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Shelby Cnty Judge of Probate, AL  
05/04/2009 01:06:59 PM FILED/CERT

Filed as additional security for  
Mortgage recorded of even date  
in Book \_\_\_\_\_, Page \_\_\_\_\_

Prepared out of state by, and when recorded, return to:  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Attention: John B. Baxter, Esq.

**ASSIGNMENT OF LEASES AND RENTS**

from

**SOUTHBROOK STATION INC.**

to

**BANK OF AMERICA, N.A., successor by merger to  
LASALLE BANK NATIONAL ASSOCIATION**

(As Agent for the benefit of the Lenders, and for its own account,  
pursuant to the Credit Agreement herein described)

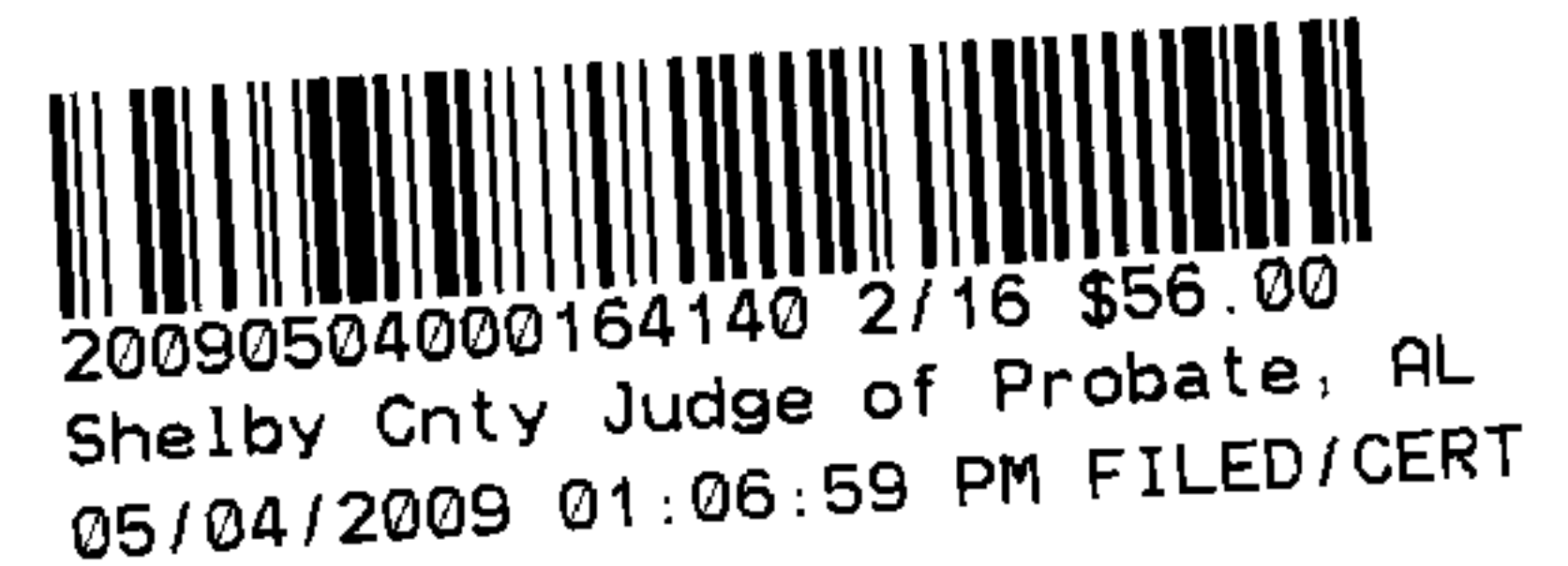
dated as of March 5, 2009

Property: Southbrook Village Shopping Center, Alabaster, Shelby County, Alabama

*Deed Cross Reference: Instr. 20050822000429940*

Return to:  
Zonia N. Veal  
First National Financial Title Services, Inc.  
3237 Satellite Blvd., Bldg 300, Suite 450  
Duluth, GA 30096  
File No.. 15008-5

Assignment of Leases and Rents  
Southbrook Station Inc.



Property: Southbrook Village Shopping Center, Alabaster, Shelby County, Alabama

Prepared out of state by, and when  
recorded, return to:

Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Attention: John B. Baxter, Esq.

### **ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of March 5, 2009 from **SOUTHBROOK STATION INC.**, a Delaware corporation; having mailing address of c/o Phillips Edison Shopping Center Fund III, L.P., 11501 Northlake Drive, Cincinnati, Ohio 45249, ("Assignor"), to **BANK OF AMERICA, N.A.**, successor by merger to LASALLE BANK NATIONAL ASSOCIATION, a national banking association (together with its successors and assigns, "Agent" or "Assignee"), in its capacity as Agent for itself and for each of the financial institutions from time to time party to that certain Credit Agreement (as hereinafter defined), Agent having a business address at 135 S. LaSalle Street, Suite 1425, Chicago, Illinois 60603. Definitions of capitalized terms are set forth in Article I below.

### **WITNESSETH:**

WHEREAS, Borrower is justly indebted to the Lenders in the principal sum of THREE HUNDRED SEVENTY-FIVE MILLION AND NO HUNDREDTHS DOLLARS (\$375,000,000.00) or so much thereof as may be advanced from time to time pursuant to the terms of the Credit Agreement, for money loaned to Borrower by the Lenders pursuant to the Credit Agreement, as evidenced by the Credit Agreement and by certain of the other Loan Documents, to be paid in lawful money of the United States of America with interest thereon, all at the rate and in the manner set forth in the provisions of the Credit Agreement; and

WHEREAS, Assignor is obligated with respect to the Obligations (hereinafter defined) under and by virtue of the Credit Agreement, with Accession Agreement thereto executed by Assignor, dated as of March 5, 2009; and

WHEREAS, as a condition to Lenders making certain of the loans under the Credit Agreement, Lenders require that Assignor enter into this Assignment to secure the loan; and



WHEREAS, Assignor is an Owner and Borrower, and as such Assignor will directly benefit from the making of the loans under the Credit Agreement by Lenders to Borrower; and

WHEREAS, in connection therewith, Assignor has executed and delivered the Security Instrument of even date herewith for the benefit of Assignee, covering the Property; and

WHEREAS, in order to induce Lenders to make available the credit facilities under the Credit Agreement, Assignor desires to absolutely assign to Assignee all Rents and income from the Property and to assign to Assignee all present and future Leases with respect to all or any portion of the Property.

**NOW, THEREFORE, WITNESSETH,** that in consideration of the sum of One Dollar (\$1.00) this day paid and other good and lawful consideration, the receipt and sufficiency of which is hereby acknowledged, and, in order to provide an additional source of payment for the Obligations, Assignor agrees as follows:

#### ARTICLE I. DEFINITIONS

For purposes hereof, the following terms shall have the following meanings:

**“Applicable Law”:** All applicable provisions of constitutions, statutes, rules, regulations and orders of all governmental bodies and all orders and decrees of all courts, tribunals and arbitrators.

**“Borrower”:** Phillips Edison Shopping Center Fund III, L.P., the Owners signatory to the Credit Agreement and the other Owners made party to the Credit Agreement pursuant to Section 4.2(t) thereof (including Assignor).

**“Credit Agreement”:** That certain Credit Agreement dated as of July 17, 2006, as amended by that certain First Amendment to Credit Agreement, dated as of April 12, 2007 and as further amended by that certain Second Amendment to Credit Agreement, dated as of June 26, 2007 by and among Borrower, Agent, and each financial institution from time to time party thereto and their respective successors and permitted assigns, as the same may be amended, restated, renewed or modified from time to time.

**“Event of Default”:** The occurrence of an “Event of Default” as defined in the Credit Agreement, or as defined in the Security Instrument, or a default by Assignor in the performance of any of the terms, covenants, and conditions of this Assignment.

**“Improvements”:** Any and all improvements, additions, alterations, betterments or appurtenances to the Property, whether now existing or at any time hereafter situated, placed or constructed upon the Property, or any part thereof.

**“Leases”:** Any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, all or any part of the Premises, together with all security and other deposits made in connection therewith and all guaranties thereof, together with and all extensions, renewals, modifications or replacements of any of the foregoing.



“Lender” or “Lenders”: The financial institutions party from time to time to the Credit Agreement as a “Lender” (as defined in the Credit Agreement), together with their successors and assignees pursuant to the Credit Agreement.

“Loan Documents”: This Assignment, the Credit Agreement, the Security Instrument, any and all UCC Financing Statements from Assignor to Agent, and any and all other documents constituting “Loan Documents”, as such term is defined in the Credit Agreement.

“Obligations”: (i) The aggregate principal balance of, all accrued and unpaid interest thereon, and all other amounts, payments and premiums due under or secured by the Credit Agreement, the Security Instrument and any and all other Loan Documents (except this Assignment), in the original principal amount of up to THREE HUNDRED SEVENTY-FIVE MILLION AND NO/100 DOLLARS (\$375,000,000.00), or so much thereof as may be advanced from time to time thereunder, whether or not evidenced by any promissory note, and any and all extensions, renewals, modifications and refinancings of same, (ii) any and all additional sums advanced by Lenders or Agent to preserve the interests granted to Agent hereunder, (iii) any and all of the covenants, conditions, warranties, representations and other obligations made or undertaken by Assignor or any other person or party to Assignee or others as set forth herein and in the Loan Documents; and (iii) all other “Obligations”, as such term is defined in the Credit Agreement as may now be, or from time to time hereafter shall become, owing to Lenders or Agent thereunder. **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED HEREBY SHALL NOT EXCEED THREE MILLION SIX HUNDRED SEVENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$3,672,500.)**

“Owner”: The borrowing entities party from time to time to the Credit Agreement as an “Owner” (as defined in the Credit Agreement), including Assignor.

“Post-Default Rate”: As defined in the Credit Agreement.

“Premises”: The Property and Improvements, collectively.

“Property”: The real estate or interest therein described in Exhibit A attached hereto and incorporated herein by this reference, and all rights, titles and interests appurtenant thereto.

“Rents”: The rents, income, receipts, revenues, issues and profits now due or which may become due or to which Assignor is now or hereafter may become entitled or which Assignor may demand or claim, arising or issuing from or out of the Leases, or from or out of the Premises or any part thereof, including, without limiting the generality of the foregoing, minimum rents, additional rents, percentage rents, parking maintenance charges or fees, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents, security deposits and other liquidated damages following default, premiums payable by any Tenant upon the exercise of a cancellation privilege provided for in any Lease and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises, together with any and all rights and claims of any kind which Assignor may have against any Tenant under any Lease or against any subtenants or occupants of the Premises.



"Security Instrument": That certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from Assignor as assignor thereunder for the benefit of Agent as beneficiary thereunder, covering the Property and other related collateral more particularly described therein, and given as an security for the repayment of the Obligations.

"Tenant": The tenant or lessee under any Lease.

## ARTICLE II. GRANT AND CONVEYANCE

Assignor does hereby unconditionally, absolutely and presently bargain, sell, assign and set over unto Assignee all right, title and interest of Assignor in and to any and all existing or future Leases;

TOGETHER with the immediate and continuing right to collect and receive all the Rents.

**TO HAVE AND TO HOLD THE SAME UNTO ASSIGNEE as provided herein.**

This Assignment is intended to be an absolute assignment from Assignor to Assignee and not merely the passing of a security interest; provided, however, that Assignee hereby grants to Assignor a revocable license to collect, except as hereinafter provided, the Rents, as they respectively become due, but not more than one month in advance, and to enforce the Leases, so long as no Event of Default exists in any of the terms, covenants, or provisions of the Credit Agreement, the Security Instrument, this Assignment or any Loan Documents. If an Event of Default occurs, however, such license shall be automatically revoked and Assignee shall not be required to take any action whatsoever, including, without limitation, instituting legal proceedings of any kind, to terminate Assignor's license to collect Rents or enforce any of the other provisions or remedies contained in the Assignment.

## ARTICLE III. REPRESENTATIONS, WARRANTIES, AND COVENANTS

3.1 Assignee as Creditor. Notwithstanding said license, Assignor agrees that Assignee, and not Assignor, shall be deemed to be the creditor of each Tenant in respect of assignments for the benefit of creditors in bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such Tenant (without obligation on the part of Assignee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein), with an option to Assignee to apply any money received by Assignee as such creditor in reduction of the Obligations.

3.2 Rights and Remedies. Assignor agrees that if an Event of Default exists, the license reserved herein by Assignor shall be automatically revoked, cease and terminate, and Assignee is hereby authorized, at its option, to enter and take possession of the Premises, or any part thereof, and to perform all acts necessary for the operations and maintenance of the Premises in the same manner and to the same extent that Assignor might reasonably so act. It is the intention of the parties that Assignee's right to collect the Rents due and owing may be exercised without electing to exercise Assignee's right to enter, take over and assume the management, operation and maintenance of the Premises. In furtherance thereof and not by way of limitation, Assignee is empowered, but shall be under no obligation, to collect the Rents, to enforce



payment thereof and the performance of any and all other terms and provisions of the Leases, to exercise all the rights and privileges of Assignor thereunder, including the right to fix or modify Rents, to bring or defend any suits in connection with the possession of the Premises or any part thereof in its own name or Assignor's name, to relet the Premises or any part thereof and to collect the Rents under any new Lease, Assignee shall from time to time apply the net amount of income after payment of all proper costs and charges, including loss or damage referred to hereinafter in Paragraph 3.6, and attorneys' fees, to the Obligations, in such order and priority as Agent shall determine, or, at Agent's election, as provided in Section 11.4 of the Credit Agreement. Such entry and taking possession of the Premises, or any part thereof, may be made by actual entry and possession, or by written notice served personally upon or sent by registered or certified mail to the last owner of the Premises appearing on the records of Assignee, as Assignee may elect, and no further authorization shall be required. Assignee shall only be accountable for money actually received by it pursuant to this Assignment. Notwithstanding any action taken by Assignee pursuant to this Paragraph 3.2 or otherwise in this Assignment, neither the assignment made pursuant hereto or any such action shall constitute Assignee as a "mortgagee in possession." If an Event of Default exists, Assignee shall have all rights and remedies provided hereunder, as well as at law or in equity, none of which shall be exclusive remedies, but on a cumulative basis.

3.3 Termination of Assignment. Should the Obligations be paid according to the tenor and effect thereof when the same shall become due and payable, and should all Obligations be performed in a timely manner, or on the earlier release of the Premises pursuant to the terms of Section 4.3 of the Credit Agreement, as evidenced by a recorded satisfaction or release of the Security Instrument, the rights and interests assigned to Assignee hereunder shall be automatically reconveyed to the owner of the Premises and this Assignment shall terminate and be of no further effect.

3.4 Consent to Payment of Rents. Assignor irrevocably consents that the Tenants, upon demand and notice from Assignee of occurrence of an Event of Default, shall pay the Rents to Assignee, without liability of the Tenants for the determination of the actual existence of any such Event of Default claimed by Assignee, Assignor hereby irrevocably authorizes and directs the Tenants, upon receipt of any notice from Assignee of an Event of Default, to pay to the Assignee the Rents due and to become due under the Leases. Assignor agrees that the Tenants shall have the right to rely upon any such notices of Assignee and that the Tenants shall pay such Rents to Assignee, without any obligation and without any right to inquire as to whether such Event of Default actually exists, notwithstanding any claim of Assignor to the contrary. Assignor shall have no claim against any Tenant for any Rents paid by any Tenant to Assignee. Upon the curing of all defaults in the payments due under or in the performance of any of the terms, covenants, or conditions of the Loan Documents, Assignee shall give written notice thereof to Tenants and thereafter, until further notice from Assignee, Tenants shall pay the Rents to Assignor.

3.5 Right to Further Assignments. Assignee shall have the right to assign Assignor's right, title, and interest in the Leases to any subsequent holder of the Security Instrument and to any person acquiring title to the Premises through foreclosure or otherwise. The receipt by Assignee of any Rents pursuant to this Assignment after the institution of foreclosure proceedings under the Security Instrument shall not cure such default nor affect such



proceedings or any sale pursuant thereto. After Assignor shall have been barred and foreclosed of all right, title and interest in the Premises, no assignee of Assignor's interest in the Leases shall be liable to account to Assignor for the Rents thereafter accruing.

3.6 Indemnity. Assignor hereby agrees to indemnify and hold Assignee and Lenders harmless from and against any and all liability, loss, or damage which Assignee may incur (a) under any of the Leases, (b) by reason of this Assignment, (c) arising from any action taken by Assignee pursuant to this Assignment, (d) as a result of any claims or demands which may be asserted against Assignee or Lenders by reason of any alleged obligation or undertaking to be performed or discharged by Assignee under any of the Leases or this Assignment, or (e) as a result of the enforcement (or attempted enforcement) of this indemnity, except to the extent the same are caused by the gross negligence or willful misconduct of Agent or any Lender. Nothing herein contained shall be construed to bind Assignee or Lenders to the performance of any of the terms and provisions contained in any of the Leases, or otherwise to impose any obligation on Assignee or Lenders, including, without limitation, any liability under the covenant of quiet enjoyment contained in any of the Leases in the event that any Tenant shall have been joined as party defendant in any action to foreclose the Security Instrument and shall have been barred and foreclosed thereby of all right, title, interest and equity of redemption in the Premises. Prior to actual entry and taking possession of the Premises by Assignee, this Assignment shall not operate to place responsibility for the control, care, management, or repair of the Premises upon Assignee or Lenders or for the carrying out of any of the terms and provisions of any Lease. Should Assignee or Lenders incur any liability by reason of actual entry and taking possession or for any other reason or occurrence or sustain loss or damage under any Lease or under or by reason of this Assignment or in the defense of any such claims or demands, Assignor shall immediately upon demand, reimburse Assignee for the amount thereof, including interest at the Post-Default Rate, or the highest rate permitted by law, whichever is lesser, together with costs, expenses and attorneys' fees, paid or incurred by Assignee and/or Lenders from time to time. Assignee may collect and retain possession and collect the Rents and apply them in or toward satisfaction of or reimbursement for all sums due pursuant to the previous sentence.

3.7 Covenants Regarding Leases. Assignor covenants it will not, without the prior written consent of Assignee obtained in each instance:

(a) enter into any new or future Lease with any person, firm or corporation, except on the best terms reasonably obtainable, under Leases which shall in all respects be satisfactory to Assignee as to the form and substance thereof and the credit standing of the respective Tenant thereunder,

(b) cancel, terminate or accept a surrender or suffer or permit any cancellation, termination or surrender of any Lease (except for a termination by Assignor by reason of a material default by Tenant);

(c) modify or amend any Lease so as to reduce the term thereof or the rent payable thereunder, or to change any renewal provision contained therein or otherwise increase the obligation of Assignor thereunder or reduce the obligations of the Tenant thereunder (provided that whether or not Assignee's consent is required hereunder, Assignor shall promptly provide a copy of such amendment or modification to Assignee);



(d) receive or collect or permit the receipt or collection of any rental payments of more than one monthly installment of rent under any Lease in advance of the due dates of such rental payments (whether in cash or by evidence of indebtedness);

(e) execute an agreement or create or permit a lien which may be or become superior to any existing Lease affecting the Premises; nor

(f) sell, assign, transfer, mortgage, pledge or otherwise dispose of or encumber, whether by operation of law or otherwise, any Lease or any rentals under any Lease or any current or future Rents.

3.8 Application of Rents. Assignor shall use and apply all Rents from the Premises first to the payment of the Obligations in accordance with the terms thereof and of the Loan Documents, and then to the payment of all Impositions (as defined in the Security Instrument) and costs and expenses of management, operation, repair, maintenance, preservation, reconstruction and restoration of the Premises in accordance with the requirements of the Security Instrument and the obligations of Assignor as the lessor under the Leases, and shall not use such Rents for purposes unrelated to the Premises unless and until all current payments on the Obligations, Impositions, and such costs and expenses have been paid or provided for.

3.9 Further Assurances. Assignor agrees to execute and deliver to Assignee and hereby irrevocably appoints Assignee and its successors and assigns as its agent and attorney-in-fact to execute and deliver during the term of this Assignment such further instruments as Assignee may deem necessary to make this Assignment and any further assignment effective.

3.10 Cancellation Proceeds. The Leases shall remain in full force and effect irrespective of any merger of the interest of the lessor and Tenants thereunder. If any Lease permits cancellation thereof on payment of consideration and said privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Assignee to be applied, at the election of the Assignee, to reduce the amount of the principal of the Obligations in the inverse order of maturity or to be held in trust by Assignee as further security, without interest, for the Obligations.

3.11 Assignor's Covenants. Assignor will perform all of its covenants and agreements as lessor under the Leases, and will not suffer or permit to occur any release of liability of any Tenant or the accrual of any right in any Tenant to withhold payment of Rents.

3.12 Notice of Default. Assignor will give prompt notice to Assignee of any notice of default, Event of Default, cancellation or surrender received from any Tenant or from any other person with respect to any Lease and furnish Assignee with complete copies of any said notice. If requested by Assignee, Assignor will enforce the Leases and all remedies available to Assignor against the Tenants in case of default under any Lease by a Tenant.

3.13 Continued Interest. Notwithstanding any variation of the terms of any Loan Document, including any increase or decrease in the principal amount of the Obligations or in the rate of interest payable under the Obligations or any extension of time for payment thereunder or any release of part or parts of the Premises, the Leases and the Rents hereby assigned shall continue as additional security in accordance with the terms of this Assignment.



3.14 Additional Security. Assignee may (a) take security in addition to the security already given Assignee for the payment of the Obligations, (b) release such other security, (c) release any party primarily or secondarily liable on the Obligations, (d) grant or make extensions, renewals, modifications, or indulgences with respect to the Loan Documents and replacements thereof, which replacements of the Loan Documents may be on the same or on terms different from the present terms of the Loan Documents, and (e) apply any other security theretofore held by it to the satisfaction of the Obligations without prejudice to any of its rights hereunder.

#### ARTICLE IV. MISCELLANEOUS

4.1 Headings. The Article, Paragraph and Subparagraph entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Paragraphs or Subparagraphs.

4.2 Notice to Parties. All notices or other communications required or permitted to be given pursuant to this Assignment shall be made and delivered as provided in Section 13.1 of the Credit Agreement.

4.3 Successors and Assigns. Subject to Section 13.5 of the Credit Agreement, all of the terms of this Assignment shall apply to, be binding upon and inure to the benefit of the parties thereto, their successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

4.4 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

4.5 Entire Agreement and Modification. This Assignment and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. This Assignment may not be amended, revised, waived, discharged, released or terminated orally, but only by a written instrument or instruments as provided in Section 13.6 of the Credit Agreement.

4.6 Applicable Law. This Assignment shall be governed by and construed according to the laws of the State of Alabama from time to time in effect, except that United States federal law shall govern to the extent that it permits Assignee to contract for, charge or receive a greater amount of interest, and also giving effect to all other United States federal laws applicable to national banks.

4.7 Severability. This Assignment is intended to be performed in accordance with, and only to the extent permitted by, all applicable legal requirements. If any provision of any of this Assignment or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather, shall be enforced to the greatest extent permitted by law.



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

4.9 Time is of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Assignor under this Assignment.

4.10 Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

4.11 No Joint Venture. Notwithstanding anything in any of the Loan Documents or in any other agreement or commitment to the contrary, neither the Loan Documents nor the transactions described in the Loan Documents nor the rights and obligations granted therein shall in any way create or contribute to the creation of a partnership or joint venture or similar arrangement between Assignor and Agent.

4.12 Waiver of Jury Trial; Jurisdiction.

(a) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN OR AMONG THE ASSIGNOR, THE AGENT OR ANY OF THE LENDERS WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE LENDERS AND THE AGENT (BY AGENT'S ACCEPTANCE HEREOF) AND THE ASSIGNOR HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR IN CONNECTION WITH ANY COLLATERAL OR ANY LIEN OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE ASSIGNOR, THE AGENT OR ANY OF THE LENDERS OF ANY KIND OR NATURE.


(b) EACH OF THE ASSIGNOR, THE AGENT AND EACH LENDER HEREBY AGREES THAT ANY FEDERAL DISTRICT COURT IN ILLINOIS OR, AT THE OPTION OF AGENT, IN THE STATE OF ALABAMA, OR, AT THE OPTION OF THE AGENT, ANY STATE COURT LOCATED IN CHICAGO, ILLINOIS OR ALABASTER, ALABAMA, SHALL HAVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN OR AMONG THE ASSIGNOR, THE AGENT OR ANY OF THE LENDERS, PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR TO ANY MATTER ARISING HEREFROM OR THEREFROM OR THE PREMISES. THE ASSIGNOR AND, BY AGENT'S ACCEPTANCE HEREOF, EACH OF THE LENDERS AND AGENT EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURTS. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE



SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE AGENT OR ANY LENDER OR THE ENFORCEMENT BY THE AGENT OR ANY LENDER OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(c) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS AND THE TERMINATION OF THIS AGREEMENT.

(SIGNATURE BEGINS ON NEXT PAGE)

  
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Shelby Cnty Judge of Probate, AL  
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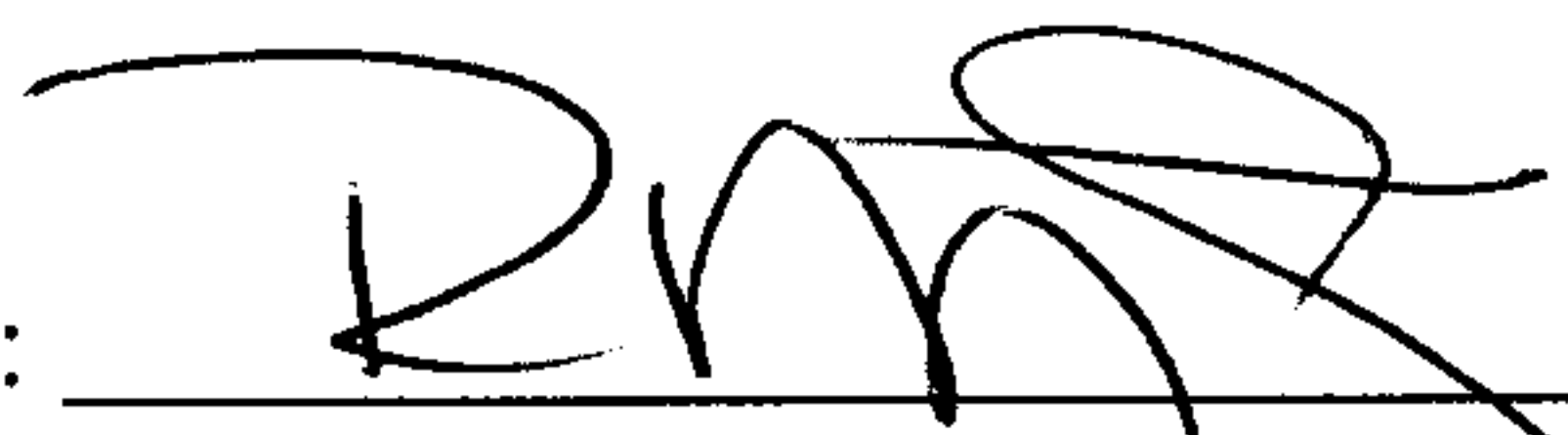
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**(SIGNATURE PAGE TO ASSIGNMENT OF LEASES AND RENTS IN FAVOR OF  
 BANK OF AMERICA, N.A. AS ASSIGNEE)**

IN WITNESS WHEREOF, this Assignment has been duly executed by Assignor under seal, as of the day and year first above written.

**ASSIGNOR:**

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

By:   
 Raymond D. Martz, Vice President

STATE OF OHIO                    )  
   ) SS:  
 COUNTY OF HAMILTON        )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Raymond D. Martz, whose name as Vice President of **SOUTHBROOK STATION INC.**, a Delaware corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

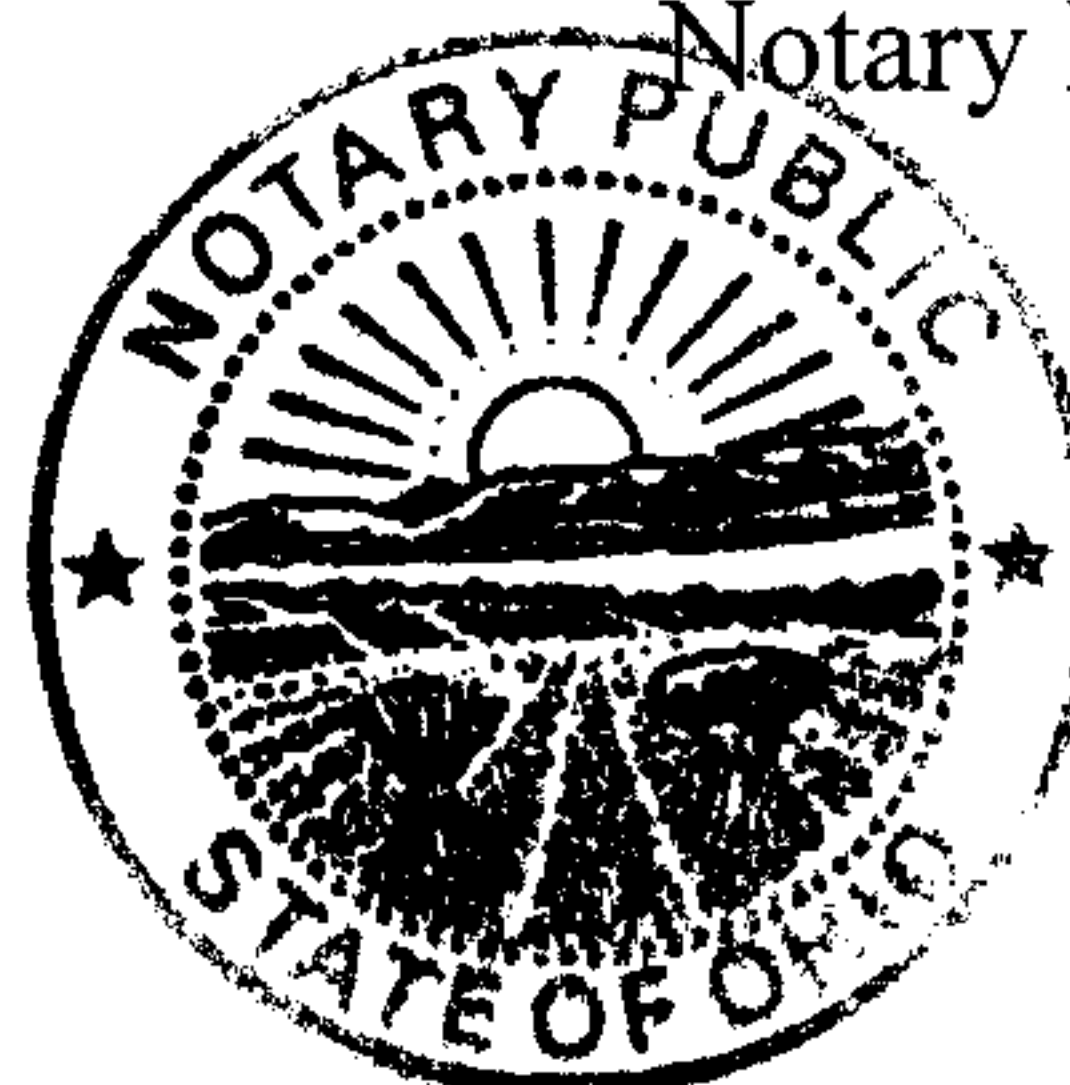
Given under my hand and official Seal this 20 day of February, 2009.

  
 Notary Public - Signature

AFFIX SEAL

\_\_\_\_\_  
 Notary Public - Printed

My Commission Expires:  
 \_\_\_\_\_



**BARBARA HOOD**  
 Notary Public, State of Ohio  
 My Commission Expires  
 August 2, 2013



**EXHIBIT "A"**

**PARCEL A:**

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

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

**PARCEL B:**

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

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

**PARCEL D**

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

Commencing at the intersection of Southwest corner of the North half of the Southwest quarter of the Northeast quarter of Section 2, Township 21 South, Range 3 West, Shelby



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

NON-EXCLUSIVE DUMPSTER PAD EASEMENT - As set forth in Statutory Warranty Deed dated August 18, 2005, recorded August 22, 2005 as Instrument No. 200508220000429940 being:

A parcel of land situated in the North half of the Southwest quarter of the Northeast quarter of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the southwest corner of the said North half of the Southwest quarter of the Northeast quarter and a point on the Northern right of way line of 6th Avenue Southwest; thence run in an Easterly direction along the South boundary of the said quarter-quarter line and said right of way line for a distance of 225.95 feet; thence leaving said right of way line turn an interior angle to the right of 110°54'58" and run in a Northeasterly direction for a distance of 294.95 feet to the point of beginning; thence turn an interior angle to the left of 92°15'09" and run in a Northeasterly direction for a distance of 87.51 feet; thence turn an interior angle to the left of 166°05'30" and run in a Southeasterly direction for a distance of 41.89 feet; thence turn an interior angle to the left of 63°25'38" and run in a Southwesterly direction for a distance of 20.71 feet; thence turn an interior angle to the right of 49°57'17" and run in an Easterly direction for a distance of 68.95 feet; thence turn an interior angle to the right of 92°00'48" and run in a Northeasterly direction for a distance of 26.38 feet; thence turn an interior angle to the right of 127°25'14" and run in a Northwesterly direction for a distance of 36.46 feet; thence turn an interior angle to the right of 90°36'41" and run in a Southwesterly direction for a distance of 16.85 feet; thence turn an interior angle to the left of 96°34'22" and run in a



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

NON-EXCLUSIVE INGRESS/EGRESS EASEMENT - As set forth in Statutory Warranty Deed dated August 18, 2005, recorded August 22, 2005 as Instrument No. 200508220000429940 being:

A parcel of land situated in the North half of the Southwest quarter of the Northeast quarter of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the southwest corner of the said North half of the Southwest quarter of the Northeast quarter and a point on the Northern right of way line of 6th Avenue Southwest; thence run in an Easterly direction along the South boundary of the said quarter-quarter line and said right of way line for a distance of 113.71 feet to a point of beginning; thence leaving said right of way line turn an interior angle to the right of  $129^{\circ}52'07''$  and run in a Northeasterly direction for a distance of 12.41 feet; thence turn an interior angle to the right of  $161^{\circ}07'24''$  and run in a Northeasterly direction for a distance of 199.71 feet; thence turn an interior angle to the left of  $156^{\circ}01'06''$  and run in a Northeasterly direction for a distance of 220.58 feet; thence turn an interior angle to the right of  $170^{\circ}02'19''$  and run in a Northeasterly direction for a distance of 48.82 feet; then turn an interior angle to the left of  $13^{\circ}55'59''$  and run in a Southwesterly direction for a distance of 43.80 feet; thence turn an interior angle to the right of  $107^{\circ}16'14''$  and run in a Southeasterly direction for a distance of 20.53 feet; thence turn an interior angle to the left of  $82^{\circ}28'59''$  and run in a Southwesterly direction for a distance of 211.68 feet; thence turn an interior angle to the right of  $167^{\circ}80'25''$  and run in a Southwesterly direction for a distance of 23.91 feet; thence turn an interior angle to the right of  $167^{\circ}25'31''$  and run in a Southwesterly direction for a distance of 140.04 feet; thence turn an interior angle to the right of  $136^{\circ}26'33''$  and run in a Southeasterly direction for a distance of 43.62 feet to a point on the Northern right of way line of 6th Avenue Southwest; thence turn an interior angle to the left of  $167^{\circ}15'08''$  and run in a Westerly direction along said right of way line for a distance of 65.64 feet to the point of beginning.

NON-EXCLUSIVE 20 FOOT UTILITY EASEMENT - As set forth in Statutory Warranty Deed dated August 18, 2005, recorded August 22, 2005 as Instrument No. 200508220000429940 being:

A parcel of land situated in the North half of the Southwest quarter of the Northeast quarter of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the southwest corner of the said North half of the Southwest quarter of the Northeast quarter and a point on the Northern right of way line of 6th Avenue Southwest;





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thence run in an Easterly direction along the South boundary of the said quarter-quarter line and said right of way line for a distance of 225.85 feet; thence leaving said right of way line turn an interior angle to the right of  $110^{\circ}54'58''$  and run in a Northeasterly direction for a distance of 621.38 feet; thence turn a deflection angle to the right of  $107^{\circ}39'26''$  and run in a Southeasterly direction for a distance of 86.63 feet to the point of beginning of a centerline of a 20 foot easement described as follows: thence turn an interior angle to the right of  $88^{\circ}58'22''$  and run in a Northeasterly direction for a distance of 137.28 feet; thence turn an interior angle to the left of  $179^{\circ}41'48''$  and run in a Northeasterly direction for a distance of 156.61 feet; thence turn an angle to the left of  $136^{\circ}40'26''$  and run in a Northerly direction for a distance of 124.01 feet to the end of the easement described herein.

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