

COMMON AREA MAINTENANCE AGREEMENT

THIS AGREEMENT, entered into as of this 14 day of December 1998, by and between METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation, party of the first part (hereinafter referred to as "Developer"), and SELKIRK PARTNERS, L.L.C, an Alabama limited liability company, party of the second part (hereinafter referred to as "SELKIRK");

WITNESSETH:

WHEREAS, SELKIRK is the owner of a parcel of land described in Exhibit "A" attached hereto and by this reference made a part hereof (said land being hereinafter referred to as the "SELKIRK PROPERTY") on which there is to be constructed an office building to be occupied by SELKIRK upon completion;

WHEREAS, Developer maintains certain areas (hereinafter referred to as the "Common Areas") as hereinafter set forth for the benefit of certain owners and tenants of a substantial portion of the development known as Inverness (said development and said areas thereof being generally within the property shown on a copy of the plan attached hereto as Exhibit "B" to this Common Area Maintenance Agreement and by this reference made a part hereof, said substantial portion thereof:

WHEREAS, SELKIRK recognizes that the maintenance by Developer of the Common Areas as hereinafter set forth will, upon completion of the aforesaid office building on the SELKIRK PROPERTY, inure to the benefit of the SELKIRK PROPERTY as well as to the benefit of such other owners and tenants within the Inverness development;

and WHEREAS, Developer and SELKIRK desire to enter into this Agreement to establish the basis on which SELKIRK will share in the costs and expenses of Developer in maintaining the Common Areas as hereinafter set forth.

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Developer to SELKIRK, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and SELKIRK covenant and agree as follows:

1. Agreement to Share. SELKIRK hereby recognizes that Developer presently maintains in a neat and orderly appearance the signs, lighting, entrances, parking areas and other landscaping located within Inverness and within the right-of-way of the road fronting Inverness known as Inverness Parkway, all as shown on Exhibit "B". SELKIRK hereby agrees for itself, its successors and assigns, that for a period of twenty (20) years from the date hereof, SELKIRK shall pay annually its share, as determined in Section 2, of all reasonable expenses and costs incurred by Developer or its successors directly in so maintaining said signs, lighting, entrances, and other landscaping. Notwithstanding the foregoing, SELKIRK agrees that the care and maintenance of the grass within the Selkirk Drive (Shelby County) right-of-way in front of the SELKIRK PROPERTY is not a part of the Common Areas and shall be maintained by SELKIRK at a quality level equal to the quality level of maintenance of the Common Areas of Inverness.

2. Method of Allocation. SELKIRK share of such maintenance costs and expenses within Inverness, as shown by Exhibit "B", and SELKIRK total obligation shall be Six Hundred and No/100 Dollars (\$600.00) for the first year and such amount shall be increased annually by three percent (3%) per year thereafter.

3. **Payment of Allocated Costs and Expenses.** Such Common Area maintenance costs and expenses shall be paid annually by SELKIRK, or its successors and assigns, to Developer, or its successors, within forty-five (45) days after receipt each calendar year by SELKIRK, of a statement from Developer certified by a duly authorized representative of Developer, or its successors, reflecting the total of such costs, . On or before the 30th day of April following each calendar year during the continuance of such Common Area maintenance by Developer, Developer shall submit such statement of expenses for the immediately preceding calendar year. Payments for any partial calendar years covered by the term of this Agreement shall be prorated according to the portion of the year covered.

4. **Term of Maintenance.** Nothing contained herein shall require or obligate Developer to maintain said signs, lighting, entrances, parking areas and other landscaping and SELKIRK recognizes that Developer, after thirty (30) days notice, may cease providing such maintenance at any time at its sole discretion. If Developer fails to maintain the Common Areas as required under this Paragraph 4, and such failure continues for a period of thirty (30) days after SELKIRK has given written notice to Developer specifying the nature of the default (provided, however, no such notice is required in an emergency), SELKIRK may enter upon Inverness and perform the necessary maintenance or repair work. This Agreement shall continue in full force and effect until, the earlier of twenty (20) years from the date hereof, or the 31st day of May of the year following the last year in which Developer, or its successors, has incurred any chargeable costs or expenses in connection with such maintenance. Developer and SELKIRK hereby agree that the obligation of SELKIRK hereunder is a real covenant and shall bind and be enforceable against all subsequent owners of the SELKIRK PROPERTY, and SELKIRK covenants and agrees that in the event SELKIRK conveys

all or any portion of the SELKIRK PROPERTY, that in connection with such conveyance SELKIRK shall require the purchaser thereof to assume the obligations of SELKIRK under this Agreement.

5. **Invalid Provisions.** If any clause or provision of this Agreement shall be illegal, invalid, or unenforceable under present or future laws, the remainder of this Agreement shall not be affected thereby. It is the intention of Developer and SELKIRK that in lieu of each clause or provision in this Agreement which shall be illegal, invalid, or unenforceable, there shall be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as possible in order to give effect to the intent of this Agreement.

6. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements between Developer and SELKIRK with respect to Common Area maintenance and constitutes the sole and entire agreement between Developer and SELKIRK with respect thereto.

7. **Headings.** The headings of the paragraphs of this Agreement are for convenience of reference only and are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

8. **Effect.** This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns whether voluntary by act of the parties or involuntary by operation of law.

Signed, sealed and delivered
By Grantor in the presence of:

[Signature]

Witness

[Signature]
Notary Public

GRANTOR: METROPOLITAN LIFE
INSURANCE COMPANY

By: [Signature] MS/A

Its: VICE PRESIDENT

Signed, sealed and delivered
by Grantee in the presence of:

GRANTEE: SELKIRK PARTNERS, L.L.C.
An Alabama limited liability
company.

[Signature]
Witness

[Signature]
Notary Public

By: At / [Signature]

Its: PRESIDENT

EXHIBIT "A"

An Exhibit to the Common Area Maintenance Agreement

A Description of the "Property"

Being that tract of land known as Inverness Parcel "11-B" on the Final Plat recorded in Map Book 24, Page 97 of Shelby County, Alabama.

Exhibit "E"

INVERNESS

A MetLife Investment



Developed and Managed by TAYLOR & MATHIS

The Common
Maintenance Area -
Along Inverness
Parkway (as outlined)

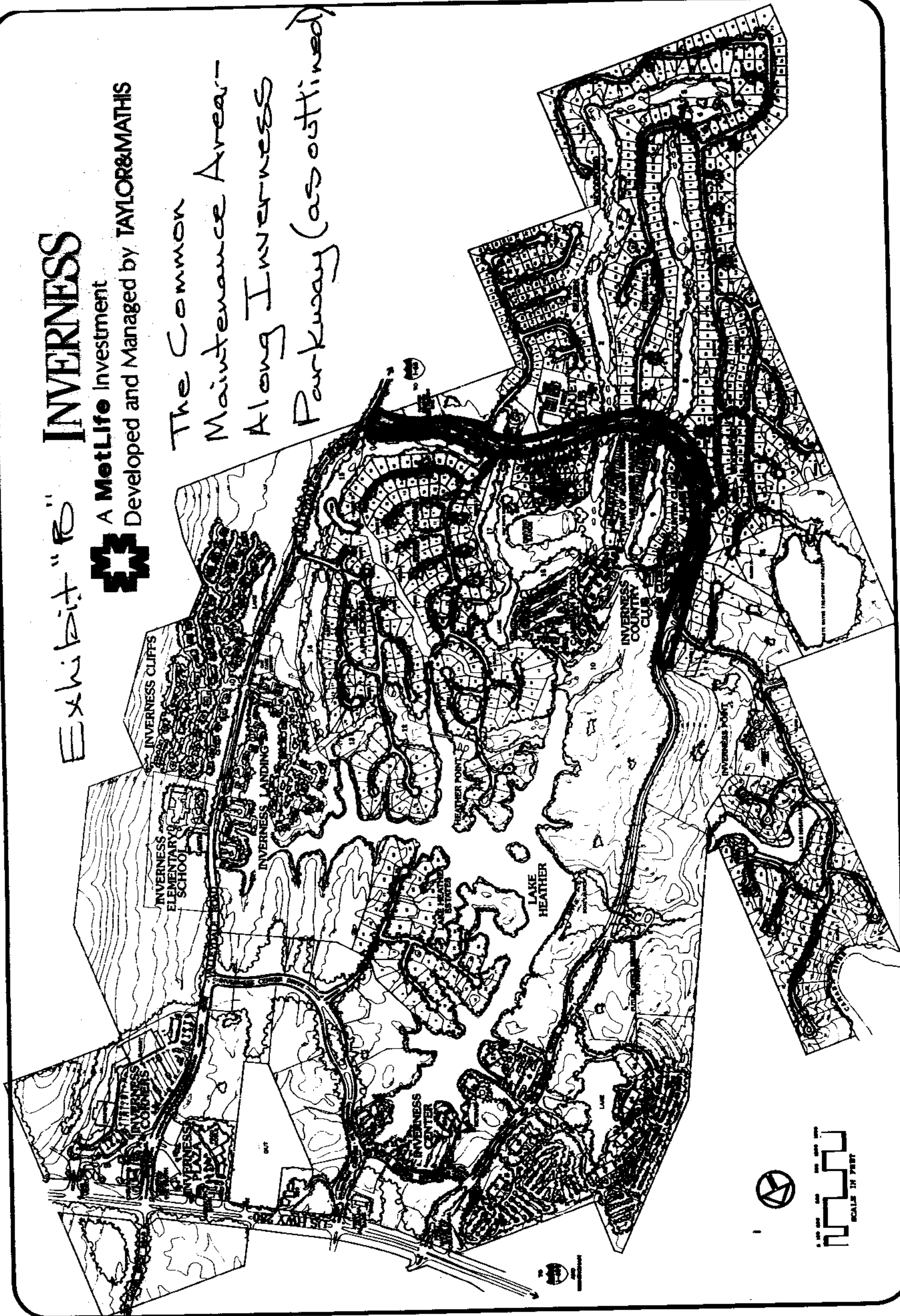


EXHIBIT B

This EXHIBIT B is attached to and by reference made a part of that certain Limited Warranty Deed dated December 1998, from METROPOLITAN LIFE INSURANCE COMPANY, INC., a New York corporation (hereinafter referred to as "Grantor") to SELKIRK PARTNERS, L.L.C., an Alabama limited liability company, (hereinafter referred to as "Grantee").

DECLARATION OF PROTECTIVE COVENANTS

Grantor hereby reserves, for the benefit of those properties which presently are, or hereafter may be designated as, part of "Inverness", and Grantor and Grantee hereby covenant and agree that the conveyance herein of the property and the estates granted by the within and foregoing Limited Warranty Deed (hereinafter "Property") is subject to, held and shall be held, conveyed, hypothecated or encumbered, rented, used, occupied and improved subject to the following Covenants and Restrictions, which shall run with the land and shall be binding upon Grantee, the heirs, legal representatives, successors and assigns of Grantee, and all parties having or acquiring any right, title, or interest in and to the real property and any part or parts thereof subject to such Restrictions.

ARTICLE I

COMMENCEMENT OF CONSTRUCTION

1. 1 Plans. Grantee hereby agrees that construction of an office building (the "building") shall conform with the exterior plans and appearance specifications, if any, approved by Grantor in the manner provided in ARTICLE II hereinbelow.

1. 2 Inverness. The Property conveyed by the within and foregoing Limited Warranty Deed is hereby declared to be and is designated as part of Inverness.

ARTICLE II

PERMITTED USES, PLAN APPROVAL

2.1 Permitted Uses. The building or buildings to be constructed on the Property shall be so constructed and used only for the following purposes:

2.1.1 Professional offices occupied by dentists, attorneys, architects, engineers and other similar professions, or business offices used exclusively for office purposes: provided, however, that the following uses shall not be permitted: any office, business or establishment wherein retail or wholesale trade or business is conducted or wherein any commodities, merchandise or products are stored, handled, conveyed, sold or otherwise disposed of.

2.1.2 Other similar compatible uses may be approved in writing by Grantor.

2.1.3 Any use hereunder shall comply with all laws, ordinances, rules, regulations and requirements of any governmental authority or agency having jurisdiction over the Property, including those relating to the use, maintenance, storage and disposal of "hazardous substances" (as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act, and the rules and regulations promulgated pursuant thereto, as may be amended from time to time), contaminants, oil, radioactive or other materials, the removal of which is required or the maintenance of which is prohibited, penalized or regulated by any governmental unit.

2.1.4 The Property shall not be used or occupied (a) as a nightclub, bar, restaurant incorporating coin-operated amusements or showing movies to its customers, theater discotheque, or social encounter restaurant (the term "social encounter restaurant" as described herein shall mean a restaurant whose primary objective is the sale of alcoholic

beverages in an atmosphere that encourages mixing and mingling in addition to the sale of food for on-premises consumption) such as Hooter's, as Hooter's is presently operated in the Birmingham, Alabama area, (b) for any business or use which creates strong, unusual or offensive odors (except cooking odors), fumes, dust or vapors; is a public or private nuisance; emits noise or sounds which are objectionable due to intermittent beat, frequency, shrillness or loudness; or creates unusual fire, explosives or other hazards, (c) as a bowling alley; billiard parlor; funeral parlor or mortuary; flea market; coin-operated Laundromat; industrial manufacturing facilities; automobile, RV, truck or trailer dealership; skating rink; adult bookstore or establishment selling, exhibiting or distributing nude, pornographic or obscene materials, including, without limitation, lingerie shop; massage parlor; topless or nude bar or lounge; so called "head shop"; amusement arcade or game room; body and fender shop; off-track betting parlor; or kennel or pet store having outdoor boarding facilities; (d) as a convenience store or a motor vehicle service station or establishment for the repair or maintenance of motor vehicles; (e) as a low cost provider of medical services, including but not limited to pregnancy termination clinic, planned parenthood and federally or state funded (in whole or part) medical services; (f) adult day care, child care; and (g) church or religious use.

2.1.5 The size of the building shall not exceed 9,000 usable square feet.

2.2 Quality of Appearance. The exterior of the building and the site development on the Property will be planned and constructed to a level of quality and appearance equal to or better than other office buildings in Inverness. The exterior appearance of the building and the site development on the Property shall be compatible with the existing appearances and site development schemes of

other office buildings and tracts within Inverness . All utilities serving the Property or the building or both shall be underground except for temporary utilities for construction purposes and Grantee shall pay any additional costs to any utility company for such underground service; all exterior lighting placed on the Property or the building shall conform to those types of lighting presently in use in Inverness .

2.3 Plan Approval. Construction of the building or site development of the Property shall not commence unless and until Grantee has obtained from Grantor, in the manner set forth hereinbelow, Grantor's unqualified and unconditional approval of any and all preliminary and final exterior plans and appearance specifications, as hereinafter described, relating to such construction of the building and site development on the Property, including, without limitation, plans and specifications for the exterior of the building, for the parking areas, for driveways, for lighting, for ingress and egress designs, for signs to be placed on the exterior of the building or on the Property, including color, location, nature and size, for landscaping, and for all other items relating to the exterior appearance of the building and the site development on the Property. The scope of review by Grantor shall be limited to appearance only and shall not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any similar or dissimilar factors. Commencement of construction prior to receipt of a Letter of Approval of the Grantor, a copy of which must be signed by the Grantee, and returned to the Grantor for retention, is strictly prohibited. In the event the Grantor no longer owns Inverness, Grantor shall give notice to Grantee to indicate the party to whom proposed plans are to be forwarded. All such plans and specifications shall be submitted to Grantor for Grantor's review and approval or disapproval in the following manner:

2.3.1 Preliminary Plans and Specifications. Grantee will submit to Grantor, for Grantor's review and approval or disapproval, preliminary plans of the exterior of the building and for lighting; a perspective of the building; specifications for exterior materials of the building; and a site plan of the Property showing all proposed improvements, grades, curbs, curb cuts, landscaping, lighting, and location of exterior signs. Within ten (10) business days from the date Grantor receives all such preliminary plans and specifications, Grantor will give Grantee written notice of Grantor's approval or disapproval thereof. If such notice is not so given within such period of time, Grantor shall be deemed to have approved such preliminary plans and specifications. Any approval by Grantor, whether actual or implied, of such preliminary plans or specifications or both shall in no event obligate Grantor to approve the final plans and specifications.

2.3.2 Final Plans and Specifications. Grantee will submit to Grantor, for Grantor's review and approval or disapproval, final plans and specifications which shall include, without limitation, working drawings of the exterior of the building, final specifications of exterior materials of the building, working drawings of all improvements to the Property exterior to the building, detailed landscaping plans, and detailed plans for exterior signs and for lighting. Within ten (10) business days from the date Grantor receives all such final plans and specifications, Grantor will give Grantee written notice of Grantor's approval or disapproval thereof. If such notice is not so given within such period of time, Grantor shall be deemed to have approved such final plans and specifications. The construction of the building and the development of the site shall be in strict compliance with said final plans and specifications submitted to and approved by Grantor, if any.

2.4 Additional Construction. From and after the time the building is completed in accordance with the provisions of Sections 2.1 through 2.3, except Grantor shall have twenty (20) business days to provide written notice to Grantee, or otherwise completed, Grantee will not construct any additional building or buildings on the Property for any purpose.

2.5 Modification to Building. Any material modifications of the exterior of the building or of any portion of the interior of the building which would affect the exterior appearance of the building or of any portion of the building or of the site development of the Property which are proposed by Grantee subsequent to Grantor's approval of the final plans and specifications in accordance with Section 2.32 will be in character with the final plans and specifications so approved by Grantor and compatible with the architecture of other structures and with the site development (including, without limitations, signs, driveways, curbs, and landscaping) of similar buildings and tracts in Inverness . Grantee shall make no such modification unless and until Grantee first obtains Grantor's approval of preliminary and final plans and specifications therefore. Grantor's approval of such preliminary and final plans and specifications shall be obtained in the same manner set forth in Section 2.3, except that Grantor shall give Grantee written notice of its approval or disapproval of such plans within twenty (20) business days of its receipt of all plans and specifications.

2.6 Signs. Any exterior sign approved by Grantor at any time will conform to the standard of exterior signs at Inverness and no modification of or addition to any exterior sign approved by Grantor shall be made unless and until Grantee first obtains Grantor's approval therefore in the manner provided in Section 2.3, except Grantor shall have twenty (20) business days to provide written notice to Grantee.

2.7 Disapproval of Plans. In the event Grantor ever disapproves any preliminary or final

plans or specifications of the building or of an additional building or buildings or of any modification of the building or of the site development, or disapproves of any other plans or specifications required to be submitted by Section 2.3 through 2.6, Grantor shall specify in detail those objections which Grantor may have to same. The factors which Grantor may consider in determining the approval or disapproval of any preliminary and final plans and specifications may include, but shall not be limited to, the following:

2.7.1 Building and architectural standards concerning the exterior of the building and all improvements exterior thereto;

2.7.2 Aesthetics (including design, appearance, color, size, location, finish, lighting, proportions and graphics of signage);

2.7.3 Exterior or exposed materials;

2.7.4 Site layout (including location of and traffic flow through proposed points of ingress and egress); and

2.7.5 Compatibility (including architectural, signage, and landscaping) with existing improvements and property contained within Inverness.

2.8 Drainage Provisions. The following provisions shall apply to drainage:

2.8.1 In connection with the construction of the building and of any modifications thereof and of any additional buildings and with the site development of the Property, Grantee shall make such provision for drainage of the Property affected by such construction and development as is satisfactory to Grantor and to any appropriate county, municipal, or governmental agencies having authority over such construction and development. Further, Grantee hereby covenants and agrees to hold Grantor harmless against any and all loss, cost,

damage, or injury which Grantor shall ever suffer or endure because of Grantee's failure to make adequate provisions for drainage of the Property after said proposed construction and development.

2.8.2 Existing drainage shall not be altered in such a manner as to divert the flow of water onto an adjacent lot or lots.

2.8.3 Drainage of surface water, storm water, and/or foundation drains may not be connected to sanitary sewers.

2.8.4 Drainage flow shall not be obstructed or be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear as a matter of record.

ARTICLE III

REPAIR OF DAMAGE; INDEMNITY

3.1 Grantee shall repair, restore, or replace, as Grantor shall direct, any property, whether personal or real, by whomever owned, which is damaged, destroyed, or injured in any way by Grantee, its agents, representatives, designees, employees, or successors or assigns, in connection with the construction of the building or the site development on the Property, including, without limitation, any right-of-way curbs, median curbs, signs, or pavement in the rights-of-way of dedicated or undedicated roads within Inverness; and Grantee hereby agrees to indemnify and hold Grantor harmless from any and all liabilities, claims, and losses resulting from or arising in connection with any such damage, destruction, or injury.

ARTICLE IV

MAINTENANCE

4.1 **Maintenance of Property.** Before such construction of the building is commenced, during such construction, and after such construction is completed, the Property and areas contiguous to the road right of ways known as Selkirk Drive shall be kept grassed, mowed, and otherwise maintained by Grantee in an attractive appearance and to a level of quality equal to or better than maintenance of other sites or common areas maintained by Grantor throughout Inverness. In the event Grantee fails to keep the Property so grassed, mowed, and maintained, Grantor, its representatives, agents, or employees shall have the right, after seven (7) days' notice to Grantee, to enter onto the Property at reasonable times and perform all work needed or desired in order to maintain the Property in the manner provided. Such entrance upon the Property for such purposes shall not be a trespass. Grantee hereby agrees to pay Grantor such costs and expenses as Grantor shall incur by so acting to maintain the Property within ten (10) days from the receipt by Grantee of a statement from Grantor for any such work.

4.2 **Maintenance During Construction.** The following provisions shall be observed:

4.2.1 Dust abatement and erosion control measures shall be provided by the contractor or owner in all stages of construction.

4.2.2 All building debris, stumps, trees, etc., must be removed from the Property by builder as often as necessary to keep the Property attractive. Such debris shall not be dumped in any area of Inverness.

4.2.3 During construction and after construction is complete, all vehicles, including those delivering supplies, must enter the Property only at places approved by the Grantor and

such vehicles must be parked on the Property.

ARTICLE V

GENERAL RESTRICTIONS

5.1 **Nuisances.** No noxious, offensive, or illegal activities shall be carried on upon any parcel nor shall anything be done on any parcel which may be or may become an annoyance or nuisance to the Inverness area.

5.2 **Mining, etc.** No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon the Property and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on the Property; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on the Property.

5.3 **Antennas.** All outside radio and television antennas shall be approved by Grantor in accordance with Article II herein.

5.4 **Trash.** No trash, garbage, or other refuse shall be dumped, stored, or accumulated on the Property. Trash, garbage or other waste shall not be kept on the Property, except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened by shrubbery or other appropriate material approved in writing by Grantor as not to be visible from any road or lake within sight distance of the parcel at any time except during refuse collection. No outside burning of wood, leaves, trash, garbage or other refuse shall be permitted.

5.5 **Subdivision.** The Property shall not be split, divided or subdivided for sale, resale, gift, transfer, or otherwise without the express written consent of Grantor.

5.6 **Access.** The Property shall be accessed solely from Selkirk Drive.

ARTICLE VI

ENFORCEMENT

6.1 In the event of a violation of breach of any of these restrictions, or any amendments thereto by any property owner, or agent of such owner, which Grantee has not cured within twenty (20) days of receipt of notice from Grantor, its successors and assigns, or any other party to whose benefit these restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages or other charges, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of any aggrieved party to invoke an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a difference violation. Grantor shall not be responsible in any way for any delay or failure to enforce or seek to enforce any violation or breach of any of these restrictions or amendments thereto.

ARTICLE VII

DURATION AND AMENDMENT

7.1 The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of Grantor and any owner of property which presently is, or may hereafter be designated as part of Inverness, their respective legal representatives, heirs, successors and assigns for a period of twenty (20) years (the "Restriction Period") from the date hereof, unless waived in writing by Grantor.

ARTICLE VIII

RECIPROCAL NEGATIVE EASEMENTS

8.1 Grantor and Grantee covenant and agree that the hereinabove provided restrictions shall not encumber or restrict or burden, either as reciprocal negative easements or as implied covenants or as restrictive covenants or as equitable servitudes or as any other right or interest or claim, any other properties owned in part or entirely by Grantor and which may benefit from the hereinabove provided restrictions, it being the intention of Grantor and Grantee that only the Property shall be restricted thereby. Grantor hereby expresses its general intent to use these same restrictions, as they may be modified, on other property in Inverness, as it may be specifically designated by deed as such from time to time.

ARTICLE IX

SEVERABILITY

9.1 Every one of the Restrictions is hereby declared to be independent of, and severable from the rest of the restrictions and of and from every other one of the restrictions and of and from every combination of the restrictions. Invalidity by any court of any restriction in this instrument shall in no way affect any of the other restrictions which shall remain in full force and effect.

Signed, sealed and delivered
By Grantor in the presence of:

Guy Luber
Witness

Patricia A. Proctor
Notary Public

GRANTOR: METROPOLITAN LIFE
INSURANCE COMPANY

By: [Signature]

Its: VICE PRESIDENT

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KA

Signed, sealed and delivered
by Grantee in the presence of:

[Signature]
Witness

[Signature]
Notary Public

GRANTEE: SELKIRK PARTNERS, L.L.C.
An Alabama limited liability
company.

By: AE / [Signature]

Its: PRESIDENT

Inst. # 1999-01848

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01/14/1999-01848
11:06 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
020 CRH 56.00