

SHELBY COUNTY)
STATE OF ALABAMA)

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT is made and entered into as of this 25th day of November, 2003 by **METROPOLITAN LIFE INSURANCE COMPANY**, a New York corporation (hereinafter "MetLife"), and **INVESTMENT ASSOCIATES, LLC**, an Alabama limited liability company (hereinafter "Investment").

WITNESSETH:

WHEREAS, MetLife is the owner of certain real property more particularly described on **EXHIBIT A** attached hereto, consisting of a retail shopping center, located in Shelby County, Alabama, and known as Inverness Corners ("Inverness Corners");

WHEREAS, by Statutory Warranty Deed dated November 2nd, 2003, MetLife conveyed unto Investment certain real estate situated in Shelby County, Alabama which is contiguous with Inverness Corners and is more particularly described on **EXHIBIT B** attached hereto (the "Investment Property"; Inverness Corners and the Investment Property are sometimes hereinafter referred to as the "Parcels");

WHEREAS, the parties hereto agree that vehicular access to and from each of Inverness Corners and the Investment Property via public and private streets, roads, drives, sidewalks and walkways will be improved and enhanced if each Parcel is afforded mutual cross easements for access over the roadways, drives, traffic aisles and lanes and curb-cuts of Inverness Corners and the Investment Property; and

WHEREAS, the parties desire to declare the easements and restrictions set forth below and join in this Declaration and Agreement to grant the above referenced cross and reciprocal access easements and to impose certain restrictions on each of Inverness Corners and the Investment Property to promote the orderly development and use of the respective Parcels.

NOW, THEREFORE, the parties hereby declare that the following easements and restrictions are hereby placed on the development and use of Inverness Corners and the Investment Property:

1. **Incorporation of Recitals.** The Recitals portion of this Agreement is hereby incorporated by this reference to the same extent and as fully as though it were here rewritten in its entirety.

2. **Creation of Mutual Reciprocal Non-Exclusive Perpetual Access Easements Burdening and Benefitting Each of the Parcels.** The owner of Inverness Corners and the owner of the Investment Property each hereby declare and reciprocally grant, for itself and its respective successors and assigns, a perpetual non-exclusive pedestrian and vehicular access

easement to the roadways within each of Inverness Corners and the Investment Property via the roadways, drives, traffic aisles and lanes and curb-cuts now or hereafter from time to time located on said Parcels; provided, however, under no circumstances shall the Parcel owners or any of their respective employees, agents, contractors or other representatives employ either of the Parcels for purposes of construction-related access, and the Parcel owners shall cause all construction-related traffic to flow directly between its respective Parcel and publicly dedicated rights-of-way located contiguous with such Parcel. In the event that one of the Parcel owners (the "Aggrieved Owner") determines that its Parcel is being used for construction-related access in violation of this Agreement, such Aggrieved Owner shall have the right to block such access through any reasonable means, and the Parcel owner engaged in such prohibited use shall be liable to the Aggrieved Owner for (i) all costs incurred in connection therewith and (ii) all damages caused to the Aggrieved Owner's Parcel by such prohibited use. The foregoing mutual reciprocal perpetual non-exclusive access easement grants and declarations are for the benefit of each of Inverness Corners and the Investment Property, the current owner of such Parcel(s) and their successors and assigns who become the owner(s) of such Parcel(s) (or any part thereof), as well as the respective tenants, guests, patrons, invitees, employees and delivery service vehicles (hereinafter referred to as the "Parcel Beneficiaries"). These mutual reciprocal access easements are non-exclusive and in common solely with Inverness Corners and the Investment Property, the current owner of such parcels, and their successors and assigns who become the owner of such parcels (or any part thereof). The owner of each of Inverness Corners and the Investment Property, respectively, shall repair and maintain the driveways on the common areas within its respective parcel, including, but not limited to the exits, entrances, roadways, passageways, landscaping and driveways, at its sole cost and expense in good condition and repair, reasonably free of dirt, rubbish, debris, water, snow and ice, refuse and obstructions, and maintain in good condition and repair the drainage system for the same, so that each access easement heretofore granted may be used and enjoyed by the Parcel Beneficiaries. As consideration for MetLife's agreement to enter into this Agreement, and as partial reimbursement for the expense to be incurred by MetLife as a result of the additional use of the Inverness Corners property, Investment hereby agrees to pay to MetLife an annual easement fee of One Thousand and No/100 Dollars (\$1,000.00), which fee shall be due and payable on or before the 1st day of December of each year during the term of this Agreement. In the event such easement fee is not paid by Investment by such date in any given year during the term hereof, MetLife shall have the option of terminating this Agreement (by written notice thereof to Investment) and prohibiting the use of the Inverness Corners property as contemplated hereby.

3. **MetLife Development.** MetLife expressly reserves the right to develop or cause the development of property adjacent to the Investment Property and the easements created hereby, and to construct any roads which may be necessary to serve such future developments.

4. **Mineral/Mining Rights.** The Easement herein granted does not include mineral and mining rights not owned by MetLife and Investment and is subject to other restrictions and limitations of record.

5. **Stop Signs.** Investment hereby agrees to install, maintain and replace as necessary, at its sole cost, stop signs (the "Stop Signs") on both sides of the service road adjacent to the Investment Property at a location to be determined by MetLife in its sole discretion. In the

event Investment fails to keep the Stop Signs maintained and in good repair as determined by MetLife in its sole discretion, MetLife, its representatives, agents or employees shall have the right, after ten (10) days written notice to Investment, to perform all work needed or desired in order to maintain the Stop Signs in the manner provided herein. Investment hereby agrees to pay MetLife such costs and expenses as MetLife shall reasonably incur by so acting to maintain the Stop Signs within twenty (20) days from the receipt by Investment of a statement from MetLife for any such work.

6. **Right to Enforce.** In the event that the owner of any Parcel burdened by easements herein created fails or refuses to repair, maintain or otherwise comply with the undertakings and agreements affecting the burdened parcels set forth in this Agreement, the non-defaulting owner shall give the defaulting owner notice of such failure in accordance with Paragraph 7 of this Agreement. Upon the defaulting owner's failure to commence activities reasonably designed to cure the noticed default with thirty (30) calendar days after the giving of the notice in accordance with Paragraph 7 hereof, the non-defaulting owners may proceed to cure the default by the defaulting owner. If the defaulting owner timely commences activities to cure the noticed default, but having so commenced, fails to complete said activities within a reasonable period of time or in a reasonable manner, the non-defaulting owner(s) shall not be required to re-notify the defaulting owner and may proceed forthwith to cure the default at the expense of the defaulting owner. A non-defaulting owner is hereby granted an irrevocable license to enter upon the defaulting owner's parcel to undertake and complete reasonably necessary activities to remedy any uncured default of which the defaulting owner has been notified. Any sum reasonably expended by the non-defaulting owner in curing the default by the defaulting owner incurred by the non-defaulting owner are paid at the per annum rate of two percent (2%) above (plus) the prime rate of interest from time to time in effect and quoted in **The Wall Street Journal**.

In addition to the foregoing monetary remedies, nothing contained in this Agreement, whether expressed or implied, shall be deemed or construed to limit any non-defaulting owner from pursuing such other rights and remedies as may be available in accordance with law or equity.

7. **Notices; "Business Days" Defined.** Any notice required or permitted to be given hereunder shall be given in writing and may be personally delivered (including recognized air courier service such as Federal Express or UPS) or mailed, United States Postal Service, registered or certified mail, postage prepaid, return receipt requested, at the following addresses or such other addresses as the owner of any Parcel for itself may designate in writing delivered or mailed as aforesaid for the purpose of receiving notices hereunder, to-wit:

<u>METLIFE:</u>	Metropolitan Life Insurance Company
	2400 Lakeview Parkway
	Suite 400
	Alpharetta, Georgia 30004-1976

With Copy To: Taylor & Mathis, Inc.
Post Office Box 43248
Birmingham, Alabama 35243-0248
Attention: Vice President of Marketing

INVESTMENT: NSH Corp.
2148 Pelham Parkway, Building 600
Pelham, Alabama 35124
Attention: Mr. Jonathan Belcher

Any notices addressed as aforesaid shall be deemed given (and received) by the owner to whom it is addressed as follows:

- a) If personally delivered, on the date that it is delivered;
- b) If sent by air courier service, on the next following business day after placed in the hands of an agent for the air courier service or deposited in a pick-up box for such service; or
- c) If mailed as aforesaid, three (3) business days after deposited with the United States Postal Service.

The terms "business day" or "business days" used in this Agreement are hereby defined and shall mean a day or days which is/are neither a Saturday, Sunday nor holiday observed by the United States Postal Service.

8. **Easements and Covenants to Run With the Land.** The foregoing mutual and reciprocal easements and covenants are hereby declared to be covenants running with the land and are for the benefit of and shall burden Inverness Corners and the Investment Property, the current owners of each of said parcels, their respective successors and assigns, and the herein defined Parcel Beneficiaries.

9. **Indemnification.** Each owner of the Parcels shall protect, defend, hold harmless, and indemnify the owner(s) of the other Parcel from and against any and all claims for death of or injury to person or damage to property, and from all actions of every kind and nature which may arise out of or result from the actions or inactions of, or by reason of the negligent installation or maintenance of any of the roadway improvements by, the indemnifying Parcel owner and its heretofore defined Parcel Beneficiaries upon or adjacent to the Easement.

10. **Binding Effect.** This Agreement and the benefits and obligations hereof shall be binding upon and inure to the benefit of, as the case may be, the parties hereto, their respective heirs, executors, administrators, successors and assigns. Provided, however, upon conveyance of the entire fee simple ownership of a Parcel by an owner, the granting owner shall be automatically and unconditionally released and discharged from any liability arising under this Agreement after the date the deed is recorded in the Probate Office of Shelby County, Alabama.

11. **Construction.** The necessary grammatical changes required to make the provision of this Agreement apply in the plural sense where there is more than one owner and to either corporations, associations, partnership or individuals, males or females, shall in all instances be assumed as though fully expressed. The captions used in this Agreement are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

12. **Severability and Governing Law.** The invalidity or unenforceability of any provision of this Agreement shall not affect or impair the validity of any other provision. The laws of the State of Tennessee shall govern the interpretation, validity, performance and enforcement of this Agreement.

13. **Amendment.** This Agreement may be modified and amended only in a written instrument executed by the record owners of the respective Parcel owners and recorded in the Probate Office of Shelby County, Alabama.

IN WITNESS WHEREOF, this Agreement has been executed by each entity having a contract interest in each Parcel as of the day and year first above written.

METROPOLITAN LIFE INSURANCE COMPANY

By: Victor W. Turner X/A
SW
Its: VICE PRESIDENT

STATE OF GEORGIA}
Fulton COUNTY}

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

Given under my hand and official seal this 22nd day of November, 2003.

Kathleen D. Coady
Notary Public



INVESTMENT ASSOCIATES, LLC

By: NSH Corp., as Member

By: *Jonathan Belcher*
Its: *Vice President*

STATE OF ALABAMA }
COUNTY OF JEFFERSON }

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that *Jonathan Belcher*, as *VP* of NSH Corp., an Alabama corporation, in its capacity as Member of INVESTMENT ASSOCIATES, LLC, an Alabama limited liability company, 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, acting in its capacity of said limited liability company.

Given under my hand and official seal, this the *25* day of *November*, 2003.

M. H. H.
Notary Public

[SEAL]

My Commission Expires May 21, 2004

EXHIBIT A

[Legal Description of Inverness Corners]

Being part of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ and the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, and the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 1, Township 19 South, Range 2 West, all in Shelby County, Alabama, and being more particularly described as follows:

Begin at the Southeast corner of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 36 and looking West along the South line of same turn an angle to the left $6^{\circ}34'27''$ and run Southwesterly 931.50 feet to a point on the proposed Southeasterly right-of-way of Valleydale Road (Shelby County Highway #17); thence right $124^{\circ}37'25''$ and run Northeasterly along said proposed right-of-way line 369.24 feet to the point of curve of a curve to the right having a radius of 1577.04 feet and a central angle of $27^{\circ}00'00''$; thence run Northeasterly along said right-of-way and arc of curve 743.16 feet to the point of tangent; thence continue Northeasterly along said right-of-way 73.70 feet to the point of curve of a curve to the left having a radius of 1492.42 feet and a central angle of $16^{\circ}41'49''$; thence continue Northeasterly along said right-of-way and arc of curve 434.92 feet to a point on the curve also being on the centerline of following described drive; thence right 90° from the tangent of said point on curve and run Southeasterly 43.60 feet to the point of curve of a curve to the left having a radius of 150 feet and a central angle of $57^{\circ}33'49''$; thence run Southeasterly along said centerline of drive and arc of curve 150.70 feet to the point of tangent; thence continue Northeasterly along said centerline of drive 254.10 feet to the point of curve of a curve to the right having a radius of 200.0 feet and a central angle of $47^{\circ}38'13''$; thence run Northeasterly along said centerline of drive and arc of curve 166.28 feet to the point of tangent; thence continue Southeasterly along said centerline of drive 95.65 feet to the point of curve of a curve to the left having a radius of 200.0 feet and a central angle of $29^{\circ}10'47''$; thence run Southeasterly along said centerline of drive and arc of curve 101.86 feet to the point of tangent; thence continue Southeasterly along said centerline of drive 86.25 feet to a point of intersection with the centerline of another drive, said point of intersection being a point on a curve having a radius of 285.0 feet and a central angle of $27^{\circ}30'00''$; thence right 90° to the tangent of said point on curve and run Southeasterly along said centerline of drive and arc of curve 136.79 feet to the point of tangent; thence continue Southeasterly along said centerline of drive 14.65 feet to a point of intersection with the back of curb line of the rear drive of said premises; thence the following courses along said curb line as follows: right $81^{\circ}52'56''$ Southwesterly 252.27 feet to the point of curve of a curve to the right having a radius of 139.50 feet and a central angle of $32^{\circ}47'50''$; thence Southwesterly along the arc of said curve 79.85 feet to the point of tangent; thence Southwesterly 31.88 feet to the point of curve of a curve to the left having a radius of 74.50 feet and a central angle of $58^{\circ}00'00''$; thence Southwesterly along the arc of said curve 75.42 feet to the point of tangent; thence Southwesterly 247.73 feet to the point of curve of a curve to the right having a radius of 189.50 feet and a central angle of $27^{\circ}00'00''$; thence Southwesterly along said arc of curve 89.30 feet to the point of tangent; thence continue Southwesterly 189.11 feet to the point of curve of a curve to the left having a radius of 160.50 feet and a central angle of $27^{\circ}00'00''$; thence run Southwesterly along the arc of said curve 75.63 feet to the point of tangent; thence continue Southwesterly 287.18 feet to a point of intersection with the South line of said Southeast $\frac{1}{4}$ of Southeast $\frac{1}{4}$ of said Section 36; thence right $61^{\circ}34'27''$ and run Westerly along said South line of $\frac{1}{4}$ $\frac{1}{4}$ section 109.70 feet to the point of beginning. Contains 26.53524 acres.

EXHIBIT B

[Legal description of the Investment Property]

A parcel of land situated in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 1, Township 19 South, Range 2 West, Shelby County more particularly described as follows:

Commence at the NE corner of Section 1, Township 19 South, Range 2 West and run South $89^{\circ}40'25''$ West for a distance of 1327.50 feet; thence run South $2^{\circ}36'42''$ East for a distance of 4.08 feet; thence run South $83^{\circ}13'42''$ West for a distance of 127.39 feet; thence run South $80^{\circ}44'11''$ West for a distance of 122.39 feet; thence run South $82^{\circ}09'09''$ West for a distance of 336.12 feet; thence run South $28^{\circ}14'23''$ West for a distance of 6.13 feet to the Point of Beginning; thence continue along the last described course for a distance of 931.71 feet; thence run South $61^{\circ}45'37''$ East for a distance of 63.04 feet; thence run South $28^{\circ}14'23''$ West for a distance of 188.79 feet to a point on the Northeastern boundary of the Inverness Elementary School Property; thence run North $65^{\circ}40'29''$ West along said school boundary for a distance of 337.05 feet to a point on a curve to the right, said curve having a radius of 2824.79 feet and a central angle of $8^{\circ}11'11''$, a chord length of 403.26 feet and a chord bearing North $23^{\circ}31'00''$ East, said curve being the Eastern right of way of Valleydale Road (Shelby County Hwy 17), thence run 403.60 feet along the arc of said curve; thence run North $27^{\circ}36'35''$ East for a distance of 611.60 feet along the Eastern right of way of Valleydale Road; thence run South $62^{\circ}23'25''$ East for a distance of 12.00 feet to a point on a curve to the right having a radius of 80.00 feet, a central angle of $87^{\circ}02'48''$, a chord length of 110.18 feet and a chord bearing of North $71^{\circ}07'59''$ East; thence run 121.54 feet along the arc of said curve; thence run South $65^{\circ}20'37''$ East for a distance of 115.43 feet to a point on a curve to the left, said curve having a radius of 201.26 feet, a central angle of $34^{\circ}17'06''$, a chord length of 118.64 feet and a chord bearing of South $82^{\circ}29'10''$ East; thence run 120.43 feet along the arc of said curve to the Point of Beginning.