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MT LAUREL TOWN CENTER COVENANTS

This instrument prepared by and
upon recording should be returned to:

Stephen R. Monk, Esq.
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
(205) 521-8429

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MT LAUREL TOWN CENTER COVENANTS

These MT LAUREL TOWN CENTER COVENANTS (together with all subsequent amendments thereto, the "Town Center Covenants") are made as of the 19 day of March, 2003 by MT LAUREL TOWN MANAGEMENT, INC., an Alabama corporation ("Developer").

RECITALS:

Developer is the owner of the Town Center Property, as hereinafter defined, and desires to own, develop, improve, lease and sell the Town Center Property for office and retail uses and for certain mixed residential and commercial uses as hereinafter provided.

The Town Center Property will constitute an integral part of the traditional neighborhood development known as Mt Laurel, which development is based on a pedestrian-friendly community mixing commercial and residential uses in a way which provides the essentials of life and enlivens the community as a whole. The Town Center Property will constitute the center of Mt Laurel and will provide its residents and guests with a place to work, shop and gather as a community.

Contemporaneously herewith, Developer has caused the Merchants' Association, as hereinafter defined, to be incorporated to act as the nonprofit entity which will enforce certain provisions of these Town Center Covenants, maintain the Common Areas, as hereinafter defined, levy Merchants' Association Assessments, as hereinafter defined, and promote various marketing and advertising activities for the benefit of all businesses within the Town Center Property.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the real property described in Exhibit A hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

As used throughout these Town Center Covenants, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.1 ADDITIONAL PROPERTY. The term "Additional Property" shall mean and refer to any real property (and any improvements thereto) lying adjacent to or in close proximity with the Town Center Property (but which does not presently comprise any part of the Town Center Property) which Developer may from time to time submit and add to the provisions of these Town Center Covenants pursuant to the provisions of Section 2.3 below. Additional Property may also include additional Common Areas.

1.2 AFFILIATE. The term "Affiliate" shall mean, as to any Person, any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate family of

such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term "control" (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise.

1.3 **COMMON AREAS.** The term "Common Areas" shall mean and refer to any real property within the Town Center Property designated as "common areas" on any subdivision plat of any of the Town Center Property or which has been specifically conveyed to the Merchants' Association for the common use and enjoyment by all Owners and Tenants. In addition, "Common Areas" shall also include (regardless of whether legal title to the same has been transferred or conveyed to the Merchants' Association) all of the following: (a) all parking areas and rear entry/access lanes and alleys provided for the common use of all Owners and Tenants and their respective employees, agents and invitees, (b) all signage, street lights, lighting, walkways, sidewalks, walls, fences, landscaping and landscaped or other areas situated on or within the parking areas, rear entry/access lanes and alleys and the Sidewalk Easement Areas, (c) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which serve any of the Common Areas (which are not owned or maintained by any public or private utility providers) and (d) any and all other areas and any improvements thereto designated by Developer or the Merchants' Association as Common Areas from time to time. The designation of any land 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; provided, however, that the Common Areas may be used by the general public (unless otherwise restricted by the Merchants' Association pursuant to any of its rules and regulations).

1.4 **LIVE/WORK UNITS.** The term "Live/Work Units" shall have the same meaning given to such term in the Master Declaration and shall refer to those Live/Work Units situated within the Town Center Property.

1.5 **LOT.** The term "Lot" shall have the same meaning given to such term in the Master Declaration and shall refer to those Lots within the Town Center Property, including all Live/Work Units.

1.6 **MASTER DECLARATION.** The term "Master Declaration" shall mean and refer collectively to the following:

(a) The Mt Laurel Master Deed Restrictions dated as of September 1, 2000 recorded as Instrument #2000-35579 in the Office of the Judge of Probate of Shelby County, Alabama, as amended from time to time (collectively, the "Master Deed Restrictions"); and

(b) The Mt Laurel Declaration of Charter, Easements, Covenants and Restrictions dated as of September 1, 2000 and recorded as Instrument #2000-35580 in the aforesaid Probate Office, as amended from time to time (collectively, the "Declaration").

The Master Deed Restrictions and the Declaration have been ratified and confirmed by EBSCO Development Company, Inc., EBSCO Industries, Inc. and Town Builders, Inc. pursuant to Ratification and Confirmation Agreement dated as of November 30, 2000 and recorded as Instrument #2000-41410 in the aforesaid Probate Office. ***Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.***

1.7 **MERCHANTS' ASSOCIATION.** The term "Merchants' Association" shall mean and refer to the Mt Laurel Merchants' Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

1.8 **MERCHANTS' ASSOCIATION ASSESSMENTS.** The term "Merchants' Association Assessments" shall mean, collectively, the Annual Assessments (as defined in Section 7.3 below), Special Assessments (as defined in Section 7.4 below), and Individual Assessments (as defined in Section 7.5 below).

1.9 **MERCHANTS' ASSOCIATION BOARD.** The term "Merchants' Association Board" shall mean and refer to the board of directors of the Merchants' Association and their duly elected successors.

1.10 **MERCHANTS' ASSOCIATION EXPENSES.** The term "Merchants' Association Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Merchants' Association, including, without limitation, the following: (a) salaries, fringe benefits and other compensation paid and out-of-pocket expenses paid or reimbursed by the Merchants' Association for employees, agents, and third party contractors; (b) management fees and expenses of administration, including legal and accounting fees; (c) utility charges for any utilities serving any of the Common Areas and Sidewalk Easement Areas; (d) the costs of any insurance policies purchased for the benefit of the Merchants' Association or its officers, directors, agents or employees; (e) the expenses of maintaining, operating, landscaping, repairing and replacing all portions of the Common Areas and any other amenities and facilities as may be determined from time to time by the Merchants' Association Board; (f) ad valorem real and personal property taxes assessed and levied upon any of the Common Areas and any personal property of the Merchants' Association; (g) any and all advertising, marketing and promotional costs and expenses incurred with respect to or in any way relating to the Town Center Property, including, without limitation, street festivals, fairs and other promotional, civic or recreational activities; (h) all other costs and expenses which the Merchants' Association Board, in its sole discretion, determines to be appropriate to be paid by the Merchants' Association; and (i) reserve funds which may be established to cover emergencies and other unforeseen expenses.

1.11 **ORGANIZATIONAL DOCUMENTS.** The term "Organizational Documents" shall mean and refer, collectively, to the Articles of Incorporation and Bylaws of the Merchants' Association, as the same may be amended from time to time.

1.12 **OWNER.** The term "Owner" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot within the Town Center Property.

1.13 **PERSON.** The term "Person" with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

1.14 **SIDEWALK EASEMENT AREA.** The term "Sidewalk Easement Area" shall mean and refer to that portion of each Lot within the Town Center Property lying between the back of the curb of any Common Road (or rear entry alley abutting such Lot) and (a) the front (or rear) of any Building constructed on such Lot and (b) the side of any Building constructed on a corner Lot. All Sidewalk Easement Areas are intended to include sidewalks or walkways.

1.15 **TENANT.** The term "Tenant" shall mean and refer to any tenant or lessee of any Building, Live/Work Unit or any of the retail or office space situated within the Town Center Property and shall also include the agents and employees of such Tenant.

1.16 **TOWN CENTER PROPERTY.** The term “Town Center Property” shall mean and refer to that certain real property situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference, together with any and all Additional Property added to the terms and provisions of these Town Center Covenants.

1.17 **TOWN CENTER TURNOVER DATE.** The term “Town Center Turnover Date” shall mean and refer to the earlier of (a) the date on which neither Developer nor any Affiliate of Developer owns any of the Town Center Property or (b) the date on which Developer elects, in its sole and absolute discretion, to relinquish (i) all rights to appoint and remove members of the Merchants’ Association Board pursuant to Section 4.2 below and (ii) all voting rights in the Merchants’ Association reserved to Developer pursuant to Section 4.3(a) below.

ARTICLE II

MASTER DECLARATION AND PROPERTY SUBJECT TO THE TOWN CENTER COVENANTS

2.1 **MASTER DECLARATION.** Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that such Owner’s Lot and such Owner are subject to all of the terms and provisions of the Master Declaration, including, without limitation, the obligation to (a) submit all plans for any exterior improvements to such Owner’s Lot to the Mt Laurel Design Review Board for approval and to comply with all of the terms and provisions of the Mt Laurel Design Code, (b) comply with the Rules and Regulations, as defined in the Master Declaration, and (c) pay all Assessments levied or assessed pursuant to the terms and provisions of the Master Declaration. These Town Center Covenants are in addition to and do not constitute a replacement or a substitution of the Master Declaration. The Town Center Property constitutes part of the Commercial Districts of Mt Laurel established and defined under the Master Declaration. As provided in the Master Declaration, Lots within the Town Center Property do not pay either General Assessments or Special Assessments.

2.2 **GENERAL DECLARATION.** Developer hereby declares that all of the Town Center Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of these Town Center Covenants and each Lot shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of these Town Center Covenants, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to all of the Town Center Property and shall be binding upon and inure to the benefit of Developer and all Owners of any of the Town Center Property and any of their Tenants and their respective successors and assigns.

2.3 **ADDITIONAL PROPERTY.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of these Town Center Covenants, to add any Additional Property to the provisions of these Town Center Covenants and, to the extent any Additional Property is specifically submitted to the terms and provisions of these Town Center Covenants by Developer, then any such Additional Property shall constitute part of the Town Center Property. Additional Property may be submitted to the provisions of these Town Center Covenants by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Office of the Judge of Probate of Shelby County, Alabama, which instrument shall be deemed an amendment to these Town Center Covenants (which need not be consented to or approved by any Owner, Tenant or Mortgagee of any Lot within the Town Center Property). Such Additional Property may be submitted to all of the terms and conditions of these Town Center Covenants or may be submitted to these Town Center Covenants subject to such other or different covenants, conditions and restrictions as Developer, in its sole discretion, may specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to these

Town Center Covenants is recorded in the aforesaid Probate Office submitting any Additional Property to the terms and provisions of these Town Center Covenants, the voting rights and percentages in the Merchants' Association shall be adjusted so that each Lot within the Town Center Property is entitled to the voting percentage determined for each Lot pursuant to the Organizational Documents. In no event shall Developer be obligated to submit any Additional Property to the provisions of these Town Center Covenants or to impose any of the covenants, conditions or restrictions set forth in these Town Center Covenants upon any other real property owned by Developer situated adjacent to or in close proximity with the Town Center Property. Notwithstanding anything provided in these Town Center Covenants to the contrary, the addition of any such Additional Property to these Town Center Covenants shall not constitute a material or adverse alteration or change in any of the rights of any Owner or Tenant to the use by any Owner or Tenant of any Lot within the Town Center Property.

2.4 **MUTUALITY OF BENEFIT AND OBLIGATION.** The provisions of these Town Center Covenants are made (a) for the mutual and reciprocal benefit of each Lot, Owner and Tenant and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any of the Town Center Property and (c) to create a privity of contract and estate between the Owners and their respective heirs, successors and assigns.

2.5 **SUBDIVISION.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, and make changes to the boundaries of any Lots owned by Developer. The rights reserved by Developer pursuant to this Section 2.5 may be exercised by Developer without any requirement that the consent or approval of any Owners, Tenants or Mortgagees be obtained (other than the Owner and Mortgagee of any Lot which is being re-subdivided) and shall include, without limitation, the right to amend from time to time and at any time **Exhibit A** to these Town Center Covenants to reflect any such subdivision or re-subdivision.

ARTICLE III

EASEMENTS

3.1 RESERVATION OF EASEMENTS WITH RESPECT TO SIDEWALK EASEMENT AREA.

(a) Developer does hereby establish and reserve for itself, the Merchants' Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement over, across, through, under and upon the Sidewalk Easement Area situated on each Lot within the Town Center Property for the purposes of (i) providing pedestrian ingress and egress over the same and (ii) constructing, erecting, operating, maintaining, repairing and replacing from time to time thereon signage, street lights, lighting, walkways, sidewalks, walls, fences, landscaping and landscaped or other areas and any other improvements thereto, including, without limitation, irrigation systems, utility lines, pipes, ducts, conduit, equipment, machinery and other apparatus and appurtenances which either Developer or the Merchants' Association may, from time to time, elect to construct, place, replace, erect, install or maintain within any portion of any of the Sidewalk Easement Area; provided, however, that neither Developer nor the Merchants' Association shall have any obligation to undertake any of the foregoing improvements with respect to or on or within any portion of any Sidewalk Easement Area.

(b) Developer does hereby reserve for itself, its agents, employees, representatives, invitees, successors and assigns, the permanent and perpetual exclusive right to use any portion of the Sidewalk Easement Areas and any of the Common Areas for (i) open-air markets or for the rental or licensing of space for pushcarts, kiosk, stands or similar temporary sales structures, (ii) any special events

(whether on a limited basis or on a recurring or daily basis) for any other purposes determined by Developer to be beneficial to the Town Center Property or to Mt Laurel and (iii) festivals, street fairs and any other events intended to enrich and enliven the community (which would include the Town Center Property as well as all other portions of Mt Laurel). Developer may, but shall not be obligated to, assign the rights reserved in this Section 3.1(b) to the Merchants' Association or to any other Person at any time.

3.2 EASEMENTS WITH RESPECT TO COMMON AREAS.

(a) Developer does hereby establish and reserve for itself, the Merchants' Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive right, privilege and easement of access to and the use and enjoyment of all of the Common Areas for the purpose of (i) installing, constructing, maintaining, erecting, replacing and repairing from time to time thereon any improvements thereto, (ii) using and enjoying any and all of the Common Areas for such purposes as Developer or the Merchants' Association may deem appropriate and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall either Developer or the Merchants' Association have any obligation to undertake the making of any improvements to any of the Common Areas.

(b) Developer does hereby grant to each and every Owner and Tenant of any Lot within the Town Center Property and their respective family members, agents, employees, guests and invitees a permanent, perpetual and non-exclusive right and easement of appropriate use and enjoyment of the Common Areas and Sidewalk Easement Areas, subject to (i) the Merchants' Association's right of regulation in accordance with the terms and provisions of this Declaration and (ii) the rights reserved by Developer hereunder.

3.3 RESERVATION OF GENERAL ACCESS AND MAINTENANCE EASEMENT. Developer does hereby grant to the Merchants' Association and its respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot and those portions of the exterior of each Building constructed thereon as may be necessary for the purpose of performing the duties of the Merchants' Association hereunder.

3.4 EASEMENTS UNDER MASTER DECLARATION. The easements established and created pursuant to this Article III are in addition to the easements established and created under the Master Declaration.

ARTICLE IV

MERCHANTS' ASSOCIATION

4.1 MEMBERSHIP. The Owner of each Lot shall be a member of the Merchants' Association. Membership in the Merchants' Association is mandatory. Membership in the Merchants' Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that the Owner of any Lot within the Town Center Property may designate in a written instrument provided to the Merchants' Association any one or more Tenants within any Buildings situated on such Owner's Lot as the Persons who have the right to exercise all or any portion of such Owner's voting rights in the Merchants' Association. Except as specifically provided above, no Tenant shall be entitled to any voting rights in the Merchants' Association. The rights of the Owners and the structure of the Merchants' Association are set forth in the Organizational Documents. Each Owner and all Tenants shall at all times comply with the provisions of these Town Center Covenants, the Organizational Documents and all rules and regulations which may from time to time be adopted by the Merchants' Association Board.

4.2 **MERCHANTS' ASSOCIATION BOARD.** The Merchants' Association Board shall have the rights and duties set forth in the Organizational Documents and in these Town Center Covenants. Developer hereby retains and shall have the sole and exclusive right to appoint and remove, with or without cause, any and all members of the Merchants' Association Board and any and all officers of the Merchants' Association until the occurrence of the Town Center Turnover Date. Each Owner, by acceptance of a deed to a Lot, vests in Developer the authority to appoint and remove all of the members of the Merchants' Association Board and all of the officers of the Merchants' Association until the occurrence of the Town Center Turnover Date.

4.3 **VOTING RIGHTS.**

(a) Notwithstanding anything provided to the contrary in these Town Center Covenants or the Organizational Documents, until the occurrence of the Town Center Turnover Date, Developer shall have the sole, exclusive and absolute right to exercise all voting rights under these Town Center Covenants and in the Merchants' Association; provided, however, that any Special Assessments to be made at any time prior to or after the Town Center Turnover Date must be submitted to and approved in accordance with the terms and provisions of Section 7.4 below.

(b) Subject to the reservation of all voting rights by Developer pursuant to Section 4.3(a) above, no Owner (and no Tenant of an Owner) shall have any voting rights under these Town Center Covenants or under the Organizational Documents until such time as a final certificate of occupancy has been issued for a Building on such Owner's Lot. Each Owner, by acceptance of a deed to a Lot, consents and agrees to the dilution of such Owner's voting rights in the Merchants' Association by virtue of the completion of construction of any additional Buildings within the Town Center Property, the change in the gross square footage of any Buildings (as may be approved from time to time by the Mt Laurel Design Review Board) or by the addition of Additional Property to the terms and provisions of these Town Center Covenants.

(c) Voting rights in the Merchants' Association are more specifically set forth in the Organizational Documents and, as provided in the Organizational Documents, are generally based on the gross square footages of Buildings within the Town Center Property.

(d) Except as specifically authorized in the Organizational Documents or in Section 4.1 above, only those Owners who hold legal title to a Lot within the Town Center Property upon which a Building has been completed, as provided in Section 4.3(b) above, shall be entitled to vote on any matter submitted to the Owners for approval. To the extent the Owners are entitled to vote on any matters pursuant to these Town Center Covenants, then the voting and quorum requirements set forth in the Organizational Documents shall be applicable to such vote and Developer shall be entitled to exercise all voting rights attributable to any Lots within the Town Center Property owned by Developer.

4.4 **DUTIES AND POWERS OF MERCHANTS' ASSOCIATION.** In addition to the rights, duties, responsibilities and obligations of the Merchants' Association otherwise set forth in these Town Center Covenants, the Merchants' 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 Organizational Documents. The powers and authority granted herein and in the Organizational Documents to the Merchants' Association shall be exercised by the Merchants' Association Board, acting through the officers of the Merchants' Association, without further consent or action on the part of any Owners or Tenants. In performing its responsibilities hereunder, the Merchants' Association acting through the Merchants' Association Board, shall have the right and authority to delegate to such Persons of its choice, including third party management companies which may be Affiliates of Developer, such duties of the Merchants' Association as may be determined by the Merchants' Association Board. In furtherance of the foregoing

and not in limitation thereof, the Merchants' Association may obtain and pay for the services of any Person (including Developer or its Affiliates) to manage its affairs, as well as employ such other personnel as the Merchants' Association Board may deem necessary or desirable for the proper operation of the Merchants' Association.

ARTICLE V

USE AND PROPERTY RESTRICTIONS

5.1 **USE RESTRICTIONS.** Except for Live/Work Units, each Lot within the Town Center Property shall be used solely and exclusively for office and retail purposes and uses only; provided, however, that (a) the specific type of office and retail use within each Building, including any Live/Work Units, on each such Lot must be approved in writing by Developer; (b) any Live/Work Units situated within the Town Center Property may be utilized for residential uses and such office and retail uses as are approved by Developer as provided in Section 5.7 below; and (c) any portion of the Town Center Property may be utilized for any of the uses included in the definition of Common Areas and any other uses which have been approved in writing by Developer. Except for Live/Work Units, no portion of the Town Center Property shall be utilized for residential purposes.

5.2 **SPECIFIC APPROVALS AND RULE MAKING AUTHORITY OF DEVELOPER.**

(a) In order to promote the economic success and long-term viability of the Town Center Property, Developer will control the tenant mix within the Town Center Property in an attempt to avoid competition between like uses and to attempt to ensure the success of each and every Tenant and retail Owner thereof. Accordingly, each Owner and Tenant of any of the Buildings within the Town Center Property will be restricted from selling products, goods and services which, in the sole and absolute opinion of Developer, compete with other products, goods and services to be provided by other Tenants and Owners within the Town Center Property. Each Owner and Tenant, including the Owner of each Live/Work Unit, will be required to register with Developer potential retail and office uses and goods, merchandise, services and prospects which any such Owner or Tenant desires to conduct, sell or provide within the Town Center Property and only such retail and office uses, goods, services and prospects as approved in writing by Developer may be provided by such Owners or Tenants. Furthermore, Developer shall have the right to adopt from time to time standards for the types, quality, style and prices of any merchandise to be sold within the retail areas of the Town Center Property, which standards may be applied on an individual store basis, on a block-by-block basis or on such other basis as Developer may, in its sole discretion, determine, including standards which may be different for abutting stores, standards which may be different for opposite sides of the street or for different sizes or types of Buildings.

(b) Developer shall have the authority to restrict or prohibit certain types of merchandise which may be offered for sale within the Town Center Property and may adopt guidelines and regulations granting to specific Owners or Tenants within specific Buildings of the Town Center Property exclusive rights to sell certain types of merchandise.

(c) Developer shall have the right to review and approve the name, logo and other identifying symbols to be used for any businesses, both retail and office, within the Town Center Property, including, without limitation, any and all signage appearing on the exterior of any Buildings, upon any exterior glass surfaces of any Buildings or any interior signage which may be visible from any of the doors or windows on the exterior of any Buildings. All signage must be professionally prepared; no hand-lettered signage will be allowed on the exterior of any Building or upon any exterior glass surfaces of any Building.

(d) Developer shall have the right to approve any and all advertising for all businesses within the Town Center Property, whether for print, television, radio, handbills, outside signage or other media. Such approval rights shall also extend and apply to advertising placards, names, insignia, trademarks, descriptive materials, banners, signage and other advertising and promotional materials utilized for any Building within the Town Center Property. Furthermore, Developer or the Merchants' Association may adopt rules and regulations which restrict or prohibit the distribution of handbills and the posting of any advertising or other types of signage within any of the Common Areas or Sidewalk Easement Areas.

(e) Developer may regulate the days and hours of operation of all retail businesses within the Town Center Property and may require all retail sales personnel to attend classes concerning the history and philosophy of Mt Laurel, the location of other commercial and public facilities within Mt Laurel and other information which would be useful or helpful to the general public.

(f) Developer shall approve all promotional activities for the Town Center Property, including, without limitation, street fairs and festivals within the Town Center Property, any of the Common Areas or Sidewalk Easement Areas, as well as advertising and promotional activities which are undertaken for the benefit of all or substantially all of the Owners and Tenants within the Town Center Property.

(g) Developer may also establish and enforce additional rules and regulations concerning the use of all Sidewalk Easement Areas and Common Areas within the Town Center Property including, without limitation, restricting or prohibiting certain uses or activities within the Common Areas and Sidewalk Easement Areas (e.g., restricting or prohibiting skate boarding, scooters, roller blades, skating, bicycles and other types of uses within the Common Areas and Sidewalk Easement Areas and requiring that all Tenants and their agents and employees park only in specific areas designated by Developer). Any and all such additional rules and regulations shall be binding upon all Owners and Tenants and their respective family members, guests, invitees, contractors, agents and employees.

(h) Developer shall have the right to enter upon all Lots and Buildings and inspect stock, inventory and services on a monthly basis and notify Owners or Tenants within the Town Center Property of any deficiency noted during such inspections which would violate any applicable rules and regulations adopted from time to time by Developer. If any such deficiencies are not resolved within a reasonable period of time, then Developer may give a second notice to such Owner or Tenant, which notice shall be noted as a "Second Notice of Deficiency". If a "Second Notice of Deficiency" is not cured within 30 days of the date of the giving of the same, then Developer and the Merchants' Association Board shall each have the right to exercise any and all rights and remedies granted herein including, without limitation, the exercise of the rights and remedies set forth in Section 5.10 below.

(i) All of the terms and provisions of these Town Center Covenants, as well any rules and regulations adopted by Developer, shall be binding on all Tenants and Owners.

(j) The rights granted to Developer in Sections 5.2(a) through 5.2(i) hereof shall continue in full force and effect at all times prior to and after the Town Center Turnover Date. At any time prior to or after the Town Center Turnover Date, Developer may, by written instrument, transfer and assign the rights reserved in this Section 5.2 to any Person.

5.3 SETBACK REQUIREMENTS. All Building setbacks for any Lot within the Town Center Property shall be established (a) on the subdivision plat for the applicable Lot, (b) in the deed from Developer conveying the applicable Lot to the Owner or (c) by the Mt Laurel Design Review Board. In

no event may any Buildings be constructed within the Sidewalk Easement Areas on any Lot unless approved in writing by the Mt Laurel Design Review Board.

5.4 **SERVICE AND STORAGE AREAS AND FACILITIES.** No materials, supplies, equipment or machinery shall be stored on any Lot outside of a Building without the prior written approval of Developer; provided, however, that (a) temporary storage of construction materials will be allowed during the construction of any Building or Improvements on a Lot so long as the same are moved upon completion of construction and (b) with respect Live/Work Units only, rear yards may contain outdoor furniture and other personal property normally and customarily found within the Residential Districts of Mt Laurel, subject to compliance with the terms and provisions of the Master Declaration. Each Building constructed on any Lot within the Town Center Property shall include a service area of adequate size and location to facilitate trash removal and for the loading and unloading of merchandise, materials and otherwise handling deliveries. All such service areas shall satisfy all requirements of the Mt Laurel Design Review Board.

5.5 **SIDEWALKS AND OUTDOOR SALES.** The Owner of each Lot within the Town Center Property shall, at the time such Owner commences construction of a Building on such Owner's Lot, construct and install sidewalks and sidewalk areas within the Sidewalk Easement Areas on such Owner's Lot in accordance with the specifications and requirements of the Mt Laurel Design Review Board. Such sidewalks shall be completed no later than the date on which a final certificate of occupancy is issued for the Building on such Owner's Lot. Subject to the rights reserved by Developer pursuant to Section 3.1(b) above, no Owners or Tenants shall conduct any business, sidewalk sales or other activities within the Sidewalk Easement Areas, Common Areas or Common Roads without the prior written approval of Developer.

5.6 **NUISANCES.**

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of any Lot within the Town Center Property or any of the Common Areas nor shall any nuisance or offensive odors be permitted to exist or operate upon or arise from any Lot or Building within the Town Center Property which would render such Lot or Building unsanitary, unsightly, offensive or detrimental to Persons using, occupying or owning any other Lots or Buildings within the Town Center Property. Each Owner and Tenant shall refrain from any act or use of a Lot or Building which would result in the same becoming unsightly or unkept, which would result in the cancellation or increase in any insurance coverage or premiums maintained by Developer or the Merchants' Association or which would be in violation of any law, statute, ordinance, rule, regulation or requirement of any applicable Governmental Authorities.

(b) Any exterior speakers, horns, whistles, bells or other devices, other than security and fire alarm devices used exclusively for such purposes, must be approved by Developer and the Mt Laurel Design Review Board.

(c) The Owners and Tenants of all Lots and Buildings within the Town Center Property, for themselves and their respective agents, employees, family members, guests and invitees, do hereby acknowledge and agree that (i) the Town Center Property will be utilized for mixed residential, office and retail uses, (ii) town fairs and festivals may be held on or within the Common Roads, Common Areas and the Sidewalk Easement Areas of the Town Center Property and (iii) certain Lots within the Town Center Property may be utilized for outdoor dining and food and beverage sales, which may include either inside or outside musical performances and the use of speakers for music and/or public address systems. Each Owner and Tenant of any Lot or Building within the Town Center Property, for themselves and their respective family members, agents, employees, guests and invitees, do hereby

consent to and approve of any and all such outdoor activities, including all sounds, noises, traffic (both vehicular and pedestrian) and smells which result from the same.

5.7 SPECIFIC RESTRICTIONS WITH RESPECT TO LIVE/WORK UNITS.

(a) The first floor of any Live/Work Unit shall at all times be used for either office or retail uses; provided, however, that if the first floor of any Live/Work Unit will not be used on a regular basis for office or retail purposes for more than 30 consecutive days, then the Owner of such Live/Work Unit shall install window treatments in the first floor windows of such Live/Work Unit in accordance with specifications and requirements which may be established from time to time by the Mt Laurel Design Review Board. As used herein the phrase "regular basis" shall mean being open for business to the general public Monday through Friday during the hours of at least 9:00 a.m. to 5:00 p.m. each such day, holidays excepted.. In no event shall the first floor area of any Live/Work Unit be used for residential purposes.

(b) Any retail and office uses of any portion of a Live/Work Unit must be approved by Developer as provided in Sections 5.1 and 5.2 above.

(c) No furniture, equipment, machinery or other personal property shall be situated outside of any Live/Work Unit within or immediately adjacent to the Sidewalk Easement Area of such Live/Work Unit.

5.8 COMPLIANCE WITH RULES AND REGULATIONS. All business conducted from any Lots or Buildings within the Town Center Property shall at all times comply with all rules and regulations adopted from time to time by Developer or the Merchants' Association Board for the conduct of business within the Town Center Property and such other requirements as may be promulgated from time to time by Developer or the Merchants' Association Board.

5.9 VARIANCES. Notwithstanding anything provided herein to the contrary, Developer or the Merchants' Association Board, each in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of this Article V. Any variance request submitted to Developer or the Merchants' Association Board shall be in writing and, upon approval of the same by either Developer or the Merchants' Association Board, shall be evidenced by a written variance executed by Developer or, in the case of the Merchants' Association Board, by either the chairman or vice chairman of the Merchants' Association Board.

5.10 ENFORCEMENT AND REMEDIES. In the event any of the provisions of this Article V are breached or not otherwise being complied with in all respects by any Owner or Tenant or any of their respective family members, guests, invitees, agents, employees or contractors, then Developer and the Merchants' Association shall each have the right, at their respective option, to (i) enjoin such violation or noncompliance and/or (ii) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Building and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by Developer or the Merchants' Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or of the removal of such violation or in any judicial proceeding, together with any other costs and expenses incurred by Developer or the Merchants' Association in connection therewith, shall be paid by the Owner or Tenant who has violated or breached any of the provisions of this Article V. To the extent any Tenant fails to pay to Developer or the Merchants' Association any and all costs required to be paid pursuant to the terms and provisions of this Section 5.10, then the Owner of the applicable Lot or Building shall be obligated to pay such costs and

expenses of Developer or the Merchants' Association. Notwithstanding anything provided herein to the contrary, the rights and remedies of Developer and the Merchants' Association set forth in this Section 5.10 shall not be deemed exclusive of any other rights and remedies which Developer or the Merchants' Association may exercise at law or in equity as a result of any default pursuant to this Article V by any Owner or Tenant.

ARTICLE VI

MAINTENANCE RESPONSIBILITIES

6.1 RESPONSIBILITIES OF OWNERS AND TENANTS.

(a) Unless specifically identified herein as being the responsibility of the Merchants' Association and subject to the provisions of Section 6.1(b) below, the maintenance and repair of all Lots (and all Improvements thereto) situated within the Town Center Property, including all landscaping and the grounds thereof, shall be the sole responsibility of the Owner of such Lot. Each Owner shall be responsible for (i) maintaining such Owner's Lot and all Improvements thereto in a neat, clean and sanitary condition, (ii) the general cleaning and removal of snow, debris, trash, rubbish and litter from such Owner's Lot and (iii) providing trash collection and removal services for such Owner's Lot and any Buildings constructed thereon. To the extent any Tenant of an Owner or the family members, agents, employees, contractors, invitees or licensees of any Owner or any Tenants of such Owner violate any of the terms and provisions of these Town Center Covenants, then, subject to the provisions of Section 6.1(b) below, the Owner of such Lot shall be responsible for such acts or omissions.

(b) For so long as Developer (or any Affiliate thereof) owns all Lots (other than the Live/Work Units) within the Town Center Property, each Tenant of any Building in the Town Center Property shall be solely responsible for any maintenance, cleaning, repair or replacement for which (i) Developer, as Owner, is responsible pursuant to Section 6.1(a) above and (ii) for which the Merchant's Association is responsible hereunder which is caused by either the negligence or wilful acts of such Tenant or the agents, employees, family members, contractors, invitees or licensees of such Tenant. In the event the Merchant's Association determines that any such maintenance, cleaning, repair or replacement is due to or caused by the negligent or wilful acts of any Tenant or any Tenant's agents, employees, family members, contracts, invitees or licensees, then the Merchant's Association shall, in addition to the exercise of any and all rights and remedies set forth in these Town Center Covenants or which may be available at law or in equity, give written notice to such Tenant requiring that such Tenant undertake such maintenance, cleaning, repair, or replacement. In the event any such Tenant fails to complete all necessary maintenance, cleaning, repairs and replacements as required by the Merchant's Association within seven (7) days from the date written notice of the same is given to such Tenant, then the Merchant's Association shall have the right, at its option (but without any obligation) to undertake such action on behalf of such Tenant and such Tenant shall be responsible for any and all costs and expenses paid or incurred by the Merchant's Association in connection therewith. The foregoing notice provision shall not be applicable in the event of any emergency situations, as determined in the reasonable discretion of the Merchant's Association, in which event the Merchant's Association may immediately take action to remedy such situation without providing prior notice or the opportunity to cure to such Tenant.

6.2 RESPONSIBILITIES OF MERCHANTS' ASSOCIATION. The Merchants' Association shall, to the extent it has received sufficient sums through Merchants' Association Assessments, maintain and keep all portions of the Common Areas in good repair and condition, including, specifically all Sidewalk Easement Areas and any landscaping, lighting and other improvements thereto. The Merchants' Association shall not be liable or responsible for (a) injuries or damages to any Person or property (i)

caused by the elements or by acts of God, (ii) resulting from or caused by rain or other water which may leak or flow onto any of the Town Center Property or any Improvements thereto or (iii) resulting from theft, burglary or other illegal entry onto any of the Town Center Property or (b) the repair, maintenance or replacement of any Improvements (other than within the Sidewalk Easement Area) situated on any Lot within the Town Center Property.

ARTICLE VII

MERCHANTS' ASSOCIATION ASSESSMENTS

7.1 MERCHANTS' ASSOCIATION ASSESSMENTS AND CREATION OF LIEN.

(a) Subject to the provisions of Section 7.2(b) below, each Owner of a Lot with the Town Center Property, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to these Town Center Covenants, is hereby deemed to covenant and agree to pay to the Merchants' Association (a) Annual Assessments, as established and to be collected as provided in Section 7.3 below, (b) Special Assessments, to be established and collected as provided in Section 7.4 below, and (c) Individual Assessments which are established or assessed pursuant to Section 7.5 below. All Merchants' Association Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 7.6 below, and all court costs and attorneys' fees incurred by the Merchants' Association to enforce or collect such Merchants' Association Assessments shall be an equitable charge and a continuing lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 7.6 below and shall also constitute a personal obligation of each Owner.

(b) All Merchants' Association Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking 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 with respect to any Lot and any Improvements thereto, the Common Areas or any other portion of the Town Center Property or as a result of any other cause or reason of any nature.

7.2 RATE AND COMMENCEMENT DATE FOR ASSESSMENTS.

(a) Subject to the provisions of Sections 7.2(b) and 7.9 below, both Annual Assessments and Special Assessments, as described in Sections 7.3 and 7.4 below, shall be assessed against each Lot, with the Owner of each Lot being required to pay his or her prorata portion of such Annual Assessments and Special Assessments, as hereinafter provided. Subject to the provisions of Section 7.9 below, the prorata portion of Annual Assessments and Special Assessments payable by each Lot shall be determined by multiplying the total amount of the Annual Assessments or Special Assessments, as the case may be, for all of the Town Center Property by a fraction, the numerator of which shall be the gross square footage of all completed Buildings situated on such Owner's Lot and the denominator of which shall be the gross square footage of all completed Buildings then situated within all of the Town Center Property, as such calculations are adjusted in accordance with the terms and provisions of Section 7.2(e) hereof. Notwithstanding anything provided herein to the contrary, no Annual Assessments or Special Assessments shall be levied against, or payable by, any Lot within the Town Center Property until such time as a final certificate of occupancy has been issued for a Building on such Lot.

(b) For so long as Developer (or any Affiliate thereof) is the Owner of all Lots (other than the Live/Work Units) within the Town Center Property, each Tenant of any Building in the Town Center Property shall be obligated to pay such Tenant's prorata portion of such Annual Assessments and

such Special Assessments, as provided in this Section 7.2(b). The prorata portion of Annual Assessments and Special Assessments payable by each Tenant shall be determined by multiplying the total amount of the Annual Assessments or Special Assessments, as the case may be, for the Town Center Property by a fraction, the numerator of which shall be the gross square footage of the leased premises by such Tenant in any Building within the Town Center Property and the denominator of which shall be the gross square footage of which shall be for all completed buildings then situated within the Town Center Property, as such calculations are adjusted in accordance with the terms and provisions of Section 7.2(e) below.

(c) Notwithstanding anything provided in these Town Center Covenants to the contrary, in the event any Additional Property is added to the Town Center Property, then (i) any completed Buildings within the Additional Property shall be subject to the Annual Assessments and Special Assessments then being paid by all Owners of all other completed Buildings within the Town Center Property, subject to proration for the actual number of days remaining in the calendar year in which such Additional Property was added to the Town Center Property and (ii) in no event shall Annual Assessments or Special Assessments paid by any Owners which are allocable to any periods of time prior to the addition of any such Additional Property to these Town Center Covenants be recomputed or subject to any refund to any of the Owners.

(d) Subject to the provisions of Section 7.9 below, from and after the date of these Town Center Covenants and continuing until December 31, 2003, the Annual Assessments for the 2003 calendar year shall equal \$0.55 per gross square foot of space in all Buildings within the Town Center Property (as adjusted as provided in Section 7.2(e) below) per calendar year. Beginning in the 2004 calendar year and each year thereafter, Annual Assessments are subject to change each year, as determined by the Merchants' Association Board, in its sole discretion.

(e) Notwithstanding anything provided in these Town Center Covenants to the contrary, the following adjustments shall be made in determining the gross square footage of space within any Building (or any leased premises within a Building) within the Town Center Property: (i) any areas which are used for outdoor seating, dining and food and beverage services by any restaurant, bar or other commercial user shall be included in the square footage of space for which Annual Assessments shall be paid; (ii) any community building or town hall building owned by Developer or any Affiliates thereof, the Merchants' Association or the Mt. Laurel Neighborhood Association, Inc. shall be exempt from all Annual Assessments and shall be excluded from the calculation of the gross square footage of space within Buildings within the Town Center Property; (iii) open-air markets, push carts, kiosk, stands and similar temporary sales structures within the Sidewalk Easement Areas in the Common Areas shall be exempt from Annual Assessments and shall not be included in such calculations; (iv) any Building (other than Live/Work Units) situated on Special Use Parcels shall be exempt from Annual Assessments and Special Assessments and shall not be included in any such calculations and (v) the adjustments set forth in Section 7.9 below shall be made when calculating the Annual Assessments payable each year.

7.3 COMPUTATION OF ANNUAL ASSESSMENTS. The Merchants' Association Board shall determine and approve annually an annual budget covering the estimated Merchants' Association Expenses for the Town Center Property for the upcoming year. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for all of the Town Center Property for the applicable year for which such budget relates and each Owner shall pay his or her prorata share of the same as provided in Section 7.2 above. As used herein, the term "Annual Assessments" shall mean the prorata share of the estimated Merchants' Association Expenses payable by the Owner or Tenant of each Building within the Town Center Property. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Merchants' Association Expenses for such year, the excess shall be retained by the Merchants' Association as a reserve for subsequent years' Merchants' Association Expenses.

7.4 **SPECIAL ASSESSMENTS.** In addition to the Annual Assessments authorized in Section 7.3 above, the Merchants' Association Board may levy in any year special assessments ("Special Assessments") for any purposes so long as such Special Assessments are approved by a majority in interest of the Owners voting at a duly convened meeting of the Merchants' Association or in a ballot vote by the Owners held in accordance with the provisions of the Organizational Documents. All Special Assessments, as approved by the Owners as provided above, shall be payable in accordance with the terms and provisions of Section 7.2 above.

7.5 **INDIVIDUAL ASSESSMENTS.** The Merchants' Association may, in its sole discretion, at any time and from time to time levy and assess as individual assessments (collectively, "Individual Assessments") against any Lot (and all Improvements thereto) any costs or expenses, including, without limitation, collection costs, attorneys' fees, court costs and any administrative costs and expenses incurred by or on behalf of the Merchants' Association as a result of the failure of any Owner or the respective family members, agents, guests, servants, employees, invitees and contractors of any Owner to at all times observe and perform their respective duties and obligations under these Town Center Covenants. The Individual Assessments provided for in this Section 7.5 shall be levied by the Merchants' Association Board and the amount and due date of any such Individual Assessments shall be specified by the Merchants' Association Board in a written notice to such Owner.

7.6 **EFFECT OF NON-PAYMENT; REMEDIES OF THE MERCHANTS' ASSOCIATION.** If any Owner or Tenant shall fail to pay any Merchants' Association Assessments within 30 days from the date of any payment notice or billing invoice submitted to such Owner, then (a) such Owner or Tenant shall be deemed in default hereunder, (b) the unpaid portion thereof shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth day following the due date of the same until the same has been paid in full and (c) the Merchants' Association shall have the right to exercise all rights and remedies available to the Merchants' Association, including, but not limited, to the right to foreclose the lien created pursuant to Section 7.1, above and the payment of the costs of such proceeding, including reasonable attorneys' fees and interest at the Applicable Rate in the manner hereinafter provided. The Merchants' Association shall have the right, in its sole discretion, to sell the Lot (and all Improvements thereto) of such defaulting Owner at public outcry to the highest bidder for cash in front of the court house door in the county where said Lot is located, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication in a newspaper of general circulation in Shelby County, Alabama at least once a week for three (3) successive weeks prior to said sale and, upon payment of the purchase money, the Merchants' Association or the Person conducting such sale is authorized to execute to the purchaser at such sale a deed to the Lot (and any Improvements thereto) so purchased. The Merchants' Association may bid at such sale and purchase the Lot (and any Improvements thereto), if it is the highest bidder therefor.

7.7 **SUBORDINATION OF LIEN.** Notwithstanding anything provided herein to the contrary, the lien for Merchants' Association Assessments and other charges authorized herein with respect to any Lot is and shall be subordinate to the lien of any Mortgage which is recorded in the Office of the Judge of Probate of Shelby County, Alabama prior to the filing of a claim or notice of lien by the Merchants' Association in said Probate Office.

7.8 **CERTIFICATES.** The Merchants' Association (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Merchants' Association Board, furnish to any Owner a certificate in writing setting forth whether the Merchants' Association Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Merchants' Association Assessments stated therein.

7.9 **EXEMPTION FROM ASSESSMENTS.** Notwithstanding anything provided to the contrary in these Town Center Covenants, Developer may designate any Lot as being exempt from the payment of Annual Assessments or Special Assessments or may by deed, contract or other written instrument reduce the amount of Annual Assessments which may be payable by any Lot within the Town Center. To the extent any Lot is exempted from the payment of Annual Assessments or Special Assessments or the amount of Annual Assessments payable by any Lot is reduced to an amount less than that which would be payable under Section 7.2 hereof, then, in addition to the adjustments provided in Section 7.2(e) above, the following adjustments shall be made in determining the prorata share of Annual Assessments payable by each Lot pursuant to Section 7.2(a) above: (a) the gross square footages of any Buildings which are either exempted or subject to reduced Annual Assessments shall be deducted from the gross square footage of all completed Buildings within the Town Center Property and (b) the amount, if any, of Annual Assessments payable by any Lot which has been exempted or is subject to reduced Annual Assessments shall be deducted from the total amount of Annual Assessments payable each year prior to determining the prorata share payable by each Lot or Building pursuant to Section 7.2 above. The granting by Developer of any exemption or any reduction in the amount of Annual Assessments payable by any Lot shall not affect the voting rights of the Owner of such Lot in the Association.

ARTICLE VIII

INSURANCE

8.1 **INSURANCE.** Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to such Owner's Lot and the Buildings and all other Improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in any Lot, does hereby waive and release the Merchants' Association, Developer and their respective agents, employees, representatives, partners, shareholders, members, officers and directors from any and all liabilities or responsibilities or any other claims 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 (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage has been caused by the fault or negligence of the Merchants' Association, Developer or any of their respective agents, employees, representatives, partners, shareholders, members, officers or directors.

ARTICLE IX

MISCELLANEOUS

9.1 **TERM.** The terms, covenants, conditions and restrictions set forth in these Town Center Covenants shall run with and bind all of the Town Center Property, shall inure to the benefit of all Owners, Tenants and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof, after which time these Town Center Covenants shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after ninety-nine (99) years from the date hereof, an agreement executed by Owners having at least fifty-one percent (51%) in interest of all voting rights in the Merchants' Association agreeing to terminate these Town Center Covenants has been recorded in the Office of the Judge of Probate of Shelby County, Alabama.

9.2 AMENDMENTS.

(a) Prior to the Town Center Turnover Date, these Town Center Covenants may be amended at any time by Developer without the consent or approval of any Owners or Tenants; provided, however, that any Special Assessments to be levied upon or assessed against any Owners must be approved by the Owners in accordance with the requirements of Section 7.04 above.

(b) From and after the occurrence of the Town Center Turnover Date, these Town Center Covenants may be amended only by both (i) the affirmative vote of fifty-one percent (51%) in interest of those Owners of the Town Center Property who have voting rights pursuant to the Organizational Documents and who are voting either in person or by proxy at either a duly constituted meeting or a ballot vote of the Owners held in accordance with the terms and provisions of the Organizational Documents and (ii) the written consent or approval of Developer; provided, however, no Owner consent or approval shall be required in connection with the exercise by Developer of its rights to (1) add Additional Property to the terms and provisions of these Town Center Covenants, (2) subdivide or re-subdivide any Lots or (3) approve specific retail and offices uses within the Town Center Property or otherwise exercise any of the rights of Developer set forth in Section 5.03 above. Any amendment to these Town Center Covenants must be recorded in the Office of the Judge of Probate of Shelby County, Alabama.

9.3 CONTROL BY DEVELOPER. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THESE TOWN CENTER COVENANTS, THE ORGANIZATIONAL DOCUMENTS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE TOWN CENTER PROPERTY, EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT, AGREES THAT UNTIL THE TOWN CENTER TURNOVER DATE, DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AND AUTHORITY TO (a) APPOINT AND REMOVE ALL OF THE MEMBERS OF THE MERCHANTS' ASSOCIATION BOARD AND (b) EXERCISE ALL VOTING RIGHTS IN THE MERCHANTS' ASSOCIATION (EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN SECTION 7.04 ABOVE).

9.4 SEVERABILITY.

If any provision of these Town Center Covenants or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of these Town Center Covenants or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

9.5 CAPTIONS AND HEADINGS.

The captions and headings contained in these Town Center Covenants are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of these Town Center Covenants. The table of contents, cover page and any index to these Town Center Covenants are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

9.6 PRONOUNS AND PLURALS.

All personal pronouns used in these Town Center Covenants, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

9.7 **BINDING EFFECT.** The terms and provisions of these Town Center Covenants shall be binding upon each Owner, Tenant and each Mortgagee of any Lot and any Improvements thereto and their respective heirs, executors, administrators, personal representatives, invitees, successors and assigns and shall inure to the benefit of Developer, the Merchants' Association, all of the Owners and their respective Tenants and Mortgagees and their respective heirs, executors, administrators, personal representatives, invitees, successors and assigns.

9.8 **NO REVERTER.** No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision hereof be deemed to vest any reversionary interest in Developer.

9.9 **INTERPRETATION.** In all cases, the provisions set forth and provided for in these Town Center Covenants shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Merchants' Association Board, will best effect the intent of the general plan of development for the Town Center Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of these Town Center Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of these Town Center Covenants shall be the date hereof. These Town Center Covenants shall be construed under and in accordance with the laws of the State of Alabama.

9.10 **RIGHTS OF THIRD PARTIES.** These Town Center Covenants shall be recorded for the benefit of Developer, the Merchants' Association, the Owners and their respective Tenants and Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Town Center Property or its operation and continuation, in the enforcement of any of the provisions of these Town Center Covenants or the right to consent to or approve of any amendment or modification to these Town Center Covenants.

9.11 **NO TRESPASS.** Whenever Developer or the Merchants' Association and their respective agents, employees, representatives, successors and assigns, are permitted by these Town Center Covenants to enter upon or correct, repair, clean, maintain or preserve or do any other action within or on any portion of a Lot or any Improvements thereto, the entering thereon and the taking of such action shall not be deemed a trespass.

9.12 **NO PARTITION.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Town Center Property.

9.13 **ORAL STATEMENTS.** Oral statements or representations by Developer, the Merchants' Association or any of their respective employees, agents, representatives, successors or assigns shall not be binding on Developer or the Merchants' Association.

9.14 **NOTICES.**

Each Owner shall be obligated to furnish to the Merchants' Association, in writing, the address to which any notice to such Owner under these Town Center Covenants is to be given and, if no address shall have been designated in writing, then all notices and demands shall be mailed or delivered to the Building, if any, situated on such Owner's Lot and, if no Building is situated on an Owner's Lot, then to the last known address of such Owner. Any Owner may, for the purposes of notices hereunder, specify in writing to the Merchants' Association that all notices be submitted to such Owner by facsimile transmission or through the Internet utilizing a specific electronic mailbox or Internet address for that particular Owner. All notices required or permitted to be given to any Owner pursuant to the terms and

provisions of these Town Center Covenants shall be deemed to have been sufficiently given or served upon any Owner when either (a) deposited in the United States mail for first-class delivery with postage prepaid and addressed to the last address furnished by such Owner to the Merchants' Association (or if no address has been furnished, then addressed to such Owner at the address of the Building, if any, situated on such Owner's Lot), in which case notice shall be deemed given upon deposit of the same in the United States mail in the manner provided above, (b) delivered by hand delivery to any one of the addresses specified in item (a) above, in which event notice shall be deemed given upon personal delivery of such notice to the mailbox or when attached to the front door of any Building at any one of the addresses specified in item (a) above, (c) sent by facsimile transmission to a facsimile number provided in writing by such Owner to the Merchants' Association, which notice shall be deemed to have been given upon transmission of such facsimile notice, or (d) sent by Internet to an electronic mailbox address or Internet address provided in writing by such Owner to the Merchants' Association, which notice shall be deemed to have been given upon transmission of such electronic mail by the Merchants' Association. All notices to the Merchants' Association shall be delivered or sent to the following address:

Mt Laurel Merchants' Association, Inc.
c/o Mt Laurel Town Management, Inc.
One Mt Laurel Avenue, Suite 205
Birmingham, Alabama 35242
Facsimile: (205) 408-8906

or to such other address as the Merchants' Association may from time to time specify in a notice to the Owners.

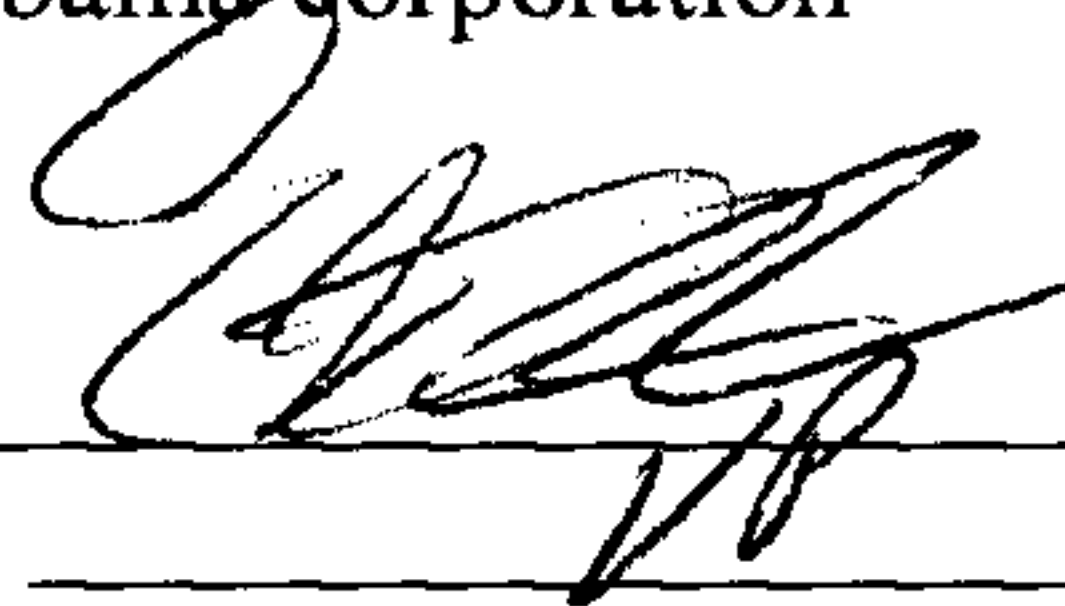
9.15 **ASSIGNMENT BY DEVELOPER.** Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any Person who shall thereafter have the same rights, powers, reservations, easements and duties as Developer hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Building within the Town Center Property by Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in these Town Center Covenants which Developer has transferred and assigned to any such third party.

9.16 **FURTHER ASSURANCES.** Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, which may be reasonably requested by Developer or the Merchants' Association for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters described herein.

9.17 **NO WAIVER.** All rights, remedies and privileges granted to Developer and the Merchants' Association pursuant to the terms and provisions of these Town Center Covenants shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the Person exercising the same, or any other Person, from pursuing such other and/or additional rights, remedies or privileges as may be available to such Person at law or in equity. The failure of Developer or the Merchants' Association at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

IN WITNESS WHEREOF, Developer has caused these Town Center Covenants to be duly executed as of the day and year first above written.

MT LAUREL TOWN MANAGEMENT, INC., an
Alabama corporation

By: 
Its: _____

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Eton B. Stephens Jr., whose name as Vice President of MT LAUREL TOWN MANAGEMENT, INC., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 19 day of March, 2003.

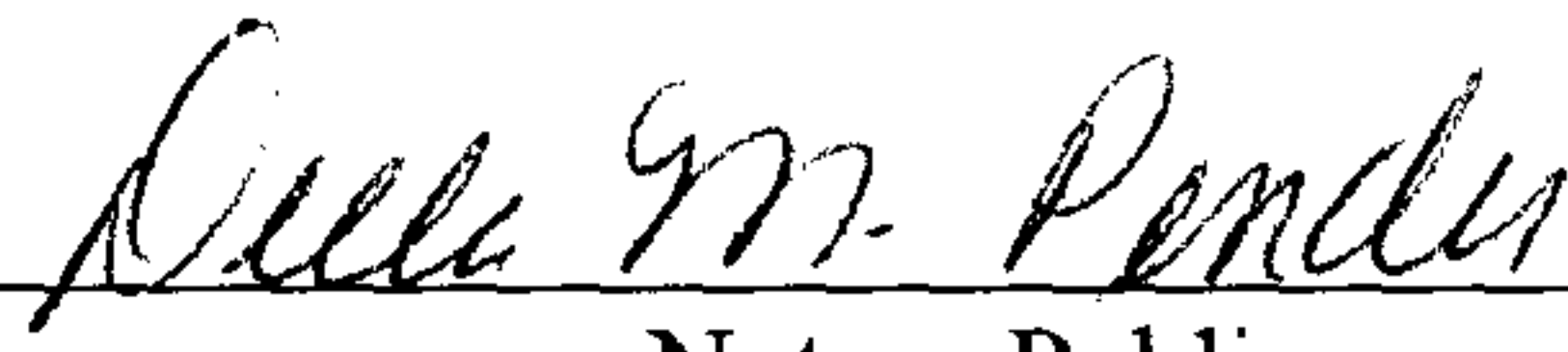

Notary Public
My Commission Expires: Sept. 19, 2006

EXHIBIT A

Legal Description of Town Center Property

A parcel of land situated in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 3, Township 19 South, Range 1 West, Shelby County, Alabama, also being a part of being more particularly described as follows:

BEGIN at the Northwestern corner of Lot 1-01, Block 1 according to the map of Mt Laurel – Phase IA as recorded in Map Book 27, Page 72-A in the Office of the Probate Judge of Shelby County, Alabama, and run in a Westerly Direction along the Northern boundary of said lot for a distance of 304.76 feet to a point, thence run in a Northeasterly direction to the Southwest corner of Lot 8-02, Block 8; thence run in an Easterly direction 101.0 feet along the Southern boundary of lot 8-02; thence run in a Northerly direction 155.5 feet along the Eastern boundary of lots 8-02, 8-03 & 8-04, Block 8; thence run in a Southeasterly direction to the Southwest corner of lot 8-06, Block 8; thence run in an Easterly direction 128.46 feet along the Southern boundary of Lots 8-06, 8-07, 8-08, 8-09 & 8-10, Block 8; thence run in a Southerly direction 119.14 feet along the Western boundary of Lots 8-11, 8-12, 8-13, 8-14 & 8-15, Block 8; thence run in a Southeasterly direction 97.04 feet along the Southern boundary of Lot 8-15, Block 8 to a point on the Western Right-of-way of Hawthorn Street; thence run in Southwesterly direction along the said Western Right-of-way of Hawthorn Street for a distance of 129.08 feet to the Northwest intersection of the Right-of-way of Hawthorn Street and Mt Laurel Avenue; thence run in Southerly direction a distance of 116.8' feet to the Southwest intersection of the Right-of-way of Hawthorn Street and Mt Laurel Avenue; thence run in an Easterly direction a distance of 60.0 feet to the Southeast intersection of the Right-of-way of Hawthorn Street and Mt Laurel Avenue; thence run in a Southwesterly and Westerly direction 976.72 feet along the Right-of-way of Hawthorn Street to a point on the Eastern Right-of-way of Dunnivant Valley Road (Shelby County Highway 41); thence run in a Northerly direction along the Eastern Right-of-way of Dunnivant Valley Road for a distance of 661.85 feet to the POINT OF BEGINNING

Containing 11.1 acres, more or less.

Note: All lot references described in this document refer to the map of Mt Laurel – Phase IA as recorded in Map Book 27, Page 72-A & 72-B in the Office of the Probate Judge of Shelby County, Alabama

TOWN CENTER BOUNDARY

Block 1

1-01

Mt Laurel Avenue

Block 2

2-01

2-02

Croft Street

70'

Not a Part of this Subdivision

Hawthorne Street

8-02

8-03

8-04

8-05

8-06

8-07

8-08

8-09

8-10

8-11

8-12

8-13

8-14

8-15

Block 8
COMMON PARKING

Not a Part of this Subdivision

COMMON AREA

Mt Laurel Avenue

Not a Part of this Subdivision

Olmsted Street

Hawthorne Street

GRAPHIC SCALE

