

CONSTRUCTION, OPERATIONS, RESTRICTIONS AND EASEMENTS AGREEMENT

BY AND BETWEEN

**RIVER RIDGE RETAIL COMPANY, L.L.C.
("RRRC")**

AND

**GAC FOOTSTORE LLC
("GAC")**

**THE RIVER RIDGE SHOPPING CENTER
OUTLOT 2**

Inst # 2001-37114

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SHELBY COUNTY JUDGE OF PROBATE
026 MSB 92.00**

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**CONSTRUCTION, OPERATIONS, RESTRICTIONS
AND EASEMENTS AGREEMENT**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "Declaration") dated August 23, 2001, by and between **RIVER RIDGE RETAIL COMPANY, L.L.C.**, hereinafter known as "RRRC" and **GAC FOOTSTORE LLC**, a Delaware limited liability company, hereinafter, together with its successors, assignees and lessees, known as "GAC".

WITNESSETH:

WHEREAS, this Declaration is made with respect to the RRRC Parcel (hereafter defined) and the Outlot (hereafter defined) which compromise a portion of the River Ridge Shopping Center in Birmingham, Alabama which real property is depicted on the Site Plan attached hereto as **Exhibit A**; and

WHEREAS, Target Corporation, formerly known as Dayton Hudson Corporation ("Target"), is the owner of that portion of the River Ridge Shopping Center designated as the "Target Parcel" on the Site Plan attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, RRRC is the owner of that portion of the River Ridge Shopping Center designated as the "RRRC Parcel" on the Site Plan and legally described on **Exhibit B** attached hereto and incorporated herein by reference; and

WHEREAS, GAC is the owner of that certain outparcel to the River Ridge Shopping Center designated as the "Outlot" on the Site Plan and legally described on **Exhibit C** attached hereto and incorporated herein by reference; and

WHEREAS, the Target Parcel, the RRRC Parcel and the Outlot are governed by that certain Operation and Easement Agreement entered into by and between Target and RRRC and recorded on September 10, 1999 at Instrument Number 1999-38041 (the "Target OEA"); and

WHEREAS, RRRC and GAC desire to establish further covenants, conditions and restrictions with respect to the ownership, use and enjoyment of the RRRC Parcel and the Outlot (hereafter collectively referred to as the "Shopping Center" for purposes of this Declaration), for the mutual benefit of each party, and the present and future owners thereof, as more specifically set forth herein.

**I. Covenants Regarding GAC of Building Pad and Subsequent
Construction and Maintenance**

1.1 Establishment of Plans. GAC shall submit to RRRC its plans for the construction of the improvements on the Outlot which shall depict building mass, parking, landscaping, building

height, signage and exterior elevations (the "Improvements") for RRRC's prior written approval. The Improvements shall be constructed substantially in accordance with plans approved by RRRC in its reasonable discretion or deemed approved as hereinafter provided ("Approved Plans"). Only after RRRC has issued its written approval of Approved Plans shall GAC commence its construction at its sole cost and expense and proceed to completion substantially in accordance with Approved Plans without any material modification, alteration, deletion or addition thereto without RRRC's prior written consent.

RRRC hereby agrees to comment on GAC's plans and specifications within thirty (30) days after receipt thereof and RRRC and GAC shall thereafter work together to make such modifications, in good faith, as RRRC deems reasonably necessary. In the event RRRC fails to comment on such plans and specifications within such thirty (30) day period, GAC's plans shall be deemed Approved Plans. Notwithstanding anything contained in this Section 1.1 to the contrary, the plans described on **Exhibit D** shall be deemed Approved Plans for purposes of this Declaration and, provided that such Approved Plans are not materially modified or altered, GAC shall not be required to obtain any further approval from RRRC with respect to such plans.

1.2 Construction Activities.

(a) GAC agrees that all construction activities performed by it shall be performed substantially in accordance with Approved Plans (whether for initial construction or subsequent construction) and in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state and federal governments, or any department or agency thereof. The Improvements on the Outlot shall be constructed by GAC substantially in accordance with Approved Plans and once commenced, such construction shall be diligently pursued to completion.

1.3 Staging Areas. GAC shall designate a staging and storage area (the "Staging Area") in an area to be approved by RRRC. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only within the Staging Area. GAC shall fence off the Staging Area during any period of construction and while any materials and construction vehicles (as aforesaid) are present in the Staging Area.

1.4 Covenants with Respect to Construction. The Outlot shall be designed, constructed and maintained in accordance with the following: (a) all utilities serving the Outlot must be extended entirely under ground and there shall be no lines, services, poles, wires or other utility facilities, whether similar or dissimilar, which shall be constructed or permitted to remain above ground level except for points of connection; (b) other than in the Staging Area, decorative screening and/or landscaping will be provided as necessary in order to obscure from public view all trash rooms, trash holding receptacles, loading and service areas, mechanical and electrical equipment, storage facilities and bins, and other building appurtenances which may be aesthetically undesirable in the same manner as the balance of the Shopping Center; and (c) appropriate screening shall be provided to screen roof-mounted equipment, roof vents and other appurtenances from public view in accordance with Approved Plans and in the same manner as the balance of the Shopping Center.

1.5 Indemnity. GAC agrees to defend, indemnify and hold harmless RRRC, its employees, agents, tenants and their employees and customers of the Shopping Center, from all damages, liens, claims, actions and proceedings and costs incurred (including reasonable attorneys' fees and costs of suit) resulting from the performance of any construction or maintenance activities performed or authorized by GAC.

1.6 Maintenance. After completion of the construction of the Improvements, GAC shall maintain the Improvements in a first class condition and state of repair consistent with the quality of similar improvements in the Shopping Center, in compliance with Approved Plans and governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction over the Improvements, and in compliance with the provisions of this Declaration and in compliance with the Target OEA. All trash and garbage shall be stored in adequate containers, located so that they are not readily visible, and removed regularly. The minimum standard of maintenance for the Outlot shall be comparable to that followed in other similar first-class regional retail developments. Section 4.2(D) of the Target OEA provides that Target and RRRC shall each pay its pro rata share of the costs of the Common Area Maintenance Costs and Administration Fee (as defined in the Target OEA). Under the Target OEA, RRRC is responsible for paying fifty-two and 14/100ths percent (52.14%) of the total cost of Common Area Maintenance Costs and Administration Fee. Although GAC has the ability to elect not to contribute to such Common Area Maintenance Costs and Administration Fee and maintain the Outlot at its expense, in the event GAC does not elect such option, the Common Area Costs and Administration Fee allocated under the Target OEA to the Shopping Center shall be further allocated as follows:

RRRC Parcel:	48.14% of the total expense
Outlot:	4.00% of the total expense
Total for Shopping Center:	52.14% of the total expense

II. Easements.

2.1 Grant of Easement for Utilities. RRRC covenants that GAC shall have the right to tap into the following utilities, each of which is located either within five (5) feet of the Outlot property line or within a roadway right-of-way adjacent to the Outlot: water, gas, electric, storm and sanitary sewer and that GAC shall not be obligated to pay any fee to RRRC for such right. RRRC does hereby establish and grant to and for the benefit of GAC, as the owner of the Outlot, for use by GAC, its successors, assigns, lessees and licensees, and the customers, employees, agents, contractors and licensees of any of the foregoing, a non-exclusive, perpetual easement over, under and across the RRRC Parcel to install, use, maintain, repair and replace underground utility facilities, including, but not limited to, water, gas, electric and telephone lines and storm and sanitary sewers, under and beneath the surface of those areas of the RRRC Parcel where the same are presently situated. GAC agrees that in the exercise of the foregoing rights, it shall promptly repair any damage caused to the RRRC Parcel on account of the use of such facilities and shall promptly restore the areas of the RRRC Parcel so affected to substantially the same condition as existed prior to the exercise of such rights, such work to be performed in a good and workmanlike manner and at the sole cost and expense of GAC. GAC shall also provide reasonable advance notice to RRRC of any anticipated repair or replacement of facilities pursuant to this paragraph

(except in the event of an emergency), and in all circumstances exercise those rights in a manner reasonably calculated, to the extent feasible, to minimize disruption of the operation of the businesses located in the Shopping Center. GAC shall be responsible for maintaining and repairing any such pipes and facilities exclusively serving the Outlot at GAC's sole cost and expense. GAC shall not be responsible for the cost of maintaining or repairing any such pipes, equipment or other utilities facilities exclusively serving the RRRC Parcel, unless such maintenance or repairs is caused or necessitated by the actions of GAC or its employees, agents, tenants or their employees or customers.

2.2 Grant of Easement for Drainage and Detention Pond. RRRC does hereby establish and grant to and for the benefit of GAC, as the owner of the Outlot, for use by GAC, its successors, assigns, lessees and licensees, and the customers, employees, agents, contractors, licensees and invitees of any of the foregoing, a nonexclusive, perpetual easement over, across, through and upon those certain drainage easement areas as shown on the Plat (hereinafter defined) for surface water drainage and runoff into the detention pond on Lot 3 of the RRRC Parcel and according to the map of River Ridge Plaza (the "Plat") as recorded in Map Book 26, Page 14 in the Office of the Judge of Probate of Shelby County, Alabama (the "Detention Pond"). RRRC represents and warrants to GAC that the Detention Pond is or shall be constructed prior to the opening for business of GAC's Improvements on the Outlot and shall adequately serve the Improvements to be constructed on the Outlot. RRRC, as owner of the RRRC Parcel, reserves for itself, its successors and assigns, the right at any time and from time to time to change the areas, locations and arrangements of such Detention Pond, provided such change does not materially adversely affect the surface water drainage and runoff from the Outlot or the size of the Detention Pond, provided that the Detention Pond remains on said Lot 3, and provided that RRRC gives GAC at least ninety (90) days prior written notice before changing such areas. GAC shall pay to RRRC its pro rata share of the cost of maintaining the Detention Pond allocated to the Shopping Center (referred to as "Detention Pond Costs"), which share shall be calculated by multiplying the annual cost of maintaining the Detention Pond less those contributions to be made by the owners of Lots 1, 4 and, if applicable, Lot 6, according to the said Plat by a fraction, the numerator of which is the area (in square feet) of GAC's Improvements and the denominator of which is the aggregate leasable floor area (in square feet) in all buildings in the Shopping Center as designated by the RRRC on the first (1st) day of January for the relevant calendar year for which the calculation is being made. Until such time as GAC's Improvements and the aggregate leasable floor area on the RRRC Parcel are constructed, the Detention Pond Costs shall be calculated based on the acreage (as shown on **Exhibit A**) of the Outlot divided by the acreage of the Shopping Center (excluding Lot 5 thereof). For any period less than twelve (12) full calendar months with respect to which such calculation is being made, Detention Pond Costs will be prorated based on the number of days in such partial twelve (12) month period. Within one hundred twenty (120) days following the end of each calendar year during which this Declaration is in effect, RRRC will give GAC written notice of the total amount(s) paid by GAC for the relevant calendar year together with the actual amount of GAC's pro rata share of Detention Pond Costs for such calendar year along with the actual amounts of the shares of Detention Pond Costs owed by the owners of Lots 1 and 4 as aforesaid. GAC shall pay to RRRC the amount so invoiced within thirty (30) days following notice from RRRC. Should GAC question the accuracy of any Detention Pond Costs, the right to dispute any Detention Pond Costs shall be conditioned upon payment to RRRC prior to its right to contest any Detention Pond Costs with an adjustment thereafter, if necessary. RRRC agrees to operate, landscape and maintain

the Detention Pond and other piping, equipment and facilities related thereto and located on the RRRC Parcel, subject to reimbursement by GAC its pro rata share for the Detention Pond Costs, as provided for in this Section 2.2.

2.3 Reservation of Easement for Maintenance of Slope. RRRC does hereby reserve for the benefit of RRRC, and its successors, assigns, agents and contractors, a non-exclusive perpetual easement over, across, through and upon the following described portion of the Outlot, being that certain cross-hatched area as shown on **Exhibit A** for pedestrian and vehicular access and for maintaining, repairing and landscaping that certain slope located immediately west of the Outlot (the "Slope Easement"). Except in the case of emergency, RRRC covenants and agrees to use the Slope Easement in this Section 2.3, so as to minimally interfere with the business and operations of GAC on the Outlot. RRRC hereby agrees to indemnify, defend and hold GAC harmless from and against any and all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss or damage of or to any person or property arising from or in any manner relating to RRRC's use of the Slope Easement except if caused by the negligence or willful misconduct of GAC.

Slope Easement Legal Description:

Being a part of Lot 2, River Ridge Plaza as recorded in Map Book 26, page 14 in the office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows:

Begin at the Southernmost corner of Lot 2, River Ridge Plaza and run in a Northwesterly direction along the common property line of Lots 2 and 3, River Ridge Plaza a distance of 221.24 feet to the Westernmost corner of said lot 2, said point lying on the Southeasterly property line of Lot 1, River Ridge Plaza; thence 90°32'13" to the right in a Northeasterly direction along the common property line of Lots 2 and 1 a distance of 8.00 feet to a point; thence 89°27'47" to the right in a Southeasterly direction along a line that is 8.00 feet parallel to the Southwesterly property line of said lot 2 a distance of 201.43 feet to a point; thence 87°46'59" to the left in a Northeasterly direction along a line that is 20.00 feet parallel to the Southeasterly property line of said Lot 2 a distance of 210.36 feet to a point; thence 90°00' to the right in a Southeasterly direction a distance of 20.00 feet to a point on the Southeasterly property line of said Lot 2, said point also lying on the Northwesterly property line of Lot 3; thence 90°00' to the right in a Southwesterly direction along the common line of Lots 2 and 3 a distance of 217.59 feet to the Point of Beginning.

2.4 Grant of Greenspace Easement. RRRC does hereby establish and grant to and for the benefit of the Outlot a perpetual, non-exclusive easement over, across, in and to that portion of the RRRC Parcel as shown and marked on the Site Plan attached hereto as **Exhibit A** (the "Greenspace") for the sole purpose of locating certain greenspace for the benefit of the Outlot as required by the City of Birmingham, Alabama, in connection with its approval of GAC's development plan. RRRC represents that it is the owner of the Greenspace, being more particularly described as an area eight (8) feet in width along the southernmost boundary of Lot 2, River Ridge Plaza as recorded in Map Book 26, Page 14 in the Office of the Judge of Probate of Shelby County, Alabama. GAC shall, at its sole cost and expense, maintain or cause to be maintained, the

Greenspace in a manner and condition consistent with the quality and condition of similar landscaping areas in the Shopping Center. GAC will exercise its rights to such Greenspace in a manner which will minimize interference with RRRC's use and enjoyment of the RRRC Parcel. GAC will indemnify, protect and hold harmless RRRC from and against any and all liens, damages, losses, claims, suits, judgments, decrees, costs and expenses, including reasonable attorney's fees and other legal costs, incurred by or imposed upon RRRC in connection with GAC's use and enjoyment of the Greenspace.

III. Use of Outlot

3.1 Operating Covenants/Use.

(a) **Use Restrictions.** The Outlot may only be used for purposes (i) consistent with the character and quality of the Shopping Center as it is then constituted; (ii) in compliance with the Target OEA; and (iii) not for any of the exclusive or restricted uses as set forth on **Exhibit E** attached hereto. Notwithstanding the foregoing, RRRC specifically consents and agrees for the purposes hereof that the Outlot may be used for the operation of a Just For Feet Store. Such business shall be conducted in a high quality, reputable manner so as to help establish and maintain a first class reputation for the Shopping Center.

3.2 No Obstructions. No Improvements shall exceed twenty-eight (28) feet in height (except for any entry features which may be up to thirty-five (35) feet in height); no fence, wall, hedge or shrub planting that obstructs site lines at elevations above three (3) feet above the roadways adjacent to the Outlot shall be placed or permitted to remain on the Outlot, and no tree or other plant shall be permitted to remain on the Outlot if it exceeds in height more than three (3) feet, unless required by any applicable laws, codes and ordinances or otherwise approved in writing by RRRC, in its reasonable discretion, or as approved in Approved Plans.

3.3 Landscaping. GAC shall install, preserve and maintain on the Outlot and on the Greenspace such shrubbery, trees and other landscaping in an amount harmonious and consistent with the landscaping of the Shopping Center or as approved in Approved Plans and shall cause such landscaping to be reasonably protected from vehicular traffic.

3.4 Parking. The Outlot shall contain a sufficient number of parking spaces to comply with all applicable laws and ordinances, including, without limitation, zoning ordinances and to comply with the Target OEA.

IV. Indemnity and Insurance

4.1 Indemnity.

(a) **By GAC.** Provided such loss, damage or injury is not caused by or arising from the negligent or willful act or omission of RRRC or RRRC's employees or agents, GAC agrees to pay, defend, indemnify and hold harmless RRRC and RRRC's employees and agents from all

losses, claims, suits, actions, damages, and liability (including reasonable attorneys' fees and the costs and expenses of defending against all of the aforesaid) arising from (i) any negligent or willful act or omission of GAC, GAC's agents, employees, assigns, or other persons over whom GAC exercises control, or (ii) any injury to or death of any person or persons or damage to or destruction of the property of any person or persons occurring in or about the Outlot.

(b) **By RRRC.** Provided such loss, damage or injury is not caused by or arising from the negligent or willful act or omission of GAC or GAC's employees or agents, RRRC agrees to pay, defend, indemnify and hold harmless GAC and GAC's employees and agents from all losses, claims, suits, actions, damages, and liability (including reasonable attorneys' fees and the costs and expenses of defending against all of the aforesaid) arising from (i) any negligent or willful act or omission of RRRC, RRRC's agents, employees, assigns, or any other person over whom RRRC exercises control, or (ii) any injury to or death of any person or persons or damage to or destruction of the property of any person or persons occurring in or about the RRRC Parcel.

4.2 Liability Insurance.

(a) GAC shall maintain, or cause to be maintained, a comprehensive general liability insurance policy with respect to the Outlot, in an amount not less than the minimum limits required by the Target OEA.

(b) The obligation to maintain the policy shall begin on the date hereof, and shall extend throughout the term of this Declaration.

(c) The policy shall insure RRRC, GAC and any designee of RRRC of which GAC has notice against loss or liability in connection with bodily injury, death or property damage or destruction occurring in, upon or about the Outlot or arising out of the use thereof by GAC or its employees, agents, contractors, lessees or invitees. The policy shall name RRRC and any designee of RRRC of which GAC has written notice as additional insureds.

4.3 Property Insurance.

(a) GAC shall carry, or caused to be carried, an "All Risk" insurance policy with respect to any Improvements.

(b) The coverage limits shall not be less than a reasonable estimate of the cost of replacing the Improvements (excluding footers and foundations).

4.4 General Clauses Concerning Insurance.

(a) Each insurance policy carried pursuant to the foregoing provisions shall be issued by an insurance company that is rated as A- or better by A. M. Best Company.

(b) Such insurance may be included in general coverage under blanket or umbrella policies which also include the coverage of other property in which GAC has an insurable interest.

(c) A copy of each such insurance policy or a certificate with respect to the policy shall be delivered to RRRC upon written request.

(d) Each such insurance policy and certificate of GAC shall provide, in effect, that the policy may not be canceled, reduced in amount, or modified by the insurer until at least thirty (30) days after the insurer shall have notified RRRC, GAC and any mortgagee of which GAC has notice in writing by certified mail, return receipt requested.

V. Eminent Domain and Casualty

5.1 Casualty.

(a) In the event any of the Improvements are damaged by fire or other casualty (whether insured or not), GAC shall promptly remove the debris resulting from such event and provide a sightly barrier and within a reasonable time thereafter or upon request of insurance proceeds, if any, shall either (i) repair or restore the Improvements so damaged, such repair or restoration to be performed in accordance with Approved Plans and all provisions of this Declaration, or (ii) erect other building improvements in such location, in accordance with plans and specifications subject to reasonable approval pursuant to the provisions of **Article I** of this Declaration, or (iii) demolish the Improvements and restore the area to an attractive condition. GAC shall have the option to choose which of the foregoing alternatives to perform, but GAC shall be obligated to perform one (1) of such alternatives. GAC shall give written notice to RRRC within ninety (90) days from the date of such casualty of which alternative it has selected; provided, however, that GAC shall have the right to change its election at any time thereafter, provided that GAC is not in default of any term or provision of this Declaration.

(b) In the event GAC shall: (i) fail to elect any of such options in writing in the ninety (90) day period following such casualty, or (ii) having elected to restore, shall fail to prosecute such restoration to conclusion within two hundred seventy (270) days after the later of such election or the receipt of insurance proceeds, if any, or (iii) having elected to raze, shall have failed to raze the Improvements and restore the Outparcel to a grassed and sightly condition within one hundred twenty (120) days of the date of the casualty, then in any of such events, RRRC shall be entitled, upon thirty (30) days prior written notice to GAC, and within said time GAC may cure said default, to raze the Improvements and grass the Outparcel all at the cost and expense of GAC in accordance with **Section 6.1** below. All repair, restoration or rebuilding of the Improvements shall be subject to the requirements hereof.

VI. Default and Remedies.

6.1 Remedies.

(a) **Self-Help.** If GAC fails to comply with any provision of this Declaration, then RRRC may, upon thirty (30) days' prior written notice, proceed to cure the default (and shall

have a license to do so) by the payment of money or performance of some other action for the account of GAC. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) GAC cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, GAC begins to cure such default with such time period and diligently pursues such action to completion. The thirty (30) day notice period shall not be required if, using reasonable judgment, RRRC deems that an emergency exists which requires immediate attention. In the event of such an emergency, RRRC shall give whatever notice to GAC as reasonable under the circumstances. Unless Target has commenced a cure pursuant to Section 6.1(B) of the Target OEA, if RRRC fails to comply with any provision of this Declaration, then GAC may, upon thirty (30) days' prior written notice, proceed to cure the default (and shall have a license to do so) by the payment of money or performance of some other action for the account of RRRC. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) RRRC cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, RRRC begins to cure such default with such time period and diligently pursues such action to completion. The thirty (30) day notice period shall not be required if, using reasonable judgment, GAC deems that an emergency exists which requires immediate attention. In the event of such an emergency, GAC shall give whatever notice to RRRC as reasonable under the circumstances; provided, however, that GAC shall not exercise the foregoing cure right if Target has commenced a cure or if Target commits in writing to commence a cure of the default in question.

(b) **Reimbursement of Costs.** Within twenty (20) days of written demand (including providing copies of invoices reflecting costs), GAC shall reimburse RRRC for any sum reasonably expended by RRRC to cure the default, together with interest at the prime rate established from time-to-time by SouthTrust Bank plus 200 basis points per annum thereon. If such amount is not paid within sixty (60) days following demand it shall, together with interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Outlot which shall bind such property until such amount is paid, at which time RRRC will record a release of such lien after written request by GAC.

(c) **Attorneys' Fees.** In the event either party shall institute any action or proceeding against the other party relating to the provisions of this Declaration, or to any default hereunder, or to collect any amounts owing hereunder, or to an arbitration proceeding commenced by agreement of the parties to any dispute, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for reasonable costs and expenses incurred by the successful litigant in connection with such action or proceeding and any appeals therefrom, including reasonable attorneys' fees and court costs.

(d) **Remedies Cumulative.** All remedies are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity. Each party shall also have the right to restrain by injunction any violation or threatened violation by any other party of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate.

VII. Miscellaneous.

7.1 Term. This Declaration and the rights, obligations and liabilities created herein shall extend for a term of fifty (50) years from the date hereof and shall automatically be extended for terms of ten (10) years each thereafter unless either party hereto, their successors and assigns, shall elect to terminate this Declaration by written recordable instrument signed by both parties and recorded in the Office of the Judge of Probate of Shelby County, Alabama. In any event, the easements contained in **Article III** hereof shall be perpetual to the extent permitted by law and unless otherwise specified herein. Upon termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by provisions of the Declaration, except as related to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that a party may have against any other party with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

7.2 Estoppel Certificate. Each party agrees that within fifteen (15) business days after written request from time to time of the other party, it will issue to a prospective mortgagee of such other party or to a prospective successor party, or to a tenant of such other party an estoppel certificate stating:

(a) whether the party to whom the request has been directed knows of any default by the requesting party under this Declaration, and if there are known defaults, specifying the nature thereof;

(b) whether this Declaration has been assigned, modified or amended in any way by such party (and if it has, then stating the nature thereof); and

(c) that to the requested party's knowledge this Declaration as of that date is in full force and effect.

Such statement shall act as a waiver of any claim by the party furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claims asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the party furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such party to disclose correct and/or relevant information.

7.3 Binding Effect. The terms of this Declaration shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become parties hereunder. The use of the term "RRRC" shall refer to River Ridge Retail Company, L.L.C., and its assigns and successors in interest with respect to the ownership of the RRRC Parcel. The use of the term "GAC" shall refer to "GAC Footstore LLC", and its assigns and successors in interest with respect to the ownership of the Outlot.

7.4 Liability of RRRC and GAC. The term "RRRC" and "GAC" as used in this Declaration shall mean only the owner for the time being of the RRRC Parcel and the Outlot as applicable, and in the event of the sale or other transfer of either property, the applicable seller or transferor, but not the successor or assign, shall be entirely freed and relieved of all of its obligations set forth in this Declaration. RRRC, its mortgagees, successors and assigns, shall have no personal liability in respect to any of the covenants or undertakings on the part of RRRC to be performed hereunder, and in the event of any default by RRRC in respect to said covenants or undertakings, GAC shall look solely to RRRC's equity in the RRRC Parcel for satisfaction of any loss or damage sustained in consequence of such default. GAC, its mortgagees, successors and assigns, shall have no personal liability in respect to any of the covenants or undertakings on the part of GAC to be performed hereunder, and in the event of any default by GAC in respect to said covenants or undertakings, RRRC shall look solely to GAC's equity in the GAC Parcel for satisfaction of any loss or damage sustained in consequence of such default.

7.5 Singular and Plural. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

7.6 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

7.7 Not a Public Dedication/No Third Party Benefit. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any party hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained herein.

7.8 Severability. Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

7.9 Amendments/Termination. This Declaration may be amended or terminated by, and only by, a written agreement signed by all of the then current owners of the Outlot and RRRC Parcel and shall be effective only when recorded in the office of the Judge of Probate, Shelby County, Alabama.

7.10 Captions and Capitalized Terms. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of the Declaration.

7.11 Force Majeure. Whenever a period of time is prescribed in this Agreement for action (other than the payment of money) to be taken by RRRC or GAC, then RRRC or GAC, as the case may be, shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time any delays actually caused by strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other material causes of any kind whatsoever that are beyond the reasonable control of RRRC or GAC (hereinafter "Force Majeure"), as the case may be; provided, however, that the party who shall invoke Force Majeure be required to justify any such delay.

7.12 Notices. Any notice or other instrument required or permitted to be given or delivered under the terms of this Declaration shall be deemed to have been given and delivered, upon receipt, when deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, addressed as follows:

IF TO RRRC: River Ridge Retail Company, L.L.C.
2222 Arlington Avenue
Birmingham, Alabama 35205
Attn: General Counsel
Facsimile No.: (205) 795-4161

With a Copy to: Denise W. Killebrew, Esq.
Berkowitz, Lefkovits, Isom & Kushner, P.C.
420 20th Street North, Suite 1600
Birmingham, Alabama 35203

IF TO GAC: GAC Footstore LLC
111 South Broadway, Suite 301
Rochester, Minnesota 55904
Attention: Henry Dion
Fax: (507) 282-5915

With a Copy to: Hinshaw & Culbertson
Piper Jaffray Tower, Suite 3100
222 South Ninth Street
Minneapolis, Minnesota 55402
Attention: L.J. Rotman
Facsimile No.: (612) 334-8888

Such notices may also be sent: (a) by overnight delivery using a nationally recognized overnight courier, in which case notice shall be effective one (1) business day after deposit, (b) by telefax, in which case notice shall be deemed effective upon receipt of a confirmation of the successful transmission (c) by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until delivery of such notice as provided herein. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

7.13 Declaration Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Declaration shall (i) entitle any party to cancel, rescind or, otherwise terminate this Declaration or (ii) defeat or render invalid the lien of any mortgage made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any rights or remedies which a party may be hereunder by reason of any such breach.

7.14 Time. Time is of the essence of this Declaration.

7.15 Nonwaiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

7.16 Mortgage Subordination. Any mortgage, deed of trust, or deed to secure debt affecting the Outlot, shall at all times be subject and subordinate to the terms of this Declaration, and any party foreclosing any such mortgage, deed of trust or deed to secure debt, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Declaration.

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

7.18 Applicable Law/Construction. This Declaration shall be governed, construed, applied and enforced in accordance with the laws of the State of Alabama. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

7.19 Authority. If either GAC or RRRC is a legal entity other than an individual, such party shall provide to the other, contemporaneously with the execution of this Declaration evidence of its authority to enter into this Declaration.

7.20 Entire Agreement. This Declaration, including the Exhibits hereto, set forth the entire understanding and agreement of RRRC and GAC with respect to the RRRC Parcel, Outlot and Improvements; all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are superseded by and merged into this Declaration. No modification or amendment of this Declaration shall be binding upon RRRC and GAC, or either, unless in writing and fully executed.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed effective as of the day and year first above written.

GAC FOOTSTORE LLC

By: _____
Its: _____

RIVER RIDGE RETAIL COMPANY, L.L.C.

By: *[Signature]*
Its: Authorized Agent

STATE OF _____)

COUNTY)

I, the undersigned, a Notary Public for said County, in said State, hereby certify that _____, whose name as _____ of **GAC Footstore LLC**, a Delaware limited liability company is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal, this ____ day of _____, 2001.

[NOTARY SEAL]

Notary Public
My commission expires: _____

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public for said County, in said State, hereby certify that David L. Silverstein, whose name as Authorized Agent of **River Ridge Retail Company, L.L.C.**, a Delaware limited liability company is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration, he, as such authorized agent and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal, this 23rd day of August, 2001.

[NOTARY SEAL]


Notary Public
My commission expires: My Commission Expires 11/4/2002

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed effective as of the day and year first above written.

GAC FOOTSTORE LLC

By: [Signature]
Its: [Signature]

RIVER RIDGE RETAIL COMPANY, L.L.C.

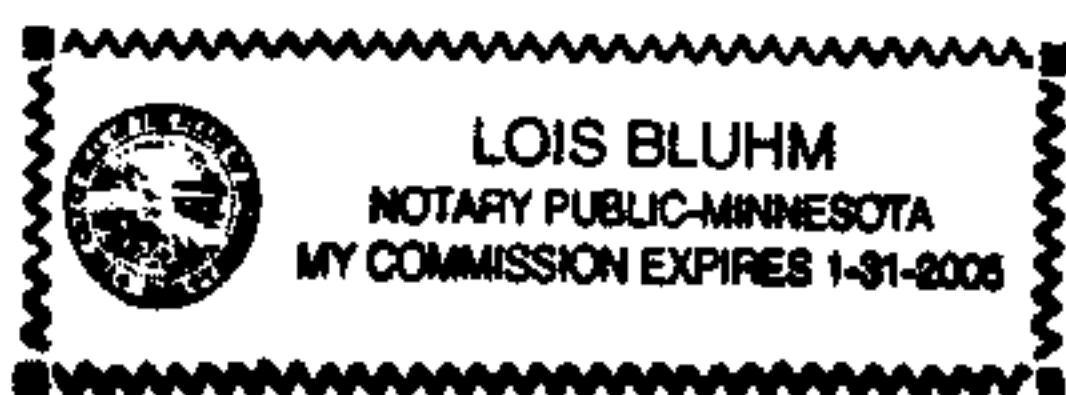
By: _____
Its: _____

STATE OF MN)
Olmsted COUNTY)

I, the undersigned, a Notary Public for said County, in said State, hereby certify that Gus A Chatoulas, whose name as Manager of **GAC Footstore LLC**, a Delaware limited liability company is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal, this 27th day of August, 2001.

[NOTARY SEAL]



Lois Bluhm
Notary Public
My commission expires: 1/31/05

CONSENT OF RRRC PARCEL MORTGAGEE

The undersigned, as the Mortgagee of the RRRC Parcel, enters herein for the sole purpose of providing its consent to the foregoing Declaration and acknowledges that the RRRC Parcel will be bound and benefited thereby.

SouthTrust Bank, an Alabama banking corporation

By: Scott M. Abbott
Title: Vice President

FLORIDA
STATE OF ~~ALABAMA~~)
ORANGE
~~JEFFERSON~~ COUNTY)

I, the undersigned, a Notary Public for said County, in said State, hereby certify that SCOTT ABBOTT, whose name as VICE PRESIDENT of SouthTrust Bank, an Alabama banking corporation, is signed to the foregoing Declaration, and who is known to me acknowledged before me on this day that, being informed of the contents of the Declaration, he/she as such officer and with full authority, executed the same for and as the act of said banking corporation on the day the same bears date.

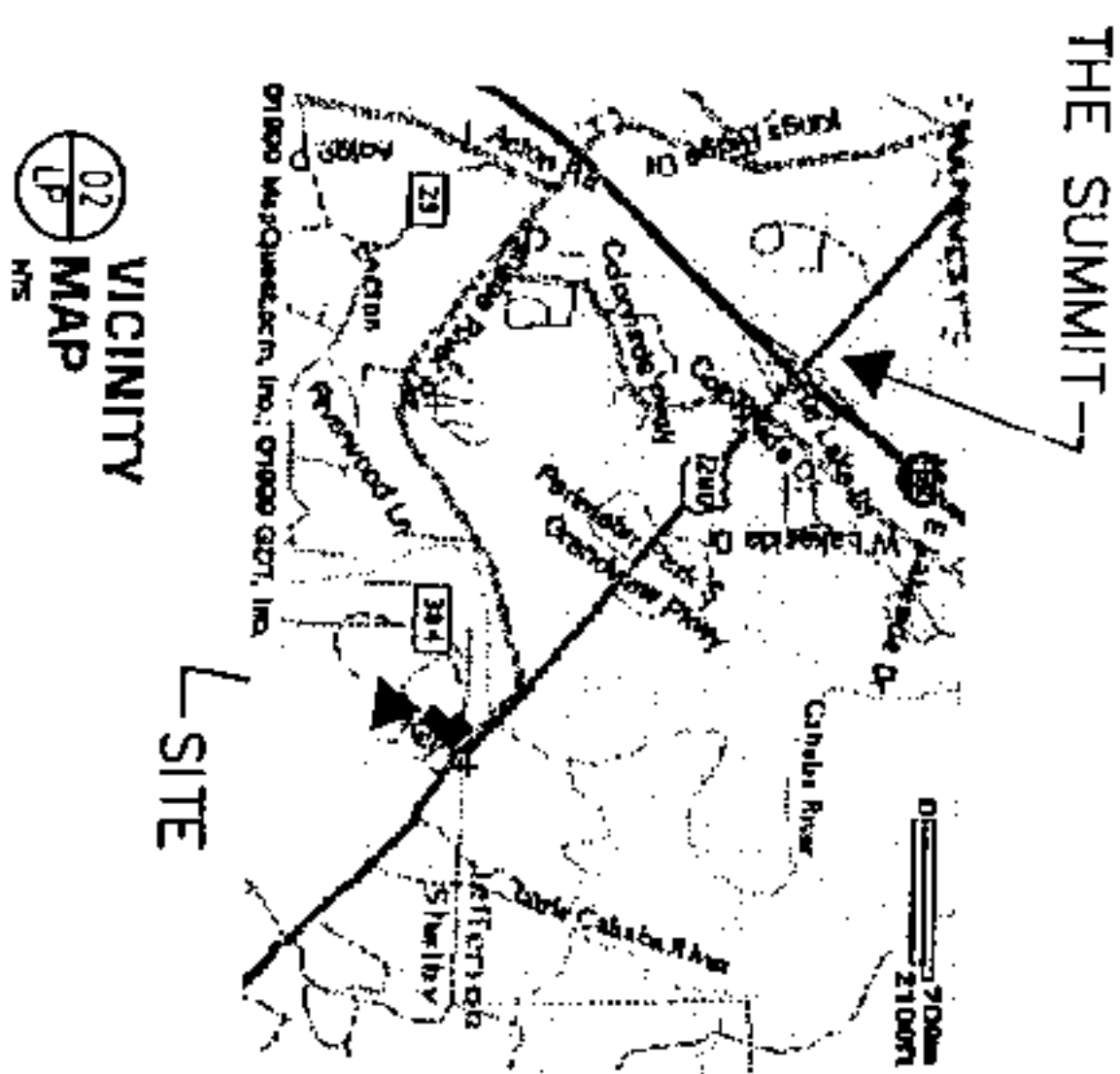
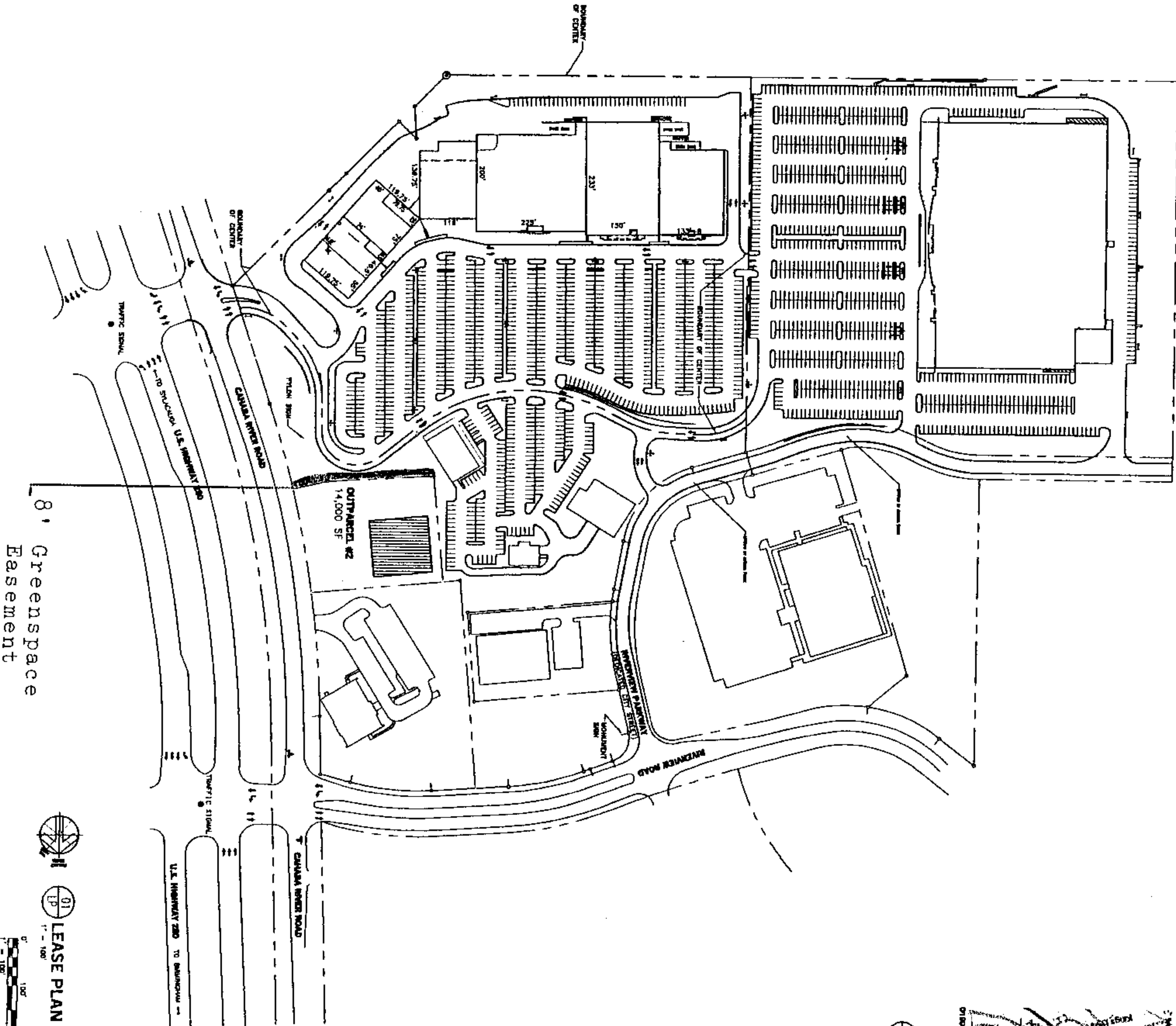
Given under my hand and official seal, this 22nd day of August, 2001.

[NOTARY SEAL]

 Kalipay Chapman
My Commission DD042811
Expires July 17, 2005

Kalipay E. Chapman
Notary Public
My commission expires: July 17, 2005

EXHIBIT A



LEASE PLAN Birmingham, Alabama		River Ridge Birmingham, Alabama		PROJECT ADDRESS: River Ridge Birmingham, AL	
Project Name LEASE PLAN		Project Number 66010C		Project Date 08/24/01	
Project Location Birmingham, Alabama		Project Owner MKT		Project Manager MKT	
Project Description LEASE PLAN		Project Status LP		Project Notes LEASE PLAN	

EXHIBIT B TO DECLARATION

RRRC PARCEL LEGAL DESCRIPTION

Lots 3 and 5 as recorded in the Map of River Ridge Plaza in Map Book 26, Page 14, in the Probate Office of Shelby County, Alabama.

EXHIBIT C TO DECLARATION

OUTLOT 2 LEGAL DESCRIPTION

Lot 2, as recorded in the Map of River Ridge Plaza in Map book 26, Page 14, in the Probate Office of Shelby County, Alabama.

EXHIBIT D TO DECLARATION

PLANS

(Prepared by Mac-K Construction)

Plans

<u>No.</u>	<u>Description</u>	<u>Date</u>
TO1	Title Sheet	8-10-01
C-01	Site Development Plan	8-10-01
C-02	Site Lighting Plan	8-10-01
C-03	Lighting Photometric Plan	8-10-01
L-1	Site Landscape Plan	8-10-01
A-30	Exterior Elevations	8-10-01

EXHIBIT E TO DECLARATION

SHOPPING CENTER AND OUTLOT

Unless otherwise noted, references to Landlord hereinbelow shall mean RRRC.

1. **STAPLES:** A retail business whose primary business is the sale or lease of any of the following product categories:

- Business equipment (including computers and telecommunications equipment);
- Furniture for business or office (including home office) use;
- Supplies for business or office (including home office) use;
- Business or office services (including copying, printing, telecommunications, packing, shipping and business equipment repair services).

The foregoing provision is hereinafter referred to as Staples' "Exclusive Use"; provided, however, that the Exclusive Use shall not apply to any of the following:

- (1) The Target Tract;
- (2) Any occupant of the Shopping Center whose occupancy rights does not exceed 2,500 square feet of floor area;
- (3) Any occupant of the Shopping Center whose occupancy rights exceeds 5,000 square feet but who does not display for sale or lease in excess of ten percent (10%) of its space for any category of the merchandise or services listed above.

If for three (3) consecutive months or more during the term of the Staples Lease (other than for temporary closing), Tenant shall not use at least ninety percent (90%) of the Premises for the Exclusive Use, then Staples' Exclusive Use shall lapse and shall be of no further force and effect.

2. **BEST BUY:** A retail business whose primary business is the sale of any of the following product categories listed in clauses (i)-(iv) below ("Best Buy Exclusive"):

- (i) electronic equipment or appliances (including, without limitation, televisions, stereos, video recorders);
- (ii) major household appliances (including, without limitation, refrigerators, freezers, stoves, microwave ovens, dishwashers, washers and dryers);
- (iii) personal computers and peripherals, computer software, car radios, stereos, tape decks or phones; and
- (iv) entertainment software including compact discs, music videos and prerecorded tapes, or any items which are a technological evolution of the foregoing items.

Subject, however, to the following: (i) Landlord's lease with Staples to the extent Landlord does not have the right to contest such tenants uses, shall not be affected by the foregoing

exclusive; and (ii) any lease with a retail store of less than 1,500 square feet in the Shopping Center shall be excluded from the foregoing exclusive use clause.

3. **CARRABBA'S:** Landlord covenants and agrees that it will not operate or permit any other tenant in the outparcel fronting the service road or in any portion of the Protected Area to operate an Italian Restaurant or, in the event of a change in the proposed operating format on the Premises, any restaurant which shall be deemed a duplication of such format, a full service restaurant with bar area, operating initially as a "dinner only" concept, subject to leases existing as of the date of the change of format. For the purposes hereof, GAC agrees that the Protected Area shall include the Outlot such that the Carrabba's exclusive use set forth hereinabove shall apply to the Outlot.

4. **MEN'S WEARHOUSE:**

The exclusive right within the Shopping Center (a) to sell men's suits, sport coats and slacks as a Primary Use (as defined below) and (b) to rent and/or sell formalwear, accessories, related items and shoes in connection with formalwear and tuxedos (collectively, Men's Wearhouse's "Exclusive Use"). Primary Use shall mean the sale of men's suits, sport coats and slacks in not more than twenty percent (20%) of the retail floor area of any premises within the Shopping Center.

5. **LINEN'S N THINGS:** A store which devotes more than ten percent (10%) of its sales floor area, not to exceed five thousand (5,000) square feet, to the sale of bedding and accessories, bath items, kitchenware, tabletop items, closet storage, and pictures, frames and posters (hereinafter a "Competing Use") without Tenant's prior written consent, which may be withheld or granted at Tenant's sole discretion ("Linen's N Things Exclusive"). No more than three (3) occupants within the Shopping Center each of 1,500 square feet or less shall not be subject to the foregoing restriction. In addition, Landlord may lease to a full-service drug store, grocery store or junior department store without regard to this restriction. It is understood that Target is exempt from this restriction. This covenant shall cease and terminate and be of no further force or effect if, the Premises shall cease to be used for the Permitted Use for a period of three (3) consecutive months, excluding temporary interruptions of said operation because of causes beyond Tenant's reasonable control.

6. **TARGET:** No portion of the Shopping Center, except for the Target Tract, shall be used for the conduct of a supermarket or other grocery store, or department within a store, where the sale of food, fruit, produce, dairy products, vegetables, bakery products, meats, or delicatessen products (hereinafter referred to as "Grocery Items") (the "Target Exclusive"); provided, however, that:

- (i) any drug store permitted under clause (ii) of Section 5.1(E) of the Target OEA hereof may carry Grocery Items, provided that the Outlot shall never be used for nor shall such drug store become a grocery store in the traditional sense (a store selling Grocery Items including fresh produce and a fresh meat market); and

- (ii) the Developer Tract (the Shopping Center under the Declaration) may contain retail stores which may sell Grocery Items as an incidental use to its primary business, provided that the Floor Area designated for the sale of such Grocery Items in such store may not exceed 2,000 square feet (such Floor Area to be determined by including one-half of the aisle space adjacent to any shelving or display case used for the retail display of such products) and provided further that the aggregate floor area in the Shopping Center (exclusive of the Outlot) utilized for the incidental sale of Grocery Items does not exceed 7,500 square feet of Floor Area.

Coffee shops, bakery shops, bagel shops, and ice cream, yogurt and smoothie shops and other similar retail stores of less than 5,000 square feet of Floor Area for on and off-premises consumption shall not be prohibited on the basis of this subparagraph.

Notwithstanding anything to the contrary provided hereinbelow, in the event at any time after the date on which the Target Tract is initially open for business, the Target Tract is not used for the sale of Grocery Items for a continuous period of one hundred twenty days (120) (other than because of a temporary closing caused by casualty, remodeling, or the like) then the exclusive use set forth above shall expire.

7. Any restaurant or other establishment serving food for on-premises consumption.
8. **ST. VINCENT'S HOSPITAL:** For so long as the adjacent parcel (defined as Lot 1 River Ridge Plaza in the Map of Subdivision recorded in Map Book 26, Page 14 in the Probate Office of Shelby County, Alabama) is owned by St. Vincent's Hospital and is being used for a primary healthcare facility, the following activities on or uses of the Property shall be prohibited, which restrictions shall run with the land:

_____ hospital, retirement home, and extended care facilities
_____ medical and dental laboratories
_____ medical professional efforts or other medical facilities offering normal and customary medical care
_____ medical clinics and treatment centers

provided, however, that such prohibited activities and uses shall not include the facilities for the retail sale of medically related products and services such as drug stores, eyewear shops, health food stores and spas and fitness centers.

9. **COST PLUS:** Unless the prior written consent of Cost Plus is obtained, a tenant or occupant of the Shopping Center (other than Cost Plus) cannot use an aggregate of one thousand (1,000) square feet or more of its premises for the display and/or sale of gourmet foods or beer and wine for off-premises consumption.

10. **PET SUPPLIES:** The exclusive right within the Shopping Center to sell pets and pet supplies as a Primary Use (the "Exclusive Use"). Primary Use shall mean the sale of pets and pet supplies in not more than ten percent (10%) of the retail floor area of any premises within the Shopping Center.