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DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

**INVERNESS HEIGHTS MARKET
HOOVER, SHELBY COUNTY, ALABAMA**

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Exhibits

- Exhibit A - Legal Description of the Development
- Exhibit B - Site Plan

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "Declaration") is made as of the 30th day of July, 2003, by **KIMCO BIRMINGHAM L.P.**, an Alabama limited partnership ("Declarant").

Preliminary Statements

The following preliminary statements are a material part of this Declaration:

A. Declarant is the owner of the Development, which Development is depicted on the Site Plan. Declarant intends that the Development shall be developed as an integrated commercial development.

B. Declarant desires to subject the Development to the covenants, conditions and restrictions set forth in this Declaration and to establish the easements described in this Declaration for the mutual benefit of Declarant and Declarant's heirs, executors, successors, assigns, employees, mortgagees, tenants, customers and invitees.

C. Capitalized terms used in the foregoing preliminary statements have the meanings set forth in Article I below.

ARTICLE I.

DEFINITIONS

For purposes of this Declaration, the following terms shall, unless otherwise indicated, have the following meanings and the use of the singular shall include the plural:

1.01 **Affiliates**: Any (a) company owned or controlled to the extent of at least fifty percent (50%) of its issued and voting capital by an Operator, and any other company so owned or controlled (directly or indirectly) by any such company or the owner of any such company, or (b) partnership, joint venture or other entity directly or indirectly controlled by, controlling, or under common control of, to the extent of fifty percent (50%) or more of voting power (or otherwise having power to control its general activities), an Operator, but in each case only for so long as such ownership or control shall continue.

1.02 **Anchor Operator**: Any (a) of the following Operators:

- (i) A.C. Moore, Incorporated, a Delaware corporation ("A.C. Moore");
- (ii) Party City of Birmingham, LLC, an Alabama limited liability company, d/b/a Party City ("Party City");
- (iii) PETsMART, Inc., a Delaware corporation ("PETsMART"); and
- (iv) The TJX Companies, Inc., a Delaware corporation ("T.J. Maxx").

- (b) Affiliates of such Operator.

1.03 Anchor Operator Leases:

- (i) Agreement of Lease, to be made and entered into by and between Declarant, as landlord, and A.C. Moore, as tenant, for certain space within the Shopping Center more particularly described in said lease (the "A.C. Moore Lease");
- (ii) Shopping Center Lease, to be made and entered into by and between Declarant, as landlord, and Party City, for certain space within the Shopping Center more particularly described in said lease (the "Party City Lease");
- (iii) Shopping Center Lease, to be made and entered into by and between Declarant, as landlord, and PETsMART, as tenant, for certain space within the Shopping Center more particularly described in said lease (the "PETsMART Lease"); and
- (iv) Lease Agreement, to be made and entered into by and between Declarant, as landlord, and T.J. Maxx, as tenant, for certain space within the Shopping Center more particularly described in said lease (the "T.J. Maxx Lease").

1.04 Common Areas: All portions of the Development which shall not be occupied by buildings from time to time. The general term "Common Areas" includes, without limitation, all parking areas, landscape areas, aisles, driveways, entrances, exits, walkways, sidewalks, roadways, loading areas (unless indicated on the Site Plan to the contrary), service roads, lighting facilities (if used to illuminate the Common Areas), common utility, mechanical, telephone and electric rooms, surface drainage facilities, traffic control signs and fences.

1.05 Declarant: Kimco Birmingham L.P., an Alabama limited partnership, so long as such limited partnership, or its successors and/or assigns, is the Owner of the Shopping Center Tract, after which the term "Declarant" shall mean the successor Owner of all or the majority of such Shopping Center Tract.

1.06 Development: The real property described in Exhibit "A" attached to this Declaration and incorporated into this Declaration for all purposes, and shown on the Site Plan attached to this Declaration as Exhibit "B" and incorporated into this Declaration for all purposes, which includes the Shopping Center Tract and the Outparcels.

1.07 Floor Area: The actual number of square feet of space contained on all floors within any Permissible Building Area in the Development and, with respect to exterior areas, including all exterior areas leased to or exclusively used by one or more tenants or occupants which are used for the sale or display of merchandise (other than exterior loading dock areas and trash compactor areas) and/or outdoor balconies, patios or other outdoor areas utilized for food or beverage service (exclusive of drive through or walk-up take-out food or beverage service). All measurements of Floor Area shall be from the exterior of outside walls or store front and/or

to the centerline of any common walls, but in no event shall Floor Area include any non-selling or storage space areas within any mezzanine, lower floor, second floor or, except as set forth above, any exterior areas.

1.08 Force Majeure. Strikes, lockouts, inability to procure materials or permits, power failure, acts of God, governmental restrictions, terrorism, civil commotion, fire, unavoidable casualty, unusually severe weather or other causes beyond the control of any Owner, tenant or occupant of the Development; provided, however, that lack of funds shall not be deemed to be a cause beyond the control of such Owner, tenant or occupant.

1.09 Lot or Lots: The lots listed in Exhibit "A" attached to this Declaration and shown on the Site Plan attached to this Declaration as Exhibit "B" and/or any other separately owned and legally subdivided portion of the Development.

1.10 Mortgage: Any mortgage or deed of trust or any leasehold mortgage, between any Operator and any third party institutional lender (or its trustee), filed in the appropriate Real Property Records of Shelby County, Alabama, encumbering any portion of the Development.

1.11 Mortgagee: The mortgagee, beneficiary or grantee, as applicable, under any Mortgage.

1.12 Operator: Any Owner, tenant, occupant, licensee and any other person or entity which operates a business within the Development permitted by this Declaration.

1.13 Outparcel or Outparcels: Each of Lots 1, 2, 3 and 4 described on Exhibit "A" attached to this Declaration, and shown on the Site Plan attached to this Declaration as Exhibit "B", and/or any other separately owned and legally subdivided portion of any such Lot.

1.14 Owner: Any person or entity who or which is the record owner of fee simple title to any Lot(s) or any portion thereof which is part of the Development, according to an instrument of conveyance filed in the appropriate Real Property Records of Shelby County, Alabama.

1.15 Permissible Building Areas: Those areas within the building limit lines depicted as the "Permissible Building Areas" on the Site Plan attached as Exhibit "B" to this Declaration.

1.16 Private Drive: A portion of the Shopping Center Tract as shown on the Site Plan attached to this Declaration as Exhibit "B".

1.17 Outparcel Expenses: As defined in Section 4.01.

1.18 Shopping Center: Shopping Center Tract described on Exhibit "A" attached to this Declaration, which includes the Private Drive, as shown on the Site Plan attached to this Declaration as Exhibit "B".

1.19 Shopping Center Monument Signs: As defined in Section 7.01.

1.20 Site Plan: The site plan attached to this Declaration as Exhibit "B" and incorporated into this Declaration for all purposes.

1.21 State: The State of Alabama.

1.22 Taxes: As defined in Section 3.04.

1.23 Water Detention and Drainage Facilities: As defined in Section 3.01.

ARTICLE II.

LAND USE

2.01 Permitted and Prohibited Uses

(a) Except as otherwise provided in this Declaration, the Development and any portion thereof shall be used only for the construction, operation and maintenance thereon of retail businesses, restaurants, financial institutions, professional offices and related facilities common to commercial developments of a similar nature, and for Common Areas relating to and necessary to the operation of the foregoing. In no event shall any portion of the Development be used or operated for any use or purpose and/or by any Operator which is not consistent and compatible with the terms and provisions of this Declaration.

(b) So long as the A.C. Moore Lease is in full force and effect, no other premises located within the Development (other than the premises leased to A.C. Moore pursuant to the A.C. Moore Lease) containing two thousand five hundred (2,500) square feet or more of Floor Area shall be used for the sale of arts and crafts supplies as a Primary Use. For the purposes of this Section 2.01(b), "Primary Use" shall mean the sale of arts and crafts supplies in fifteen percent (15%) or more of retail selling Floor Area but in no event greater than two thousand five hundred (2,500) square feet.

(c) So long as the Party City Lease is in full force and effect, no other premises located within the Development (other than the premises leased to Party City pursuant to the Party City Lease) shall be used for the sale of party goods and costumes (the "Party City Exclusive Items"), except for Incidental Sales. For the purposes of this Section 2.01(c), "Incidental Sales" shall mean the sale of the Party City Exclusive Items in the lesser of (i) five hundred (500) square feet, or (ii) five percent (5%) of such tenant's Floor Area.

(d) So long as the PETsMART Lease is in full force and effect, no premises within the Development (other than the premises leased to PETsMART) shall be used for the retail sale of (i) pets (including but not limited to fish, birds, reptiles, dogs, cats and other small animals), (ii) pet food, accessories and other products relating to pets and animals, including equestrian products and apparel related thereto, and (iii) services related to pets and animals, such as grooming, boarding, animal training and obedience classes and veterinary services, except on a basis which is incidental to an otherwise permitted use (all of such items being herein collectively referred to as the "PETsMART Exclusive Products"). For purposes of this Section 2.01(d), the term "incidental use" shall mean that the use occupies the lesser of (a) two hundred fifty (250) square feet of Floor Area, or (b) five percent (5%) of the sales area in the subject premises.

(e) So long as the T.J. Maxx Lease is in full force and effect, no premises within the Development (other than the premises leased to T.J. Maxx) shall at any time contain more than fifteen thousand (15,000) square feet of Floor Area used or occupied for, or devoted to, the sale or display of soft goods (as defined by the trade from time to time) (the "TJ Maxx Exclusive Item"), including in the computation of such Floor Area, one-half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of the T.J. Maxx Exclusive Item.

(f) During the Term of this Declaration, no portion of the Development shall be leased, rented, occupied, used or permitted to be occupied or used by any person or entity, for any of the following purposes, except as expressly set forth otherwise in this Section 2.01(f):

- (i) any industrial or any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse.
- (ii) any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the (1) temporary use of construction trailers during periods of construction, reconstruction or maintenance and (2) parking of a trailer in close proximity to the loading dock located at the rear of the premises leased to A.C. Moore, provided that such trailers do not obstruct traffic or impair truck access to any of the loading docks and loading areas of other Operators;
- (iii) any dumping, disposing, incineration or reduction of garbage (exclusive of screened garbage compactors located near the rear of any building) except as may be allowed by applicable codes and zoning ordinances;
- (iv) any dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to service only facilities for drop-off, pick-up and delivery by the ultimate consumer that do not include on-site plant or processing facilities, as the same may be found in first class retail shopping districts in the Birmingham metropolitan area; provided, however, that the same are located at least one hundred (100) feet from the front door of the premises leased to TJ Maxx;
- (v) any pool hall, bingo hall, dance hall, discotheque, massage parlor, bowling alley or tattoo parlor; provided, however, the foregoing shall not prohibit a restaurant on any Outparcel that features entertainment components (including, without limitation, bowling lanes, pool tables and similar) such as "Dave & Buster's" or similar concept;

- (vi) any adult bookstore, adult video store or other sexually oriented or pornographic business; provided, however, the foregoing shall not prohibit a national or regional retail bookstore (such as Barnes & Noble, Border's, Bookstop or similar) or a video store (such as Blockbuster, Hollywood Video or similar) that carries very limited quantities of adult material but not as such store's primary line of merchandise (similar to the quantities of adult materials currently sold, rented and/or displayed in a typical Barnes & Noble, Border's, BookStop, Blockbuster or Hollywood Video in Alabama, as applicable);
- (vii) beauty salon or beauty spa combination, in excess of 2,500 square feet of Floor Area; provided, however, the foregoing shall not prohibit the retail operation of a national or regional beauty supply or cosmetic store (such as Ulta Cosmetics or similar concept);
- (viii) any skating rink;
- (ix) any "second hand" store or "surplus" store but excluding any Operator that is a national or regional retailer of fashion merchandise such as those stores currently operating as a "TJ Maxx" or "Marshall's" or similar;
- (x) (a) any bar, lounge, tavern, night club or (b) any establishment selling alcoholic beverages for on-premises consumption except in conjunction with and a part of a full service restaurant that does not regularly derive more than fifty percent (50%) of its revenues from, or uses more than fifty percent (50%) of its Floor Area for, the sale of alcoholic beverages;
- (xi) any theater provided, however, that such restriction does not prohibit the use of televisions or satellite broadcasts in connection with a retail facility or in a facility primarily used as a restaurant as permitted under this Declaration;
- (xii) an off-track betting establishment (except incidental sales of state lottery tickets);
- (xiii) any living quarters, apartments, hotel, motel, extended-stay family or other lodging rooms; or
- (xiv) any children's recreation facility or amusement park or circus, or any amusement arcade or gallery, virtual reality, laser tag, game room or similar place of recreation or amusement, or any sports or entertainment facility (including, without limitation, a karate or other martial arts facility, gymnasium, health club, racquet club or physical fitness facility) (provided, however, that retail facilities may operate no more than four (4) electronic games incidental to their primary operations, and the foregoing shall not prohibit a restaurant on any Outparcel that features entertainment components (including, without limitation, bowling lanes, pool tables and

similar) such as the concept currently operated as a "Dave & Buster's" or similar).

(g) During the Term of this Declaration, no portion of the Shopping Center shall be leased, rented, occupied, used or permitted to be occupied or used by any person or entity, for any of the following purposes, except as expressly set forth otherwise in this Section 2.01(g):

- (i) any non-retail purpose (repairs, alterations and offices incidental to retailing, and banks and small loan offices, real estate, insurance, brokerage and travel agents not being deemed non-retail, provided such uses do not exceed ten thousand (10,000) square feet in the aggregate, and are not located within seventy-five (75) feet of the exterior walls of the premises occupied by T.J. Maxx); or
- (ii) any restaurant or establishment selling food prepared on premises for consumption on or off premises.

(h) During the Term of this Declaration, the Development shall be subject to the terms and provisions of that certain Declaration of Protective Covenants, dated and recorded as of even date herewith, in Volume ★, Page of the Real Property Records of Shelby County, Alabama, as amended from time to time, and for so long as such Declaration of Protective Covenants is in full force and effect and encumbers the Development.

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2.02 No Interference With Common Areas. No use of the Development shall be made which shall unreasonably interfere with the use of the Common Areas within the Development for the purposes for which they were intended as provided in this Declaration or impede the free flow of vehicular or pedestrian traffic thereon. Notwithstanding the foregoing or anything in this Declaration which may be, or may appear to be, to the contrary, subject to applicable law, each tenant or occupant of the Shopping Center shall have the right to conduct sidewalk sales on the sidewalks immediately in front of their respective premises only; provided, however, that (i) such sales shall be conducted at all times in a manner consistent with first class shopping centers in the Birmingham, Alabama metropolitan area, and (ii) such sales do not interfere with or disrupt, in more than a de minimis fashion, the normal business operations of other tenants or occupants of the Shopping Center, normal pedestrian access, the visibility of any other tenant's or occupant's premises or any signage thereon, or the use of the Common Areas by others as set forth in this Declaration.

2.03 Conformity to Site Plan. Except as shown on the Site Plan, no tower or other structure shall be constructed in the Common Areas, except that each Owner shall have the right to (i) plant trees and other growing plants in the Common Areas pursuant to a landscape plan which provides for the uniform distribution of trees throughout the Shopping Center, provided no tree shall unreasonably interfere with (a) the visibility of any Owner's building signage, except as otherwise may be required by applicable governmental authority or (b) the access to any Owner's Lot, and (ii) construct other items or amenities customary for first-class commercial developments, such as signage, light standards, benches and directional signage, provided the same does/do not unreasonably interfere with access to any Lot or the visibility of building

signage or any other previously existing signage located on any Lot. Subject to the provisions of Article VI of this Declaration, any changes to the Common Areas not permitted in the preceding sentence may be made only with the prior written consent of the Owners, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that minor modifications of an immaterial nature to the Common Areas on an Owner's Lot may be made by such Owner without such consent if such changes do not materially alter vehicular or pedestrian traffic flow, visibility, or parking arrangements upon, or access with respect to, the Development. No Owner shall permit the alteration of the size or location of curb cuts or private drives that provide access to the Development as shown cross hatched on the Site Plan (collectively, the "Private Drive").

ARTICLE III.

RECIPROCAL EASEMENTS: COMMON AREAS

3.01 Grant and Declaration of Reciprocal Easements. Declarant hereby reserves to itself and grants any future Owners for the benefit of Declarant and Declarant's successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees and invitees (including concessionaires and vendors), and for the benefit of each of the Lots within the Development: (A) permanent, mutual, reciprocal and non-exclusive easements and rights to use the Common Areas as they exist from time to time for the purposes for which they are provided and intended, including, but not limited to, (i) ingress, egress, access, loading and unloading, vehicular and pedestrian traffic, including commercial vehicular traffic such as delivery trucks, upon or across, as applicable, the parking areas, entrances, exits, driveways, walks or service drives located within the Common Areas; (ii) installation, connection, operation, maintenance and use of sanitary sewers, storm drains, detention basins, water, electric and gas lines, telephone lines, vaults, conduits and transformers and other utility lines and related facilities (which shall be located underground whenever required); and (iii) the use of landscaping, directional signs and other areas intended for common use, and (B) permanent, mutual, reciprocal and non-exclusive easements upon, over and across the Private Drive for the purpose of vehicular and pedestrian ingress, egress and access, including commercial vehicular traffic such as delivery trucks, and (C) permanent, mutual, reciprocal and non-exclusive easements upon, under, over, above and across the Common Areas of Lots 1, 2, 3 and 4 for the discharge, drainage, and use, of storm water runoff, and to install, maintain, repair and replace storm water collection, and distribution lines, conduits, pipes and other apparatus under and across those portions of the such Lots to the detention area located on the Shopping Center as shown on the Site Plan. The storm water detention areas located within the Development indicated on the Site Plan, and all lines, conduits, pipes and other apparatus for water drainage, and all storage systems necessary in connection therewith, shall be hereinafter called the "Water Detention and Drainage Facilities". The easements granted herein shall include the right of reasonable ingress and egress with respect to the Water Detention and Drainage Facilities as may be required to maintain and operate the same. Once constructed, (i) the Water Detention and Drainage Facilities shall not be modified, altered, relocated or otherwise changed, without the prior written consent of all Owners whose Lot(s) are benefitted by such Water Detention and Drainage Facilities; and (ii) each Owner shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Water Detention and Drainage Facilities located upon its Lot and make any and all repairs and replacements that may from time to time be required with respect thereto; provided, however, that each Owner whose Lot benefits from such Water Detention and

Drainage Facilities shall be responsible to pay such Owner's proportionate share of the costs incurred in operating and maintaining the same in accordance with Section 4.01 of this Declaration.

3.02 Minimum Parking Requirements. Each Owner of a Lot in the Development shall provide on its Lot, the greater of: (a) five (5) parking spaces per 1,000 square feet of Floor Area on its Lot for general retail space (excluding restaurant space) and ten (10) parking spaces per 1,000 square feet of Floor Area on its Lot for restaurant use, or (b) the number of parking spaces required to satisfy all applicable governmental or quasi-governmental laws, rules, regulations and codes without variance thereto, and without counting any parking spaces contained within any other Lot or any other property.

3.03 Temporary Use of Common Areas During Construction and For Maintenance and Repair. In connection with work performed at the Development, incidental encroachments upon the Common Areas as a result of the temporary use of construction equipment such as contractors' sheds, ladders, scaffolding, storefront barricades, and similar facilities resulting in temporary obstruction of portions of the Common Areas shall be permitted hereunder so long as they are kept within reasonable requirements of construction or maintenance repair work expeditiously pursued; provided, however, that in the event any access drive is obstructed thereby, an alternate access drive must be provided at all times. A "construction staging area" on each Lot, which shall either be designated on the Site Plan or reasonably agreed to by the Owners, may be used for temporary storage of construction equipment, material and vehicles being utilized in connection with the initial construction on a Lot, subject to all of the other terms of this Declaration. Common Areas may be utilized for ingress and egress of vehicles transporting construction materials, equipment, and persons employed in connection with any work performed at the Development. From and after the date that the first tenant of the Shopping Center opens for business to the public, adequate fencing must surround the construction areas within each Outparcel at all times during which construction activities are in progress.

3.04 Barriers and Traffic Control. Except as provided in Section 3.03 above or as required by governmental authorities, no walls, fences, or barriers of any sort or kind shall be constructed or maintained in the Common Areas of the Development, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements granted by this Declaration, or the free access and movement, including without limitation, pedestrian and vehicular traffic, between the various Lots; provided, however, subject to the other provisions of this Declaration, reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic may be installed so long as the access driveways to the parking areas in the Development are not closed or blocked and the traffic circulation pattern of the Common Areas, as depicted on the Site Plan, is not changed or affected in any way.

3.05 Reasonable Use of Easements.

(a) The easements granted above in Section 3.01(a) shall be used and enjoyed by each Operator in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Operator at any time conducted on its Lot,

including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

(b) Once the Water Detention and Drainage Facilities are installed pursuant to the easements granted in Section 3.01, no permanent building, structures, trees or other improvements inconsistent with the use and enjoyment of such easements (excluding improvements typically found in common areas of shopping centers) shall be placed over or permitted to encroach upon such Water Detention and Drainage Facilities. The Owner of the Lot(s) served by such facilities shall not unreasonably withhold its consent to the reasonable relocation of such facilities requested by the Owner of a Lot where such installations are located, at such requesting Owner's sole cost and expense, so long as water detention and drainage services to the other Owner's Lot are not unreasonably interrupted and the remaining provisions of this Section 3.05 are complied with.

(c) Once commenced, any construction undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Operator. Except in cases of emergency, the right of any Owner to enter upon a Lot of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Lot if the same interferes with utility or drainage easements or easements of ingress, egress or access to or in favor of another Owner's Lot, shall be undertaken only in such a manner so as to minimize any interference with the business of the other Operator. In such case, no affirmative monetary obligation shall be imposed upon the other Owner, and the Owner undertaking such work shall with due diligence repair at its sole cost and expense any and all damage caused by such work and restore the affected portion of the Lot upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the commencement of such work. In addition, the Owner undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the other Operator(s) from all damages, losses, liens or claims attributable to the performance of such work.

ARTICLE IV.

OPERATION AND MAINTENANCE OF COMMON AREAS

4.01 Responsibility for Maintenance. Upon completion of construction of the improvements on the Common Areas or any portion thereof, each Owner shall, during the term of this Declaration, operate, maintain, repair and, as necessary, replace, or cause to be operated, maintained, repaired and replaced all Common Areas located on such Owner's Lot and shall keep the same, or cause the same to be continuously kept, in good condition and repair (consistent with standards of maintenance for the operation of similar first-class commercial developments in Alabama), in a safe and sound condition, clean and free of rubbish, debris, and other hazards to persons using the same, and in compliance with all applicable governmental laws, codes, ordinances, rules and regulations. The Common Areas shall be equipped with a lighting system designed to produce a minimum maintained lighting intensity at grade of at least 2.5 foot candles at all points of the parking areas of the Common Areas so long as the same complies with all applicable governmental laws, codes, ordinances, rules and regulations. Each Owner shall activate such lighting each day from dusk to at least 11:00 p.m., and shall provide low level

security lighting from such time until dawn. Upon receipt of a request from the Operator of any other Lot to keep the drive aisles lighted for periods of time beyond which the Operator(s) of other Lots would normally do so in connection with its/their normal business operations, the Operator(s) of such Lots shall keep the drive aisles located on such Operator's Lot lighted for the time periods requested by such Operator(s) conditioned upon the performance of the covenants in the following sentence. In connection therewith, the Operator(s) requesting such extended lighting hours shall pay, or cause to be paid, promptly upon receipt of a reasonably detailed invoice therefor (but in any event within fifteen (15) days after receipt), its/their proportionate share of the increase in costs incurred by the Operator(s) of such Lot(s) for complying with such request. Such maintenance, operation, repair and replacement shall include, but not be limited to, the following:

- (a) The care and replacement of all shrubbery, plantings, and other landscaping;
- (b) Maintenance, repair and replacement of concrete and asphalt paving and other surface materials used on drives, parking areas and walkways using, to the extent reasonably possible, the same type of material originally installed, to the end that drives, parking areas and walkways are at all times kept in a level, smooth and substantially uniform condition;
- (c) Adequate marking, striping and directional signing of all parking areas;
- (d) Maintenance, repair and replacement of all common electrical and other common utility equipment, fixtures, and facilities so that the same are at all times in good operating condition, including lighting in the Common Areas, and electric light replacements;
- (e) Payment of all electrical, water and other utility charges or fees for services furnished to the Common Areas and provision of adequate security service if determined to be necessary or desirable;
- (f) Snow and ice removal, when and if necessary, and sweeping and removal of rubbish and debris at least three (3) times per week, but more frequently if required;
- (g) Maintenance, repair and replacement of all Water Detention and Drainage Facilities, if any; and
- (h) Common Area casualty insurance with respect to the improvements constituting the Common Areas and Common Area liability insurance as provided in Section 4.03.

Each Owner of an Outparcel shall pay to Declarant, so long as Declarant is the Owner of the Shopping Center Tract and thereafter to the successor Owner(s) of the Shopping Center Tract (the applicable owner being referred to in this Section 4.01 as the "Owner of the Shopping Center Tract"), as such Owner's sole obligation with respect to maintenance and repair expenses relating to the Private Drive and Water Detention and Drainage Facilities, a fixed fee of One

Thousand Five Hundred and No/100 Dollars (\$1,500.00) per annum, increasing by ten percent (10%) every five (5) years for the repair and maintenance of the Private Drive and the Water Detention and Drainage Facilities ("Outparcel Expenses"). The obligation to pay such Outparcel Expenses will begin on the day construction activities are commenced on the Owner's Outparcel. The Outparcel Expenses shall be due and payable (in advance) to the Owner of the Shopping Center Tract on the first day of each calendar year, except that the amount due to such Owner in the calendar year in which construction commenced shall be prorated as of the date construction commenced and due on such date. It shall not be necessary for the Owner of the Shopping Center Tract to invoice or otherwise bill the Owners of the Outparcels for the Outparcel Expenses. Each Owner of an Outparcel, by accepting title to such Outparcel agrees to pay the Owner of the Shopping Center Tract the Outparcel Expenses in advance, send notice of date of construction commencement and remit payment to the address set forth in Section 11.13 (for so long as Declarant is the Owner of the Shopping Center Tract).

4.02 Taxes. The Owner of each Lot shall pay or cause to be paid all real property taxes and other special taxes and assessments levied against its Lot and the buildings and improvements thereon (herein called "Taxes").

Each Owner (or their tenants and designated agents) may contest at its own expense the existence, amount or validity of any real property tax or other special tax or assessment levied upon its Lot by appropriate proceedings (x) which shall prevent the collection of or other realization upon the tax, assessment, levy, fee, charge, lien or encumbrance so contested and (y) which shall prevent the sale, forfeiture or loss of the Lot to satisfy the same. The other Owners, at the expense of the contesting party, shall cooperate with the contesting party and execute any documents or pleadings legally required or necessary for any such contest in form reasonably acceptable to such party. The contesting party shall indemnify and hold the other Owners harmless from any expenses, loss or damage suffered by the other Owners as a direct result of any such challenge or contest by the contesting party.

4.03 Common Area Liability Insurance

(a) Each Owner shall maintain or cause to be maintained insurance with insurance companies licensed to do business in Alabama, against all statutory and common law liabilities for damage to property or injuries, including loss of life, sustained by any person or persons within or arising out of the use of the Common Areas, whether caused by any Owner's or tenant's or their respective agents', guests', invitees', or customers' negligence or otherwise. Such policy shall provide limits on a "per occurrence" basis of not less than (a) \$3,000,000 with respect to injury to any one person, \$3,000,000 with respect to any one occurrence, and \$3,000,000 with respect to property damage arising out of any one occurrence, or (b) \$3,000,000 combined single limit coverage. The policy shall provide that it shall not be canceled or amended without at least thirty (30) days' prior written notice to the other Owners of which the Owner has been given notice and for which an address has been furnished and any Owners' mortgagees of which the Owner has been given notice and for which an address has been furnished as additional insured(s). Such policy shall name the Owners and any Owners' mortgagees of which the Owner has been given notice and for which an address has been furnished as additional insured(s). Upon written request therefor, certificates of such insurance shall be delivered to the Owners not less than thirty (30) days after the date of this Declaration

and thereafter not less than fifteen (15) days prior to the expiration date of the expiring policy. The amount of coverage may be reassessed every five (5) years and adjusted to be equivalent to the prevailing market standard in Shelby County, Alabama upon the agreement of the Owners. Any insurance carried or required to be carried pursuant to this Declaration may be carried under an insurance policy(ies), a program of self-insurance (subject to subsection (b) below) or pursuant to a master policy of insurance or so-called blanket policy of insurance covering other locations of an Owner or such Owner's occupants or their respective Affiliates, or any combination thereof.

(b) Any of the Owners, or any of such Owner's tenants or occupants, having a reported tangible net worth (e.g. exclusive of any value for goodwill or similar assets) of not less than One Hundred Fifty Million and No/100 Dollars (\$150,000,000.00) as computed in accordance with generally accepted accounting principles, consistently applied, shall have the right to satisfy the obligations of an Owner under Section 4.03(a) above by implementing a self insurance program with respect to the liabilities described in Section 4.03(a) above, after thirty (30) days' prior written notice to all of the other Owners of such program of self-insurance and the coverages to be self-insured for those portions of the Common Areas contained solely within such Owner's Lot.

ARTICLE V.

UTILITIES

5.01 Location of Utility Lines. Any Owner may locate utility lines and related facilities in the Common Areas on its Lot without the approval of the other Owners so long as such Owner installs such lines and facilities in a manner which minimizes the interference with the use of the Common Areas to the greatest extent possible and otherwise satisfies the requirements of Section 5.02. The location of all utility lines and related facilities in the Common Areas located on another Owner's Lot shall be subject to the prior written approval of the Owner over or under whose Lot the same is to be located, which consent shall not be unreasonably withheld and which request for approval shall be responded to within forty-five (45) days from receipt. If requested by any utility company or an Owner upon completion of construction of such utility facilities, the Owners of Lots affected thereby shall join in the execution of an easement agreement, in recordable form, appropriately identifying the type and location of such respective utility facility.

5.02 Relocation. At any time, the Owner of any Lot shall have the right to relocate on its Lot any such utility lines and related facilities then located on its Lot, provided that such relocation shall be performed only after thirty (30) days' notice of such Owner's intention to so relocate has been given to the Owners of the Lots benefiting from such utility line, and such relocation: (a) shall not interfere with or diminish the utility services to the benefited Lots; (b) shall not reduce or unreasonably impair the usefulness or function of such utility; (c) shall be performed without cost or expense to the Owner of the benefited Lot; and (d) the new line shall be functioning prior to discontinuance of the existing service.

ARTICLE VI.

BUILDING DESIGN AND CONSTRUCTION

6.01 Building Design and Construction. Subject to the rights granted by any Anchor Operator Leases pertaining to the premises or building of any Anchor Operator (or its successor or assigns) thereunder or national tenant or occupant and any other agreement entered into by Declarant, the plans and specifications of the buildings to be constructed in the Development and any future alterations or modifications to the elevations and exterior appearances (including changes in color) of such buildings shall be subject to the prior written approval of Declarant, which approval shall not be unreasonably withheld or delayed; provided, however, that any future alterations or modifications to the elevations and exterior appearances of the buildings located within the Development necessary to conform such buildings to the then-current prototypical design of an Anchor Operator (or its successor or assign) or a national tenant or occupant shall not require any such prior approval of Declarant. Such approval is to ensure conformity to the requirements of this Declaration, compliance with the general plan of construction and general overall aesthetic quality of the Development, consistency of materials used and compatibility of uses. Declarant, by Declarant's approval of such plans and specifications, is not responsible for the adequacy of structural or mechanical engineering design or specifications or the improvements constructed. During construction, all Owners shall cause their contractors to abide by reasonable rules and regulations of the Development. Each Owner shall either provide for a staging area on its own Lot or mutually agree with any other Owner(s) regarding the use of a construction staging area on any other Lot. All exterior construction (including landscaping, which must be completed during initial construction), alteration, and repair work shall be accomplished in an expeditious manner, in compliance with all laws, rules, regulations, orders, permits, approvals and licenses of governmental authorities having jurisdiction. All trash, debris and waste materials shall be removed from construction areas on a daily basis. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other Owner or to the Lot on which the work is being done or any other Lot in the Development. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of any affected Lot to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Owner undertaking such work shall promptly pay all costs and expenses associated therewith and shall indemnify and hold all Owners harmless from all damages, losses, or claims, including reasonable attorneys fees, attributable to the performance of such work.

6.02 Building Height. In no event shall any building or facade, structure or canopy constructed in the Shopping Center be higher than the facade of the premises of T.J. Maxx as originally constructed. Except as expressly set forth in this Section 6.02 to the contrary, in no event shall any building constructed on any Outparcel be of a height in excess of twenty-five (25) feet (inclusive of architectural features). For the purposes of this Section 6.02, height of any building constructed on an Outparcel shall be measured from finished grade of floor to the highest point on the roof of the building, including canopies, chimneys or decorative towers incidental to the design of the building. Notwithstanding anything in this Declaration the

contrary, subject to all applicable laws and the terms of Section 6.04 below, each Owner shall have the right to install a satellite antennae or other data communications devices and related wiring upon the roof of the building on such Owner's Lot, provided that the same do not add more than four (4) feet to the maximum building height on any Outparcel.

6.03 Location and Number of Buildings. Subject to the restrictions set forth in this Declaration, all buildings and structures in the Development shall be constructed only in the Permissible Building Areas. No buildings or structures shall be constructed in the Shopping Center within the Common Areas, but the foregoing prohibition shall not apply to the Monument Signs expressly authorized by Sections 7.01 and 7.02 nor to directional signs, bumper guards or curbs, landscape planters, lighting standards, and any other landscaping or other improvements as may be required under applicable controls and regulations of the city in which the Shopping Center is located, provided such items are installed and maintained in compliance with Section 2.03. In addition, subject to governmental requirements and the provisions of Section 6.01 and Section 6.02, any Owner may construct, install, repair, remove, replace and maintain sidewalks and walkways, and canopies and marquees (with signs which may be affixed thereto) which may encroach a reasonable distance (not to exceed fifteen (15) feet) over or upon, as the case may be, the sidewalks and walkways contiguous to the Building Area. Finally, no more than one (1) building shall be constructed on any Outparcel, which building shall contain the lesser of (i) 8,500 square feet of Floor Area on Outparcel 1, 10,000 square feet of Floor Area on Outparcel 2, 11,000 square feet on Outparcel 3, and 15,000 square feet on Outparcel 4, or (ii) the Floor Area allowed by applicable code requirements without variance.

6.04 Maintenance of Buildings. The Owner of each Lot in the Development shall maintain, or cause to be maintained, in a safe, clean and tenantable condition and in good order and repair, consistent in manner and appearance with a first-class commercial development, all buildings (including, but not limited to, all loading docks, truck facilities and compactor areas) and other improvements located on its respective Lot. All exterior painted portions of such buildings and other improvements shall be repainted when reasonably necessary. All rooftop equipment shall be located behind appropriate screening so as to not be visible from street level, and outdoor refuse areas shall be screened from public view.

6.05 Maintenance of Vacant Lots. Until such time as buildings or improvements are constructed on any Lot in the Development, each Owner of an undeveloped Lot shall rough grade such Lot to conform to Declarant's master grading plan for the Development, adequately seed such Lot and maintain such Lot in a good and neat condition. There shall be no storage allowed on any undeveloped Lot in the Development.

6.06 Mechanic's Liens. If because of any act or omission (or alleged act or omission) of an Owner, its employees, agents, contractors or subcontractors, any mechanic's or other lien, charge or order for the payment of money or other encumbrance shall be filed against the Lot of another Owner, the first Owner shall, at its own cost and expense, cause the same to be discharged of record or insured or bonded over to the reasonable satisfaction of the Owner of the Lot encumbered by the particular lien or encumbrance within thirty (30) days after notice to said Owner of the filing thereof. In any event said Owner shall indemnify, defend and save harmless the other Owner from and against all costs, liabilities, expenses, damages, suits, penalties, claims and demands (including actual attorneys' fees and costs incurred) resulting therefrom. If the first

Owner fails to comply with the foregoing provisions, the other Owner shall have the option of discharging or bonding any such lien, charge, order or encumbrance, and the first Owner agrees to reimburse the other Owner for all costs, expenses (including actual attorneys' fees) and other sums of money expended in connection therewith, including interest on the amounts expended from the date of the expenditure until the date of payment at an annual rate of interest (the "Default Rate") equal to the prime rate announced from time to time by the Chase Manhattan Bank plus two percent (2%), or, if such institution shall cease to exist, the prime rate announced from time to time by the publicly held bank located in New York, New York which has the most assets plus two percent (2%). An Owner must remove of record, or cause to be removed of record, or insure over any lien encumbering a Lot not owned by it if such removal is required in connection with a financing or disposition of the Lot encumbered by such lien. In all events, an Owner must remove of record, or cause to be removed of record, any such lien encumbering a Lot not owned by it within two (2) years of the date such lien was filed of record.

6.07 Indemnification. If any Owner fails to fulfill its obligation to maintain Common Area liability insurance coverage, as required by Section 4.03 above, or in the event of self-insurance, then such Owner shall defend, indemnify and save the other Owners harmless from any and all liability, damage, expense, cause of action, suit, claim or judgment arising from any injury to persons or property in or on the Common Areas of such Owner's Lot to the extent arising from the occupation, use, possession, conduct or management of the Common Areas by such Owner, its tenants, agents or employees.

6.08 Insurance. Each Owner shall maintain, or cause to be maintained, in full force and effect all risk coverage insurance with a financially responsible insurance company licensed to do business in the State of Alabama for at least eighty percent (80%) of the replacement cost of all buildings (exclusive of footings and foundations) and other improvements located on such Owner's Lot (with a commercially reasonable deductible), adjusted at least annually to account for increases in the replacement cost, with waivers of subrogation as to casualties caused by the negligence of the other Owners; provided that, notwithstanding the existence of such insurance coverage, no Owner shall be required to build or rebuild any buildings or other structures on its Lot and the provisions of Section 6.09 shall control. Each Owner shall have the right to self-insure its obligations under this Section if it satisfies the net worth and other requirements set forth in Section 4.03(b).

6.09 Damage to or Destruction of Buildings. In the event that any part of any building, structure or other improvement on any Lot not constituting the Common Areas is damaged by fire or other casualty, the Owner upon whose Lot such damaged or destroyed building, structure or other improvement is located shall not be obligated to restore same (without limiting such Owner's obligations under any leases or other agreements), provided that such Owner, at its sole expense and without regard to the availability of insurance proceeds, shall promptly remove all debris. Within ninety (90) days after the fire or other casualty, such Owner shall elect either (i) to raze the building, structure, or other improvement that is damaged and grade the affected area to substantially the same grade as the adjacent parking area and either adequately seed such affected area, or pave such area for parking, or (ii) to restore the remaining portions of the damaged building, structure or other improvement, if any, or to demolish and rebuild the same to an architectural whole with at least the same quality of workmanship and materials used with respect to the original construction and in a first-class, workmanlike manner. Such Owner shall,

not later than ninety (90) days after such fire or other casualty, commence either (i) or (ii) above and thereafter diligently prosecute same to completion. If the Owner elects to proceed pursuant to (i), such work shall be completed in ninety (90) days, but the Owner shall be entitled to nine (9) months to complete the work described in (ii). Nothing herein shall prevent such Owner from restoring or rebuilding such damaged building, structure or other improvement on such affected area at a later time should such Owner decide initially not to restore such damaged building, structure or other improvement, so long as such construction (and its deferral) does not violate any of the provisions herein.

6.10 Eminent Domain. If under the power of eminent domain, which shall include conveyances or dedications made in settlement of or in lieu of condemnation proceedings, any portions of a building, structure and/or other improvement and/or any portion of the Common Areas on a Lot is taken (collectively, a "Partial Taking"), the Owner of such Lot shall either (without limiting such Owner's obligations under any leases or other agreements) (i) raze the remainder of the building, structure, or other improvement that is partially taken and grade the affected area to substantially the same grade as the adjacent parking area and either adequately seed such affected area, or pave such area for parking, or (ii) restore the remaining portions of the Common Areas, building, structure or other improvement, or to demolish and rebuild the same to an architectural whole with at least the same quality of workmanship and materials used with respect to the original construction and in a first-class, workmanlike manner as soon as possible (but in no event longer than two hundred ten (210) days after such Owner's receipt of the award for such Partial Taking) to as close to its prior condition and design as is reasonably feasible.

6.11 "As-built" Survey. Each Owner shall, prior to commencement of business operations on such Owner's Lot, deliver to Declarant an "as-built" survey of such Lot.

6.12 Compliance with Law. Each Owner of a Lot shall operate and maintain all buildings, detention and/or retention areas, and other structures and improvements on the Owner's Lot in compliance with all applicable codes, laws, ordinances, rules and regulations. In addition, each Owner is responsible for such compliance as to the Common Areas pursuant to Section 4.01.

ARTICLE VII.

SIGNS

7.01 Shopping Center Monument Signs. The maintenance and operation cost for any and all Shopping Center pylon, pole or monument signs and electrical service to such signs, if any, shall be the responsibility of the Owner(s) of the Shopping Center and each Owner shall pay, or cause to be paid, such costs on an equitable basis based upon signage area of the Operators who are listed on such signs. Subject to all applicable governmental laws, codes, ordinances, rules and regulations, the proposed locations of the monument signs for the Shopping Center (collectively, the "Shopping Center Monument Signs") are shown on the Site Plan. Declarant, in Declarant's sole discretion, shall have the exclusive right to allocate the space on the Shopping Center Monument Signs to the other Operators of the Shopping Center and Declarant hereby grants and conveys to such Operators a nonexclusive easement over and across

the Development to the extent necessary to install, repair and maintain their respective panels on the Shopping Center Monument Signs.

7.02 Outparcel Monument Signs. No pylon, pole or monument sign located on any Outparcel shall exceed twenty five feet (25') in height. Any pylon, pole or monument sign located on any Outparcel shall be located in the locations shown on the Site Plan.

7.03 Compliance. Notwithstanding any provision of this Article VII to the contrary, all signage at the Development must comply with all applicable governmental laws, codes, ordinances, rules and regulations.

ARTICLE VIII.

MORTGAGES SUBORDINATE TO DECLARATION

Any Mortgage affecting any portion of the Development shall at all times be subject and subordinate to the terms of this Declaration and any mortgagee foreclosing any such Mortgage or acquiring title by reason of a deed in lieu of foreclosure shall acquire title to the premises affected thereby subject to all of the terms of this Declaration. Notwithstanding the foregoing, the lien of any such Mortgage or any lien arising from a claim under this Declaration shall be established as of the date of the filing of any such Mortgage or lien claim in the Real Property Records of Shelby County, Alabama.

ARTICLE IX.

APPROVALS

Upon receipt by an Owner of a request for approval, such Owner shall within thirty (30) days (except where a different approval period is expressly provided for under this Declaration) after receipt of such request for approval, notify in writing the Owner making such request of any objections thereto (such objections to be specifically stated) and such Owner may within fifteen (15) days thereafter resubmit their request for approval rectifying any such objections to the appropriate Owner. The Owner shall then have an additional fifteen (15) days after receipt of said revisions to approve or disapprove same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by such Owner provided that the request for approval specifies that failure to object within such time period shall constitute approval. Whenever in this Declaration an Owner is given the right to approve or disapprove in its sole discretion, it may disapprove without specifying the reason therefor.

ARTICLE X.

REMEDIES

10.01 Default of Owner. An Owner shall be deemed to be in default upon the expiration of ten (10) days from receipt of written notice from any other Owner (with a copy to all other Owners) specifying a failure to pay any amount due under this Declaration and upon the expiration of thirty (30) days from receipt of written notice from any other Owner (with a copy to all other Owners) specifying the particulars in which such Owner has failed to perform the

obligations of this Declaration other than due to non-payment unless that Owner prior to the expiration of the applicable period, has rectified the particulars specified in said notice. However, such Owner shall not be deemed to be in default if such failure (except the failure to pay any monetary obligation) cannot be rectified within said thirty (30) day period despite its good faith efforts to do so, and such Owner shall have commenced to cure the default within said thirty (30) days and diligently pursued such cure until completed.

10.02 Right to Cure Defaults. In the event that any Owner (referred to in this Section 10.02 as the "Responsible Party") fails to maintain the Common Areas in accordance with Section 4.01, or any portion thereof for which it is responsible, the Owner of any Lot shall have the right, upon ten (10) days' prior written notice to the Responsible Party (with a copy to all other Owners), to perform any such maintenance or any easement appurtenant thereto if the Responsible Party fails to cure, or commence to cure and diligently pursue to completion, the default identified in the written notice to it within such ten-day period. Notwithstanding the foregoing, in the event of an emergency which threatens the health or safety of Development Operators or patrons, such advance written notice shall not be required prior to effectuating such cure on behalf of another Owner, but the curing Owner shall make reasonable attempts to contact the defaulting Owner prior to and/or during the course of such cure. Any costs incurred by the curing Owner therefor shall be reimbursed by the Responsible Party within thirty (30) days of presentation of the appropriate statement therefor. Upon the filing of notice of the non-payment of any such amounts in the Real Property Records of Shelby County, Alabama, such amounts shall constitute liens against the Lot of the defaulting Owner as of the date of the filing thereof and the curing Owner shall be entitled to take any action necessary to perfect and/or foreclose such lien. Any such lien(s) shall not have priority over leases of record at such Lot or any Mortgage then filed of record against such Lot at the time such lien is perfected.

10.03 Other Remedies. In addition to the foregoing, if any Owner defaults in the performance of any other material provision of this Declaration, which default continues after the period of grace, if any, with respect thereto, any other Owner may institute legal action against the defaulting Owner for specific performance, declaratory relief, damages or other suitable legal or equitable remedy. The remedies and liens provided in this Article X and the enforcement thereof as provided in this Declaration shall be in addition to and not in substitution for or exclusion of any other rights and remedies which the parties may have under this Declaration or at law or in equity.

10.04 Attorneys' Fees. In addition to the recovery of damages and of any sums expended on behalf of the defaulting Owner, together with interest thereon, as set forth in this Declaration, the prevailing party in any action to enforce any provision of this Declaration shall be entitled to receive from the other party its costs and expenses incurred in connection with such action, including actual reasonable attorneys' fees and costs for services rendered to the prevailing party in any such action (including any appeal thereof).

10.05 Interest. In the event any Owner fails to pay any sum due under this Declaration within ten (10) days from the due date specified in the Declaration, such past due amount shall accrue, and the failing party shall be liable for, interest from the original due date until paid at the Default Rate.

ARTICLE XI.

MISCELLANEOUS

11.01 Obligations of Declaration. Except as otherwise provided by the terms and provisions of this Declaration, each and every covenant, undertaking, condition, easement, right, privilege and restriction (herein referred to as "Obligations of this Declaration") made, granted or assumed, as the case may be, by this Declaration, is made for the personal benefit of Declarant and shall be an equitable servitude on the portion of the Development thereby affected appurtenant to or for the benefit of the other portions of the Development. Every Obligation of this Declaration shall run with the land, and shall be binding upon the Owner making or assuming the several Obligations of this Declaration, and such Owner's successors, assigns, Mortgagees, tenants, customers and invitees and shall inure to the benefit of their respective successors, assigns, Mortgagees, tenants, customers and invitees. Any transferee of any part of the Development shall automatically be deemed, by acceptance of title to such Lot, to have assumed all the Obligations of this Declaration relating thereto, but only to the extent such Obligations of this Declaration accrue after the effective date of such transfer of title, and to have agreed with the Owner or Owners of all other portions of the Development to execute any and all instruments and do any and all things reasonably required to carry out the intention of this Declaration. Any transferor shall upon the consummation of such transfer be relieved of all further liability under this Declaration except such liability as may have arisen during its period of ownership of the portions of the Development so conveyed and which remains unsatisfied, unless such transferor remains an Owner hereunder. In connection with any transfer of all or the majority of the area currently constituting Lot 14, Declarant shall deliver written notice of the notice address of the transferee to the other Owners of which Declarant has been given notice and for which an address has been furnished.

11.02 No Waiver. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Owner of a breach or a default of any of the terms and conditions of this Declaration by any other Owner shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Declaration or a waiver by any other Owner. Except as otherwise specifically provided in this Declaration, no remedy provided in this Declaration shall be exclusive, but each shall be cumulative with all other remedies provided in this Declaration and at law or in equity.

11.03 No Termination For Breach. It is expressly agreed that no breach, whether or not material, of the provisions of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect, in any manner, any other rights or remedies which any Owner may have hereunder by reason of any breach of the provisions of this Declaration.

11.04 No Dedication to Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Development to the general public or for any public use or purpose whatsoever, it being the intention of Declarant that this Declaration is for the exclusive benefit of all Owners of any portion of the Development and their successors,

assigns, Mortgagees, tenants, customers and invitees, and that nothing in this Declaration, expressed or implied shall confer upon any party other than such Owners, and their successors, assigns, Mortgagees, tenants, customers and invitees any rights or remedies under of by reason of this Declaration. Any Owner of a Lot shall have the right from time to time to close all or any portion of the Common Areas on such Lot to the public in order to prevent a dedication thereto or the accrual of any rights in any party not expressly granted rights hereunder, but such closing shall not unreasonably interfere with the use and enjoyment by the other Owners and their successors, assigns, Mortgagees, tenants, customers and invitees of the easements hereby created and such closing shall not be for any period longer than is required by law to prevent a dedication to the public or the accrual of any rights in any party not expressly granted rights hereunder.

11.05 Amendment, Modification or Termination. This Declaration may be amended or modified at any time by a declaration in writing mutually agreed to, executed and acknowledged by the Owners of the total land area of the Development and thereafter duly recorded in the Real Property Records of Shelby County, Alabama, provided this Declaration shall not be terminated during the term hereof or amended or modified in any manner which is inconsistent with the rights of tenants of the Development under their respective leases. Notwithstanding the foregoing, this Declaration shall not be terminated, amended, altered or modified in any way without the prior written consent of (i) any first Mortgagee then encumbering the Development, or any Lot thereof and/or (ii) any Operator of the Development with the current right to approve any amendment or modification of this Declaration.

11.06 Term of Declaration. This Declaration shall be effective as of the date of recording hereof in the Real Property Records of Shelby County, Alabama, and shall continue in full force and effect until 11:59 p.m. on December 31, 2075; provided, however, that the easements granted pursuant to Section 3.01 shall survive such termination and be perpetual unless no portion of the Development is utilized for retail purposes for a continuous period of two (2) years (excluding any period during which an Owner is prevented from engaging in such use by reason of Force Majeure), in which event, this Declaration and the rights, restrictions and easements contained in this Declaration except for (a) easements for ingress and egress to and from any Lot to and from a dedicated right-of-way and (b) those easements and rights of use granted in Section 3.01(C) of this Declaration, shall terminate and be of no further force or effect. It is agreed and acknowledged that those rights and easements referred to in (a) and (b) of the preceding sentence shall be perpetual in duration notwithstanding the termination of this Declaration or any other provisions of this Declaration to the contrary.

11.07 Estoppel Certificate. At any time, and from time to time, within thirty (30) days after notice or request by an Owner, the then Owners of all Lots comprising the Development at no cost to the requesting party shall execute and deliver to any Mortgagee, ground lessee or purchaser a statement certifying that this Declaration is unmodified and in full force and effect or if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement, and that, among other things reasonably requested, to the knowledge of such Owner, there exists no default under this Declaration, other than as specified therein.

11.08 Governing Law. This Declaration shall be construed in accordance with the laws of the State.

11.09 Headings. The section headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration and shall not be considered in any construction or interpretation of this Declaration or any part thereof.

11.10 No Partnership. Nothing in this Declaration shall be construed to make the Owners partners or joint venturers or render any of said Owners liable for the debts or obligations of the others.

11.11 Force Majeure. Declarant shall each be excused from performing any obligation or undertaking provided in this Declaration (except for any obligation to pay sums of money) in the event, but only so long as, the performance of such obligation is prevented or delayed by strikes, lockouts, inability to procure materials or permits, power failure, acts of God, governmental restrictions, civil commotion, fire, unavoidable casualty, or other causes beyond the control of such Owner, provided that lack of funds shall not be deemed to be a cause beyond the control of such Owner.

11.12 Hazardous Substances. No Operator of the Development shall use, discharge, dump, spill or store any "Hazardous Substances" (as defined below) in the Development, except for Hazardous Substances that are used or stored by such Operator in connection with the customary operation of its retail store or restaurant at the Development provided that (i) such Hazardous Substances are used and stored in compliance with applicable laws, and (ii) such Operator cleans-up, removes and otherwise remediates any discharging, dumping or spilling of such Hazardous Substances in accordance with applicable laws and the reasonable requirements of the other Owners. Each Owner hereby covenants and agrees to defend, protect, indemnify and hold harmless each other and their respective directors, officers, agents, representatives and employees from and against all claims, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities (including, without limitation, reasonable attorneys' fees and cost of suit; all third-party claims and sums paid in settlement thereof, with or without legal proceedings; compensatory and punitive damages; lost profits; clean-up costs; penalties and fines) asserted or incurred in connection with or arising as a result of the violation of this Section (including, without limitation, any personal injury or property damage) and the enforcement of this indemnity. The term "Hazardous Substances" shall mean asbestos, soil or groundwater contamination, radioactivity, methane, radon, volatile hydrocarbons, underground storage tanks and any other hazardous or toxic substances, materials or conditions as same may be defined and/or regulated by any federal, state or local governmental body having applicable jurisdiction.

11.13 Notices. Any notice, demand, request, consent, approval, designation, or other communication made pursuant to this Declaration by one Owner to any other shall be in writing and shall be given or made or communicated by personal delivery; by United States registered or certified mail, return receipt requested; or by prepaid Federal Express or other nationally recognized overnight delivery service addressed, to the address of such Owner as set forth in the instrument vesting title in such Owner as provided by the Real Property Records of Shelby County, Alabama unless other written notice of such address has been delivered to the other Owners, and addressed, in the case of Declarant to:

Kimco Birmingham L.P.
c/o Kimco Realty Corporation
3333 New Hyde Park Road
New Hyde Park, NY 11042


11.14 Further Provisions. Notwithstanding any other provisions herein contained, this Declaration does not limit any additional rights, privileges and remedies created between any Owner and such Owner's tenants or occupants. Without limiting such tenant's or occupant's other rights and remedies, any tenant or occupant of all or any portion of an Owner's Lot may enforce this Declaration in the name of such Owner to the extent provided in such tenant's or occupant's written agreement with such Owner.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed effective as of the day first above written.

Declarant:

KIMCO BIRMINGHAM L.P.,
an Alabama limited partnership

By: KD Birmingham 1035, Inc.,
an Alabama corporation,
general partner

By: 
Name: BRUCE M. KAUDERER
Title: Vice President

STATE OF New York §
COUNTY OF Nassau §

The foregoing instrument was acknowledged before me this 18th day of July, 2003, by Bruce M. Kauderer, as V. P. of Kimco Birmingham 1035, Inc., an Alabama corporation, general partner of Kimco Birmingham L.P., an Alabama limited partnership, who is personally known to me to be the person who signed the foregoing instrument and he acknowledged that the execution thereof was his free act and deed as such officer for the uses and purposes therein expressed, and that the said instrument is the act and deed of said partnership for the uses and purposes therein expressed.

WITNESS my hand and official seal this 18th day of July, 2003.

Roseanne Dwyer
Notary Public in and for the State of _____

My Commission Expires: _____

ROSEANNE DWYER
Notary Public, State of New York
No. 4909302
Qualified in Nassau County
Commission Expires January 11, 2006

Exhibit "A"

Legal Description of the Development

Description of the Shopping Center

A parcel of land situated in the Northeast one-quarter of the Southeast one-quarter of Section 36, Township 18 South, Range 2 West and the Northwest one-quarter of the Southwest one-quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Northwest corner of the Northwest one-quarter of the Southwest one-quarter of Section 31, Township 18 South, Range 1 West and run in a Southerly direction along the west line for a distance of 165.34 feet; thence turn an exterior angle of 90 degrees 17 minutes 26 seconds to the right and run in an Easterly direction for a distance of 419.70 feet; thence turn an interior angle of 75 degrees 55 minutes 04 seconds to the left and run in a Southwesterly direction for a distance of 483.03 feet; thence turn an exterior angle of 165 degrees 36 minutes 34 seconds to the right and run in a Southerly direction for a distance of 152.38 feet; thence turn an interior angle of 90 degrees 00 minutes 00 seconds to the left and run in a Westerly direction for a distance 251.13 feet; thence turn an exterior angle of 103 degrees 37 minutes 16 seconds to the right and run in a Southwesterly direction for a distance of 138.35 feet; thence turn an exterior angle of 194 degrees 10 minutes 07 seconds to the right and run in a Southwesterly direction for a distance of 266.47 feet to a point on a curve to the right, said curve having a radius of 3124.05 feet, a central angle of 00 degrees 44 minutes 02 seconds, an interior angle of 88 degrees 33 minutes 51 seconds to the left to chord for a chord distance of 40.01 feet; thence run along arc of said curve for a distance of 40.01 feet; thence turn an interior angle of 91 degrees 26 minutes 09 seconds to the left from chord and run in a Northeasterly direction for a distance of 189.66 feet; thence turn an exterior angle of 135 degrees 00 minutes 00 seconds to the right and run in a Northwesterly direction for a distance of 46.45 feet; thence turn a exterior angle of 135 degrees 00 minutes 00 seconds to the right and run in a Northwesterly direction for a distance of 673.90 feet; thence turn an interior angle of 180 degrees 41 minutes 41 seconds to the left and run in a Northwesterly direction for a distance of 19.70 feet to a point on the Easternmost right of way line of Cahaba Beach Road; thence turn an interior angle of 89 degrees 49 minutes 43 seconds to the left and run in a Northeasterly direction along said right of way for a distance of 42.66 feet to the point of commencement of a non-tangent curve to the right, said curve having a radius of 1220.03 feet, a central angle of 12 degrees 22 minutes 05 seconds, an interior angle of 173 degrees 53 minutes 33 seconds to the left to chord for a chord distance of 262.85 feet; thence run along arc of said curve and along said right of way for a distance of 263.36 feet; thence turn an interior angle of 173 degrees 43 minutes 12 seconds to the left from chord and run in a Northeasterly direction along said right of way for a distance of 289.69 feet to the point of commencement of a non-tangent curve to the left, said curve having a radius of 915.84 feet, a central angle of 10 degrees 04 minutes 28 seconds, an exterior angle of 174 degrees 57 minutes 52 seconds to the right to chord for a chord distance of 160.83 feet; thence run along arc of said curve and along said right of way for a distance of 161.03 feet to a point on the North line of the Northeast one-quarter of the Southeast one-quarter of Section 36, Township 18 South, Range 2 West; thence leaving said right of way, turn an interior angle of 122 degrees 20 minutes 33 seconds to the left from chord and run in an Easterly direction along the North line

for 242.13 feet to the POINT OF BEGINNING. Said parcel contains 638,712 square feet or 14.66 acres more or less.

Description of Outparcels 1, 2 and 3:

A parcel of land situated in the Northeast one-quarter of the Southeast one-quarter of Section 36, Township 18 South, Range 2 West and the Northwest one-quarter of the Southwest one-quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of the Northeast one-quarter of the Southeast one-quarter of Section 36, Township 18 South, Range 2 West and run in a Westerly direction along the North line for a distance of 242.13 feet to the point of commencement of a non-tangent curve to the right, said curve having a radius of 915.84 feet, a central angle of 10 degrees 04 minutes 28 seconds, an interior angle of 122 degrees 20 minutes 33 seconds to the right to chord for a chord distance of 160.83 feet; thence run along arc of said curve for a distance of 161.03 feet; thence turn an exterior angle of 174 degrees 57 minutes 52 seconds to the left from chord and run in a Southwesterly direction for a distance of 289.69 feet to the point of commencement of a non-tangent curve to the left, said curve having a radius of 1220.03 feet, a central angle of 12 degrees 22 minutes 05 seconds, an interior angle of 173 degrees 43 minutes 12 seconds to the right to chord for a chord distance of 262.85 feet; thence run along arc of said curve for a distance of 263.36 feet; thence turn an interior angle of 173 degrees 53 minutes 33 seconds to the right from chord and run in a Southwesterly direction for a distance of 42.66 feet; thence turn an interior angle of 89 degrees 49 minutes 43 seconds to the right and run in a Southeasterly direction for a distance of 19.70 feet to the POINT OF BEGINNING; thence turn an exterior angle of 180 degrees 41 minutes 41 seconds to the right and run in a Southeasterly direction for a distance of 673.90 feet; thence turn an interior angle of 135 degrees 00 minutes 00 seconds to the left and run in a Southeasterly direction for a distance of 46.45 feet; thence turn an interior angle of 135 degrees 00 minutes 00 seconds to the left and run in a Southwesterly direction for a distance of 189.66 feet to a point on the Northernmost right of way of U.S. Highway 31 and a point on a non-tangent curve to the right, said curve having a radius of 3124.05 feet, a central angle of 00 degrees 07 minutes 09 seconds, an interior angle of 88 degrees 08 minutes 15 seconds to the left to chord for a chord distance of 6.49 feet; thence run along arc of said curve and along said right of way for a distance of 6.49 feet; thence turn an exterior angle of 179 degrees 53 minutes 04 seconds to the right from chord and run in a Northwesterly direction along said right of way for a distance of 621.39 feet; thence turn an interior angle of 129 degrees 11 minutes 45 seconds to the left and run in a Northwesterly direction along said right of way for a distance of 128.15 feet to a point on the Easternmost right of way of Cahaba Beach Road; thence turn an interior angle of 143 degrees 14 minutes 45 seconds to the left and run in a Northeasterly direction along said right of way for a distance of 101.62 feet to the POINT OF BEGINNING. Said parcel contains 145,031 square feet or 3.33 acres more or less.

Description of Outparcel 4:

A parcel of land situated in the Northeast one-quarter of the Southeast one-quarter of Section 36, Township 18 South, Range 2 West and the Northwest one-quarter of the Southwest one-quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Northwest corner of the Northwest one-quarter of the Southwest one-quarter of Section 31, Township 18 South, Range 1 West and run in a Southerly direction along the west line for a distance of 165.34 feet; thence turn an exterior angle of 90 degrees 17 minutes 26 seconds to the right and run in an Easterly direction for a distance of 419.70 feet; thence turn an interior angle of 75 degrees 55 minutes 04 seconds to the left and run in a Southwesterly direction for a distance of 483.03 feet; thence turn an exterior angle of 165 degrees 36 minutes 34 seconds to the right and run in a Southerly direction for a distance of 152.38 feet to the POINT OF BEGINNING; thence run along last described course for a distance of 452.49 feet; thence turn an interior angle of 96 degrees 31 minutes 50 seconds to the left and run in a Southwesterly direction for a distance of 200.44 feet to a point on the Northernmost right of way of U.S. Highway 280 and a point on a curve to the right, said curve having a radius of 3124.05 feet, a central angle of 04 degrees 17 minutes 18 seconds, an interior angle of 146 degrees 45 minutes 17 seconds to the left to chord for a chord distance of 233.76 feet; thence run along arc of said curve and along said right of way for a distance of 233.82 feet; thence turn an interior angle of 89 degrees 57 minutes 01 seconds to the left from chord and run in a Northeasterly direction for a distance of 266.47 feet; thence turn an interior angle of 194 degrees 10 minutes 07 seconds to the left and run in a Northeasterly direction for a distance of 138.35 feet; thence turn an interior angle of 103 degrees 37 minutes 16 seconds to the left and run in an Easterly direction for a distance of 251.13 feet to the POINT OF BEGINNING. Said parcel contains 147,453 square feet or 3.39 acres more or less.

Exhibit "B"

Site Plan

20030731000493820 Pg 32/32 107.00
Shelby Cnty Judge of Probate, AL
07/31/2003 11:24:00 FILED/CERTIFIED

