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CONSTRUCTION, OPERATIONS, RESTRICTIONS AND EASEMENTS AGREEMENT

BY AND BETWEEN

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

AND

**INLAND SOUTHEAST RIVER RIDGE, L.L.C.
("INLAND")**

**THE RIVER RIDGE SHOPPING CENTER
PAD C**

Land Title

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

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "Declaration") dated February 17, 2003, by and between **INLAND SOUTHEAST RIVER RIDGE, L.L.C.**, a Delaware limited liability company ("Inland") and **RIVER RIDGE RETAIL COMPANY, L.L.C.**, a Delaware limited liability company ("RRRC").

WITNESSETH:

WHEREAS, this Declaration is made with respect to the Inland Parcel (hereafter defined) and Pad C (hereafter defined) which comprise 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, Inland is the owner of that portion of the River Ridge Shopping Center designated as the "Inland Parcel" on the Site Plan and legally described on **Exhibit B** attached hereto and incorporated herein by reference; and

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

WHEREAS, the Target Parcel, the Inland Parcel and Pad C are governed by that certain Operation and Easement Agreement entered into by and between Target and RRRC (as predecessor in interest to Inland) and recorded on September 10, 1999 at Instrument Number 1999-38041 (the "Target OEA"); and

WHEREAS, Inland and RRRC desire to establish further covenants, conditions and restrictions with respect to the ownership, use and enjoyment of the Inland Parcel and Pad C (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 of RRRC Regarding Building Pad and Subsequent
Construction and Maintenance**

1.1 Establishment of Plans. RRRC shall submit to Inland its plans for the construction of the improvements on Pad C which shall depict building area, parking, landscaping, building height, signage (other than Tenant signage which shall be in accordance with the sign criteria

applicable to the Shopping Center) and exterior elevations (the "Improvements") for Inland's prior written approval. The Improvements shall be constructed substantially in accordance with plans approved by Inland in its reasonable discretion or deemed approved as hereinafter provided ("Approved Plans"). Only after Inland has issued its written approval of Approved Plans shall RRRC 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 Inland's prior written consent.

Inland hereby agrees to use all diligent efforts to comment on RRRC's plans and specifications within ten (10) days after receipt thereof (but in no event later than twenty (20) days after receipt thereof) and Inland and RRRC shall thereafter work together to make such modifications, in good faith, as Inland deems reasonably necessary. In the event Inland fails to comment on such plans and specifications within such twenty (20) day period, RRRC's plans shall be deemed Approved Plans provided RRRC's plans and specifications, or the correspondence accompanying the transmittal of the plans and specifications, disclose that the plans shall be deemed approved if Inland does not comment to the same within twenty (20) days after receipt thereof. 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, RRRC shall not be required to obtain any further approval from Inland with respect to such plans.

1.2 Construction Activities. RRRC 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, in all material respects, 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 Pad C shall be constructed by RRRC substantially in accordance with Approved Plans and once commenced, such construction shall be diligently pursued to completion.

1.3 Staging Areas. RRRC shall designate in Tenant's plans and specifications a reasonable staging and storage area (the "Staging Area") which shall be subject to Inland's reasonable approval. The approved Staging Area shall be set forth in the Approved Plans. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only within the Staging Area. RRRC 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. Pad C and any buildings constructed thereon shall be designed, constructed and maintained in accordance with the following: other than in the Staging Area, decorative screening and 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.

1.5 Indemnity. RRRC agrees to defend, indemnify and hold harmless Inland, its employees, agents, tenants and their employees and customers of the Shopping Center and Inland's

primary lender, 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 activities performed or authorized by RRRC.

1.6 Maintenance. After completion of the construction of the Improvements, RRRC shall maintain the Improvements in good 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 Pad C shall be comparable to that followed in other similar regional retail developments.

1.7 Definition of Common Area. The Common Area of the Shopping Center shall consist of all portions of the Shopping Center which shall not be occupied by buildings, loading areas and trash enclosures as depicted on the Site Plan, including, without limitation, that portion of Pad C that does not include the building pad, subject to the rights of Inland to rearrange, relocate, and reconfigure such Common Areas of the Shopping Center as provided in **Section 2.1** hereof. The term "Common Area" or "Common Areas" shall refer to and include all parking areas, landscaped areas, driveways, entrances, exits, walkways, service roads, lighting facilities (if used to illuminate the Common Areas), utility lines serving the Shopping Center, the Common Areas and Pad C and Improvements (except as provided in **Section 2.2** below), surface drainage facilities, trash control center, fences, and other such facilities designed for the common use of all tenants and occupants of the Shopping Center.

1.8 Common Area Maintenance.

(a) Inland agrees to maintain, or cause to be maintained, the Common Area in good condition and in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances and the provisions of this Declaration.

(b) The minimum standard of maintenance for the improved Common Area shall be comparable to that followed in other first-class retail developments of comparable size in the Birmingham, Alabama, area and shall include, but not be limited to, the following:

- (i) Maintain, repair and resurface all drive and parking areas to keep the same in a smooth and evenly covered condition and periodically sweep, clean and re-stripe the same;
- (ii) Remove papers, debris, filth, refuse, ice and snow from the drive and parking areas to the extent necessary to keep the same in a first-class, clean, and orderly condition;
- (iii) Install and maintain appropriate directional signs and markers, and replace the same as necessary;

- (iv) Illuminate the drive and parking areas, and maintain and replace lighting facilities, bulbs and ballasts;
- (v) Maintain all landscaped areas, including the replacement of shrubs and other landscaping as necessary and maintain any automatic sprinkler system serving the landscaped areas;
- (vi) Store all Common Area trash and garbage in adequate, screened containers and provide for regular collection of same; and
- (vii) Maintain, clean, repair and replace as necessary all storm drains, utility lines, sewers, and other utility systems and services located in the Common Area necessary for the operation of the Common Area or any buildings or improvements located within the Shopping Center.

1.9 Common Area Operating Costs. RRRC shall pay to Inland a “Common Area Payment” as such term is hereinafter defined. For purposes of this Declaration, the following terms shall have the following meanings:

(a) The phrase “Common Area Operating Costs” shall mean, for each calendar year (or portion thereof) during which this Declaration is in effect, the aggregate of all costs, expenses and liabilities of every kind or nature paid or incurred by Inland (to the extent that Inland, in its good faith judgment, regards it as reasonably necessary or appropriate to provide the services and materials referred to in **Section 1.8** or hereafter referred to and to pay and incur the costs, expenses and liabilities hereafter referred to) in connection with sweeping, cleaning, removing debris from, maintaining, restriping and repairing the Common Area; lighting the Common Area (including replacement of bulbs and ballasts, and painting, repairing and maintaining of light standards); providing project identification signs; providing signs, equipment and/or personnel for assisting in traffic control and management at the Common Area (including a shuttle service if applicable); constructing, operating, repairing, maintaining and replacing any on-site or off-site utilities necessary or appropriate for the operation of the Common Area (provided that the cost of any replacements are amortized over the useful life of the replacement); providing and maintaining planting and landscaping with respect to the Common Area (including the replacement of shrubs and other landscaping as necessary); providing security services with respect to the Common Area; operating any loudspeakers or other equipment supplying music (including the replacement of the same, provided that the cost of any replacements are amortized over the useful life of the replacement); utilities charges for any services to the Common Area; repairing, replacing and maintaining utility lines located in the Common Area which do not exclusively serve one tenant in the Shopping Center (provided that the cost of any replacements are amortized over the useful life of the replacement); exterminating and pest control in and about Pad C and Shopping Center; repairing and maintaining overhead canopies at the Shopping Center (including, without limitation, lighting and tile); repairing and maintaining sidewalks in the Common Area (including, without limitation, periodic steam cleaning thereof); plus all other costs and expenses of every kind or

nature paid or incurred by Inland relative to operating, managing and equipping the Common Area including, without limitation, planned unit development maintenance fees or dues, property owner's association fees or dues and similar charges, and annual charges for reserves established by Inland for future replacements or improvements to the Common Area (inclusive of periodic new blacktopping of the parking areas and major roof repairs and major structural repairs). Notwithstanding the foregoing, for purposes of determining RRRC's Common Area Payment only, the Common Area Operating Costs shall not include Inland's general off-site overhead, initial construction and landscaping and other capital improvements (including re-roofing), advertising expenses, real estate commissions, leasing salaries and expenses, bonuses to employees, costs to maintain and to operate an interior mall, legal fees attributable to matters concerning any tenant in the Shopping Center, and charges relating to repair and maintenance of leasable structures in the Shopping Center. The phrase "Common Area Payment" shall refer to RRRC's Share (as defined below) of the Common Area Operating Costs to be paid by RRRC, or any subsequent owner of Pad C, pursuant to **Section 1.10** below.

(b) The phrase "RRRC's Share" as applied to Common Area Operating Costs shall refer to an amount calculated by multiplying the total Common Area Operating Costs by a fraction, the numerator of which shall be the aggregate leasable floor area (in square feet) of the Improvements and the denominator of which shall be the aggregate leasable floor area (in square feet) of all buildings in the Shopping Center as designated by Inland on the first (1st) day of January for the relevant calendar year for which any calculation referred to in this **Article I** is being made. For any period less than twelve (12) full calendar months with respect to which such calculation is being made, RRRC's Share of such costs will be prorated based on the number of days in such partial twelve (12) month period. For purposes of the foregoing calculation, the aggregate leasable floor area of the Improvements shall be determined by measuring to the middle of any demising walls and to the exterior wall of all exterior walls.

1.10 Common Area Payment. If the Effective Date of this Declaration is not the first (1st) day of a calendar month, RRRC shall pay a pro rata portion for such partial month. The initial estimated monthly Common Area Payment is \$ tbd per square foot per year and \$ tbd per square foot per month. The estimated monthly Common Area Payment for subsequent years shall be based on the amount of RRRC's Share for the preceding year, as determined in **Section 1.11** below, divided by twelve (12).

1.11 Notice of Common Area Operating Costs. Within six (6) months following the end of each calendar year during which this Declaration is in effect, Inland will give the owner of Pad C written notice of the total amount(s) paid by the owner of Pad C for the relevant calendar year together with the actual amount of RRRC's Share of any of the Common Area Operating Costs (collectively "Such Costs") for such calendar year. If the actual amount of RRRC's Share of any of Such Costs with respect to such period exceeds the aggregate amount(s) previously paid by the owner of Pad C with respect thereto during such period, the owner of Pad C shall pay to Inland the deficiency within ten (10) days following notice from Inland. If the aggregate amount(s) previously paid by the owner of Pad C with respect thereto exceeds RRRC's Share of any of Such Costs for such period, then, at Inland's election, such surplus (net of any amounts then owing by the owner of Pad C to Inland) shall be credited against the next ensuing installment of any of Such Costs due hereunder by the owner of Pad C, or Inland may refund

such net surplus to the owner of Pad C. Should the owner of Pad C question the accuracy of any Such Costs, the Pad C owner's right to dispute any Such Costs shall be conditioned upon payment to Inland of RRRC's Share thereof prior to its right to contest any Such Costs with an adjustment thereafter, if necessary.

1.12 Taxes.

(a) RRRC shall pay all Taxes (as hereinafter defined) imposed or assessed on Pad C, the Improvements and any personal property thereon. RRRC shall pay its pro rata share of all Taxes with respect to the Common Areas of the Shopping Center, excluding all buildings. Inland shall, upon receipt of the tax billing for the Shopping Center, determine the allocation of taxes to the Common Area and shall provide RRRC with such allocation and the method therefor. RRRC shall pay such amount within thirty (30) days after receipt of the allocation. RRRC's pro rata share shall be equal to a fraction, the numerator of which shall be the gross leasable area of the Improvements and the denominator of which shall be the aggregate gross leasable area of all buildings within the Shopping Center, including the Improvements.

(b) Inland shall pay all Taxes imposed or assessed on or against the Shopping Center.

(c) As used herein, "Taxes" are defined as any and all ad valorem, property, income, sales or other taxes, assessments, license or permit fees, excises, imposts and charges of every nature and classification, payment thereof, that are levied, assessed, charged or imposed upon the respective properties at any time.

II. Easements.

2.1 For Access. Inland does hereby establish and grant to and for the benefit of RRRC, as the owner of Pad C, for use by RRRC, its successors, assigns, lessees and licensees of Pad C, and the customers, employees, agents, contractors, licensees and invitees of any of the foregoing, a non-exclusive, perpetual easement over, across, through and upon the roadways, driveways and walkways of that portion of the Shopping Center Parcel as shown on **Exhibit A** as the same may exist from time to time, for the purpose of ingress, egress and parking and for access to Pad C. Inland, as owner of the Inland Parcel, reserves for itself, its successors and assigns in ownership of the Inland Parcel, reserves the right at any time and from time to time to: (a) change the areas, locations and arrangements of parking areas and other Common Areas; (b) enter into, modify and terminate easements and other agreements pertaining to the maintenance and use of the parking areas and other Common Areas; (c) close any or all portions of the Common Areas to such extent and from such time as may, in the sole discretion of Inland, be legally necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; (d) close temporarily, if necessary, any part of the Common Areas in order to discourage non-customer parking; (e) make changes, additions, deletions, alterations or improvements in and to such Common Areas; and (f) adopt reasonable rules and regulations by which RRRC shall abide relating to the use of the Common Areas. Notwithstanding the foregoing sentence, Inland shall not alter the current configuration of the Common Areas within

that certain cross-hatched area shown on **Exhibit A-2** (the "Protected Area") without the prior written consent of RRRC (not to be unreasonably withheld, conditioned or delayed). It is understood and agreed that it shall be unreasonable for RRRC to withhold consent to a reconfiguration of the Common Areas within the Protected Area (i) in the event of an eminent domain taking of any portion of the Common Areas as set forth in **Section 6.1** or (ii) if the reconfiguration does not materially and adversely affect ingress, egress, visibility and parking for the Improvements. Inland further agrees that no building or other structure shall be erected in the area cross-hatched on **Exhibit A-2**; and except in the event of an eminent domain taking of any portion of the Common Areas in accordance with **Section 5.1**; and except as otherwise approved by RRRC (consent not to be unreasonably withheld). RRRC shall cause its employees to park only in the parking areas as Inland and RRRC shall mutually agree. RRRC shall cooperate fully with Inland to control employee parking, in order that employees shall park their vehicles in designated areas.

2.2 Grant of Easement for Utilities. Inland covenants that RRRC shall have the right to tap into the following utilities, each of which is located either within five (5) feet of the Pad C property line or within a roadway right-of-way adjacent to Pad C: water, gas, electric, storm and sanitary sewer and that RRRC shall not be obligated to pay any fee to Inland for such right. Inland does hereby establish and grant to and for the benefit of RRRC, as the owner of Pad C, for use by RRRC, 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 Inland 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 Inland Parcel where the same are presently situated. RRRC agrees that in the exercise of the foregoing rights, it shall promptly repair any damage caused to the Inland Parcel on account of the use of such facilities and shall promptly restore the areas of the Inland 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 RRRC. RRRC shall also provide reasonable advance notice to Inland 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. RRRC shall be responsible for maintaining and repairing any such pipes and facilities exclusively serving Pad C at RRRC's sole cost and expense. RRRC shall not be responsible for the cost of maintaining or repairing any such pipes, equipment or other utilities facilities exclusively serving the Inland Parcel, unless such maintenance or repairs is caused or necessitated by the actions of RRRC or its employees, agents, tenants or their employees or customers.

2.3 Grant of Easement for Drainage and Detention Pond. Inland does hereby establish and grant to and for the benefit of RRRC, as the owner of Pad C, for use by RRRC, 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 Inland 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"). Inland, as owner of Inland 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 Pad C or the size of the Detention Pond, provided that the Detention Pond remains on said Lot 3, and provided that Inland gives RRRC at least ninety (90) days prior written notice before changing such areas. RRRC shall pay to Inland 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, the Outlot and, if applicable, Lot 6, according to the said Plat, by a fraction, the numerator of which shall be the aggregate leasable floor area (in square feet) of RRRC's Improvements and the denominator of which shall be the aggregate leasable floor area (in square feet) in all buildings in the Shopping Center as designated by Inland on the first (1st) day of January for the relevant calendar year for which the calculation is being made. Until such time as RRRC's Improvements and the aggregate leasable floor area on Inland Parcel are constructed, the Detention Pond Costs shall be calculated based on the acreage (as shown on **Exhibit A**) of Pad C 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, Inland will give RRRC written notice of the total amount(s) paid by RRRC for the relevant calendar year together with the actual amount of RRRC'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. RRRC shall pay to Inland the amount so invoiced within thirty (30) days following notice from Inland. Inland agrees to operate, landscape and maintain the Detention Pond and other piping, equipment and facilities related thereto and located on Inland Parcel, subject to reimbursement by RRRC its pro rata share for the Detention Pond Costs, as provided for in this **Section 2.2**.

2.4 Grant of Easement for Water Vault. RRRC does hereby establish and grant to and for the benefit of Inland, as the owner of the Inland Parcel, for use by Inland, 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 Pad C (a) to maintain the water vault as shown on **Exhibit A** (the "Water Vault") including, but not limited to the contents of the Water Vault (the fire water and domestic water main tap, backflow preventor, and double detector checkvalve) and (b) to monitor any devices for flow and/or tamper. Inland agrees that in the exercise of the foregoing rights, it shall promptly repair any damage caused to Pad C on account of the use of such facilities and shall promptly restore the areas of Pad C 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. Inland 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 on Pad C. RRRC shall pay to Inland its pro rata share of the cost of maintaining the Water Vault allocated to the Shopping Center as part of RRRC's Common Area Payment.

III. Use of Pad C

3.1 Use Restrictions. Pad C 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, Inland specifically consents and agrees for the purposes hereof that Pad C may be used for the operation of an in-line multi-tenant retail center or for a single retail tenant. 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 Landscaping. RRRC shall install, preserve and maintain on Pad C 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.

IV. Indemnity and Insurance

4.1 Indemnity.

(a) **By RRRC.** Provided such loss, damage or injury is not caused by or arising from the negligent or willful act or omission of Inland or Inland's employees or agents, RRRC agrees to pay, defend, indemnify and hold harmless Inland and Inland'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 any negligent or willful act or omission of RRRC, RRRC's agents, employees, assigns, or other persons over whom RRRC exercises control.

(b) **By Inland.** 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, Inland 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 any negligent or willful act or omission of Inland, Inland's agents, employees, assigns, or any other person over whom Inland exercises control.

4.2 Liability Insurance.

(a) RRRC shall maintain, or cause to be maintained, a comprehensive general liability insurance policy with respect to Pad C, 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 Inland, RRRC and any designee of Inland of which RRRC has notice, including Inland's primary lender, against loss or liability in connection with bodily injury, death or property damage or destruction occurring in, upon or about Pad C or arising out of the use thereof by RRRC or its employees, agents, contractors, lessees or invitees. The policy shall name Inland and any designee of Inland of which RRRC has written notice as additional insureds.

4.3 Property Insurance.

(a) RRRC 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 RRRC has an insurable interest.

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

V. Eminent Domain and Casualty

5.1 Eminent Domain. In the event the whole or any portion of the Common Area shall be taken by right of eminent domain or any similar authority of law (a "Taking"), the entire award for the value of the land and improvements so taken shall belong to Inland, mortgagees, as their interest may appear, and no other party shall have a right to claim any portion of such reward by virtue of any interest created by this Declaration to the extent that it would reduce the award to Inland provided, however, that in the event that any such Taking includes any portion of the area shown cross-hatched on **Exhibit A-3**, RRRC shall have the right to join with Inland on all negotiations and settlements with the condemning authority and RRRC shall be entitled to an equitable share of any award granted for a taking within such area. In addition, RRRC may file a collateral claim with the condemning authority over and above the value of the land being so taken to the extent of any damage suffered by such party resulting from the severance of the land or improvements so taken in such claim shall not operate to reduce the award applicable to the parcel or property so taken. In the event of a partial Taking, Inland shall restore the improvements and/or parking located on the Common Areas as nearly as possible to the condition existing prior to the Taking without contribution from any other party and any portion

of any condemnation award necessary therefore shall be held in trust and applied for such purpose.

5.2 Casualty.

(a) In the event any of the Improvements are damaged by fire or other casualty (whether insured or not), RRRC 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. RRRC shall have the option to choose which of the foregoing alternatives to perform, but RRRC shall be obligated to perform one (1) of such alternatives. RRRC shall give written notice to Inland within ninety (90) days from the date of such casualty of which alternative it has selected; provided, however, that RRRC shall have the right to change its election at any time thereafter, provided that RRRC is not in default of any term or provision of this Declaration.

(b) In the event RRRC 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 Pad C to a grassed and sightly condition within one hundred twenty (120) days of the date of the casualty, then in any of such events, Inland shall be entitled, upon thirty (30) days prior written notice to RRRC, and within said time RRRC may cure said default, to raze the Improvements and grass Pad C all at the cost and expense of RRRC 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 RRRC fails to comply with any provision of this Declaration, then Inland 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, Inland deems that an emergency exists which requires immediate attention. In the event of such an emergency, Inland shall give whatever notice to RRRC as reasonable under the circumstances. Unless Target has commenced a cure pursuant to **Section 6.1(B)** of the Target OEA, if Inland 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 Inland. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) Inland cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, Inland 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 Inland as reasonable under the circumstances; provided, however, that RRRC 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), RRRC shall reimburse Inland for any sum reasonably expended by Inland to cure the default, together with interest at the prime rate established from time-to-time by SouthTrust Bank. 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 Pad C which shall bind such property until such amount is paid, at which time Inland will record a release of such lien after written request by RRRC.

(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 "Inland" shall refer to Inland Southeast River Ridge, L.L.C., and its assigns and successors in interest with respect to the ownership of Inland Parcel. 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 Pad C. Notwithstanding the foregoing, the terms "Inland" and "RRRC" as used in this Declaration shall mean only the owner for the time being of Inland Parcel and Pad C 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.

7.4 Liability of Inland and RRRC. Inland, its mortgagees, successors and assigns, shall have no personal liability in respect to any of the covenants or undertakings on the part of Inland to be performed hereunder, and in the event of any default by Inland in respect to said covenants or undertakings, RRRC shall look solely to Inland's equity in the Inland Parcel for satisfaction of any loss or damage sustained in consequence of such default. 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, Inland shall look solely to RRRC's equity in Pad C 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 No 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 Pad C and the Inland 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 and 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 Inland or RRRC, then Inland or RRRC, 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 Inland or RRRC (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 INLAND: Inland Southeast River Ridge, L.L.C.
c/o Inland Retail Real Estate Trust, Inc.
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Ms. Roberta Matlin
Facsimile: (630) 218-4900 and (630) 571-2360

With a Copy to: Robert Baum, General Counsel
The Inland Real Estate Group, Inc.
2901 Butterfield Road
Oak Brook, Illinois 60523
Facsimile: (603) 218-4900 and (630) 571-2360

IF TO BAYER: 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
Facsimile No.: (205) 322-8007

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 Pad C, 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.

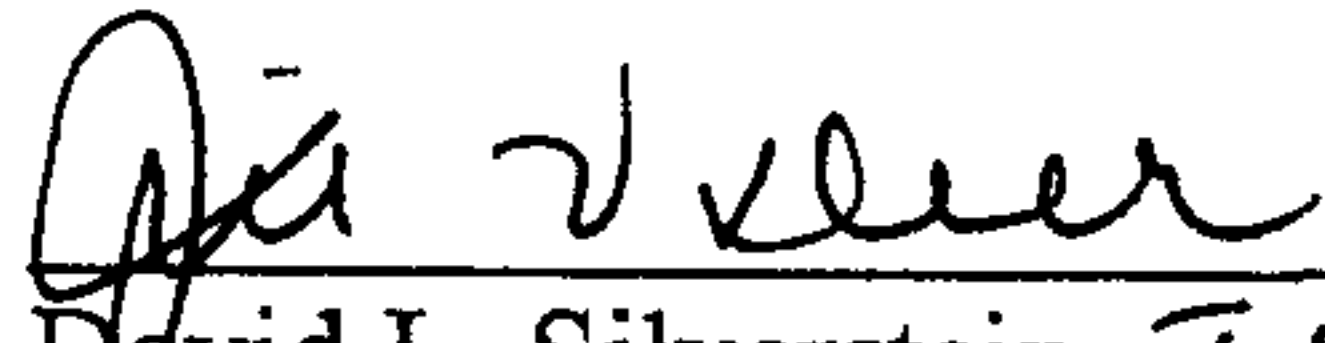
7.19 Authority. If either RRRC or Inland is a legal entity other than an individual, such party shall provide to the other, contemporaneously with the execution of this Declaration evidence of its authority to enter into this Declaration.

7.20 Entire Agreement. This Declaration, including the Exhibits hereto, set forth the entire understanding and agreement of Inland and RRRC with respect to the Inland Parcel, Pad C and the 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 Inland and RRRC, 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.

RIVER RIDGE RETAIL COMPANY, L.L.C.

By: 
David L. Silverstein *Jill V. Deer*
Its: ~~Authorized Agent~~ *SVP*

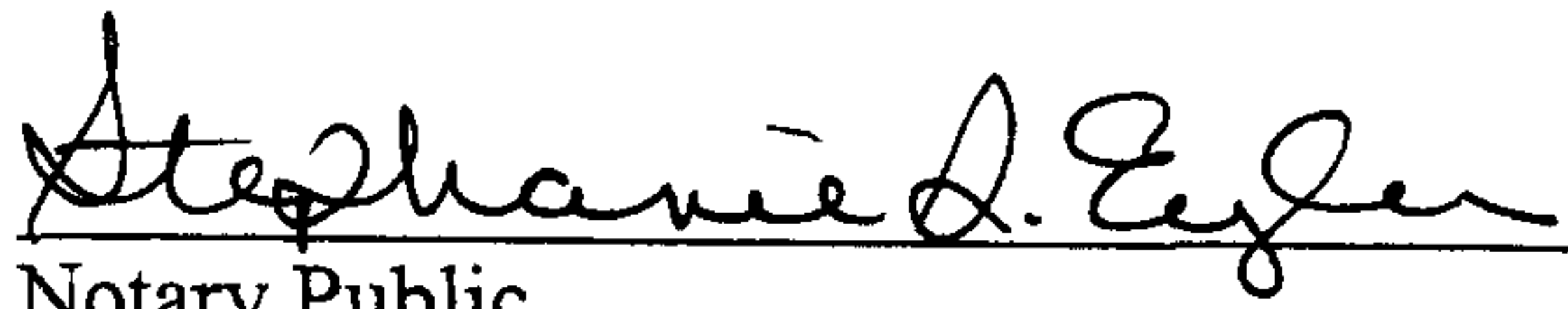
STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public for said County, in said State, hereby certify that ~~David L. Silverstein~~ *Jill V. Deer*, whose name as ~~Authorized Agent~~ *SVP* 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 1st day of May, 2003.

[NOTARY SEAL]


Notary Public
My commission expires: 12-19-04

INLAND SOUTHEAST RIVER RIDGE, L.L.C.,
a Delaware limited liability company

By: Inland Retail Real Estate Limited Partnership,
an Illinois limited partnership

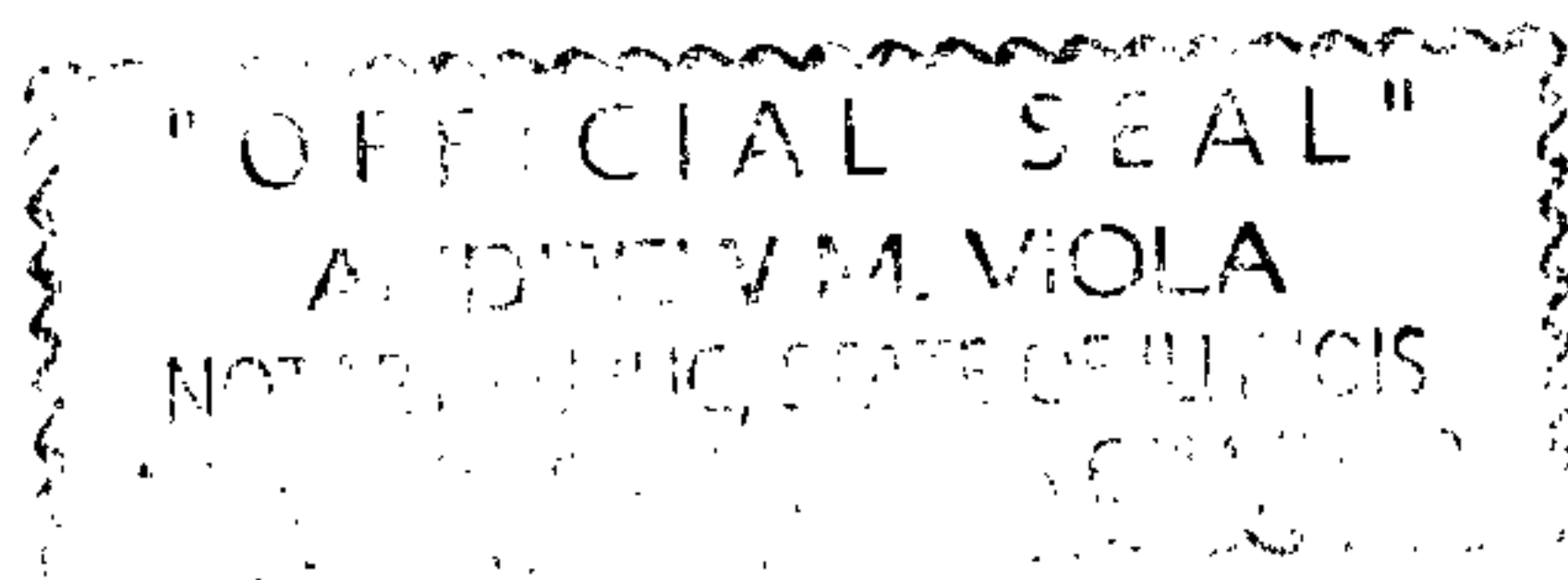
By: Inland Retail Real Estate Trust, Inc.,
a Maryland corporation

By: Roberta S. Matlin
Name: ROBERTA S. MATLIN
As Its: VICE PRESIDENT

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

17th day of FEBRUARY, 2003, personally appeared
ROBERTA S. MATLIN, its VICE PRESIDENT of INLAND
RETAIL REAL ESTATE TRUST, INC., a Maryland corporation, the general partner of INLAND
RETAIL REAL ESTATE LIMITED PARTNERSHIP, an Illinois limited partnership, the member
of INLAND SOUTHEAST RIVER RIDGE, L.L.C., a Delaware limited liability company, who
acknowledged the execution of the above and foregoing Agreement for and on behalf of said
corporation, for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date
above written.

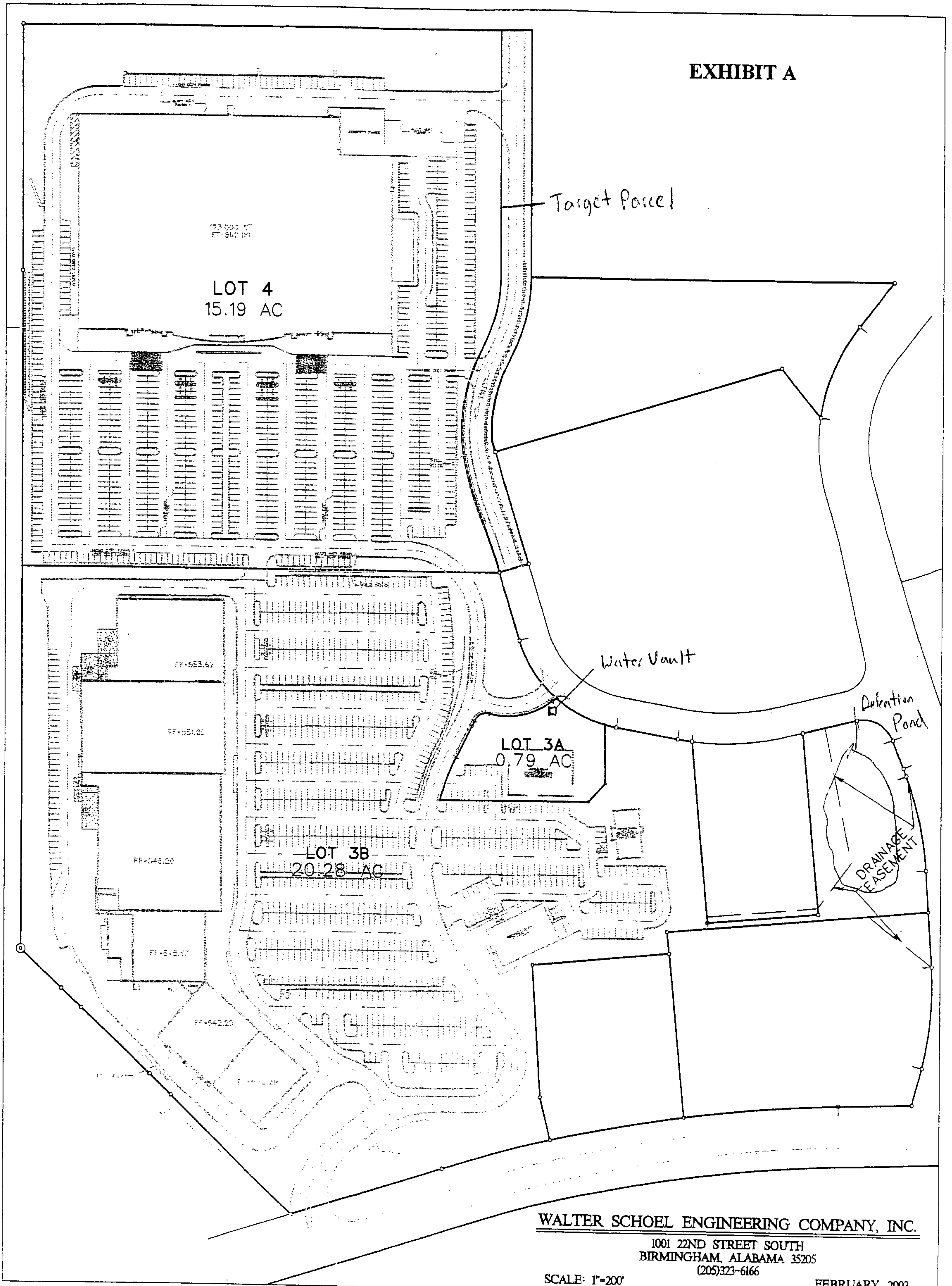


Andrew M. Viola
NOTARY PUBLIC
Andrew M. Viola
(Printed Signature)

My Commission Expires:
6-11-03

EXHIBIT A TO DECLARATION
SHOPPING CENTER SITE PLAN

EXHIBIT A



WALTER SCHOEL ENGINEERING COMPANY, INC.

1001 22ND STREET SOUTH
BIRMINGHAM, ALABAMA 35205
(205)323-6166

SCALE: 1"=200'

FEBRUARY, 2003

EXHIBIT A-2 TO DECLARATION

PROTECTED AREA

EXHIBIT A - 2

LOT 4
15.19 AC

LOT 3A
0.79 AC

LOT 3B
20.28 AC

DRAINAGE
EASEMENT

WALTER SCHOEL ENGINEERING COMPANY, INC.
1001 22ND STREET SOUTH
BIRMINGHAM, ALABAMA 35205
SCALE: 1"=200'
(205)323-6166

EXHIBIT A-3 TO DECLARATION

CONDEMNATION AREA

EXHIBIT A - 3

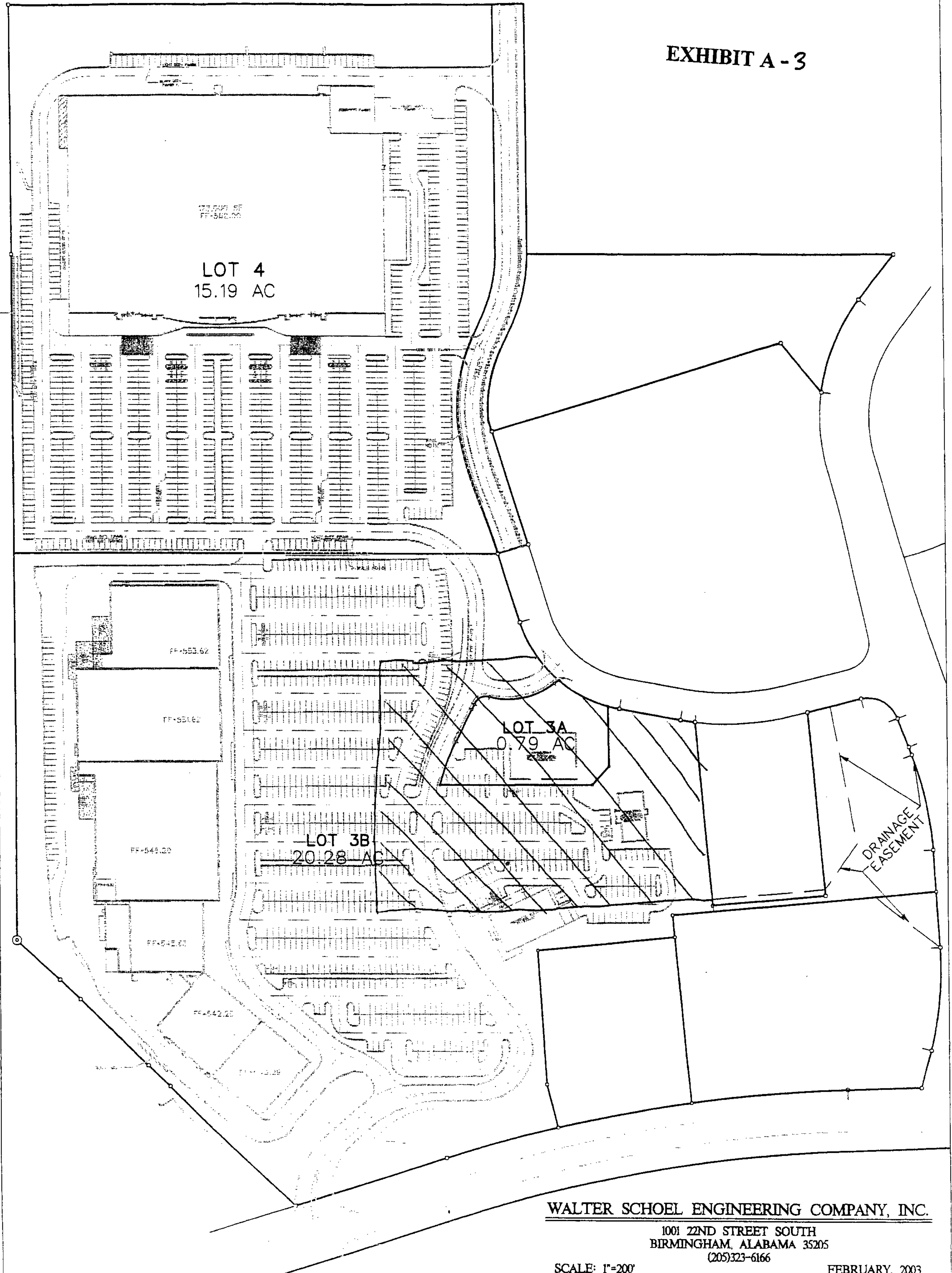


EXHIBIT B TO DECLARATION

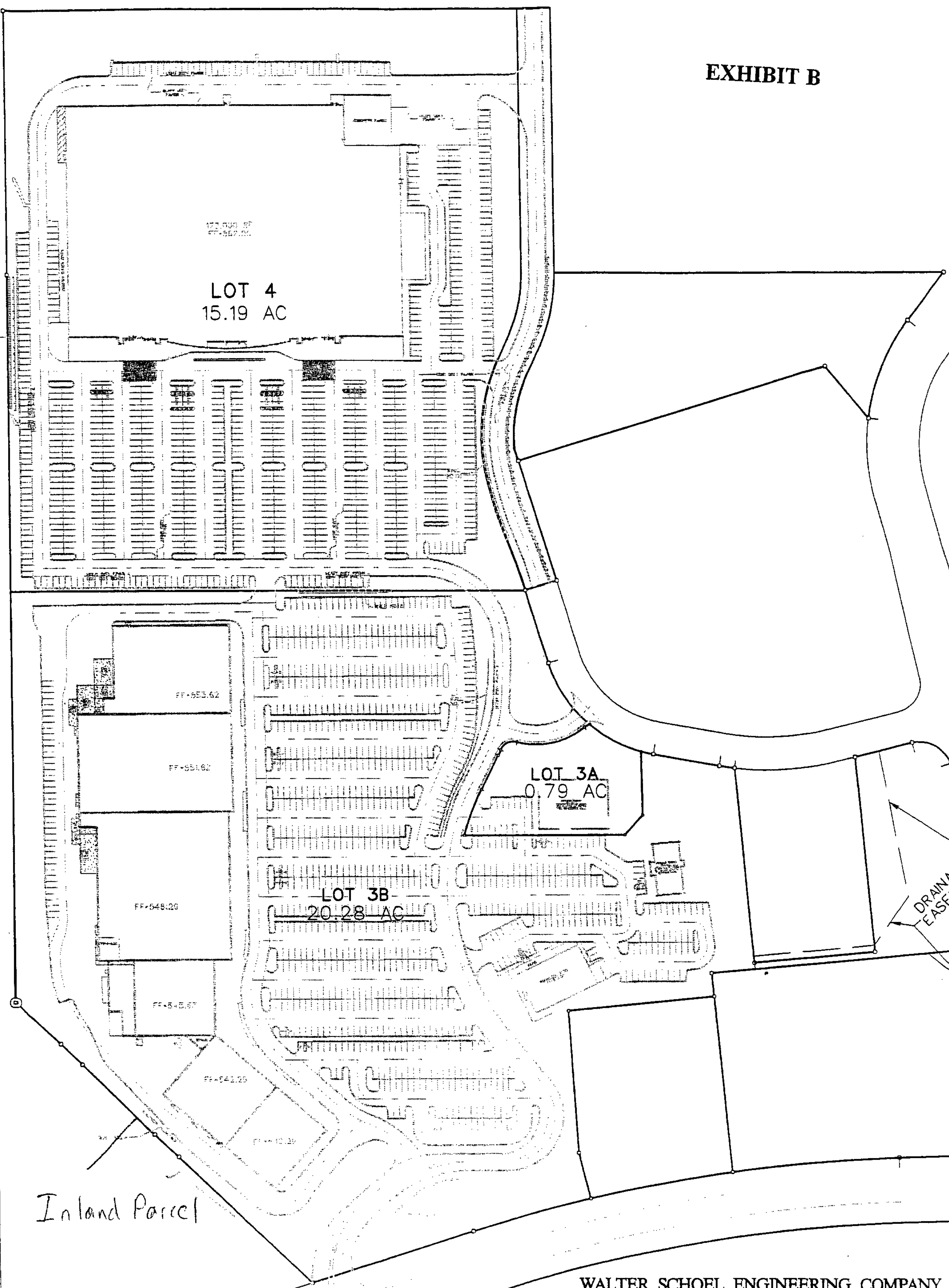
INLAND PARCEL LEGAL DESCRIPTION

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

LESS AND EXCEPT:

Lot 3A according to the River Ridge Plaza Lot 3 Resurvey as recorded in Map Book 31, Page 58 in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT B



Inland Parcel

WALTER SCHOEL ENGINEERING COMPANY, INC.

1001 22ND STREET SOUTH
BIRMINGHAM, ALABAMA 35205
(205)323-6166

SCALE: 1"=200'

FEBRUARY, 2003

EXHIBIT C TO DECLARATION

PAD C LEGAL DESCRIPTION

Lot 3A according to the River Ridge Plaza Lot 3 Resurvey as recorded in Map Book 31,
Page 58 in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT C

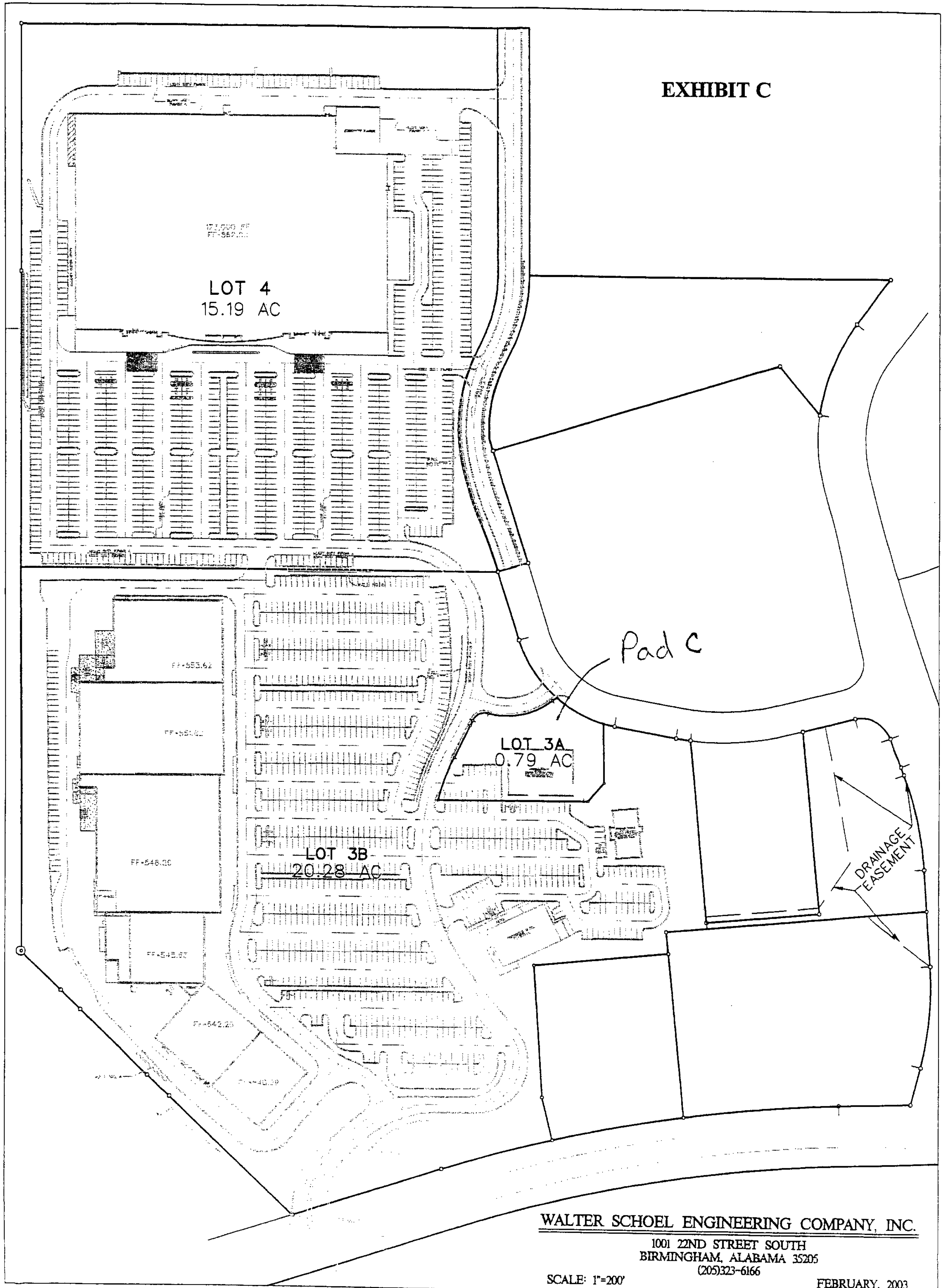


EXHIBIT D TO DECLARATION

PLANS

None

EXHIBIT E TO DECLARATION
SHOPPING CENTER AND PAD C

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

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, RRRC agrees that the Protected Area shall include Pad C such that the Carrabba's exclusive use set forth hereinabove shall apply to Pad C.

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 Pad C 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 Pad C) 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.

11. **LENNEY'S SUB SHOP:** So long as Tenant is open and operating its business in the Leased Premises and the primary purpose of such business is the operation of a restaurant specializing in the sale of submarine/deli style sandwiches and Philly cheese steak sandwiches, Landlord agrees that it will not, after the date hereof, directly lease space in the Shopping Center to a "Competing Business", which is defined as any other tenant whose "Primary Business" (as hereinafter defined) will be the operation of a restaurant specializing in the sale of submarine/deli style sandwiches and Philly cheese steak sandwiches. This limitation shall not apply to present tenants (or their assignees or sublessees) whose leases may not prohibit such use. For purposes hereof, the term "Primary Business" shall be defined as a third party tenant which derives more than twenty percent (20%) of its gross sales from the sale of submarine/deli style sandwiches and Philly cheese steak sandwiches.
12. **CHEE'BURGER CHEE'BURGER:** So long as Tenant is open and operating its business in the Leased Premises and the primary purpose of such business is the operation of a full service restaurant featuring hamburgers and cheeseburgers, Landlord agrees that it will not, after the date hereof, directly lease space in the Shopping Center to a "Competing Business", which is defined as any other tenant whose "Primary Business" (as hereinafter defined) will be a full service restaurant featuring hamburgers and cheeseburgers. This limitation shall not apply to present tenants (or their assignees or sublessees) whose leases may not prohibit such use or any tenant, present or future, who may sell hamburgers and cheeseburgers on an incidental basis and not as its Primary Business. For purposes hereof, the term "Primary Business" shall be defined as a third party tenant occupying 10,000 square feet or more which devotes more than twenty percent (20%) of its leased space as a full service restaurant featuring hamburgers and cheeseburgers.
13. **ELECTRONICS BOUTIQUE OF AMERICA:** So long as Tenant is open and operating its business in the Leased Premises and the primary purpose of such business is the sale of video game platform hardware and software and accessories, electronic board games, and hand held video game entertainment and software, Landlord agrees that it will not, after the date hereof, directly lease space in the Shopping Center to a "Competing Business", which is defined as any other tenant whose "Primary Business" (as hereinafter defined) will be the retail sale of video game platform hardware and software and accessories, electronic board games, and hand held video game entertainment and software. This limitation shall not apply to present tenants (or their assignees or sublessees) whose leases may not prohibit such use or any tenant, present or future, who may sell video game platform hardware and software and accessories, electronic board games, and hand held video game entertainment and software on an incidental basis and not as its Primary Business. For purposes hereof, the term "Primary Business" shall be defined as a third party tenant occupying 2,000 square feet or less which derives more than twenty-five percent (25%) of its Gross Sales from the sale of video game platform hardware and software and accessories, electronic board games, and hand held video game entertainment and software.