, Alabama. Reference is hereby expressly made to such record for a particular description of the New Easement; and

WHEREAS, the term "Strip Portion" as used in this Agreement means the "Strip Segment" of each respective owner Licensee, except that in the case of Penney's "Strip Portion" it also includes the Penney Stub, and in the case of the Authority's "Strip Portion" it also includes the Authority Stub; and

WHEREAS, Licensees recognize that Licensor intends to construct, operate and maintain electric transmission lines, towers, poles, appliances and fixtures on the Easement area and has the right and authority under the Deed and the Old Easement to construct, operate and maintain electric transmission lines and all communication lines, towers, poles and appliances necessary or convenient in connection therewith; and

WHEREAS, each Owner Licensee is the owner of, or the owner of an interest in, the servient estate of the strip of land embraced in the Easement and desires to use and permit the said Easement area to be used for the construction, reconstruction, operation and maintenance of vehicle parking areas, pedestrian access, roadways and other vehicle ingress and egress, and certain utility facilities in connection with the operation of the Shopping Center or other retail facility to the extent and as specifically described in Exhibit A attached hereto, but in no event in violation of Section 4 hereof (such use being called the "Encroachment"); and



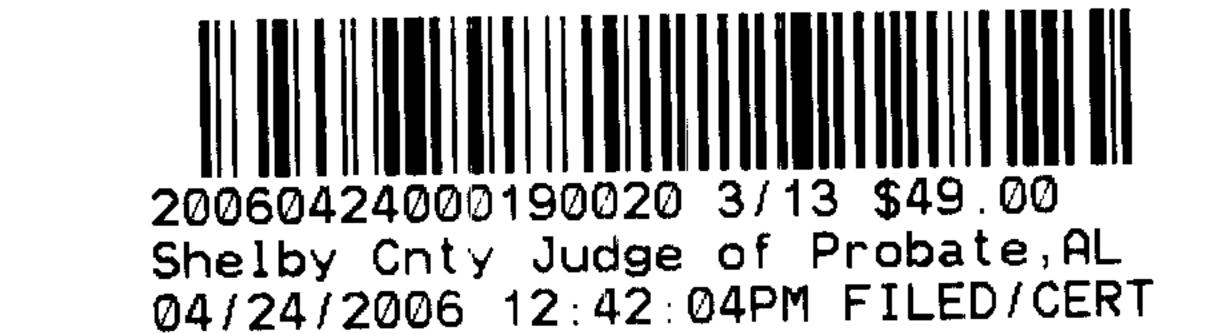
WHEREAS, the Encroachment does and will benefit the Licensees in the use of the Shopping Center Land and may inconvenience, burden and interfere with Licensor in the exercise of its rights in and to such easement and will increase the risks imposed upon it in connection with the exercise of such rights in and to such easement;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and in further consideration of the sum of One Dollar (\$1.00) in hand paid by the Licensees to the Licensor, the receipt whereof is hereby acknowledged, it is hereby agreed and covenanted between the parties hereto, for themselves and their respective successors and assigns, as follows:

- 1. Subject to the terms and conditions of this Agreement, including without limitation Section 4 hereof, Licensor hereby expressly consents to the use of the Encroachment upon said strip of land encumbered by the Easement by the Licensees and their respective lessees, sublessees and other occupants of any shopping center or other retail facility constructed adjacent to the said easement area, and the successors, assigns and business invitees of each of the foregoing, subject to the terms of this Agreement.
- 2. Each Licensee will secure and maintain at its expense, a policy of public liability insurance issued by a corporation which is qualified to do business in the State of Alabama which is rated at least A-VIII or better by the then current edition of Best's Insurance Reports published by A.M. Best Co. which policy shall insure Licensee's obligation hereunder to hold Licensor harmless from any and all liability which Licensor may incur as the result of any personal injuries, death to persons or damage to or destruction of property, as provided in the succeeding paragraph hereof. Such policy shall provide coverage to Licensor by naming Licensor as an additional insured as its interests may appear in the amount of Two Million Dollars (\$2,000,000) for each occurrence, personal injury or injuries, death to persons and/or damage to or destruction of property or properties, and shall contain a provision that such policy will not be terminated as to Licensor until Licensor shall have been given at least thirty (30) days notice in writing of the date on which such policy will be terminated. Licensee will furnish Licensor with either a certified copy of such policy or a certificate(s) of insurance, or certification of self-insurance as provided below, as the case may be, evidencing that the insurance required to be carried by such Licensee is in full force and effect within thirty (30) days after Licensor's written request. The minimum amount of assured liability is subject to review for adjustment by Licensor after five (5) years from the date of this agreement and subsequent adjustments are subject to review after five (5) years from the date of such adjustments. Notwithstanding anything to the contrary contained in this Section 2 or elsewhere in this agreement, each Licensee may self-insure the foregoing insurance requirements if and so long as such Licensee's net worth (or the net worth of any affiliated entity insuring Licensee's obligations under Licensee's self-insurance program) is at least \$200,000,000 and provided that upon written request such Licensee shall certify the same to Licensor in writing and provide any reasonably requested documents evidencing such net worth, or in lieu of such certification, deliver to Licensor a copy of its annual report that is audited by an independent certified public accountant which discloses that such Licensee has such net worth.

Each Owner Licensee will at all times hereafter (i) release Licensor with respect to any and all claims, damage, expense and liability which such Licensee may incur, suffer or be subjected to as the result of any personal injuries, death to persons or damage to or destruction of property, occurring within the Shopping Center and whenever occurring, suffered or allegedly suffered by such Licensee, its employees, tenants, agents or contractors, based upon or growing out of the ownership, use or occupancy of said strip of land or the construction, operation or maintenance of such electrical facilities on said strip of land by Licensor, and even though caused, occasioned or contributed to by the negligence, sole or concurrent, of the Licensor, its agents, servants or employees so long as such claim or loss involves in any way the construction, operation, maintenance or presence of the Encroachment by such Licensee, and (ii) indemnify, protect and save Licensor harmless from any and all actual damage, and from any and all claims for and/or liability for actual damages, which Licensor may incur, suffer or be subjected to as the result of any personal injuries, death to persons or damage to or destruction of property, occurring in whole or in part on such Licensee's Strip Portion and whenever occurring, suffered or allegedly suffered by such Licensee, its employees, tenants, invitees, licensees, or any other persons whomsoever, based upon or growing out of the ownership, use or occupancy of said strip of land or the construction, operation or maintenance of such electrical facilities on said strip of land by Licensor, and even though caused, occasioned or contributed to by the negligence, sole or concurrent, of the Licensor, its agents, servants or employees so long as such claim or loss involves in any way the construction, operation, maintenance or presence of the Encroachment by such Licensee.

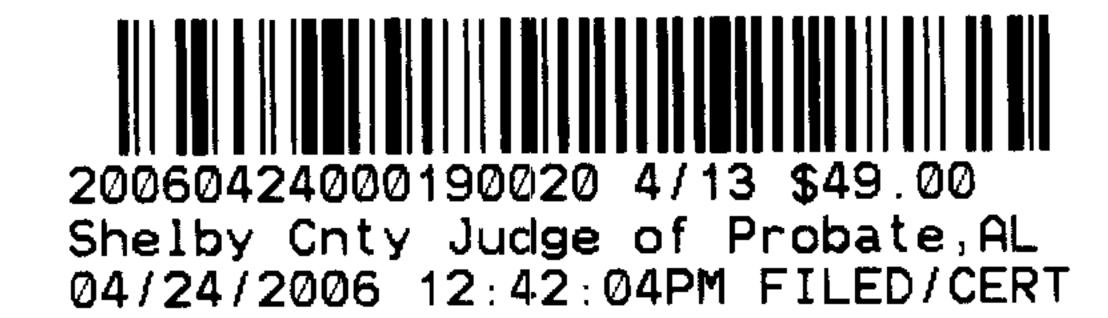
- 3. Each Licensee agrees and covenants that neither by the occupancy of such portions of said strip of land within such Encroachment, nor in any other way, has it claimed or is it claiming: (1) adversely to Licensor in its ownership of the Easement (each Licensee has in the Deed subordinated its ownership, easement and other rights, title and interest in and to all Strip Portions to Licensor's Easement), or (2) the right to maintain such Encroachment on such strip of land other than is permitted by this Agreement, but that the maintenance of such Encroachment by Licensee on said strip of land is with the recognition of the superior easement of Licensor, including the right of Licensor to place additional facilities permitted by the Deed within the Easement hereafter on such strip of land. Prior to installing any additional poles, towers or other structures, Licensor agrees to consult with Licensee regarding the locations for such facilities and the work schedule for installation thereof, but Licensor shall not be obligated to agree to any suggested modifications to Licensor's plans with respect to such locations and schedule.
- 4. The Licensees agree that they will not maintain or use the Encroachment so as to cause the transmission lines, communication lines, or any other structures or electrical equipment of Licensor now or hereafter located on the Easement strip of land to become or remain in violation of the requirements of the



National Electrical Safety Code as to clearances between electrical conductors and ways accessible to pedestrians and vehicles or otherwise. The said National Electrical Safety Code herein referred to is more specifically described in "Safety Rules for the Installation and Maintenance of Overhead Electric Supply and Communication Lines" published currently by the Institute of Electrical and Electronics Engineers (the "NESC"). Licensor agrees that the construction of the facilities that comprise the Encroachment will not violate the NESC. Each Owner Licensee agrees to maintain the Encroachment on its Strip Portion as shown on Exhibit A hereto and in accordance with good engineering practices and in such a manner as to not result in any adverse effect on the structural integrity or operational reliability of Licensor's facilities, including without limitation, that such Licensee shall maintain any and all conduits, pipes or other utility or drainage facilities in its Strip Portion in such a manner that they shall not leak and cause saturation or other adverse effects to the ground within Licensor's easement area. Each Licensee acknowledges that Licensor shall exercise its rights with respect to its Easement by utilization of heavy equipment and vehicles and that each Licensee shall be responsible to design, construct and install the Encroachment on its Strip Portion in such a manner as to protect it from such activities by Licensor. Licensor shall not be responsible for any damage to any part of the Encroachment caused by its exercise of its rights with respect to its easement and each Licensee hereby releases and waives any claim with respect to any such damage to the Encroachment.

In the use of the Encroachment, each Licensee also agrees to meet the standards and requirements of OSHA pertaining to or associated with Licensor's facilities on such Licensee's Strip Portion.

- 5. Licensees agree that in the event Licensor notifies them in writing that the Encroachment facilities on the Easement, or any parts thereof, must be temporarily inactivated to permit Licensor's proposed construction, reconstruction, repair or maintenance of electric transmission lines, communication lines, or other structures and facilities on Licensor's Easement, the Licensees, in such event, will immediately cease use of the same, or designated parts thereof, in order to facilitate the foregoing. During such temporary interruption of the use of the Encroachment, the Licensees shall be permitted to have as much access to and across the said easement strip as reasonably possible in order to be able to continue their business operations, provided no such access shall be permitted that impedes Licensor's work or that is in violation of Section 4 above.
- 6. Each Owner Licensee further agrees and covenants that it will construct and maintain at its own expense and as shown on Exhibit A, a concrete curb or barricade or fender or other adequate protective structure around each tower, poles, guy wire, or other work now existing on the Easement within or enclosed by the present boundaries of the property owned by the respective Licensee, and each tower, pole or other work which Licensor may construct in the future on such Licensee's Strip Portion within said boundaries in order to protect the same against damage from vehicles driven or parked thereon.
- 7. Notwithstanding anything to the contrary contained herein, each Owner Licensee further agrees and covenants that it will promptly and in any event within thirty (30) days from the date of Licensor's written notice to it, repair or replace any parts of the Encroachment that are not in compliance with this Agreement, including without limitation, Section 4. In the event such improvements or designated parts thereof are not so repaired or replaced within thirty (30) days after such notice is given, or in the event of an emergency (i.e., a situation presenting a material risk of imminent injury to persons or property or impairment of the structural integrity or reliability of Licensor's facilities), Licensor is hereby given the express privilege, power and authority to repair or replace the same or any part thereof without incurring any liability to any Licensee on account of any loss thereby sustained, even though Licensor is deemed negligent in such repair or replacement. Each Owner Licensee agrees and covenants that it will in such event promptly reimburse Licensor for the reasonable expense incurred in said repair or replacement on the respective Owner Licensee's Strip Portion.
- 8. With respect to Paragraph 7, each Owner Licensee agrees and covenants upon Licensor's request to give to Licensor, its agents, servants or employees, a full and complete release, satisfaction and discharge of all claims which it may have against Licensor, its agents, servants or employees arising out of or resulting from any use by Licensor of that portion of the Easement over and across said lands of such Licensee, or any damage to such Licensee's property, real and/or personal, caused during the repair or replacement authorized above in Paragraph 7, and to pay or cause to be paid all costs and expenses incurred by Licensor, its agents, servants or employees, in the repair of its facilities and expenses and attorney's fees incurred in defending any action which may be brought against Licensor, its agents, servants or employees, by reason of the matters contained herein.
- 9. Each Licensee agrees and covenants that: (1) in the use of the Encroachment, no flammable material, liquid or solid, will be stored or used on the Easement (other than fuel in tanks of vehicles or equipment permitted herein); (2) it will reimburse Licensor for the cost of any relocations or revisions of electrical facilities necessitated by the Encroachment; and (3) no vehicles permitted to be parked on Licensor's Easement will be over thirteen and one-half feet (13 1/2') in height. Not in limitation of any other provision of this Agreement and the agreement of the parties that this Agreement permits the installation and maintenance of the Encroachment only as described herein and nothing more, each Licensee acknowledges that it has no right to construct any improvements in the easement area, to perform any excavation in the easement area, to store any materials or equipment in the easement area (excluding temporary parking of employees and customers at the shopping center) or otherwise use the easement area in any manner not expressly agreed to herein.
- 10. Notice herein referred to shall be deemed to be given upon the date evidenced on the return receipt after mailing to Licensor or Licensee if the same is in writing and sent by certified or registered U.S. Mail with return receipt requested at the following respective addresses.



If to Licensor:

Alabama Power Company

P.O. Box 2641

Birmingham, AL 35291

Attention: Manager of Transmission, Lay Dam-Bessemer 115 KV TL

and if to Licensees:

To Developer:

c/o Colonial Realty Limited Partnership

2106 6th Avenue North

Suite 750

Birmingham, AL 35203

Attn: Sr. V.P. – Property Management

To Penney:

J.C. Penney Properties, Inc.

P.O. Box 10001

Dallas, Texas 75301-1104 Attention: Real Estate Counsel

To Target:

Target Corporation
Property Development

Attn: Real Estate - Existing Stores - Alabama

1000 Nicollet Mall Minneapolis, MN 55403

To Authority:

The Commercial Development Authority of the City of

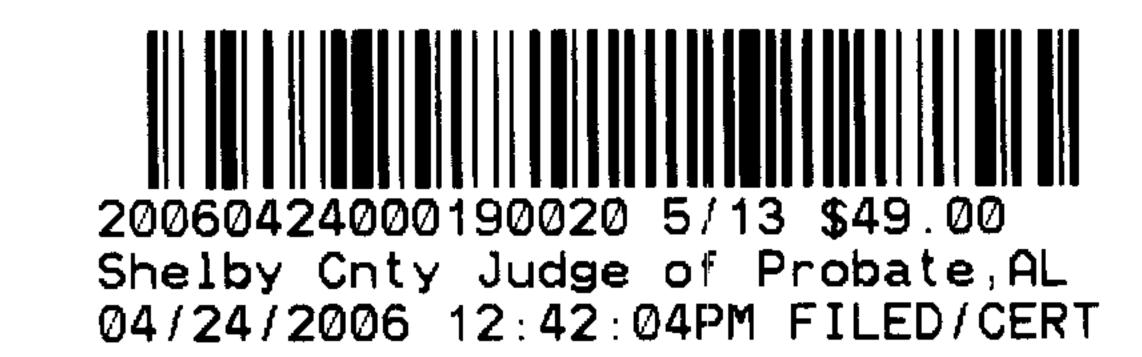
Alabaster, Alabama 201 First Street North Alabaster, Alabama 35007 Attention: Chairman

and in each case posted in the United States mail, registered or certified, return receipt requested, with postage prepaid.

- 11. The consent and license granted to the Licensees hereunder shall be perpetual and it is understood and agreed between the parties hereto that all the undertakings and covenants herein are to be construed and intended as covenants which run with the land and are to be binding upon, enforceable against, and inure to the benefit of the parties hereto, their executors, administrators, successors and assigns. This Agreement may be executed in counterparts, and each counterpart shall be deemed to be an original. This Agreement may be recorded.
- 12. Wherever in this agreement the term Licensor or Licensee is used, such term shall be deemed to include their respective executors, administrators, successors or assigns. No Licensee shall be liable under this Agreement for any liability of any other Licensee. The Licensees shall not be jointly liable under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument and affixed their seals on this the 17th day of April, 2006.

[Signatures on following pages]



### ALABAMA POWER COMPANY

By: Coper Roper

Name: Jeffrey E. Roper

Title: Iransmission Line Supervisor-Birmingham

STATE OF ALABAMA	
COUNTY OF <u>Jefferson</u>	
I, Iracy De Mora	, a Notary Public in and for said Cou

I, Iracy De Mora, a Notary Public in and for said County in said State, hereby certify that Jeffrey E. Royce, whose name as Iransmission Line Supervisor-B'ham of Alabama Power Company, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the instrument, (s)he as such Supervisor-Birming and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the  $\frac{2157}{}$  day of April , 2006.

My Commission Expires: 12|3|09

Notary Public-State at Large

[signatures continue on following pages]

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### HIGHWAY 31 ALABASTER, LLC,

an Alabama limited liability company

By:\_\_

Name:

Delegated Authorized Signatory

STATE OF ALABAMA

COUNTY OF TEFFENSM

I, a Notary Public, in and for said County in said State, hereby certify that 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 limited liability company.

Given under my hand this the \_\_\_\_

day of

\_\_\_\_, 2006.

My Commission Expires: 100. 8 2000

Nøtary Public - State at Large

[signatures continue on following pages]

# HIGHWAY 31 ALABASTER TWO, LLC,

Notary Public - State at Large

an Alabama limited liability company

\_\_\_

Name: Delegated Authorized

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STATE OF ALABAMA

COUNTY OF WILLIAM )

I, a Notary Public, in and for said County in said State, hereby certify that 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 limited liability company.

Given under my hand this the \_\_\_\_\_ day of \( \frac{\partial WU}{\partial \text{, 2006.}} \)

My Commission Expires: MV 8, 2000

[signatures continue on following pages]

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J. C. PENNEY PROPERTIES, INC.,

a Delaware corporation

By:\_\_\_\_

Paul Freddo, President

ATTORNEY

STATE OF TEXAS

COUNTY OF COLLIN

I, a Notary Public, in and for said County in said State, hereby certify that Paul Freddo 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 14th

day of April, 2006.

My Commission Expires: 130300

GLADYS HARRIS
MY COMMISSION EXPIRES
January 20, 2010

Printed Name

[signatures continue on following pages]

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TARGET CORPORATION,

a Minnesota corporation

By:\_\_\_\_

Name:

Scott Nelson Vice President

Title: Target Corporation

STATE OF MINNESOTA )

COUNTY OF HENNEPIN

I, a Notary Public, in and for said County in said State, hereby certify that Scott Delson whose name as Vice President of TARGET CORPORATION, a Minnesota 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 17% day of 49%

My Commission Expires: 1312010

Motary Public - State at Large

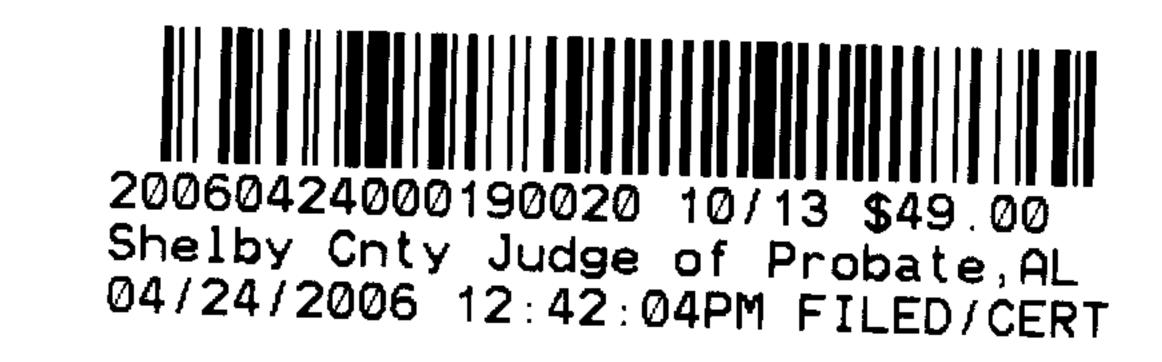
Minnesota

Notary Public - State at Large

Printed Name

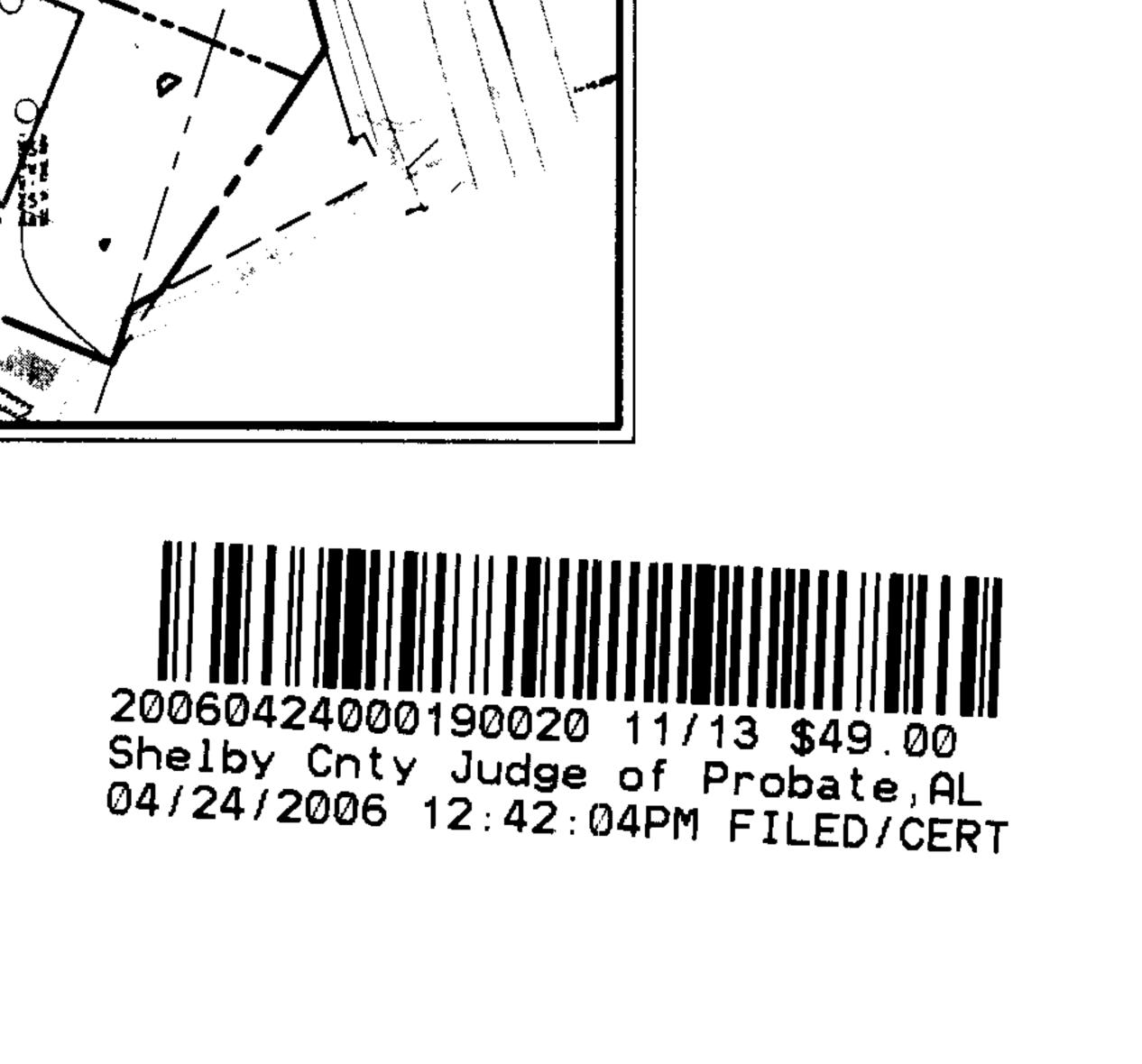
CAROL E. DRAKE
NOTARY PUBLIC - MINNESOTA
MY COMMISSION
EXPIRES JAN. 31, 2010

[signatures continue on following pages]



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

	By: Lemme 100h
	Name: DENNIS RUTTHER
	Title: CHATR MAN
THE STATE OF ALABAMA	
COUNTY OF SHELBY	
Development Authority of the Che foregoing instrument or convocation informed of the contents of the same voluntarily for and as the	
Given under my hand th	is the day of, 2006.
My Commission Expires:	Notary Public - State at Large



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### EXHIBIT B-1

### Legal Description of Penney Stub

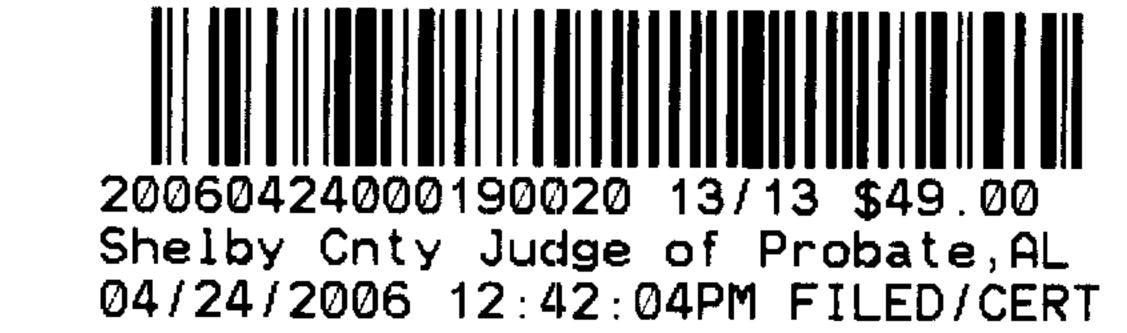
JC PENNEY PROPERTIES, INC. (Existing Easement)

A strip of land 100 feet in width which lies within the Southwest Quarter of the Northeast Quarter (SW¼ of NE¼) of Section 12, Township 21 South, Range 03 West, Shelby County, Alabama, such strip being more particularly described as follows:

To reach the point of beginning, commence at the Southeast Corner of Section 12, Township 21 South, Range 03 West; thence run N35°54'02"W a distance of 3614.75 feet to a point, such point being the point of beginning of the right of way herein described; therefrom, the strip is 100 feet in width and lies 50 feet each side of a centerline and the continuations thereof which begins at such point of beginning and turns a deflection angle to the left and runs S23°14'55"E a distance of 235 feet, more or less, to a point, such point being the point of ending of the right of way herein described.

All bearings are based on Alabama State Plate West Zone Grid North.

## EXHIBIT B-2



### Legal Description of Authority Stub

COMMERCIAL DEVELOPMENT AUTHORITY
OF THE CITY OF ALABASTER, ALABAMA (Existing Easement)

A strip of land 100 feet in width which lies within the Northwest Quarter of the Northeast Quarter (NW¼ of NE¼) of Section 12, Township 21 South, Range 03 West, Shelby County, Alabama, such strip being more particularly described as follows:

To reach the point of beginning, commence at the Southeast Corner of Section 12, Township 21 South, Range 03 West; thence run N35°54'02"W a distance of 3614.75 feet to a point; thence turn a deflection angle to the right and run N16°07'52"E a distance of 325.83 feet to a point; thence turn a deflection angle to the left of 31°31'35" and run N15°23'43"W a distance of 1606.79 feet to a point, such point being the point of beginning of the right of way herein described; therefrom, the strip is 100 feet in width and lies 50 feet each side of a centerline and the continuations thereof which begins at such point of beginning and turns a deflection angle to the right of 80°19'02" and runs N64°55'19"E a distance of 193 feet, more or less, to a point on the westerly edge of U.S. Hwy 31 Right Of Way, such point being the point of ending of the right of way herein described.

All bearings are based on Alabama State Plate West Zone Grid North.