

STATE OF ALABAMA)
COUNTY OF SHELBY)

COMMON AREA MAINTENANCE AGREEMENT

THIS COMMON AREA MAINTENANCE AGREEMENT (this "Agreement") is entered into as of this 25th day of November, 2003, by and between METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation, party of the first part (hereinafter referred to as "Developer"), and MCKIBBON HOTEL GROUP OF BIRMINGHAM, ALABAMA, L.P., a Georgia Limited Partnership (hereinafter referred to as "McKibbon");

W I T N E S S E T H:

WHEREAS, McKibbon is the owner of a parcel of land described in Exhibit "A" attached hereto and by this reference made a part hereof (said land being hereinafter referred to as the "MCKIBBON PROPERTY") on which there is to be constructed a hotel to be operated by McKibbon or one of its parent, subsidiaries, affiliates or another entity which is directly or indirectly controlled by McKibbon or its parent, subsidiaries or affiliates upon completion;

WHEREAS, Developer maintains certain Common Areas (as hereinafter defined) for the benefit of certain owners and tenants of a substantial portion of the development known as "Inverness Center", which development and said areas thereof consist of 146 acres and are more particularly described in Exhibit "B" attached hereto and by this reference made a part hereof ("Inverness Center");

WHEREAS, McKibbon recognizes that the maintenance by Developer of the Common Areas as hereinafter set forth will, upon completion of the aforesaid hotel on the MCKIBBON

{00893976.5}

Handwritten: Land Title

PROPERTY, inure to the benefit of the MCKIBBON PROPERTY as well as to the benefit of such other owners and tenants within the Inverness Center development; and

WHEREAS, Developer and McKibbon desire to enter into this Agreement to establish the basis on which McKibbon will share in the costs and expenses of Developer in maintaining the Common Areas as hereinafter set forth.

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Developer to McKibbon, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and McKibbon covenant and agree as follows:

1. **Agreement to Share.** McKibbon hereby recognizes that Developer presently maintains in a neat and orderly appearance certain common areas (the "Common Areas"), including but not limited to the following: signs, lighting, entrances, parking areas and the landscaping located in the right of way of the roads within Inverness Center and within the rights-of-way of public highways fronting Inverness Center known as Inverness Center Parkway, Inverness Center Drive, Inverness Center Place and U.S. Highway 280, and that Developer presently intends to so maintain any other roads constructed on land now or hereafter owned by Developer in Inverness Center, all as shown on Exhibit "B". McKibbon hereby agrees for itself, its successors and assigns, that it shall pay annually its Pro Rata Share (as defined below) of all reasonable expenses and costs (the "CAM Costs") actually incurred by Developer or its successors directly in connection with the maintenance of the Common Areas, whether paid to employees of Developer or to parties engaged by Developer. Notwithstanding the foregoing, McKibbon agrees that the care and maintenance of the grass within the Inverness Center Drive right-of-way and any access roads located on or contiguous with the

MCKIBBON PROPERTY is not a part of the Common Areas and shall be maintained by McKibbon at a quality level equal to the quality level of maintenance of the Common Areas of Inverness Center. In the event McKibbon fails to provide such maintenance at such quality level, and such failure continues for a period of thirty (30) days after Developer has given written notice to McKibbon specifying the nature of the default (provided, however, no such notice is required in the event of an emergency), Developer shall have the right to (i) enter upon such area and perform the necessary maintenance and (ii) receive compensation from McKibbon for the actual cost incurred by Developer in performing such maintenance.

2. **Method of Allocation.** McKibbon's pro rata share (its "Pro Rata Share") of the CAM Costs shall be determined by multiplying the total of the annual CAM Costs by a fraction established as follows: the numerator of such fraction shall be the number of acres contained in the MCKIBBON PROPERTY and the denominator of such fraction shall be the total acreage as shown in Exhibit "B" attached hereto. McKibbon's Pro Rata Share is subject to adjustment by Developer based on the foregoing formula if the total acreage shown in Exhibit "B" is diminished by casualty, condemnation or similar takings or other events reducing such total acreage or if the total acreage is increased by additions to such acreage.

3. **Payment of Allocated Costs and Expenses.**

3.1 The CAM Costs shall be paid annually by McKibbon, or its successors and assigns, to Developer, or its successors, within forty-five (45) days after receipt each calendar year by McKibbon, of a detailed statement from Developer certified by a duly authorized representative of Developer, or its successors, reflecting the total of the CAM Costs and a computation reflecting McKibbon's share of such costs. Developer shall endeavor to submit such detailed statement of

expenses for the immediately preceding calendar year on or before the 30th day of April following each calendar year during the term of this Agreement (as set forth in Section 4 below). Developer's failure to include an item in the CAM Costs or to submit such statement as called for herein shall not be deemed to be a waiver of McKibbon's requirement to pay the sums herein provided.

3.2 If this Agreement becomes effective on any day other than January 1, or if the term of this Agreement ends on any day other than December 31, any payment due to Developer by reason of the CAM Costs shall be justly and fairly prorated. This covenant shall survive the expiration or termination of this Agreement if the CAM Costs will become payable by McKibbon subsequent to the expiration of this Agreement.

3.3 Any amount due from McKibbon to Developer hereunder which is not paid within ten (10) days of the date the same is due shall bear interest at the rate (the "Default Rate") equal to the lesser of: (i) the maximum interest rate allowed by applicable law; or (ii) one and one-half percent (1 1/2 %) per month from the due date until paid unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by McKibbon under this Agreement.

4. **Term of Maintenance.** Nothing contained herein shall require or obligate Developer to maintain the Common Areas and McKibbon recognizes that Developer, after thirty (30) days notice, may cease providing such maintenance at any time at its sole discretion. This Agreement shall continue in full force and effect for a period of twenty (20) years from the date hereof, unless Developer provides written notice of its intent to terminate this Agreement prior to the expiration of said 20-year period. Developer and McKibbon hereby agree that the obligation of McKibbon hereunder is a real covenant and shall bind and be enforceable against all subsequent owners of the

MCKIBBON PROPERTY, and McKibbon covenants and agrees that in the event McKibbon conveys all or any portion of the MCKIBBON PROPERTY, that in connection with such conveyance McKibbon shall require the purchaser thereof to assume the obligations of McKibbon under this Agreement.

5. **McKibbon's Right to Audit.** McKibbon shall have the right, upon thirty (30) days prior written notice, to audit Developer's records pertaining to CAM Costs billed to McKibbon within three (3) months after McKibbon receives a statement for such charge; provided, however, that McKibbon shall have no such right to audit Developer's records unless and until McKibbon has paid to Developer all CAM Costs owed to Developer in accordance with such statement. If no such contest is made by written notice to Developer, delivered within such three (3) month period, such charge shall be binding upon McKibbon in all respects. Said audit shall take place at Developer's corporate office (which is currently located in Kennesaw, Georgia) during normal business hours and occur no more than once in any calendar year. Such audit shall be conducted by an employee of McKibbon or a certified public accountant retained by McKibbon, at its expense, whose compensation is not contingent upon the results of such accountant's audit or the amount of any refund received by McKibbon. If such audit discloses that the charges actually incurred by Developer are less than those used by Developer in calculating McKibbon 's Pro Rata Share, then Developer shall give McKibbon a credit towards the next payment of CAM Costs coming due for the amount McKibbon paid in excess of McKibbon 's actual Pro Rata Share. McKibbon hereby agrees to keep the results of any such audit confidential, and to require McKibbon's auditor and its employees and each of their respective attorneys and advisors to likewise keep the results of such audit in strictest confidence. In particular, but without limitation, McKibbon agrees: (i) not to

disclose the results of any such audit to any past, current or prospective owner of any portion of Inverness Center; and (ii) to require its auditors, attorneys and anyone associated with such parties not to disclose the results of such audit to any past, current or prospective owner of Inverness Center; provided, however, Developer hereby agrees that nothing in items (i) or (ii) above shall preclude McKibbon from disclosing the results of such audit in any judicial or quasi-judicial proceeding, or pursuant to any court order or discovery request, or to any current or prospective assignee of McKibbon, or to any agent, representative or employee of Developer who requests the same.

6. **Liens.** Whenever and as often as McKibbon shall not have paid any sum payable hereunder to Developer within ten (10) days of the due date, such amounts (including interest thereon at the Default Rate) shall constitute a lien on the MCKIBBON PROPERTY until paid in full upon proper recordation of a claim of lien by the Developer in the land records of Shelby County, Alabama. Such liens shall be prior and superior to all other liens except (a) any lien for real estate taxes and other governmental assessments on the MCKIBBON PROPERTY, (b) the lien of any first mortgage on the MCKIBBON PROPERTY recorded before the date on which the amount sought to be enforced hereunder became delinquent, and (c) any other lien recorded prior to the time of recording this Agreement, if any.

7. **Books and Records.** During the term of this Agreement, Developer, or its successors, shall maintain, keep, and preserve for a period of one (1) year after the time period to which they relate, full, complete, and accurate books and records regarding the maintenance costs and expenses which are the subject of this Agreement. Such books and records shall include complete information as to the purpose, nature, and amount of any item included in such costs and expenses, and the receipt of any expenditure in connection therewith.

8. **Invalid Provisions.** If any clause or provision of this Agreement shall be illegal, invalid, or unenforceable under present or future laws, the remainder of this Agreement shall not be affected thereby. It is the intention of Developer and McKibbon that in lieu of each clause or provision in this Agreement which shall be illegal, invalid, or unenforceable, there shall be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as possible in order to give effect to the intent of this Agreement.

9. **Attorneys' Fees.** In the event either Developer or McKibbon brings an action at law or equity against the other in order to enforce any provision of this Agreement or as the result of an alleged default under this Agreement, the prevailing party in such action shall be entitled to recover from the other party reasonable attorneys' fees and court costs including such fees, costs and expenses as such prevailing party may incur on any appeal from such action or proceeding.

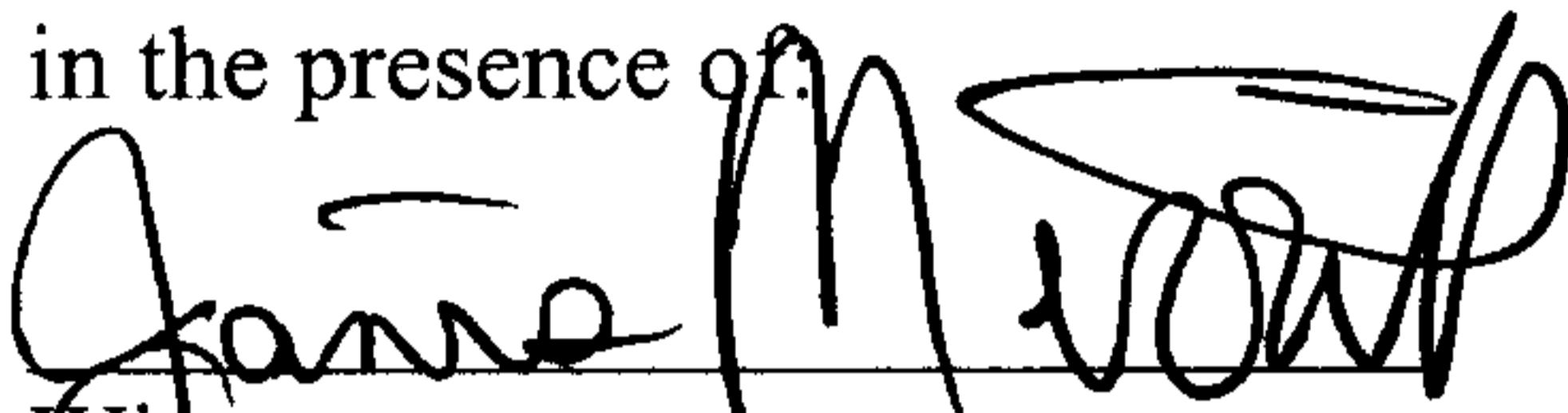
10. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements between Developer and McKibbon with respect to maintenance of the Common Areas and constitutes the sole and entire agreement between Developer and McKibbon with respect thereto.

11. **Headings.** The headings of the paragraphs of this Agreement are for convenience of reference only and are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

12. **Effect.** This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns whether voluntary by act of the parties or involuntary by operation of law.

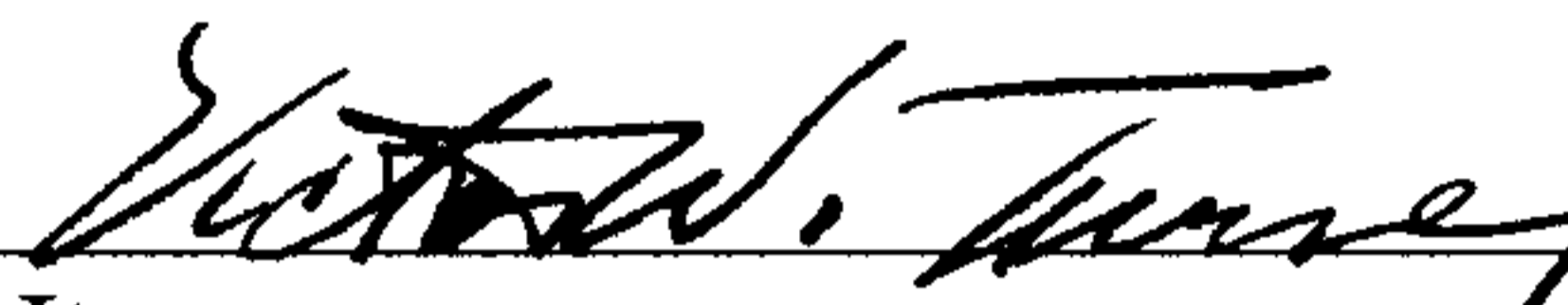

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed under seal as of the date first above written.

Signed, sealed and delivered
in the presence of.


Witness

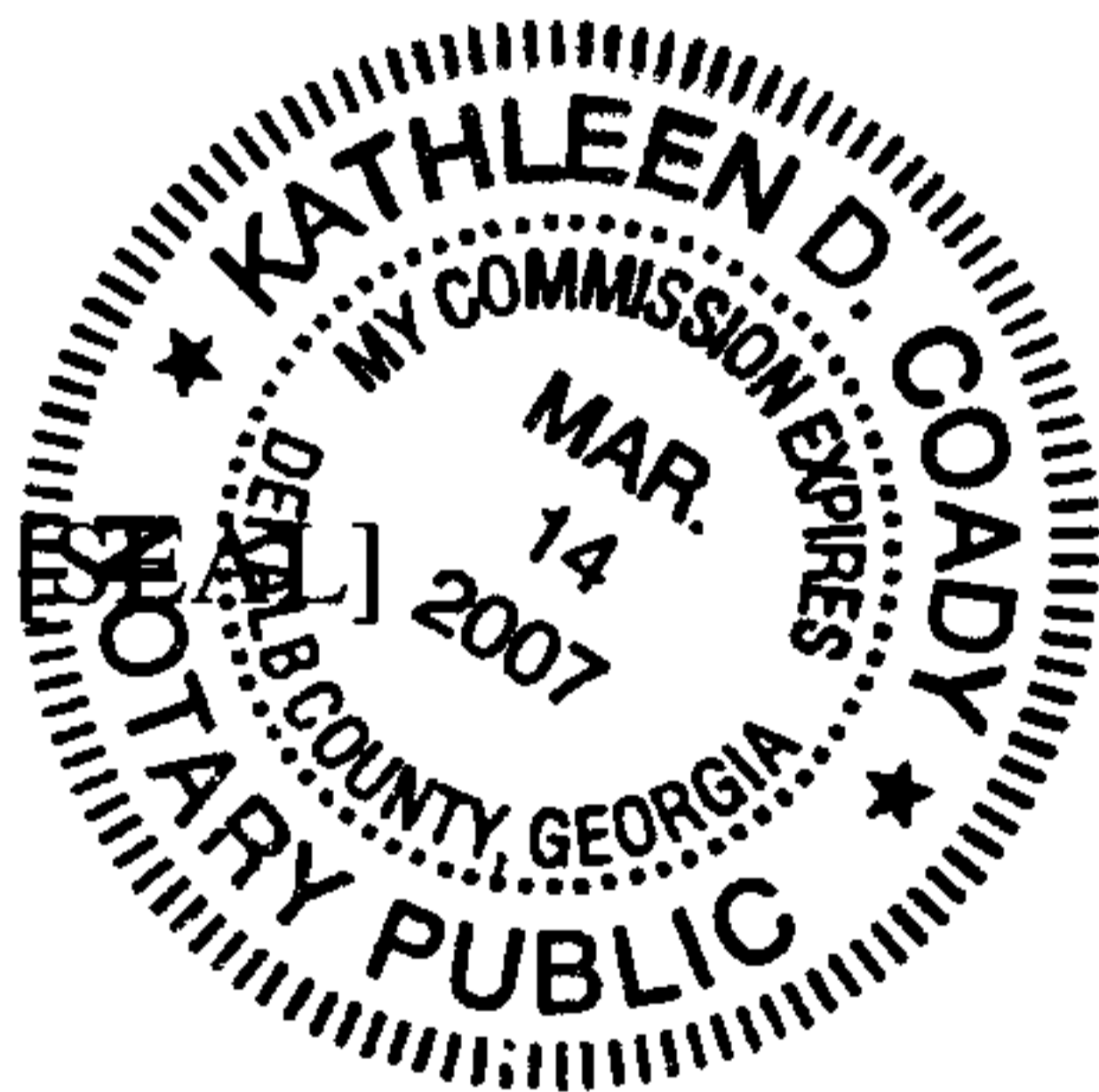
STATE OF GEORGIA }
COUNTY OF FULTON }

METROPOLITAN LIFE INSURANCE COMPANY

By: 
Its: VICE PRESIDENT 

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Victor W. Turner as VICE PRESIDENT of Metropolitan Life Insurance Company, a New York corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 21st day of November, 2003.




Notary Public

Signed, sealed and delivered
in the presence of:

Kotui Whitfield
Witness

MCKIBBON HOTEL GROUP OF BIRMINGHAM,
ALABAMA, L.P.

By: David J. Hughes
Its: President - McKibbon Hotel
Corp. Inc. General Partner

STATE OF Georgia }
Hall COUNTY }

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that David J. Hughes, whose name as President of McKibbon Hotel Group of Birmingham, L.P., a Georgia limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of this instrument, he/she executed the same voluntarily for and as the act of said limited partnership.

Given under my hand and official seal, this the 24th day of November, 2003.

Katherine McGee
Notary Public

Katherine McGee
Notary Public, Hall County, Georgia
My Commission Expires August 23, 2004

[SEAL]

This instrument prepared by:
Thomas C. Clark, III, Esq.
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000

Exhibit "A"

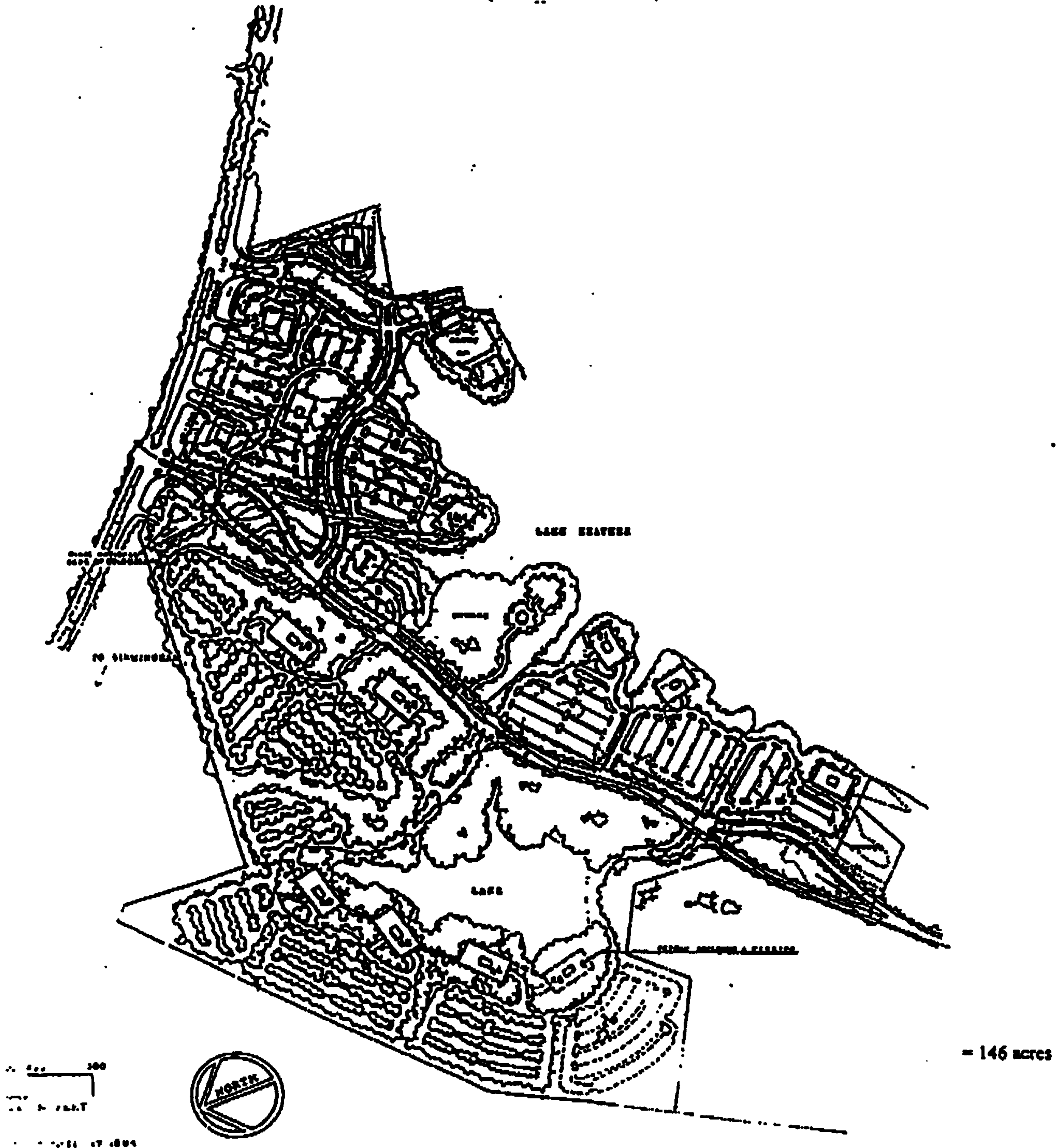
(McKibbon Property)

A parcel of land situated in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, said point also being on the West boundary line of Lot 1, of Dewberry's Subdivision as recorded in Map Book 9, page 11, in the Office of the Judge of Probate, Shelby County, Alabama; thence run North $00^{\circ}01'03''$ West along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ line and said West lot line for a distance of 150.00 feet to the Point of Beginning; thence leaving said $\frac{1}{4}$ - $\frac{1}{4}$ line and said West lot line run South $89^{\circ}58'57''$ West for a distance of 368.00 feet; thence run North $68^{\circ}11'03''$ West for a distance of 175.55 feet to the Southeasterly right of way of Inverness Center Drive (ROW varies); said point also being the point of curvature of a curve to the left, having a radius of 375.00 feet, a central angle of $14^{\circ}31'16''$ a chord length of 94.79 feet and a chord bearing of North $19^{\circ}54'23''$ East; thence continue along the arc of said curve and along said right of way for a distance of 95.04 feet to the Point of Tangency of said curve; thence run North $12^{\circ}38'45''$ East along said right of way for a distance of 78.22 feet; thence run North $03^{\circ}50'26''$ East along said right of way for a distance of 96.13 feet; to the point of curvature of a curve to the right, having a radius of 361.25 feet, a central angle of $24^{\circ}42'04''$ a chord length of 154.54 feet and a chord bearing of North $16^{\circ}11'28''$ East; thence continue along the arc of said curve and along said right of way for a distance of 155.74 feet; thence leaving said right of way run South $73^{\circ}17'13''$ East for a distance of 258.79 feet; thence run South $80^{\circ}00'58''$ East for a distance of 187.24 feet to the West line of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, said point also being on the West line of Lot 1, of Dewberry's Subdivision as recorded in Map Book 9, page 11 in the Office of the Judge of Probate, Shelby County, Alabama; thence run South $00^{\circ}01'03''$ West along said $\frac{1}{4}$ - $\frac{1}{4}$ line and said West lot line for a distance of 368.01 feet to the Point of Beginning.

Together with those rights granted in the Access Road Construction and Easement Agreement and Drainage Easement Agreement recorded in Instrument 20030618000380510, in the Probate Office of Shelby County, Alabama.

Exhibit B
(Inverness Center)



METROPOLITAN LIFE INSURANCE INVESTMENT
Designed and developed by **TAYLOR & MATHIS**

Plan by **REXCH, HOOPER & FINGER**