

## COMMON AREA MAINTENANCE AGREEMENT

**THIS AGREEMENT**, entered into as of this 10th day of December, 1999, by and between METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation, party of the first part (hereinafter referred to as "Developer"), and FIRST NATIONAL BANK OF SHELBY COUNTY, a National Bank, party of the second part (hereinafter referred to as "First National Bank");

### **WITNESSETH:**

**WHEREAS**, First National Bank 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 "First National Bank Property") on which there is to be constructed a bank building to be occupied by First National Bank;

**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 Corners Shopping Center (said development and said areas thereof being generally within the property shown on the copy of a plan thereof attached hereto as Exhibit "B" and by this reference made a part hereof, said substantial portion thereof consisting of approximately thirty-one (31) acres):

**WHEREAS**, First National Bank recognizes that the maintenance by Developer of the Common Areas as hereinafter set forth will, upon completion of the aforesaid office building on the First National Bank Property, inure to the benefit of the First National Bank Property as well as to the benefit of such other owners and tenants within the Inverness Corners Shopping Center

Inst # 1999-50024

*7/10/99 / Davis Plaza*

development; and

**WHEREAS**, Developer and First National Bank desire to enter into this Agreement to establish the basis on which First National Bank 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 First National Bank, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and First National Bank covenant and agree as follows:

1. **Agreement to Share**. First National Bank hereby recognizes that Developer presently maintains in a neat and orderly appearance the signs, lighting, entrances, parking areas and other landscaping located in the right of way of the roads within Inverness Corners Shopping Center, and within the right-of-way of a public highway fronting Inverness Corners Shopping Center known as Valleydale Road, and that Developer presently intends to so maintain any other roads constructed on land owned by Developer in Inverness Corners Shopping Center, all as shown on Exhibit "B". First National Bank hereby agrees for itself, its successors and assigns, that for a period of twenty (20) years from the date hereof, First National Bank shall pay annually its pro rata share, as determined in Section 2, of all reasonable expenses and costs actually incurred by Developer or its successors directly in so maintaining said signs, lighting, entrances, parking areas, and other landscaping. Notwithstanding the foregoing, First National Bank agrees that the care and maintenance of the grass within any right-of-ways of the Existing Access Road or future access roads surrounding the First National Bank Property is not a part of the Common Areas and shall be maintained by First National Bank at a quality level equal to the quality level of maintenance of the

Common Areas of Inverness Corners Shopping Center.

2. **Method of Allocation.** First National Bank's pro rata share of such maintenance costs and expenses within Inverness Corners Shopping Center, as shown by Exhibit "B", shall be determined by multiplying the total of such annual costs and expenses for such maintenance by a fraction established as follows: The numerator of such fraction shall be the number of acres contained in the First National Bank Property; the denominator of such fraction shall be the total acreage (31 acres) as defined herein, and such costs shall be reasonable.

3. **Payment of Allocated Costs and Expenses.** Such Common Area maintenance costs and expenses shall be paid annually by First National Bank, or its successors and assigns, to Developer, or its successors, within forty-five (45) days after receipt each calendar year by First National Bank, of a detailed statement from Developer certified by a duly authorized representative of Developer, or its successors, reflecting the total of such costs and expenses and a computation reflecting First National Bank's share 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 detailed 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 medians, landscaping, lighting and First National Bank recognizes that Developer, after thirty (30) days notice, may cease providing such maintenance at any time at its sole discretion. 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 First National Bank hereby agree that the obligation of First National Bank hereunder is a real covenant and shall bind and be enforceable against all subsequent owners of the First National Bank Property, and First National Bank covenants and agrees that in the event First National Bank conveys all or any portion of the First National Bank Property, that in connection with such conveyance First National Bank shall require the purchaser thereof to assume the obligations of First National Bank under this Agreement.

5. **Books and Records.** During the term of this Agreement, Developer, or its successors, shall maintain, keep, and preserve for a period of three (3) years after the time period to which they relate, full, complete, and accurate books and records regarding the maintenance costs and expenses which are the subject of this Agreement. Such books and records shall include complete information as to the purpose, nature, and amount of any item included in such costs and expenses, and the receipt of any expenditure in connection therewith. First National Bank, or its duly authorized agent or representative, shall have the right, at any reasonable time, to inspect such books and records and all related or supporting information.

6. **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 First National Bank 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.

7. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements

between Developer and First National Bank with respect to Common Area Maintenance and constitutes the sole and entire agreement between Developer and First National Bank with respect thereto.

8. **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.

9. **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.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed under seal as of the date first above written.

METROPOLITAN LIFE INSURANCE COMPANY,  
a New York corporation

  
Witness

By:   
Joel R. Redmon  
Assistant Vice President 

  
Notary Public  
Notary Public, DeKalb County, Georgia  
My Commission Expires March 15, 2003

FIRST NATIONAL BANK OF SHELBY COUNTY,  
a National Bank

Witness

Patricia L. Dore  
Notary Public

By:

Walter J. Thomas, CEO

Title:

Chief Executive Officer



## INVERNESS CORNERS OUTPARCEL "E"

A part of the Southeast 1/4 of the Southeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of said 1/4-1/4 section and run North along the East line of said 876.66 feet; thence a deflection angle to the left of  $90^{\circ}00'00''$  and run in a Westerly direction 210.00 feet to a point on a curve to the left, said curve being on the Southeasterly line of the access drive for Inverness Corners Shopping Center; thence a deflection angle right to the tangent of said point on curve and run in a Northwesterly direction along the arc of said curve 35.94 feet to a point; thence a deflection angle left of  $90^{\circ}00'00''$  from the tangent of said point on curve and run in a Northwesterly direction 29.00 feet to a point on the Northwesterly line of said access drive, said point being on a curve to the right, having a radius of 160.50 feet and a central angle of  $64^{\circ}59'54''$ ; thence a deflection angle left of  $90^{\circ}00'00''$  to the tangent of said point on curve and run in a Southeasterly to Southwesterly direction along the arc of said curve and access drive 182.08 feet to a point of compound curve, said curve having a radius 135.50 feet and a central angle of  $77^{\circ}00'01''$ ; thence run in a Southwesterly to Westerly direction along the arc of said curve and access drive 182.10 feet to the point of tangent; thence continue in a Westerly direction along said tangent 88.60 feet to the point of curve of a curve to the left, said curve having a radius of 184.50 feet and a central angle of  $10^{\circ}36'27''$ ; thence continue in a Westerly to Southwesterly direction along the arc of said curve and access drive 34.16 feet to a point on said curve; thence an interior angle of  $90^{\circ}00'00''$  from the tangent of said point on curve and run

# EXHIBIT "A"

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in a Northwesterly direction 163.11 feet to a point on a curve to the left, said curve being on the Southeasterly line of the access drive behind Inverness Corners Shopping Center, said curve having a radius 112.00 feet and a central angle of  $29^{\circ}54'04''$ ; thence an interior angle of  $96^{\circ}34'35''$  and run to the right in a Northeasterly direction along the arc of said curve and access drive 58.45 feet to the point of tangent; thence continue in a Northeasterly direction along said access drive 65.95 feet to the point of curve of a curve to the right, said curve having a radius of 54.00 feet and a central angle of  $32^{\circ}35'39''$ ; thence continue in a Northeasterly direction along the arc of said curve and access drive 30.72 feet to the point of tangent; thence continue in a Northeasterly direction along said tangent and access drive 4.21 feet to the point of curve of a curve to the left, said curve having a radius 100.00 feet and a central angle of  $14^{\circ}05'14''$ ; thence continue in a Northeasterly direction along the arc of said curve and access drive 24.59 feet to the point of tangent; thence continue in a Northeasterly direction along said tangent and access drive 10.54 feet to the point of curve of a curve to the right, said curve having a radius 140.00 feet and a central angle of  $13^{\circ}11'55''$ ; thence continue in a Northeasterly direction along the arc of said curve and access drive 32.25 feet to the point of tangent; thence continue in a Northeasterly direction along said tangent 2.93 feet to the point of curve of a curve to the right, said curve having a radius of 35.00 feet and a central angle of  $53^{\circ}22'51''$ ; thence continue in a Northeasterly to Southeasterly direction along the arc of said curve and access drive 32.61 feet to the point of tangent; thence continue in a Southeasterly along said tangent and access drive 9.55 feet to the POINT OF BEGINNING. Contains 1.4000 acres, more or less.

EXHIBIT "B"

# INVERNESS

A Metropolitan Life Investment  
Developed and Managed by TAYLOR&MATHIS

INVERNESS  
CORNERS

Inst. # 1999-50024

12/10/1999-50024  
02:00 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE

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