

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

Inst # 2000-05486

DECLARATION OF PROTECTIVE COVENANTS

FOR

LEE BRANCH CORPORATE CENTER

THIS DECLARATION OF PROTECTIVE COVENANTS (hereinafter referred to as the "Declaration") is made as of this 22th day of February, 2000 by AIG Baker Lee Branch, L.L.C., a Delaware limited liability, (hereinafter referred to as the "Developer"), which declares that the real property hereinafter described and defined as "Lee Branch Corporate Center" (the "Development") is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants").

WHEREAS, the Developer is presently the owner of all of the real property described in the Plat of the Development prepared by Gonzalez Webb Strength Civil Engineering & Surveying, Inc., and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 26, at Page 33, as amended in Map Book 26, Page 109, as such may be further amended from time to time; and

WHEREAS, the Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value and amenities of the Development and for the development, maintenance and administration of certain areas thereof which benefit all owners of property therein and, to this end, desires to subject said real property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the said real property and each owner thereof; and

WHEREAS, the Developer has deemed it desirable for the establishment and enforcement of uniform standards of development quality and the effective preservation of the appearance, value and amenities of the Development to create a nonprofit corporation (sometimes hereinafter referred to as the "Association") to which should be delegated and assigned the powers of maintaining and administering certain areas thereof which benefit all owners of property therein and enforcing the Protective Covenants and of levying, collecting and depositing such charges and assessments as may be authorized in this Declaration for that purpose; and

WHEREAS, the Developer has incorporated the Association under the laws of the State of Alabama, as a nonprofit corporation, for the purposes of exercising the aforesaid functions.

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NOW, THEREFORE, the Developer declares that the real property described in Section 2.02 hereof, and such additions thereto as may hereafter be made pursuant to Section 2.03 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said real property, as well as their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

1.01 **"Articles of Incorporation"** shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

1.02 **"Assessments"** shall mean both Annual Assessments and Special Assessments as such terms are defined in Article IV hereof.

1.03 **"Association"** shall mean and refer to Lee Branch Corporate Center Property Owners' Association, an Alabama nonprofit corporation, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles of Incorporation and Bylaws of the Association make reference.

1.04 **"Board"** shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.

1.05 **"Building"** with an initial capital letter, shall mean and refer to any building or other structure constructed or situated on any portion of the Property.

1.06 **"Bylaws"** shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

1.07 **"Common Areas"** shall mean and refer to all real and/or personal property which the Association and/or the Developer owns for the common use and enjoyment of the members of the Association, and all real and/or personal property within or in the vicinity of the Property in which the Association and/or the Developer has an interest for the common use and enjoyment of the members of the Association, including, without limitation, (a) all public or private roadways or easements upon which roadways providing ingress to or egress from the Property have been constructed within the boundaries of the Property, including without limitation, Lee Branch Lane, (b) all signage, street lights, lighting, walkways, sidewalks, paths, lanes, gates, walls, fences, guardhouses, improvements, landscaping and landscaped or other areas immediately adjacent to any public or private roadways, including all medians and roundabouts within any public or private roadways, (c) the Pond Areas, and all other lakes, water features, storm drains, and sewers, drainage

and/or watershed protection or retention ponds, lakes, basins or other areas and facilities located within the Property (other than such areas located solely within the boundary lines of any Lot), (d) all utility lines, pipes, ducts, conduit, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas, and (e) any other areas or improvements on or within the Property which are designated as Common Areas by Developer or the Association from time to time. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof. The use of the Common Area shall be restricted to park landscape, entry features, directional graphic system, drainage and retention, landscape medians, security, safety, pedestrian paths, roads, project lighting and recreational purposes or any other use to which a majority of the membership of the Association may accede.

Developer agrees that all of the Common Area, fee simple title to which may be owned or held by Developer, shall be conveyed to the Association not later than sixty (60) days after Developer relinquishes control of the Board pursuant to the Articles of Incorporation and this Declaration.

1.08 **"Developer"** shall mean and refer to AIG Baker Lee Branch, L.L.C., a Delaware limited liability, or its successors or assigns if such successors or assigns acquire any portion of the Property from the Developer and is designated as successor developer by Developer.

1.09 **"Governmental Authority"** shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Development.

1.10 **"Improvements"** with an initial capital letter, shall mean and refer to all Buildings and any other device or other improvement constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Building or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, piers, decking, docks, gazebos, foundations, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot. "Improvements" shall also mean any grading, any excavation or fill in excess of what is reasonably necessary for routine landscaping maintenance and repair.

1.11 **"Institutional Mortgagee"** shall mean and refer to any federal or state chartered bank, life insurance company, federal or state savings and loan association or real estate investment trust which holds a first mortgage or other first lien or charge upon any Lot or portion of a Lot or any interest therein which is of record in the Office of the Judge of Probate of Shelby County, Alabama.

1.12 **"Lot"** shall mean and refer to the Office Lots and any other designated Lots in accordance with property added under Section 2.03 hereof.

1.13 **"Occupant"** shall mean and include any Owner and any guest, tenant, agent, employee or invitee thereof and any other person who occupies or uses any Lot or Building within

the Development. All actions or omissions of any Occupant shall be deemed the actions and omissions of the Owner of such Lot or Building.

1.14 **"Office Lot"** shall mean each of Lots 1A through 11 according to the Plat.

1.15 **"Owner"** shall mean and refer to one or more persons or entities who or which have fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.16 **"Plat"** shall mean that certain Plat of Lee Branch Corporate Center prepared by Gonzalez, Webb Strength Civil Engineering & Surveying, Inc., and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 26, Page 33 and any amendments thereto.

1.17 **"Pond Areas"** shall mean and refer to the pond areas situated or to be situated on the Property as shown on the Plat.

1.18 **"Property"** or **"Development"** shall mean and refer to all real property which are presently or may hereafter be subject to this Declaration pursuant to Article II hereof.

1.19 **"Protective Covenants"** shall be defined as set forth in the heading of this Declaration.

1.21 **"Supplementary Declaration"** shall be defined as set forth in Section 2.03 hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO, DELETIONS THEREFROM

2.01 **General Declarations.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property, any part thereof and each Lot, Building, Improvement and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title of the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Building, Improvement or Common Area thereto.

2.02 **Legal Description.** The real property which presently is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Shelby County, Alabama, and as described in the Plat.

2.03 Additions to Property. Upon the approval in writing of the Association, the owner of any property who desires to subject it to this Declaration, may file a supplement to this Declaration (a "Supplementary Declaration") to that effect in the Office of the Judge of Probate of Shelby County, Alabama. Such Supplementary Declaration may contain such complementary additions to and modifications of the Protective Covenants as the Association shall determine to be necessary or proper to reflect the different character, if any, of the additional property, provided they are not inconsistent with the general plan of this Declaration, and shall set forth any reallocation of voting rights or responsibility for Assessments by the Owner of the Additional Property.

2.04 Withdrawals of Property. The Association may at any time or from time to time withdraw portions of the Property from this Declaration, provided only that the withdrawal of such portions of the Property shall not, without the joinder or consent of the Owners of Lots constituting over one-half of the then existing square footage of the Property, increase by more than one-fourth (1/4) the share of Association expenses payable by any Owner of a Lot which would remain subject thereto after such withdrawal. The withdrawal of Property as aforesaid shall be evidenced by filing in the Office of the Judge of Probate of Shelby County, Alabama, a Supplementary Declaration setting forth the portions of the Property to be so withdrawn.

2.05 Platting and Subdivision of the Property. The Developer shall be entitled at any time and from time to time, to subdivide, plat and/or re-plat all or any part of the Property, and to file subdivision restrictions and/or amendments thereto as the Developer may deem necessary with respect to the Development. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots owned by Developer. Any further subdivision or combination of any Lots shall not affect the allocation of Assessments between Office Lots as set forth in Section 4.07 or, except as otherwise set forth in Section 9.03, the voting rights of Owners.

2.06 Mutuality of Benefit and Obligation. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot, Building and Common Area and are intended to create mutual, equitable servitudes upon and in favor of each Lot, Building and Common Area, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot within the Development and (c) to create a privity of contract and estate between Developer and the Owners and their respective heirs, successors, and assigns.

2.07 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot in the Development, to make improvements and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (a) installation and maintenance of any Improvements in or to the Common Areas, (b) changes in the location of the boundaries of any Lots owned by Developer or of the Common Areas, (c) installation and maintenance of any water, sewer and any other utility systems and facilities within the Common Areas and (iv) installation of security and trash and refuse facilities.

ARTICLE III

EASEMENTS

3.01 **Owner's Easement With Respect To Common Areas.** Subject to the limitations set forth in Section 3.09 and the restrictions in Article VII of this Declaration, every Owner shall have the non-exclusive right, privilege and easement of access to and enjoyment in and to all Common Areas in common with Developer, its successors, assigns, and all other Owners and Occupants.

3.02 **Owner's Mutual, Reciprocal, Non-Exclusive, Easement for Ingress and Egress and/or Utilities, Other Services and Drainage.** In the event that all of the Owners shall agree, they may elect to create, by having all affected Owners file a declaration in the Office of the Judge of Probate of Shelby County, Alabama, one or more mutual, reciprocal, non-exclusive easement(s) in favor of each Owner, in common with all other Owners, and their respective tenants, employees, guests, invitees, licensees, agents and contractors under, through and over such portions of the Property as are designated therein in order to: (1) permit vehicular and pedestrian traffic over, through and across such areas designated therein as may from time to time be paved and intended and designated for such purposes and use and (2) install, maintain, use, repair and replace wires, pipes, conduits, utility lines, sewer and storm drainage lines and other services located or to be located on the Property. The use of each such easement may be made subject to such terms and restrictions as the Owners may agree and set forth in such declaration. In the event that all of the Owners shall agree, they may elect to have the Association maintain any such easement or easements.

3.03 **Grant of Easement to Governmental Authorities.** Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and non-exclusive easement over, across, through and upon any private roadways within the Development forming a part of the Common Areas for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

3.04 **Additional Easements and Uses.** For so long as the Developer owns any Lot, the Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the

completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Office of the Judge of Probate of Shelby County, Alabama. Such right of the Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the owners, their respective tenants, employees, guests, invitees, licensees and agents.

3.05 Reservation of General Access Easement. Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purpose of (a) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (b) the performance of the respective duties of Developer, the Association and their respective successors and assigns, pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Building, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or Building directly affected thereby.

3.06 Reservation of Easement Along Lakes and Waterways. Developer does hereby establish and reserve for itself, the Association, and their respective successors and assigns, a permanent, perpetual and non-exclusive easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width along that portion of any Lot which is directly adjacent to or abuts the Pond Areas or any other lake, retention pond, water feature, reservoir or waterway within the Development for the purpose of (a) constructing, installing, maintaining, repairing, operating, and replacing, and the use of, sidewalks, walkways, or paths thereon, (b) providing Developer, the Association, all Owners and their respective Occupants, successors and assigns, with the non-exclusive right to use such easement property and any improvements thereto for pedestrian access to, along and around the Pond Areas or such other lake, retention pond, water feature, reservoir or waterway and (c) mowing, clearing, removing, cutting or pruning any grass, weeds, underbrush, trees, stumps or other unsightly growth thereon; provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements or undertake any of the foregoing maintenance, repair, or other actions specified herein.

3.07 Reservation of Maintenance Easement. Developer does hereby establish and reserve for the Association and its agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire safety and a first-class appearance within the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.08 Reservation of Environmental Easement. Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon the unimproved portions of

all Lots for the purpose of taking any action necessary to effect compliance with any watershed, soil erosion or environmental rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right (but not the obligation) to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of any Governmental Authorities. Except in the case of any perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section shall not unreasonably interfere with the use or occupancy of any Building situated on any Lot.

3.09 Limitations. Any easements which may be created pursuant to this Article shall be appurtenant to and the benefits and burdens thereof shall pass along with the title to every Lot and are further subject to the following limitations:

(a) All provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association;

(b) All rules and regulations governing the use and enjoyment of the Common Areas which have been or may hereafter be adopted by the Association; and

(c) All restrictions contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property.

3.10 Additional Documents. All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

4.01 Affirmative Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance for a Lot, whether or not it shall be so expressed in any such deed or other instrument, including any purchaser at a judicial sale, shall be obligated and hereby covenants and agrees to pay to the Association, in the manner set forth herein, all Assessments determined in accordance with the provisions of this Declaration.

4.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Development, and in particular for the improvement, preservation, maintenance and administration of the Common Areas

and of any easement in favor of the Association, as well as for such other purposes as are properly undertaken by the Association.

4.03 Annual Assessments. The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Article V hereof) and such other recurring or projected expenses as the Board may deem appropriate. The Assessment year for the Annual Assessment need not be the calendar year.

4.04 Special Assessments. In addition to the Annual Assessments specified in Section 4.03 hereof, the Association may at any time levy one or more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or expected or unexpected repair or replacement to any of the Common Areas, including any fixtures and personal property related thereto; provided, however that any such Special Assessment must have the assent of Owners who own fifty percent (50%) or more of the total square footage of the Property at a duly called meeting for this purpose, written notice of which shall be sent to all Owners at least thirty (30) days in advance.

4.05 Duties of the Board. The Board shall fix the amount of all Assessments, the date of commencement for each Assessment, and the due date of such Assessment, on a per Lot basis, at least thirty (30) days in advance of any such commencement date, and shall at that time, prepare a roster of the Lots and Assessments applicable thereto, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the amount of the Assessment, the commencement and due dates shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement.

4.06 Date of Commencement and Due Date For Assessments. The liability of a Lot for any Assessment shall commence on the date or dates (which shall be the first day of a month) fixed by the Board in the resolution authorizing such Assessment. The due date of any such Assessment (which may be different from the commencement date) shall also be fixed in the resolution authorizing such Assessment (but which need not be the first day of a month). Such Assessments shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as so fixed in the resolution authorizing the Assessment.

4.07 Allocation of Assessment. The Board shall allocate a portion of each Assessment among the Lots as follows: each Office Lot shall be responsible for its pro rata share of the total amount of such Assessment (with the pro rata share to be determined by multiplying the Common Expenses by a fraction, the numerator of which shall be the square footage of each Office Lot and the denominator of which shall be the square footage of all of the Office Lots, excluding Lot 11). Initially, such allocation of Assessments is based upon the initial plans for the Development. If after filing of the Plat, a Lot is subdivided in accordance with the requirements of this Declaration or if two Lots are combined in accordance with this Declaration or the Plat is otherwise duly amended, the pro rata share for Assessments of the Lots shall be adjusted and determined based upon the new square footage of each Lot as set forth above.

4.08 Certificates Concerning Assessments. The Association shall, upon demand at any time, furnish to any Owner liable for any Assessment or his designee a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

4.09 No Exemption from Liability for Assessments. No Owner may exempt himself from liability for any Assessment levied against his Lot by waiver of the use or enjoyment of any of the Common Areas, or by abandonment of the Lot or in any other manner.

4.10 Effect of Non-Payment of Assessments: The Lien, the Personal Obligation; Remedies of the Association.

(a) If any Assessment or other charge or lien provided for herein is not paid in full on the due date set by the Board, then such Assessment charge or lien shall become delinquent on the fourteenth (14th) day thereafter, and shall, together with a late charge of four percent (4%) of the amount due and such interest thereon and cost of collection thereof as are hereinafter provided, thereupon become a continuing lien on the Lot encumbered thereby, and also the personal obligation of its Owner, his heirs, and his or its successors and/or assigns. The personal obligation of any Owner to pay such Assessment, however, shall remain his or its personal obligation and shall not be a personal obligation of any successors or assigns unless expressly assumed by them (but shall remain as a lien upon the Lot to the extent provided herein).

(b) If any Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at ten percent (10%) per annum, and the Association may bring an action against the Owner personally obligated to pay the same and/or commence the foreclosure of the aforesaid lien against the Lot in like manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, and there shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include the aforesaid late charge, interest on the Assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien. Any person (except an Institutional Mortgagee) who shall acquire, by whatever means, any interest in the ownership of any Lot, or who may be given or acquire a mortgage, lien or other encumbrance thereon, is hereby placed on notice of the lien granted to the Association and shall acquire his interest in any Lot expressly subject to any such lien of the Association.

(c) The lien herein granted to the Association shall be perfected by recording a claim of lien in the Office of the Judge of Probate of Shelby County, Alabama, stating the description of the Lot encumbered thereby, the name of its Owner, the amount due and the date when due. The lien shall continue in effect until all sums secured by it, as herein provided, shall have been fully paid. Such claim of lien shall include only Assessments which are due and payable when the claim of lien is recorded, plus interest, late charges, costs, attorneys' fees and advances to pay taxes,

prior encumbrances and other proper charges together with interest thereon, all as provided herein. Such claim of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. No sale or other transfer of a Lot shall relieve any Owner from liability for any Assessment due before such sale or transfer, nor from the lien of any such Assessment. The written opinion of an officer of the Association that any lien is subordinate to any given mortgage shall be deemed to be dispositive of that issue.

(d) The lien of any Assessments shall be subordinate to the lien of any Institutional Mortgagee bearing a recording date in the Office of the Judge of Probate of Shelby County, Alabama, prior to the date of recording the Association's claim of lien. Where an Institutional Mortgagee obtains title to a Lot as a result of foreclosure of its mortgage or where any Institutional Mortgagee or its designee accepts a deed to a Lot in lieu of foreclosure, such acquiror of title, its successors and assigns shall not be liable for any Assessment pertaining to such Lot or chargeable to the former Owner which became due prior to the acquisition of title to such Lot, unless such delinquent Assessment was secured by a claim of lien recorded prior to the recordation of the Institutional Mortgagee's mortgage. Such unpaid Assessments shall be instead collectible from all Owners, including such acquiror and its successors and assigns. Nothing herein contained shall be construed as releasing the party liable for such delinquent assessments from the payment thereof or liability for the enforcement or collection thereof by means other than foreclosure.

(e) Any person who acquires an interest in a Lot, except an Institutional Mortgagee as specifically provided above, including, but not limited to, persons acquiring title by operation of law or at a judicial sale, shall not be entitled to occupancy of the Lot or the use or enjoyment of the Common Areas until such time as all unpaid Assessments due and owing by the former Owner have been paid in full.

(f) The Association shall have the right to assign its claim of lien, and any other lien rights provided for in this Article, for the recovery of any unpaid Assessments to the Developer, to any Owner or group of Owners or to any third party.

4.11 **Exempt Property.** The Board shall have the right to exempt any portion of the Property from the assessments, charge and lien created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

(a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) As Common Area as defined in Section 1.07 hereof;

(c) As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

ARTICLE V

COMMON EXPENSES

The following are certain expenses with respect to the Common Areas which are hereby declared to be Common Expenses which the Association is obligated to collect by Assessment and which Owners are obligated to pay as provided in Article IV hereof. The enumeration below of these expenses shall in no way limit the Association from considering other expenses incurred in managing the Association or any part of the Common Areas and/or the Property as expenses subject to collection by Assessment.

5.01 **Maintenance and Repair of Common Areas.** The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean, attractive, and sanitary condition, including, without limitation and by example only: the cost and expense of maintaining, repairing, lighting, signing, cleaning, sweeping, painting, striping and removal of snow, ice, trash and debris from the Common Areas; the cost and expense of maintaining watering, planting, replanting and replacing flowers, trees, grass, shrubbery and planters; the cost and expense of rental or depreciation of machinery, equipment, fixtures and personal property used in the operation and maintenance of the Commons Areas; the cost and expense of the repair or replacement of the paving, curbs, walkways, drainage, pipes, conduits, lighting (including bulbs and ballasts) and similar items used in connection with the Common Areas; property owner association fees, if any, assessed to the Common Areas; and an administrative fee equal to fifteen percent (15%) of the total cost of operating and maintaining the Common Areas. Notwithstanding the foregoing, the cost and expense of any capital items, as such term is defined by generally accepted accounting principles (GAAP), shall be amortized over the useful life of the item.

5.02 **Utility Charges and Common Services.** Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Development, including, without limitation, trash collection and security services, if any.

5.03 **Management.** The cost and expense of such (a) employees or agents, including professional management agents, accountants, contractors, and attorneys, and (b) materials, supplies and equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas.

5.04 **Liability Insurance; Fidelity and Directors' Insurance; Other Insurance.** Liability insurance covering the Association, and its directors, officers, agents and employees, including fidelity and directors' insurance covering all directors, officers, agents and employees of the Association and the ARB and all managing agents who handle Association funds, if any, liability coverage with respect to the Common Areas, and any costs of any other insurance policies purchased for the benefit of the Association or Development, if any.

5.05 **Ad Valorem Taxes, Assessments.** Ad valorem real and personal property taxes and all assessments of any public authority assessed and levied upon any of the Common Areas (including, without limitation, sanitary sewer taxes, extraordinary or special assessment and all costs and fees, exclusive of any interest or late fees assessed for delinquent payment, including reasonable attorney's fees incurred in reasonably contesting or negotiating the same with public authorities).

5.06 Enforcement of Declaration and Rules and Regulations. All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the Protective Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Articles of Incorporation, the Bylaws or this Declaration.

5.07 Reserve Funds. The establishment and maintenance of a reasonable reserve fund or funds (a) for inspection, maintenance, repair and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace, (b) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (c) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

5.08 Miscellaneous. All other fees, costs and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or with the Board, in its sole discretion, determines to be appropriate to be paid by the Association.

ARTICLE VI

ARCHITECTURAL CONTROL

6.01 Necessity of Architectural Review and Approval. In order to preserve the architectural and aesthetic appearance of the Development, to establish a harmonious design for the Development, and to protect and promote the value of the Property, the Lots and all Buildings and Improvements thereon, no improvements or structure of any kind, including, without limitation, any building, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer, drain, disposal system, decorative building, landscaping, landscape device or object, shall be commenced, erected, installed, placed, moved onto, replaced, relocated, permitted to remain on or maintained upon the Property, nor shall any addition, change or alteration therein, thereof or thereto be made, nor any subdivision platting or replatting of the Property be made, unless and until the plans and specifications, showing the color, nature, kind, shape, size, materials and location of the same, shall have been submitted to and approved in writing by, the Association. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography.

6.02 Architectural Review Board. The architectural review and control functions of the Association shall be administered and performed by the Architectural Review Board (hereinafter referred to as the "ARB"), which shall consist of not less than one (1) member or more than five (5) members who may or may not be members of the Association. For so long as the Developer owns a Lot, it shall have the right to appoint all of the members of the ARB, or such lesser number as it may choose. Members of the ARB (as to whom the Developer may relinquish the right to appoint), and all members of the ARB after the Developer no longer owns a Lot, shall be appointed by, and shall serve at the pleasure of, the Board. A majority of the ARB shall constitute a quorum to transact

business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB, because of death, resignation, or other termination of service of any member thereof shall be filled by the Board, except that, for so long as the Developer owns a Lot, the Developer, to the exclusion of the Board, shall have the right to fill any such vacancy.

6.03 Powers and Duties of the ARB. The ARB shall have the following powers and duties:

(a) To adopt and approve, from time to time and at its election, Architectural Planning Criteria (hereinafter referred to as "APC") for the Development. The initial APC is as set forth in **Exhibit A**, attached hereto and incorporated herein. The APC shall be consistent with the provisions of this Declaration. Notice of the adoption of any modification or amendment to the APC, including a verbatim copy of such change or modification, shall be delivered to each member of the Association, provided that such delivery shall not constitute a condition precedent to the effectiveness or validity of such adoption or modification.

(b) To require submission to the ARB of plans and specifications for any improvement or structure of any kind, and any change, modification or alteration thereof, including, without limitation, any such improvement or change to any building, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer, drain, disposal system, landscaping or landscape device or object, the construction or placement of which is or is proposed upon any Lot or the Property. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ARB and as set forth in the APC, and shall include, but not necessarily be limited to:

(i) Two (2) copies of an accurately drawn and dimensioned site development plan and grading plan indicating the nature and extent of all grading and excavation for such Lot, the location of any and all Improvements, including, specifically, the Building to be constructed on such Lot, the location of all driveways, walkways, and outbuildings, and the relationship of the same to any set-back requirements applicable to the Lot and the number and location of all parking areas, parking spaces and curb cuts onto adjoining public or private roadways.

(ii) Two (2) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Building to be constructed on the Lot, which plans shall also indicate the total gross square footage of space, the number of stories and height of the Building to be built on such Lot.

(iii) Two (2) copies of written specifications and samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Building on such Lot or any other Improvements thereto, including without limitation, the type and color of all materials to be utilized on the exterior of any Building.

(iv) Two (2) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot or Building.

(v) Two (2) copies of a landscaping plan, including screening for trash receptacles and service areas.

(vi) Two (2) copies of a signage plan for such Lot and the Building to be built thereon.

(vii) Such other plans, specifications or other information or documentation as may be required by the ARB as may be necessary for the ARB to evaluate completely the proposed structure or improvement in accordance with this Declaration and the APC.

(c) To approve or disapprove the submitted plans and specifications for any improvement or structure as hereinabove described prior to commencement of construction of such improvement or structure. The approval by the ARB of plans and specifications submitted for its approval, as herein specified, shall not be deemed to be a waiver by the ARB of the right to object to any of the features or elements embodied in such plans or specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. Any party aggrieved by a decision of the ARB shall have the right to make a written request to the Board of the Association, within thirty (30) days of such decision, for a review thereof. The determination of the Board, after reviewing any such decision, shall in all events be dispositive. If any improvement or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the ARB, or shall not be completed, changed, modified or altered in accordance with the approvals granted by the ARB, then the Owner shall, upon and in accordance with a demand by the ARB, cause the property, improvement or structure either to be restored to its original condition or to comply with the plans and specifications as approved by the ARB, and shall bear all costs and expenses of such restoration or compliance, including the costs and reasonable attorneys' fees of the ARB. Notwithstanding the aforesaid, after the expiration of one (1) year from the date of final completion of any such improvement or structure, such improvement or structure shall be deemed to comply with all of the provisions hereof unless notice to the contrary shall have been recorded in the Office of the Judge of Probate of Shelby County, Alabama, or legal proceeding shall have been instituted to enforce such compliance. Any agent or member of the ARB may at any reasonable time enter any building or property subject to the jurisdiction of the ARB which is under construction or on or in which the agent or member may believe that a violation of the Protective Covenants is occurring or has occurred. Prior to the use or occupancy of any improvement or structure constructed or erected on any Lot, the Owner thereof shall apply for certification from the ARB that the construction thereof has been completed in accordance with the plans and specifications approved by the ARB. The ARB may, from time to time, delegate to a person or persons the right to approve or disapprove plans and specifications and to issue such certification.

(d) To adopt fees which shall be designed to reimburse the Association for the necessary and reasonable costs incurred by it in processing requests for ARB approval of any matters

under its jurisdiction. Such fees, if any, shall be payable to the Association, in cash, at the time that any application for approval is sought from the ARB.

(e) In the event the fees specified in subparagraph (d) above or any other costs or expenses of the ARB or Board pursuant to any other provisions of this Article VI are not paid by the Owner, they shall become a lien of the Association on the affected Lot enforceable in the manner specified in Article IV hereof.

(f) The ARB or any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot, Building or any other Improvements being constructed thereon in order to determine whether the approved plans and specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARB. Notwithstanding anything provided herein to the contrary, any inspections conducted by the ARB shall (i) not unreasonably interfere with the use of occupancy of any Lot or Building by any Owner or Occupant thereof, (ii) be limited to the exterior (outside) areas of such Improvements and (iii) not extend to or allow any entry upon or into any interior areas of any Improvements.

6.04 Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Developer, the Association, the ARB nor any agent, employee, representative, member, shareholder, partner, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article VI, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article VI, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Buildings, Improvements or the personal property of any Owner, Occupant or the respective tenants, employees, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any buildings or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot) and (f) any court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or any Improvements situated thereon. Notwithstanding anything to the contrary in this Declaration, it is not the responsibility of the Developer, the Association or the ARB to determine compliance of any Improvements or any plans or specifications therefor with any federal, state or local law, rule or regulation or with any requirement of any Governmental Authority (although plans and specifications may be disapproved for noncompliance), but such compliance shall instead remain the sole responsibility of the Owner or Occupant.

ARTICLE VII

RESTRICTIONS

7.01 **Use Restrictions.** For a period of fifty (50) years from the date of this Declaration, the primary use of the Office Lots shall be restricted to use as business offices and uses ancillary to business offices or for "Flex Space" uses, provided that permitted uses of Lots shall be further restricted by any applicable zoning laws and regulations. For purposes of this Declaration, "Flex-Space" Uses will permit a use of up to twenty-five percent (25%) of the floor area for storage and the remaining seventy-five percent (75%) of the floor area for office related uses. Thereafter, all uses permitted by applicable zoning laws or regulations shall be permitted. Without limiting the foregoing, any dangerous, noxious, offensive or excessively noisy activities, production of objectionable and noxious odors, oil or mineral exploration and the keeping of animals, birds or fowl shall be prohibited. During the initial fifty (50) years from the date of this Declaration, any Owner may request from the Association at any time a determination of whether a proposed use of its Lot is permitted, and a certificate to that effect signed by an officer of the Association shall be deemed to be dispositive of that issue, subject to applicable zoning restrictions.

7.02 **Lot Size.** No Lot shall be subdivided without the prior written approval of the Association unless otherwise permitted in Article II of this Declaration.

7.03 **Loading, Service and Outside Storage.** Each improved Lot shall provide sufficient on site loading facilities to accommodate all proposed site activities. All loading movement, including turnarounds, shall be made off of any right-of-way. All loading docks, service areas, and the like shall be located and screened from view so as to reduce to an absolute minimum their visibility from any street or other right-of-way; such screening may consist of any approved combination of earth mounding, landscaping, walls and/or fencing. No materials, supplies or equipment shall be permitted to remain outside of any building except for reasonable construction materials during construction of any Building. Rubbish and garbage facilities shall also be screened so as not to be visible from any street or other right-of-way.

7.04 **Mechanical and Industrial Equipment.** Any mechanical or industrial equipment visible from any street or right-of-way shall be considered as landscape elements, and all such equipment, including exterior lighting fixtures, shall be subject to such conditions as are established in any approval which may be granted by the ARB.

7.05 **Curb Cuts.** Curb cuts on boundary streets owned by the Association shall be minimized and shall be subject to the approval of the ARB.

7.06 **Drainage and Water Retention.** Each Lot must conform to any water management plan for the Property, as determined by the ARB and amended from time to time.

7.07 **Building/Mechanical Equipment.** All mechanical equipment which is utilized to service buildings, including roof mounted equipment, shall be enclosed or screened from view so as to be an integral part of the architectural design.

7.08 **Site Grading.** Site grading be subject to the review of the ARB.

7.09 Parking. Parking on the streets or other rights-of-way in the Development is strictly prohibited. All parking within the Development shall be limited to designated parking areas, and each Lot shall contain adequate parking for such Lot in accordance with applicable laws of the Governmental Authorities. No cross-parking easements or other agreements shall be permitted across separate Lots. Trucks may not be parked where visible from a street or other right-of-way. No boats, motor homes, trailers or camping trailers may be parked on the Property except for (a) trailers utilized as construction offices during construction of Improvements upon any Lot (not to exceed one (1) trailer per Lot), and (b) one (1) trailer on any Lot owned by Developer to be utilized as a sales or leasing office, prior to completion of Improvements on all Lots.

7.10 Signs and Graphics. Signs and sign locations within the Property shall be subject to the review of the ARB.

7.11 Exterior Lighting. Exterior lighting shall be subject to the review of the ARB.

7.12 Landscaping. All landscaping shall be subject to the review of the ARB.

7.13 Utilities. All electrical and telecommunication lines located upon the Property, other than those existing on the date of this Declaration, shall be installed and maintained underground. No overhead utility, power, telephone, cable television or other lines shall be installed or maintained without prior written approval of the ARB.

7.14 Building Materials and Roof Materials. All Buildings located upon the Property shall be constructed from materials approved by the ARB, all of which shall be subject to the review and approval of the ARB as more particularly set forth in this Declaration.

7.15 Pond Areas.

(a) No boating, skiing, swimming or fishing shall be allowed, on, or from any Lot which abuts the Pond Areas or on the Pond Areas. Notwithstanding anything provided in this Section 7.15(a) to the contrary, the Association, its successors and assigns shall have the right to utilize electric or gasoline powered watercraft on the Pond Areas in performing any maintenance activities thereon.

(b) Drainage flow into the Pond Areas from any portion of the Development shall not be obstructed, diverted or rerouted outside of the natural drainage swales existing on any portion of the Property within the Development, unless approved by the ARB.

(c) The Association may require that, with respect to any Lot which abuts the Pond Areas, appropriate measures be taken to (i) install a permanent lake edge treatment or any other similar improvements along the edge of the Pond Areas in order to encourage and preserve the aesthetical beauty of the Pond Areas and to prevent soil erosion or unsightly growth in and around the Pond Areas and (ii) control and eliminate siltation into or upon the Pond Areas.

7.16 Compliance with Governmental Regulations. Each Owner or Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the Governmental Authorities.

7.17 Maintenance. All buildings, landscaping and other improvements upon individual Lots shall be continuously maintained by the Owner thereof so as to preserve a well-kept appearance, especially along the perimeters of any Lot consistent with standards of a first class office building in the Birmingham, Alabama area. The Association shall have the responsibility of insuring that all such improvements are so maintained. The Association may appoint a maintenance committee to oversee and implement its responsibility and to amend and enforce the same, including the following maintenance standards:

(a) Trash. All trash and garbage shall be placed in designated containers, or within the Owner's contained service area and all such service areas shall be screened from view and properly landscaped and otherwise stored and handled in accordance with applicable governmental regulations (including, without limitation, applicable federal, state, local and/or municipal regulations). The permissible size of containers shall be determined by the decision of the Association and its decision shall be final. Yards and landscape areas will be kept free of trash, leaves and dead landscaping materials. In no event shall an Owner burn any material, or place any rubbish or permit any rubbish outside of designated containers, on Owner's Lot.

(b) Landscaping. All landscaped areas, including sodded areas, shall receive regular maintenance, including trimming, fertilization, irrigation, mowing and replacement of dead or diseased plant materials as required.

(c) Parking Lot and Sidewalks. All parking lots, sidewalks, and other hard surface areas shall be swept and cleaned regularly and cracks and damaged areas of such hard surface areas shall be repaired or replaced as required. Damaged or eroding areas of any asphalt parking surface shall be replaced as required and an overall resurfacing of the parking area will be done as necessary. Broken bumper stops and/or curbing shall be replaced as required and drainage inlets, storm sewers and any surface drainage facilities shall be maintained in good repair and shall remain clear of debris so as to enable the proper flow of water.

(d) Lighting. Levels of light intensity in the parking areas of all exterior walkways shall be maintained at safe levels and bulbs shall be replaced expeditiously as failure occurs. Light poles and standards shall be maintained in good repair and shall be kept functional at all times.

(e) Painting. All exterior painted surfaces shall be repainted on a regular schedule as required to maintain an exterior appearance which is uniformly clean, neat and orderly. Unless previously approved by the ARB, the color and quality of paint selected for such repainting is subject to the review of the ARB.

(f) Signs. All signs shall be maintained in good repair so as to be clear and legible.

(g) Run-Off. It shall be the responsibility of the Owner of any Lot, during the period of construction of any Improvements on the Lot or during the period prior to installation of landscaping on such Lot to keep Lee Branch Lane and other Common Areas free from any dirt or debris accumulating in Lee Branch Lane and other Common Areas by the method of pressure washing or other method acceptable to the ARB.

7.18 Tenants. It shall be the responsibility of each Owner to insure that any tenant of any Lot or portion thereof which is owned by it or him receives a copy of the aforesaid restrictions and that every lease utilized by such Owner contain a provision therein stating that every tenancy is subject to all of the terms and provisions of this Declaration, the Articles of Incorporation, the Bylaws and the rules and regulations adopted pursuant thereto. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations adopted pursuant thereto for all costs of enforcing the same.

7.19 Enforcement. If a determination is made by the Association that any of the aforementioned restrictions are being or have been violated upon any Lot, then the Association shall so notify the Owner in writing, specifying the violation. If within ten (10) days from such notification, the Association shall make a second determination that sufficient progress has not been made to remedy the violation, the Association may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation. The Owner shall be liable for the cost and expense of all such actions and the Association may treat all such costs and expenses therefor as a charge which shall become a lien of the Association on the affected Lot enforceable in the manner specified in Section 4.10 hereof.

ARTICLE VIII

CASUALTY, CONDEMNATION AND INSURANCE

8.01 Damage or Destruction to Common Areas. In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Section 8.01, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty with such changes, if any, as shall be approved by the Association. Notwithstanding anything provided in this Section 8.01 to the contrary, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such

repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Institutional Mortgagee of any Lot or Building be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

8.02 Damage or Destruction to Lots and Buildings. In the event of any fire or other casualty which damages or destroys any portion of any Lot, Building or any other Improvements thereto, then the Owner of such damaged Lot or Building shall promptly repair and otherwise restore, subject to compliance with the terms and provisions of Article VI hereof, such Lot, Building or other Improvements to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that if such restoration is impracticable or economically unfeasible, then the Owner of such Lot or Building shall promptly clear away, demolish and remove from the Lot any Improvements damaged or destroyed and return the remainder of the Lot and any remaining Improvements thereto to a clean, orderly, safe and sightly condition (including installing appropriate landscaping as approved by the ARB pursuant to Article VI hereof) which shall comply with all of the rules and regulations of the appropriate Governmental Authorities.

8.03 Condemnation of Common Areas.

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Development or the utilization of any other Common Areas within the Development, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all owners in an amount sufficient to provide funds to pay the remaining costs of repair, restoration and reconstruction.

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Development cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken or if the Board shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner.

8.04 Condemnation of Lots and Buildings. In the event that all or any portion of a Lot, Building or any other Improvements thereto is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Building shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot, Building or any Improvements thereto, as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article VI hereof and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot, Building or other Improvements is impracticable, economically unfeasible or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe and sightly condition (including installing appropriate landscaping as approved by Developer pursuant to Article VI hereof).

8.05 Insurance.

Each Owner shall be solely responsible for obtaining and maintaining comprehensive public liability, property damage, title and all other types of insurance with respect to its Lot, and Building, and any other Improvements. Each Owner, by acceptance of a deed to or other conveyance of any interest in a Lot does hereby waive and release the Association, Developer and their respective agents, employees, representatives, partners, shareholders, member, officers and directors from any and all liabilities or responsibilities or any other claim by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner, even if such loss or damage is caused by the fault or negligence of the Association, Developer, or any of their respective agents, employees, representatives, partners, shareholders, members, officers and directors.

ARTICLE IX

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

9.01 Membership. Every Owner, including the Developer, shall, for so long as it is an Owner, at all times be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Shelby County, Alabama and a true copy of such recorded instrument is promptly delivered to the Association. Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest (provided such tender is accepted), or upon such ownership interest being divested in some other manner. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the

provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

9.02 Board. The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the sole right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until the latter to occur of the following (a) the expiration of twenty (20) years from the date of this Declaration or (b) at such time as Developer no longer is the Owner of any Lot within the Development; provided, however, that Developer may, in its sole discretion, elect to transfer all such rights to the members of the Association prior to the occurrence of either of the foregoing events in the manner provided in the Bylaws. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 9.02.

9.03 Voting. Subject to the restrictions hereinafter set forth, each Owner shall be entitled to that number of votes equal to the percentage obtained by dividing the gross square footage of each Owner's Lot by the gross square footage of all of the Lots. Each Owner, by acceptance of a deed or other conveyance to a Lot or Building, consents and agrees to the dilution of its voting interest in the Association by virtue of any additional property being added to the Development as set forth in this Declaration. When one or more persons hold such interest, all such persons may be members, and the vote(s) for such Property shall be exercised in the manner set forth in the Bylaws. There shall be no fractional voting. The votes of Owners of a single lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required under the provisions of this Declaration, the Articles of Incorporation or the Bylaws, the affirmative vote of Owners who own a majority of the total square footage of the Property which is represented at any meeting of members duly called, and at which a quorum is present, shall be binding upon the members. Voting may take place by proxy executed and delivered in the manner set forth in the Bylaws.

Notwithstanding the provisions of this Section 9.03, the Developer shall have the right to elect the members of the Board, and in the event of vacancies, the Developer shall fill vacancies, until such time as all Lots have been sold to Owners other than Developer, or the Developer elects, at its option, to terminate its control of the Association, whichever first occurs. Notwithstanding anything provided in this Section 9.03 to the contrary, Developer hereby retains and shall have the sole right to exercise all voting rights and powers of the Association until the latter to occur of the following: (a) the expiration of twenty (20) years from the date of this Declaration or (b) at such time as Developer no longer is the Owner of any Lot within the Development, subject to the rights of Developer to transfer such rights to the members of the Association as provided in the Bylaws.

9.04 Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any

conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. The powers of the Association shall include, but not be limited to, (a) the power to purchase one or more Lots and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell and otherwise convey the same, (b) subject to the provisions of this Section 9.04, the right to borrow money for the purpose of acquiring additional Common Areas, for constructing, repairing, maintaining or improving the Commons Areas or any portion thereof or for providing any of the services authorized herein, (c) subject to the provisions of this Section 9.04, the right to give mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the Association and all Owners and Occupants, (d) the right to grant and accept easements, (e) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; provided, however, the dedication or transfer of title to any of the Common Areas must be approved by a majority of the votes represented in person or by proxy at a duly held meeting of the Association called for such purpose and (f) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer and /or security services for the Common Areas and/or the Lots. For so long as Developer shall own any Lot, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

9.05 **Agreements.** Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the property operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Expense. During the terms of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the

Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation or the Bylaws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

9.06 **Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every officer, agent, representative and member of the Board harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any such officer, agent, representative or member of the Board in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding if approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative or member of the Board. The officers, agents, representatives and members of the Board of the Association shall not be liable for any mistake in judgment, negligence or otherwise except for their own finally determined by a court of competent jurisdiction. The officers, agents, representatives and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such officer, agent, representative and member of the Board harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, agent, representative or member of the Board may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and officers and directors liability insurance in order to fulfill its obligations under this Section 9.06 and the costs of such insurance shall constitute a Common Expense.

ARTICLE X

NATURE OF PROTECTIVE COVENANTS; DEFAULTS AND REMEDIES

10.01 **Protective Covenants Running with the Land.** The foregoing Protective Covenants shall constitute a servitude in and upon the Property and shall run with such Property and inure to the benefit of and be enforceable by the Developer, its designated successors and assigns, by the Association, or by any Owner and his respective heirs, successors and assigns for a term of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive periods of ten (10) years, unless an agreement, which has been signed by Owners who own eighty percent (80%) or more of the then existing total square footage of the Property, agreeing to terminate or modify this Declaration has been recorded in the Office of the Judge of Probate of Shelby County, Alabama.

10.02 **Default.** Violation or breach of any of the Protective Covenants shall constitute a default hereunder. The Association shall provide written notice thereof to any Owner and any

Institutional Mortgagee who or which has requested the same and provided to the Association an address for such notices.

10.03 Remedies for Default. The existence of any default which has not been cured within fourteen (14) days of the notice specified above shall give the Developer, its successors or assigns, the Association, any Owner, and/or their respective heirs, successors and assigns, in addition to all other remedies specified herein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them. Pursuit by the Association of any such remedies shall be in the manner set forth in the Bylaws.

10.04 Nature of Remedies; Waiver. All rights, remedies and privileges granted to the Association pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

ARTICLE XI

AMENDMENT OF DECLARATION

11.01 Amendment By Developer. The Developer reserves the right unilaterally to amend this Declaration, and to do so at such time, and upon such conditions, in such form and for such purposes as it, in its sole discretion, shall deem appropriate by preparing and recording an amendment hereto, provided, however, that this right of unilateral amendment shall expire after all Lots have been sold to Owners other than the Developer, after which time this Declaration may be amended only in the manner set forth in Section 11.02 hereof.

11.02 Amendment By Association.

(a) Amendments to this Declaration may be proposed by either the Board acting upon a vote of the majority of the Board, or by the affirmative vote of Owners who own not less than a majority of the acres constituting the Property, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to the Declaration being proposed by the said Board or members, such proposed amendment or amendments shall be transmitted to the President of the Association or, in the absence of the President, such other officer of the Association, who shall thereupon call a special meeting of the members of the Association for a date not sooner than twenty (20) days, nor later than sixty (60) days, from receipt by him of the proposed amendment or amendments, and it shall be the duty of the Secretary of the Association to give each member written or printed notice of such special meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than fifty (50) days, before the date set for such special meeting. Such notice shall be given to any Institutional Mortgagee of record who requests such notices and provides an address therefor to the Association. If mailed, such notice shall be deemed to be

properly given when deposited in the United States mail, addressed to the member at his post office address as it appears on the records of the Association, the postage thereon being prepaid. Any member may, by written waiver of notice signed by such members, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. At such special meeting, the amendment or amendments proposed must be approved by the affirmative vote of Owners who own not less than eighty percent (80%) of the total square footage of the Property which is represented at any meeting at which a quorum has been obtained in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Office of the Judge of Probate of Shelby County, Alabama within twenty (20) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. Thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

(b) Notwithstanding the foregoing provisions of this Article XI, no amendment to this Declaration shall make any change in the qualifications of the membership nor in the voting or property rights of members, without approval in writing by all members and the joinder of all Institutional Mortgagees. Furthermore, no amendment to this Declaration shall abridge, limit, amend or alter the rights, privileges, powers or options of the Developer or any Institutional Mortgagee, as the same are set forth in this Declaration, without the prior written consent of the Developer if it is so affected and/or any Institutional Mortgagee which is so affected.

11.03 Restrictions on Amendment.

(a) No amendment shall materially adversely affect the rights of any Owner or group of Owners, unless such Owner or all Owners so adversely affected shall consent thereto. For example, no amendment shall alter the basis for apportionment of Assessments in any manner or place more burdensome restrictions on any Lot which would materially adversely affect any Owner or Owners, as opposed to other Owners, unless the Owner or Owners so adversely affected shall consent thereto.

(b) No amendment shall materially adversely affect the rights and priorities of any Institutional Mortgagees of record or change the provisions of this Declaration with respect to Institutional Mortgagees, unless all Institutional Mortgagees of record so adversely affected shall consent thereto.

(c) No amendment shall be made to this Declaration so long as the Developer owns any Lot, unless the Developer shall consent thereto. Such consent may be withheld by the Developer for any reason or no reason at all.

(d) Scrivener's Error. Notwithstanding the foregoing amendment provisions, any scrivener's error or omission may be corrected by the filing of an amendment to this Declaration consented to by the Board and any Owners or mortgagees of record directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Declaration, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment to this Declaration executed by the Board without the consent of any other party.

ARTICLE XII

GENERAL PROVISIONS

12.01 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States mail, postage paid, to the address of such Owner as it appears on the records of the Association at the time of such mailing.

12.02 Severability. Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any previous other provision, all of which shall remain in full force and effect.

12.03 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

12.04 Captions. The captions and titles of the various Articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

12.05 Binding Effect. The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Institutional Mortgagee and the respective heirs, executors, administrators, personal representatives, successors and assigns of each Owner, Occupant and Institutional Mortgagee, and shall inure to the benefit of Developer, the Association, all of the Owners and their respective mortgagees and their respective heirs, executors, administrators, personal representative, successors and assigns.

12.06 Usage. Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

12.07 ~~Effective Date~~. This Declaration shall become effective upon its recordation in the Office of the Judge of Probate of Shelby County, Alabama.

IN WITNESS WHEREOF, the undersigned have duly executed this Declaration as of the date first above written.

**AIG BAKER LEE BRANCH, L.L.C.,
a Delaware limited liability company,**

By: AIG Baker Shopping Center
Properties, L.L.C., its sole member

By: H. Ernest Mon
Its: Executive Vice President

Exhibit A

ARCHITECTURAL PLANNING CRITERIA

1. Architectural Review Board¹

- 1.1 The Developer shall designate an Architectural Review Board (ARB) composed of three to five individuals in accordance with Section 6.02 of the Declaration of Protective Covenants for Lee Branch Corporate Center.
- 1.2 All new construction, and/or additions and renovations of structures at Lee Branch Corporate Center shall be submitted to and approved by the ARB prior to commencing construction. Submittals shall be as specified herein, and shall include any and all additional information as may be requested by the ARB in order to assure compliance with these regulations.
- 1.3 Basis of disapproval by the ARB of any submittal may be any of the following:
 - a). Failure of any plans and or specifications to comply with any of the regulations herein.
 - b) Failure to submit any required or requested information.
 - c) ARB objection to the exterior design, appearance or materials proposed for any structure, landscaping or hardscape.
 - d) Objection to the locations of any proposed structure upon any lot or parcel or with reference to other lots or parcels in the vicinity.
 - e) Objection to the site plan, grading plan, drainage plan, landscaping plan or density calculations for any lot or parcel.
 - f) Objection to the color scheme, finish, proportions, style of architecture, materials, height, and bulk or appropriateness of any proposed structure.
 - g) Objection to parking areas proposed for any lot or parcel on the grounds of incompatibility to proposed uses and structures or the insufficiency of the size of the parking areas in relation to the proposed use.

¹ This Exhibit shall be construed in conjunction with the terms of the Declaration of Protective Covenants for Lee Branch Corporate Center; provided however, in the event of conflict, the terms of this Exhibit shall control. All capitalized terms in this Exhibit shall have the same meanings as set forth in the Declaration of Protective Covenants for Lee Branch Corporate Center.

h) Failure of the plans to take into consideration the particular topography and storm water run off of the lot or parcel.

i) Any other matter, which, in the opinion of the ARB, would render the proposed structure, structures or uses inharmonious with adjacent lots and or parcels.

1.4 The scope of the review by the ARB is limited to review for compliance with the intent of the Declaration of Protective Covenants for Lee Branch Corporate Center and such further requirements herein set forth and shall not be construed to mean approval for structural soundness, compliance with building and/or zoning codes and regulations or other similar or dissimilar factors or as further set forth in Section 6.04 of the Declaration of Protective Covenants for Lee Branch Corporate Center. Failure of the ARB to discover any violations with the requirements herein shall not relieve the Lot, Owner or Occupant from compliance with any of the requirements herein or with any applicable government regulation, code or zoning restriction.

2. General Requirements

2.1 All Lots shall be developed in accordance with these regulations and all applicable governmental ordinances, zoning regulations and building codes.

2.2 Owners and Occupants are responsible for securing their own approvals from the applicable governmental authorities and from the ARB. If any changes are required by any governmental authority subsequent to ARB approval, revised documents shall be resubmitted for ARB approval, which shall not be unreasonably withheld.

2.3 ARB will review and respond to all submittals as required by the land sale agreement, or if not specified therein, within two (2) weeks of ARB's receipt thereof.

2.4 Requirements, Codes and Ordinances of Shelby County, including the Scenic Corridor Overlay District shall govern if more stringent than this regulation.

3. Submittal Requirements (minimum):

3.1 Preliminary submittal:

a). Site plan(s) showing existing topography and conditions, existing trees at the Property, proposed locations and dimensions of building(s), drives, walks, curb cuts, parking spaces size and number, dumpster and transformer locations and access, landscaped areas, required setbacks and other information as required.

b). Schematic floor and roof plans and elevations of all proposed buildings and structures notated to indicate proposed exterior materials, building heights, including equipment and trash screening scheme(s).

c). Site lighting design including photometrics.

- d). Conceptual landscape plan, showing location and number of hardwood, evergreen and ornamental trees and shrubs.
- e). Physical samples of all proposed materials and colors, professionally mounted on a board (Sample Board), with all materials and colors labeled, coordinated and consistent with the notations on the building elevations.

3.2 Final Submittal:

- a). Complete civil engineering plans and specifications sealed by an Alabama Licensed Engineer.
- b). Complete architectural plans and specifications sealed by an Architect registered in the state of Alabama.
- c). Complete landscape and irrigation plans, including plant lists indicating plant materials, species and sizes.
- d). Complete plans and specifications for the monument sign, if applicable.
- e). Shop drawings for any and all building mounted signage, or construction details and information as necessary and required to indicate compliance with these regulations.

3.3 Plans: The items referenced in Sections 3.1 and 3.2 shall be referred to cumulatively as the "Plans".

4. Site Design Regulations

4.1 Building Setbacks from property line:

- a). Front (Lee Branch Lane): 80 feet minimum
- b). Side: 10 feet minimum.
- c). Rear: as approved by ARB and as allowed by zoning.

4.2 Paving and Hardscape setbacks from property line:

- a). Front: 20 feet minimum.
- b). Side: 10 feet minimum, except the ARB for special situations may approve 5' minimum.
- c). Rear: as approved by ARB and as allowed by zoning.

4.3 Parking lot pavement markings shall be green.

- 4.4 All general area lighting shall be provided using freestanding pole lighting equal to WLS-FV series. Maximum pole height shall be 35 feet. Color of poles and freestanding fixtures shall be dark green to match Sherwin Williams SW 2385. Site lighting shall be controlled and/or shielded so as to not shine on adjacent properties. Security lighting shall provide a minimum of 1 foot candle maintained at all parking areas.
- 4.5 All building mounted lighting shall be designed to shine downward. Wall packs and other fixtures with a visible light source are prohibited.
- 4.6 The use of decorative landscape lighting is encouraged but not required. If used, light sources shall be concealed from view and shall not shine on adjacent properties.
- 4.7 Parking lots shall provide a minimum of one landscaped interior island per every 10 spaces, unless otherwise approved by the ARB. The intent is to prohibit large expanses of uninterrupted paving.
- 4.8 Handicapped access where curb cut is made and from building to existing sidewalks (if any) and handicapped parking shall be provided in accordance with the Americans with Disabilities Act.
- 4.9 All dumpsters, trash containers, ground mounted equipment shall be completely screened if visible from Lee Branch Lane or Highway 119, unless otherwise approved by the ARB.

5. Building Design Regulations

- 5.1 All buildings shall be constructed primarily of brick on all four sides compatible in color with Developer's building, unless otherwise approved by the ARB. The use of garish or primary colors and painted masonry is prohibited.
- 5.2 All buildings with flat or gently sloping roofs (3 in 12 maximum slope) shall have parapets or sloped exposed roofing on all four sides of the building. Interior roof drainage is recommended for flat roofs. However, decorative metal through wall scuppers and downspouts will be accepted at the rear side of the building only on flat roofed buildings. Flat roofs not visible to the public may be of any material allowed by code. Exposed roofing shall be architectural metal standing seam, dimensional asphalt shingles, or slate and shall be sloped at a minimum of 8 in 12, unless otherwise approved by the ARB.
- 5.3 Trim materials may be painted or prefinished metal, natural stone, architectural precast concrete, painted wood or EIFS. Rough sawn lumber, and fake or plastic materials are prohibited.
- 5.4 All roof or ground mounted mechanical equipment shall be screened from public view from Lee Branch Lane and Highway 119. The parapet shall be the only acceptable means of screening rooftop equipment, unless otherwise approved by the ARB. Ground mounted equipment may be screened with landscaping, masonry walls to match the building, or decorative wood fencing as approved by the ARB.

5.5 Glass and glazing shall be non reflective. (Reflectance shall be limited to 20% or less).

6. Freestanding signage

6.1 Owners may install one freestanding monument sign, which shall be in accordance with the design illustrated on Attachment A. The sign shall include the Lot address number. Identification signage and address shall consist of individual pin mounted metal letters with an architectural bronze colored painted finish.

Exception: Owners of Lots 9, 10 and 11 may submit a custom design for ARB approval. Signage submitted shall use same materials as shown on Attachment A and shall be externally illuminated.

6.2 Monument sign shall be set back no more or less than 5 feet back from the property line.

6.3 Monument sign shall be externally illuminated at night.

6.4 Internal freestanding directional signage is allowed up to 2 SF per sign, subject to ARB approval.

6.5 Regulatory and traffic control signage: Any required regulatory signage shall be submitted for approval to ARB. Signage to be placed in the right of way for Lee Branch Lane shall be of materials and meet a standard to be determined by ARB.

6.6 Temporary signage, no larger in area than that allowed for permanent signage, may be installed until such time as the building is occupied.

7. Building Signage

7.1 Any building signage shall be individual letters and dimensional in nature, compatible with the architectural design. Building mounted signage is limited to an area equal to 5% of the building elevation on which it is to be mounted. Signage mounted on glass is limited to 1 SF in area. Color of signage shall be as approved by ARB. If a monument sign is not constructed, Company name(s) and address shall be on the building, visible from the street.

7.2 Any building mounted signage shall be externally illuminated or backlit only. Internally illuminated signage, box signs, cigar signs, movable or flashing signs, flags and banners are prohibited.

7.3 Temporary signage, no larger in area than that allowed for permanent signage, may be installed until such time as the building is occupied.

8. Landscaping

8.1 Parking lot islands at the ends of double rows of parking shall contain a minimum of two deciduous hardwood shade trees. Islands at the end of single rows of parking shall contain a minimum of one deciduous hardwood shade tree.

8.2 All parking shall be completely screened from Lee Branch Lane with solid evergreen shrubbery which, when mature, is at least 30" tall. A minimum of three different species shall be used, so as to provide some variety and a "park like" setting along Lee Branch Lane. Low evergreen and/or seasonal planted, integrated with the screening design, shall be provided at the base of any monument signage.

8.3 Un-landscaped areas shall be sodden with Bermuda or Zosia sod, or other approved ground cover, or maintained with a minimum of 3" of natural pine park or pine straw mulch.

8.4 All landscaping shall be irrigated and maintained in good health and vigor. Mulched areas shall be replenished at least once annually.

8.5 Side yards shall be planted with a minimum of one two inch (2") caliper hardwood shade tree per 50 linear feet of Lot line, plus a minimum of one evergreen tree per 50 linear feet of Lot line. Evergreen trees shall be a minimum of two inch (2") caliper or a minimum of four feet (4') tall at time of planting. Trees shall be grouped in clusters of three to five trees for a natural effect. Additional underplanting of shrubs and groundcovers is encouraged.

8.6 A minimum of 1 ornamental or flowering specimen tree shall be provided per Lot for seasonal color. Size shall be two inch (2") caliper minimum at time of planting.

8.7 Acceptable trees: Acceptable shrubs include, but are not limited to holly, yaupon, juniper, azalea and rhododendrons. Acceptable ornamentals include, but are not limited to, Crepe Myrtles, Cherry, Bradford Pear, Dogwood or Japanese Maple. Acceptable hardwood shade trees include, but are not limited to, Live Oak, Pin Oak, October Glory Maple, White Oak, Hickory and Elm. Acceptable evergreen trees include, but are not limited to, Fraser Fir, Scottish Pine, Virginia Pine, Magnolias and Cedars. Acceptable ground covers include, but are not limited to, pachysandra, mondo grass, zosia or bermuda sod, periwinkle, and low growing junipers. Ornamentals trees may not be substituted for hardwood trees required by this section.

8.8 Existing trees along Lee Branch Lane shall be clearly shown and accounted for on all site plan submittals. If a tree needs to be removed to allow for entrance drive into the Lot, ARB shall be provided prior written notification and ARB may, at the sole election of ARB, choose to relocate the existing tree.

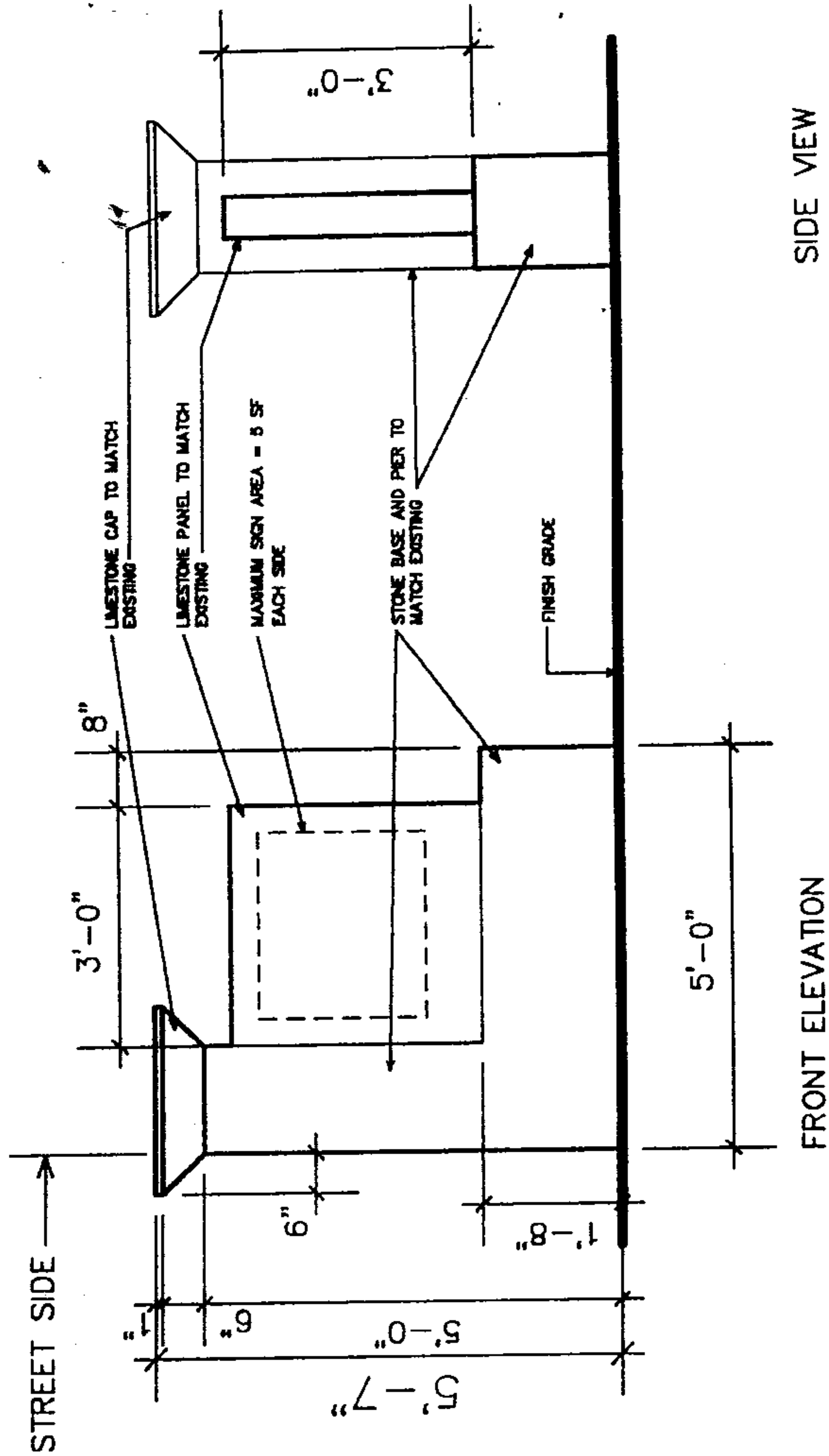
9. Construction Regulations:

9.1 Comply with reasonable stipulations as noted on the Plans approved by the ARB, and/or provided in writing at the time of ARB approval.

9.2 Regularly clean up and remove all debris, garbage, refuse and trash as and when it accumulates and properly dispose thereof.

9.3 Provide erosion control until such time as all ground covers and landscaped areas are completed.

- 9.4 Regularly clean the existing roadways of any construction dirt, trash or debris and take all measures to prevent such dirt, trash or debris from getting on Lee Branch Lane.
- 9.5 All contractors shall be duly licensed and insured. The Association, ARB, and the Developer shall be named as additional insured parties. Submit to the ARB proof of this insurance prior to beginning construction.
- 9.6 No shall be allowed on Lee Branch Lane or on any adjacent Lot.
- 9.7 No utility lines shall extend over the Lot line.
- 9.8 Any damage to Common Areas by Owner, or its agents, representatives, or contractors shall be repaired immediately.
- 9.9 Jumping of curbs is strictly prohibited; Owner shall submit Plans to ARB prior to making the necessary curb cuts.
- 9.10 Excess concrete or asphalt shall be removed from and disposed of properly off the premises of the Development. Wash down of concrete spoils on Common Area or adjacent Lots is prohibited
- 9.11 All excess materials shall be removed from the premises of the Development.



ATTACHMENT A
 MONUMENT SIGN DESIGN STANDARD
 LEE BRANCH CORPORATE CENTER

Inst # 2000-05486

37

02/22/2000-05486
 03:11 PM CERTIFIED
 SHELBY COUNTY JUDGE OF PROBATE
 037 HYS 99.50