
DECLARATION OF EASEMENT AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS ("DER") is made as of the 26 day of May, 2004 ("Effective Date"), by; **AIG BAKER EAST VILLAGE, L.L.C.**, a Delaware limited liability company, for itself and its successors and assigns ("Owner").

RECITALS

WHEREAS, Owner is the owner of a tract or parcel of land located in the City of Hoover, Shelby County, Alabama, on which Owner has constructed a retail shopping center known as the "The Village at Lee Branch – Phase II," said parcel being referred to herein as the "Shopping Center Tract", and being described on Exhibit A attached hereto and shown on the site plan attached hereto as Exhibit C (as such site plan may be modified from time to time, the "Site Plan"); and

WHEREAS, Owner is also the owner of certain tracts or parcels of land located adjacent to the Shopping Center Tract, which Owner intends to sell or lease, and which are designated on the Site Plan and hereinafter referred to as "Pad E," "Pad F," "Pad G," "Pad H," and "Pad I," respectively, and more particularly described in Exhibit B attached hereto (said parcels being hereinafter referred to individually as a "Pad" and collectively as the "Pads"); and

WHEREAS, in order to facilitate the development of the Shopping Center Tract and the Pads as an integrated commercial retail shopping center substantially as shown on the Site Plan, and to protect the retail character and intent of the development, Owner hereby declares and imposes certain covenants, conditions and restrictions upon the Shopping Center Tract and the Pads; and

WHEREAS, Owner expressly intends that each covenant stated herein shall constitute a covenant running with the land, and shall inure to the equal benefit of the owner of the Shopping Center Tract, and the owners of the Pads, and may inure to the benefit of any other entity which

may acquire any interest, in whole or in part in the Shopping Center Tract or the Pads, as the case may be.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Building.

“Building” shall mean any enclosed structure placed, constructed or located on the Property, which for the purpose of this DER, shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

1.2 Building Areas.

“Building Areas” shall mean the limited areas of the Property within which Buildings are or may be constructed, placed or located, including, without limitation, all drive-thru lanes and trash enclosure areas.

1.3 Common Areas.

“Common Areas” shall mean all of the Shopping Center Tract other than the Building Areas, as such areas may change from time to time. Those portions of the Building Areas on the Shopping Center Tract which are not from time to time used or cannot be used for Buildings shall become part of the Common Areas for the uses permitted hereunder.

1.4 Owner.

“Owner” shall mean AIG Baker East Village, L.L.C., and, after compliance with the notice requirements set forth in Section 7.1, its successors and assigns who become owners of all or any portion of the Shopping Center Tract.

1.5 Floor Area.

“Floor Area” means the aggregate from time to time of the actual number of square feet of floor space in any Building designated or intended for use by a Pad Owner or Occupant, whether or not actually occupied, measured from the exterior faces or the exterior lines of the exterior walls, store fronts, walls fronting on any enclosed malls or interior common area, corridors and service area (except party and interior common walls, as to which the center thereof instead of the exterior faces thereof shall be used). “Floor Area” shall include outdoor

balconies, patios or other outdoor areas utilized for retail sales or food or beverage service (exclusive of any permitted drive through or walk-up, take-out food or beverage service).

1.6 Hazardous Materials.

“Hazardous Materials” shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

1.7 Improvements.

“Improvements” shall mean all Buildings and surrounding areas including without limitation all landscaping, entrances, exits, signs, driveways, parking areas and other improvements to be constructed or located on the Pads.

1.8 Occupant.

“Occupant” shall mean any Person, from time to time entitled to the use and occupancy of the Property, or any portion thereof, under an ownership right or any lease, sublease, license, concession or other similar agreement.

1.9 Pad Owner.

“Pad Owner” shall mean, as of any time, the fee simple owner of the Pads at such time, and, after compliance with the notice requirements set forth in Section 7.1, its successors and assigns who become owners of all or any portion of the Pads. Each Pad Owner, by acceptance of a deed conveying ownership of and to its Pad, consents to all of the terms, conditions, rights and obligations hereunder. In no event, unless elected by Owner, shall the term Pad Owner include Owner in the event Owner owns any Pads at any time.

1.10 Party.

“Party” shall mean the Owner and the Pad Owner and, after compliance with the notice requirements set forth in Section 7.1, their respective successors and assigns who become owners of all or any portion of the Property. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Property owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party shall be released from the obligations of this DER arising subsequent to the effective date of the transfer notice.

1.11 Permittee.

“Permittee” shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, tenants, subtenants, and concessionaires of Occupants and other persons who have business with owners of the Property insofar as their activities relate to the permitted use of such Property.

1.12 Person.

“Person” shall mean any individual, partnership, firm, association, corporation, limited liability company, trust or any other form of business or government entity.

1.13 Property.

“Property” shall mean, collectively, the Shopping Center Tract and the Pads, collectively.

1.14 Shopping Center.

“Shopping Center” shall mean that certain commercial shopping complex, located in the City of Hoover, County of Shelby, State of Alabama, and commonly known as The Village at Lee Branch Phase II Shopping Center, which is comprised of the following parcels of real property:

- (a) the Shopping Center Tract (which includes Outlots C & D as shown on the Site Plan;
- (b) Pad E;
- (c) Pad F;
- (d) Pad G;
- (e) Pad H;
- (f) Pad I.

1.14 Utility Lines.

“Utility Lines” shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water.

ARTICLE II

EASEMENTS

2.1. **Ingress, Egress and Parking.** Owner hereby establishes and creates for the benefit of, and as an appurtenance to, the Pads, and for the benefit of the Pad Owners thereof from time to time and their Permittees, a non-exclusive, perpetual easement for the passage and parking of vehicles over and across the parking and driveway areas located in the Common Areas of the Shopping Center Tract, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Common Areas of the Shopping Center Tract, as the same may from time to time be constructed and maintained for such use. Each Pad Owner hereby establishes and creates for the benefit of, and as an appurtenance to, the Shopping Center Tract and the Pads, and for the benefit of the Owner, all Pad Owners, and all Permittees, a non-exclusive, perpetual easement for the passage and parking of vehicles over and across the parking and driveway areas located on the Pads, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Pads, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations, as well as other provisions contained in this DER:

(a) Owner further reserves the right to close off the Common Areas for such reasonable period of time as may be legally necessary, in the opinion of Owner or its counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that in no event shall any such closing prevent access to any Pads and prior to closing off any portion of the Common Areas, as herein provided, Owner shall give written notice to the affected Pad Owner(s) of its intention to do so, and shall attempt to coordinate such closing with such Pad Owner(s) so that no unreasonable interference in the passage of pedestrians or vehicles shall occur; and

(b) The Pad Owners shall have the right to close off the parking and access areas located on the Pads for such reasonable period of time as may be legally necessary, in the opinion of the Pad Owners or their counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that in no event shall any such closing prevent use of the Common Areas of the Shopping Center Tract, and the Pad Owners shall give written notice to Owner of their intention to do so; and

(c) Each Party reserves the right to, at any time and from time to time, to exclude and restrain any Person who is not a Party or Permittee from using the Common Areas on the Shopping Center Tract or the parking and access areas of the Pads, as the case may be; and

(d) In no event shall any Pad Owner be entitled to store materials or personal property, or construct staging materials or construction facilities on, or park construction vehicles within, the Shopping Center Tract without Owner's prior written consent or except as otherwise set forth herein.

2.2 Utilities.

(a) Owner hereby grants and conveys to the Pad Owners a non-exclusive perpetual easement in, to, over, under, along and across those portions of the Common Areas (exclusive of any portion located within Building Areas) located on the Shopping Center Tract necessary for the tie-in and use of Utility Lines installed by Owner or its agents serving the Pads, including, but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines; provided, however, in no event shall the operation of any such Utility Line have a material, adverse impact on the Shopping Center. Any other Utility Lines which may need to be installed or constructed from time to time, for use by the Pads, shall be installed or constructed only with the prior written consent of the Owner

(b) The Pad Owners shall be responsible for all governmental impact fees due for development on their respective Pads, and the Pad Owners shall, at their sole cost and expense, be responsible for tap in/hook-up into the utilities upon payment by said Pad Owners of the standard tap in/ hook-up fees to the respective utility providers.

2.3 Storm Water. Owner hereby grants and conveys to the Pad Owners a non-exclusive perpetual right and easement to discharge surface storm drainage and/or runoff from the Pads over, upon and across the Common Areas of the Shopping Center Tract and into the water collection, retention and distribution facilities, so long as such drainage shall not cause any damage to the Shopping Center or any improvements thereon.

ARTICLE III

CONSTRUCTION

3.1 General Requirements.

(a) All construction activities performed within the Pads shall be performed in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof. All construction shall utilize new materials, and shall be performed in a good, safe, workman like manner.

(b) The construction activities on the Pads, if any, shall not:

(i) unreasonably interfere with the use, occupancy or enjoyment of any part of the Shopping Center by any occupant thereof; and

(ii) cause the Shopping Center or any Building located in the Shopping Center to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof, including, without limitation, all parking codes, regulations and ordinances, or cause Owner to be in default or in violation of any lease.

(c) All Pad Owners shall use the staging area designated by Owner (the "Staging Areas"), and each Pad Owner shall conduct its construction activities on its Pad in such a manner so as to keep its construction activities solely within the designated Staging Areas, including, without limitation, all vehicles, workers, materials and scaffolding. Parking for all motor vehicles involved in the construction shall only be allowed to park within the confines of the Staging Areas. All construction on the Pads shall be conducted in a manner as to minimize any interference with the construction or operation of the Shopping Center.

(d) Each Pad Owner shall conduct its construction activities on its Pad in such a manner so as to minimize damage to the Shopping Center or the Common Areas. In the event any part of the Shopping Center Tract, the Common Areas or another Pad is damaged due to any Pad Owner's construction activities conducted on its Pad, the damaging Pad Owner shall promptly repair and restore the damaged area to the same condition as existed immediately prior to said Pad Owner's construction activities. To the extent permitted by laws, each Pad Owner shall and agrees to defend, indemnify and hold harmless Owner from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person (including without limitation any damage to the Shopping Center) arising out of or resulting from any construction activities performed or authorized by such indemnifying Pad Owner; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of Owner or its agents or anyone claiming by, through or under any of them.

(e) Each Pad Owner shall commence construction of its Improvements as soon as reasonably practicable after taking ownership from the Owner (or after any other such transfer of ownership), and shall thereafter continue to pursue such construction with due diligence to completion.

(f) In connection with the construction of improvements upon its Pad, each Pad Owner shall regularly clean, as reasonably needed, the roadways and driveways used by its construction vehicles of mud, dirt and construction debris resulting from its construction, and upon completion of such construction activity shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

3.2 Building Restrictions.

(a) No sign or Building constructed, placed or erected on any Pad shall exceed one story in height; (c) exceed a maximum height of twenty-six feet (26') as measured from the finished floor level to the highest point on such building or structure (inclusive of the height of all types of projections or architectural treatments or embellishments thereon, such as, but without limitation, HVAC equipment, parapets, mansards, signs, satellite dishes, and antennae).

(b) No more than one building shall be constructed on any Pad.

(c) Unless Owner's prior written consent is obtained, the Floor Area of any

Building constructed, placed or erected on any Pad shall not exceed the following sizes:

Pad E -	6,400 square feet
Pad F -	6,400 square feet
Pad G -	8,000 square feet
Pad H -	as approved by Owner
Pad I -	as approved by Owner

3.3 Signage. Subject to applicable governmental approvals and Seller's right to approve as set forth in Section 3.4 above, each Pad Owner shall have the right to install its standard corporate building signage on the Building to be constructed on the Pad. Any freestanding signage any Pad Owner desires to erect must be submitted to Owner with its Site Plan as set forth below, and approved by Owner. The applicable governmental authorities may not permit freestanding signage or may limit the amount of freestanding signage available in the Shopping Center, and, as such, it shall not be unreasonable for Owner to disapprove any freestanding signage.

3.4 Site Plan Approval.

(a) It is the intention of Owner that all buildings, signs, landscaping and related improvements located upon the Pads be constructed, installed, erected, operated and maintained so as to be consistent with standards of first class shopping center development and, in any case, compatible with and complementary to the improvements and landscaping within the Shopping Center. Accordingly, site layout and all buildings, signs, landscaping and related improvements upon the Pads, including initial construction and any exterior alterations on the Pads, exterior remodeling, or reconstruction of any improvements following the initial construction thereof (except for any reconstruction pursuant to plans previously approved by Owner), shall be performed only in accordance with plans for such work approved by Owner as set forth in this Section 3.4.

(b) No initial construction of any Improvements, including any structure, building, fence, wall, parking area facility, landscaping, driveway or sign shall be initiated or begun upon the Pads without Owner's prior written approval of the Plans (as hereinafter defined), and upon Owner's approval of such Plans, any construction shall be effected substantially in accordance with such approved Plans (the "Approved Plans"). As used herein, the term "Plans" shall mean construction plans, working drawings and specifications prepared under supervision of an architect and engineer licensed to practice architecture and engineering in the State of Alabama and shall include:

(i) A site plan showing location of all Buildings and other structures to be constructed on the Pads as well as location of all entrances, exits, signs, driveways, parking areas (including without limitation, parking space detail if applicable) and other pertinent material.

(ii) Complete details as to the grading, drainage, utility service, paving,

exterior lighting, landscaping and screening.

(iii) Front, side and rear colored elevation drawings, including floor and roof plans, for all buildings and structures.

(iv) Wall sections.

(v) Detailed identification of construction materials and colors.

(vi) Detailed signage drawings, including color samples, for any signage to be located on the Building.

(c) Owner reserves to itself the sole and exclusive authority to approve such Plans or to disapprove the same for initial consideration, and Owner will disapprove such proposed Plans only if it deems, in its reasonable discretion, (i) that the Improvements (including landscaping) contemplated by the Plans are not in accordance with the construction standards or the requirements required by the applicable governing authority or by occupants or tenants in the Shopping Center, (ii) that the Improvements will detract from the attractiveness of the Shopping Center or will be unsuitable, undesirable or inappropriate for aesthetic reasons, (iii) that the exterior design, color scheme, finish, proportions or style of architecture of the proposed Improvements are not compatible with the improvements in the Shopping Center, or (iv) that the Plans do not include such information as is reasonably required by Owner for the purposes of approving the proposed development of the Pads.

(d) Prior to construction, unless otherwise agreed by the Parties, the Pad Owners shall provide Owner with a minimum of two (2) sets of its Plans for Owner's approval. Owner shall have twenty (20) days from receipt of the Plans to approve or disapprove the Plans. Owner shall approve the Plans by causing both sets of Plans to be initialed on its behalf and returning one (1) set of Plans to the Pad Owners (the "Approved Plans"). If Owner fails to respond either approve the Plans or reject the Plans within said twenty-day period, the Plans shall be deemed as approved by Owner. If Owner shall disapprove the Plans, it shall give its reasons therefore and the Pad Owners shall not commence construction until the Plans have been revised so as to meet Owner's reasonable objections or until Owner and Pad Owner mutually consult to establish Approved Plans for the proposed Improvements.

(e) The Pad Owners shall construct the Improvements on the Pads in substantial compliance with the Approved Plans, subject to site modifications and zoning conditions. Owner reserves the right to approve any material changes from the Approved Plans including but not limited to any material changes in the elevations and signage, and reserves the right to approve any plans to reconstruction or future alterations or renovations.

(f) In furtherance of the foregoing, but without limiting in any way the right of Owner to approve all Plans as aforesaid, the foregoing standards shall be applicable:

(i) All exposed exterior surfaces of any Buildings on the Pads shall be

properly finished prior to the occupancy or use of the same.

(ii) No used materials shall be incorporated in, on or into the exterior surfaces of any Buildings on the Pads without the express written consent of Owner.

(iii) All Improvements on the Pads shall be construed and maintained at all times in accordance with all applicable building codes, ordinances, rules and regulations of all governmental authorities having jurisdiction therefor.

(iv) Storage tanks, cooling towers, vents, hoods, transformers, garbage dumpsters, loading docks and other loading and unloading facilities, and any other like structures or equipment located on the Pads shall be fully screened and hidden from public view. All roof top equipment shall be fully screened.

(g) No provision or requirement set forth herein shall constitute Owner as an agent of any Pad Owner relating to the compliance of the Approved Plans with any laws, rules, orders, ordinances, directions, regulations, and requirements of any federal, state, county and municipal authorities, now in force or which hereafter be in force, including but not limited to the Americans with Disabilities Act or 1990. Such approval by Owner shall be to insure that the Improvements do not violate the restrictions set forth herein and are reasonably architecturally harmonious with the Shopping Center.

(h) The parking and access area on the Pads, if any, shall be constructed substantially as shown on the Site Plan and shall not be altered in any manner without the prior written consent of Owner.

ARTICLE IV

MAINTENANCE

4.1 Maintenance of the Pads.

(a) From and after the date of Closing, the Pad Owners shall maintain or cause to be maintained, the Improvements on the Pads in good condition and repair. The minimum standard of maintenance for the Improvements on the Pads shall be comparable to the standard of maintenance currently existing at the Shopping Center and otherwise followed in other first class commercial shopping centers in the metropolitan Hoover, Alabama area. Notwithstanding the foregoing, the Improvements on the Pads shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances. All materials used in the repair and/or replacement of any Improvements shall be at least equal to the quality of the materials used originally and shall maintain the architectural and aesthetic harmony of the Shopping Center as a whole. The maintenance and repair obligation shall include, but not be limited to, the following:

(i) Keeping and maintaining the surfaces in a level, smooth and

evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(ii) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(iii) Maintaining, cleaning and replacing any necessary directional, stop or handicapped signs or markers; restriping any parking lots and drive lanes located on the Pads as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks, if any;

(iv) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(v) Maintaining all perimeter and exterior building walls, including, but not limited to, all parapets and retaining walls in a good condition and state of repair;

(vi) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and

(vii) Maintaining elements of the storm drainage system.

(c) After construction of building improvements upon any Pad, the Pad Owner of such Pad shall maintain and keep, or cause to be maintained and kept, the exterior portions of such improvements, including service areas, loading docks and signage, in a good, clean, safe, sightly, and orderly condition and state of repair, reasonably free from odors and vermin, consistent with the standards of maintenance followed in other first-class retail developments of comparable size in the metropolitan area where the Shopping Center is located. All trash and garbage from the operation of business upon any Pad shall be stored in adequate containers, and areas near trash containers shall be maintained in a clean, neat and safe condition. Each Pad Owner shall arrange or cause its tenants to arrange for regular removal of such trash or garbage from its Pad.

(d) In the event the Building or any of the Improvements upon any Pad are damaged by fire or other casualty (whether insured or not), the Pad Owner upon whose Pad such improvements are located shall promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the improvements so damaged, (ii) erect other improvements in such location, or (iii) restore any remaining improvements to an architectural whole, demolish any unrestored improvements, remove all debris, and pave or grass and otherwise restore the area to a neat, orderly, sanitary and attractive condition. Each Pad Owner shall have the option to choose among the aforesaid alternatives, but each Pad Owner shall be obligated to perform one of such alternatives. Nothing herein shall limit the rights or obligations of any Pad Owner and Occupant of a Pad under the

terms of any lease or other separate agreement between such Pad Owner and Occupant.

4.2 Maintenance of the Shopping Center Tract. The Owner shall cause to be maintained, or maintain, the Common Areas in good condition and repair. The minimum standard of maintenance for the Common Areas shall be comparable to the standard of maintenance currently existing at the Shopping Center and otherwise followed in other first class commercial shopping centers in the metropolitan Hoover, Alabama area. Notwithstanding the foregoing, the Common Areas shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances.

4.3 Liens. Each Party agrees to defend, indemnify and hold each other Party harmless from and against any mechanic's, materialman's and/or labor's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorneys' fees and court costs, arising out of and in connection with their respective maintenance obligations set forth in the Article IV, and in the event that any portion of the Property shall become subject to any lien of another Party, such Party shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to the lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

ARTICLE V

OPERATION OF THE SHOPPING CENTER

5.1 Uses.

(a) The Pads shall be used for any lawful commercial retail purposes subject only to the restrictions set forth in this DER.

(b) During the term of this DER, no portion of the Pads shall be used for the uses or purposes as set forth in Exhibit D attached hereto.

(c) At all times, the Pads shall be operated in compliance with all applicable governmental rules, regulations, codes and ordinances, including without limitation those regulations regarding parking. At all times, the Pads shall be operated so that the entire Shopping Center remains in compliance with such codes. Once each Pad Owner's Plans are initially approved by Owner as set forth in Section 3.4 above, any changes in use which require additional parking shall be approved in writing by Owner.

(d) Parking by employees of any Pad Owner or Occupant shall be in designated "employee parking" areas, the location of which shall be determined by Owner in the event Owner deems it necessary to designate such areas; provided Owner shall be under no obligation to do so.

5.2 CAM Charges. Subject to and in accordance with the provisions of this Section 5.2, each Pad Owner shall pay to Owner its Pro Rata Share (as hereafter defined) of the following

costs, fees and expenses incurred by Center Owner in connection with the maintenance, management and operation of the Common Areas of the Shopping Center (collectively, "CAM Charges"):

(a) Taxes. The total costs of any real property taxes and assessments (including without limitation sanitary sewer taxes, extraordinary or special assessments and all costs and fees (exclusive of any interest or late fees assessed for delinquent payment), reasonable attorney's fees incurred in contesting or negotiating the same with public authorities) levied or imposed or assessed against the Shopping Center during each calendar year. Each Pad Owner shall be responsible for and shall pay to the appropriate taxing authority directly all real property taxes and assessments applicable to each Pad Owner's respective Pad.

(b) Insurance Costs. Any and all insurance carried by Owner with respect to the Common Areas of the Shopping Center (collectively, "Insurance Costs").

(c) Maintenance Costs. The total costs incurred in the normal administration, operation and preventive and corrective maintenance of the Common Areas of the Shopping Center, including without limitation and by example only: the cost and expense of maintaining, repairing, restriping, lighting, signing, cleaning, sweeping, painting, removal of snow, ice, trash, debris; the costs and expense for utilities used or consumed; the costs of landscaping, including watering, planting, replanting, and replacing flowers, trees, shrubs, and planters; the cost and expense of rental or depreciation of machinery, equipment, fixtures and personal property used; the costs of capital expenses amortized over the useful life of the item; the repair or replacement of any paving, curbs, walkways, drainage, pipes, conduits, lighting (including bulbs and ballasts) and similar items; security services, if any; property owner association fees, if any; the cost of personnel to implement maintenance services; management fee; and an administrative fee equal to fifteen (15%) of the total cost of operating and maintaining the Shared Common Facilities.

(d) Pad Owner's Pro Rata Share. An annual sum for each Pad Owner's portion of the annual CAM Charges limited to and determined by multiplying the applicable CAM Charges by a fraction, the numerator of which shall be the square footage of the Floor Area of any Building structure placed, constructed or located on a Pad, and the denominator of which shall be the square footage of the total leasable and/or occupiable area within the Shopping Center, excluding however, the land area of parcels the owner, lessee or occupants of which self-maintain with respect to any particular component of the CAM Charges, or any land parcels within the Shopping Center which Owner does not own.

The payment of each Pad Owner's Pro Rata Share shall commence on the earlier of (i) the day the initial Pad Owner (other than the Owner) opens its business to the public; or (ii) one-hundred (120) days after the closing of the sale of the applicable Pad from the Owner to the initial owner of the applicable Pad, if a sale, or (iii) one-hundred (120) days after the effective date of the lease, if a Pad is ground leased from the Owner (the "Commencement Date") (provided that in the event the Owner is not AIG Baker East Village, L.L.C. at any time, the Commencement Date for any Pads owned by AIG Baker East Village, L.L.C. at such time, will be day the Pad Owner opens for business). The Owner shall establish the fiscal year for

determining the payment of each Pad Owner's Pro Rata Share of CAM, Taxes and Insurance. Within thirty (30) days of the Commencement Date, and at least once per fiscal year thereafter, the Owner shall furnish each Pad Owner with a statement stating the total budget for the Common Areas. If at any time during the calendar year Owner determines that the initial estimate should be revised so that it will more closely approximate the expected actual Pad CAM Charges, Owner may revise the initial estimate by delivering to a Pad Owner a subsequent statement. Within sixty (60) days following each calendar year for the Shopping Center, Owner shall deliver to each Pad Owner a statement of the actual Pad CAM Charges payable by each Pad Owner for the previous calendar period. Owner's failure to include any item of CAM Charges or to submit statements as called for herein shall not be deemed to be a waiver of Pad Owner's requirement to pay the sums herein provided. If the total amount of estimated payments paid by Pad Owner for any calendar period is less than the actual Pad CAM Charges payable by Pad Owner for the same period, then the Pad Owner shall pay the balance of the Pad CAM Charges to Owner in one lump sum within fifteen (15) days after Owner delivers to the Pad Owner the statement of the actual amount. If the total amount of the estimated payments paid by a Pad Owner for any calendar period is greater than the actual Pad CAM Charges for the same period, then the Pad Owner shall receive a credit against the next due payment(s) of estimated Pad CAM Charges.

At least once per fiscal year, the Owner shall have the right to increase each Pad Owner's Pro Rata Share by an amount not to exceed five percent (5%) of the total contribution made by said Pad Owner in the previous fiscal period. Each Pad Owner shall pay to the Owner on the first day of each month during each calendar year the monthly installments of CAM, Taxes and Insurance based upon the amount of each Pad Owner's Pro Rata Share. Owner's failure to timely submit such budget or the annual statement shall not affect each Pad Owner's obligation to pay its pro rata share during any period.

Each Pad Owner acknowledges and agrees that, in the event (a) any portion of the Common Areas is ever maintained by a party other than the Owner, at no cost to Owner, and/or (b) any party other than the Owner is separately assessed and pays Taxes on any portion of the Shopping Center, at no cost to Owner, then the Pad Owner's Pro Rata Share of the CAM Charges shall be adjusted accordingly. Additionally, a Pad Owner's Pro Rata Share of the CAM Charges shall be subject to adjustment by Owner in the event the leasable and/or occupiable area of the Shopping Center is diminished by casualty, condemnation or similar takings or other events reducing the leasable and/or occupiable area or if the leasable and/or occupiable area is increased by additions to the Shopping Center.

5.3 Taxes. Each Pad Owner shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real and personal property taxes and assessments which are levied against each Pad Owner's Pad.

5.3 Insurance/Indemnification.

(a) Each Pad Owner shall procure and maintain in full force and effect throughout the term of this DER general public liability insurance and property damage insurance

against claims for personal injury, death or property damage occurring upon, in or about its property, each Pad Owner's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Each Pad Owner shall also name Owner as an additional insured on its general liability insurance and deliver to Owner a certificate of insurance evidencing such prior to its entry onto the Property. Each Pad Owner shall provide to the Owner its certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by each Pad Owner which may cover other property in addition to the property covered by this DER. Such insurance shall provide that the same may not be cancelled without thirty (30) days prior written notice to the Owner.

(b) Each Pad Owner covenants and agrees to defend, protect, indemnify and hold harmless Owner from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorneys' fees and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to property of any Person located on each Pad Owner's Pad, except for claims caused by the negligence or willful act or omission of the Owner or its Permittees.

(c) The Owner covenants and agrees to defend, protect, indemnify and hold harmless the Pad Owners from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorneys' fees and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to property of any Person located in the Common Areas, except for claims caused by the negligence or willful act or omission of the Owner or its Permittees.

5.4 Hazardous Materials. As of the Effective Date, no Party shall use, or permit the use of Hazardous Materials on or about, under the Property, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all applicable federal, state and local laws governing the same. Each Party shall indemnify, protect, defend and hold harmless any other Party from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including, but not limited to, costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by such indemnifying Party, occurring after the Effective Date hereof, whether or not in the ordinary course of business.

5.6 Name of the Shopping Center. Until such time as all Parties agree otherwise, the Shopping Center shall be called The Village At Lee Branch-Phase II Shopping Center.

ARTICLE VI

DEFAULT

6.1 Default. If any Party shall fail to perform any covenant or condition contained in this DER, the aggrieved Party shall give the defaulting Party at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default is not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting Party shall have not in good faith have commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved Party may institute legal and/or equitable proceedings for full and adequate relief from the consequences of said default or threatened default.

6.2 Self-Help. If a Party fails to operate or maintain all or any portion of their respective Property pursuant to and in accordance with the provisions of this DER, or defaults under any other obligations set forth in this DER, then any non-defaulting Party, after notice and time to cure as herein permitted, shall have the right to perform such obligations on behalf of the defaulting Party and the defaulting Party agrees to reimburse the Party performing the work within thirty (30) days of receipt of an invoice documenting such costs. Any such claim for reimbursements shall be secured by a lien on the Property of the defaulting Party which lien shall be effective upon recording of a notice thereof in the appropriate public records for Shelby County, Alabama. The lien shall be subordinate to any first mortgage/deed of trust then encumbering the Tract(s) in question.

ARTICLE VII

MISCELLANEOUS

7.1 Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt or (d) by legible facsimile (followed by hard copy delivered in accordance with the preceding subsections (a)-(c)), and such notices shall be addressed as follows:

To Owner:

AIG Baker East Village, L.L.C.
c/o AIG Baker Shopping Center Properties, L.L.C.
1701 Lee Branch Lane
Birmingham, AL 35242
Attn: Legal Department
Telephone No.: (205) 969-1000
Facsimile No.: (205) 969-9467

or to such other address as the Parties may from time to time specify in writing to the other Party. Any notice shall be effective only upon receipt (or refusal by the intended recipient to accept delivery). Notices sent or received by a party's designated counsel shall be deemed sent or received, as the case may be, to the applicable Party. The address for the Pad Owner of each Pad shall be the address maintained by the Pad Owners on file with the office of the County Assessor

for delivery of ad valorem tax statements relating to each Pad Owner's respective Pads, unless Owner is otherwise notified. A Party transferring all or any portion of its interest in the Property shall give notice to the other Party(s) of such transfer and shall include therein at least the following information: (1) the name and address of the new Party; (2) a copy of the legal description of the portion of the Property transferred; and (3) in the case of a Pad Owner, an agreement by the transferee Pad Owner to assume all obligations which accrue during its period of ownership.

7.2 Estoppel Certificate. Each Party, upon request by another Party, agrees that upon written request not more than once per annum, it will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

(a) whether it knows of any default under this DER by the requesting Person, and if there are known defaults, specifying the nature thereof;

(b) whether the DER has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and

(c) whether this DER is in full force and effect.

7.3 Mortgagee Protection. Any Pad Owner shall have the right to encumber its interest in its respective Pad by mortgage or deed of trust, provided that such mortgage or deed of trust is subject to and subordinate to this DER.

7.4 Time. Time is of the essence in the performance of each of the Pad Owner's respective obligations contained herein.

7.5 Attorneys' Fees. If either Party hereto fails to perform any of its obligations under this DER or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this DER, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs (including costs of any trial or appeal there from) and reasonable attorneys' fees and disbursements.

7.6 Governing Law; Jurisdiction and Venue.

(a) **THIS DER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA.**

(b) For the purposes of any suit, action or proceeding involving this DER, each Party hereby expressly submits itself to the jurisdiction of all federal and state courts sitting in the State of Alabama and consents that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such

court's jurisdiction by registered mail or by personal service, provided that a reasonable time for appearance is allowed, and each Party agrees that such courts shall have the exclusive jurisdiction over any such suit, action or proceeding commenced by any Party. In furtherance of such agreement, each Party agrees upon the request of another Party to discontinue (or agree to the discontinuance of) any such suit, action or proceeding pending in any other jurisdiction.

(c) Each Party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this DER brought in any federal or state court sitting in the State of Alabama and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

7.7 Waiver of Trial by Jury.

EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS DER OR ANY OF THE DOCUMENTS EXECUTED IN CONNECTION HERewith, THE PROPERTY, OR ANY CLAIMS, DEFENSES, RIGHTS OF SET-OFF OR OTHER ACTIONS PERTAINING HERETO OR TO ANY OF THE FOREGOING.

7.8 Rights of Successors. The provisions of this DER will be binding upon Owner and each Pad Owner of the Pads, and their respective successors, heirs, assigns and mortgagees to the extent herein provided. Each covenant herein is made for the mutual and reciprocal benefit of the Pads and the Shopping Center Tract and constitutes a covenant running with the land and binds every owner now having or hereinafter acquiring an interest in the Pads or the Shopping Center Tract. This DER shall create privity of contract with and among Owner and all grantees of all or any portion of the Property and their respective heirs, executors, administrators, successors and assigns. Each of the easements and restrictions created by this DER are appurtenant to the property to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to said property.

7.9 Severability. The invalidation of any one of the covenants, conditions, restrictions or other provisions herein contained by judgment or court order shall in no way affect the remaining covenants, conditions, restrictions or other provisions hereof, and the same shall remain in full force and effect.

7.10 Joint Venture. Nothing herein shall be construed to make any Party a partner or party to a joint venture with any other Party, or to render any Party responsible or liable for the debts of any other Party. Nothing herein shall restrict a Party's right to sell, lease, mortgage or otherwise convey its interest in the Property; provided, however, upon any such conveyance, the successor in interest shall be subject to the terms, conditions and obligations set forth in this DER.

7.11 Modification. This DER may be modified, or amended in whole or in part only by a written and recorded instrument recorded in said public records and signed by Owner only; provided that in the event any such modification or amendment materially affects the rights of any Pad Owner hereunder or materially affects said Pad Owner's use of its Pad, then the affected Pad Owner's consent to such modification or amendment shall be obtained. Nothing herein shall prohibit or restrict the Pad Owners from entering into separate agreements which, as between such parties only, modify their respective rights and obligations under this DER.

7.12 Remedies. The rights established hereunder, and each of them, shall be enforceable at law or in equity, it being fully understood that an action for damages shall not be an adequate remedy for a breach of this DER. Any Party hereto shall be entitled to pursue injunctive relief or specific performance with respect to any violation or threatened violation by any party of any of the terms, covenants, or conditions of this DER.

7.13 Merger of Title. The covenants, agreements, rights, privileges and easements established herein shall survive any merger of title to the Pads and the Shopping Center Tract.

7.14 Non-Waiver. The failure of Owner to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which Owner may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

7.15 Captions. The captions and paragraphs of this DER are for convenience only and are not intended to affect the interpretation or construction of the provisions herein stated.

7.16 Not a Dedication. Nothing in this DER shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever. It is the intention of the Owner that this DER be strictly limited to and for the purposes expressed herein.

7.17 Transfer of Ownership of the Shopping Center Tract. In the event AIG Baker East Village ever sell, transfers or conveys all of its right, title and interest in and to the Shopping Center Tract to a third party (other than Outlots C and D as shown on the Site Plan), and at the time of such conveyance, retains ownership of all or any Pads, from and after the date of such conveyance of the Shopping Center Tract, the provisions of Section 3.4 shall not apply to the Pads owned by AIG Baker East Village, L.L.C. at such time.

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IN WITNESS WHEREOF, the Owner has executed this DER as of the Effective Date.

OWNER:

AIG BAKER EAST VILLAGE, L.L.C.,
a Delaware limited liability company,

By: AIG Baker Shopping Center Properties, L.L.C.,
a Delaware limited liability company,
its sole member

By: Alex D. Baker
Alex D. Baker
President

Amy E. McNell
Witness
Mark C. Matthews
Witness

ACKNOWLEDGMENT FOR OWNER

STATE OF ALABAMA)
) SS:
COUNTY OF SHELBY)

On this 18 day of May, 2004, before me appeared Alex D. Baker, to me personally known, who being by me duly sworn, did say that he is the President of AIG Baker Shopping Center Properties, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware, the sole member of AIG Baker East Village, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware and that said instrument was signed and sealed on behalf of said limited liability company by authority of its members, and said Executive Vice President acknowledged said instrument to be the free act and deed of said limited liability company.

Mary Lyon Fay
Print Name: Mary Lyon Fay
Notary Public, State at Large: Alabama
My Commission Expires: 3-29-08

EXHIBIT A

LEGAL DESCRIPTION OF SHOPPING CENTER TRACT

Lots 1, 2 and 3 of The Village at Lee Branch Sector 1 – Phase 2, as recorded in Map Book 33, Page 58, being a re-subdivision of Lot 5A of The Village at Lee Branch Sector 1 – Revision 1 as recorded in Map Book 31, page 130A & 130B, in the Probate Office of Shelby County, Alabama.

EXHIBIT B

LEGAL DESCRIPTION OF THE PADS

Pad E

Lot 4 of The Village at Lee Branch Sector 1 – Phase 2, as recorded in Map Book 33, Page 58, being a re-subdivision of Lot 5A of The Village at Lee Branch Sector 1 – Revision 1 as recorded in Map Book 31, page 130A & 130B, in the Probate Office of Shelby County, Alabama.

Pad F

Lot 5 of The Village at Lee Branch Sector 1 – Phase 2, as recorded in Map Book 33, Page 58, being a re-subdivision of Lot 5A of The Village at Lee Branch Sector 1 – Revision 1 as recorded in Map Book 31, page 130A & 130B, in the Probate Office of Shelby County, Alabama.

Pad G

Lot 6 of The Village at Lee Branch Sector 1 – Phase 2, as recorded in Map Book 33, Page 58, being a re-subdivision of Lot 5A of The Village at Lee Branch Sector 1 – Revision 1 as recorded in Map Book 31, page 130A & 130B, in the Probate Office of Shelby County, Alabama.

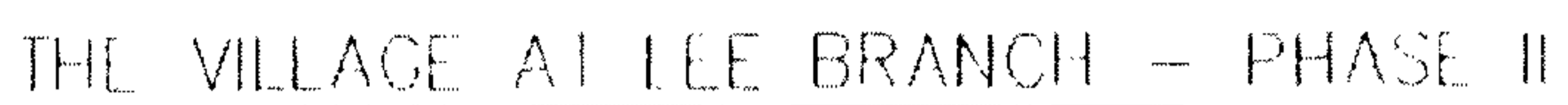
Pad H

Lot 7 of The Village at Lee Branch Sector 1 – Phase 2, as recorded in Map Book 33, Page 58, being a re-subdivision of Lot 5A of The Village at Lee Branch Sector 1 – Revision 1 as recorded in Map Book 31, page 130A & 130B, in the Probate Office of Shelby County, Alabama.

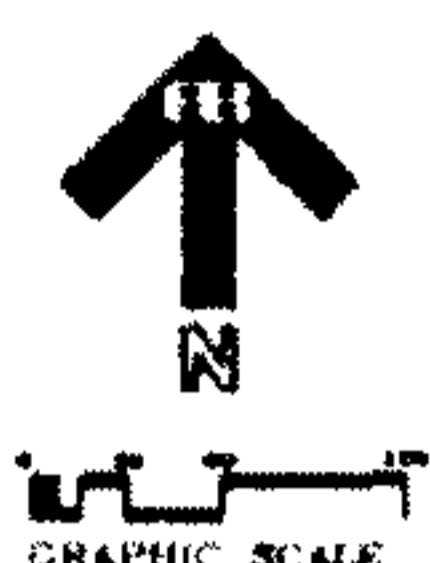
Pad I

Lot 8 of The Village at Lee Branch Sector 1 – Phase 2, as recorded in Map Book 33, Page 58, being a re-subdivision of Lot 5A of The Village at Lee Branch Sector 1 – Revision 1 as recorded in Map Book 31, page 130A & 130B, in the Probate Office of Shelby County, Alabama.

SITE PLAN



AIG Baker East Village, L.L.C.
SHELBY COUNTY, ALABAMA



LAKE
±8.1 ACRES

UPPER FLOOR LAYOUT

Shopping Center Tract

EXHIBIT D

PROHIBITED USES

A. No portion of the Pads may be sold, leased, occupied or used for any of the following prohibited uses or operations that produce or are accompanied by the following characteristics:

1. any activity which constitutes a public or private nuisance or which generates excessive noise, litter, dust, dirt or odor;
2. any unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks);
3. warehouse operation, or any assembling, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation;
4. trailer court, mobile home park, lot for sale of new or used motor vehicles, labor camp, junk yard, stock yard or animal raising (other than pet shops); and
5. dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner.
6. laundromat, veterinarian, veterinary hospital or car washing establishment;
7. game room or arcade;
8. funeral establishment, mortuary or similar service;
9. auction or bankruptcy sale, except per order of court;
10. pawn shop;
11. outdoor circus or other outdoor entertainment use;
12. outdoor meetings, meeting hall or other place of assembly;
13. operation of "elephant trains" or similar transportation devices;
14. flea market, flea circus, surplus store or other operation for the sale of used goods;
15. shooting gallery or gun range;
16. employment agency;
17. bar serving alcoholic beverages (except as an incident to a full service and full kitchen restaurant operation), nightclub, discotheque or dance hall;
18. massage parlor;
19. off-track betting establishment;
20. office purposes (except incidental to Purchaser's Intended Use)
21. residential purposes
22. a theater, auditorium, meeting hall, school, church or other place of public assembly, "flea market," gymnasium, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, facility for the sale, display, leasing or repair of motor vehicles, night club, adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not available for sale or rental to children under seventeen (17) years old because such inventory explicitly deals with or depicts human sexuality).

B. For so long as Academy Sports, its successors or assigns is operating a retail store in its premises in the Shopping Center selling sporting goods or sports apparel, sports footwear and related accessories, no portion of the Pads may be sold, leased, occupied or used for any of the following uses:

1. as a store in the business of selling sporting goods or sports apparel, sports footwear and related accessories

(it being understood and agreed that the incidental retail sale of sports footwear by a store primarily in the business of selling shoes or the incidental retail sale of sportswear by a store primarily in the business of selling apparel shall not violate this exclusive right, by example and not limitation, T. J. Maxx and Ross Stores shall not be businesses which violate this exclusive). Additionally, a family shoe store (such as Famous Footwear and Rack Room Shoes) shall be permitted to sell sports footwear, provided that [and notwithstanding the last sentence of this paragraph] such stores incidental sales of sports footwear constitute less than twenty percent (20%) of such operator's or tenant's gross sales and less than 1,250 square feet of display area inclusive of allocable aisle space. The incidental sale of such items in connection with the overall business of another operator or tenant shall not be deemed a violation of this paragraph. As used herein, "incidental sale" shall mean less than five percent (5%) of such operator's or tenant's gross sales and less than five hundred (500) square feet of such operator's or tenant's display area (inclusive of allocable aisle space).

2 any arcade; any tavern or bar, except to the extent incidental to a restaurant operated primarily for on-premises consumption (incidental for this purpose being defined as less than 49% of such restaurant's gross sales; any night club or discotheque; any second hand store; any mobile home park or trailer court (except that this provision shall not prohibit the temporary use of construction trailers); any dumping, disposing, incineration or reduction of garbage (exclusive of dumpsters located in the rear of any building); any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; any central laundry or dry cleaning plant or Laundromat (except that this prohibition shall not be applicable to on-site service provided solely for pickup and delivery by the ultimate consumer); any automobile, truck, trailer, or R.V. sales, leasing, display or repair; any skating rink; any living quarters, sleeping apartments or lodging rooms; any veterinary hospital, animal raising facilities or pet shop (except that this prohibition only prohibits a pet shop if it is adjacent to the Academy premises); any mortuary; any pawn shop; any bingo club; any auction house; any flea market; any establishment selling or exhibiting pornographic materials; any restaurant, any use which is a public or private nuisance.

C. For so long as Publix, its successors or assigns is operating a retail store in its premises in the Shopping Center, no portion of the Pads shall be used to:

1. (a) operate a grocery supermarket, bakery, delicatessen, and fish market; (b) sell drugs or other products which are required by law to be dispensed by a registered pharmacist; and (c) engage in retail sales of items of food for "off-premises" consumption.
2. adult entertainment, massage parlor, adult book store and a so called "head shop"
3. for any unlawful purpose, or in any way which would constitute a legal nuisance to adjacent tenants or occupants in the Shopping Center or surrounding areas
4. for the placement of any telecommunication towers

Notwithstanding the foregoing, the following shall not be prohibited on the Pads: (i) a sit down restaurant offering prepared ready-to-eat food items for consumption either on or off the premises; (ii) a delicatessen or sandwich shop type restaurant (but not a bakery) which offers take out service as an incidental part of its restaurant operation, provided that at least seventy percent (70%) of the Leasable Floor Area of such restaurant (exclusive of kitchen or food preparation area) is utilized for seated dining purposes; (iii) a health food store or nutrition center, provided that the Leasable Floor Area devoted to such health food store or nutrition center shall not exceed 1,600 square feet, ice cream parlor or frozen yogurt store, franchise doughnut shop (equivalent to a Dunkin' Donut or Krispy Kreme operation), candy store, or a pizza pickup or delivery outlet, all of which may offer the sale of food items for consumption on or off the premises; (iv) a combination gas station and convenience food store operation, provided that the Leasable Floor Area devoted to the sale of food and beverage products shall not exceed 1,500 square feet; PROVIDED, HOWEVER, the foregoing exception (iv) shall not permit a gas station/convenience food store that is owned by, operated by or controlled by another grocery supermarket entity or general merchandise retailer that also operates grocery supermarkets (such as WalMart), such entity's parent company or its subsidiaries or affiliates, and which gas station and convenience store operation is identified on the premises with such grocery supermarket name or the name under which such general merchandise retailer operates its grocery supermarkets within the State of Alabama; (v) a video rental or sale store (similar to a Blockbuster Video) which may offer the sale of items normally

sold by movie theaters (i.e., popcorn or candy) for consumption off the premises; (vi) a coffee shop (equivalent to a Starbucks or Caribou Coffee) selling bakery items as an incidental part of its business; and (vii) a sit down restaurant offering breakfast and lunch items, including bagels and other items typically characterized as "bakery" items for sale and consumption off the premises (equivalent to a Panera Bread or Atlanta Bread Company), provided, however, (A) in no event shall said restaurant be allowed to sell meats or salads by the pound, and (B) at least seventy percent (70%) of the Leasable Floor Area of said restaurant (exclusive of kitchen or food preparation area) is utilized for seating dining purposes.

MORTGAGEE'S CONSENT AND SUBORDINATION

The undersigned, as the holder of that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement (the "Mortgage") executed by executed by AIG Baker Brookstone, L.L.C., Brookstone Townhomes, L.L.C., and AIG Baker East Village, L.L.C. (collectively, the "Mortgagor"), dated March 18, 2004, filed in the Office of the Judge of Probate of Shelby County, Alabama, under Instrument Number 20040322000146300, to SouthTrust Bank ("Mortgagee"), which said Mortgage encumbers the property described on Exhibit "A" and Exhibit "B", (1) consents to and approves the execution and delivery by the parties thereto of that certain DECLARATION OF EASEMENTS AND RESTRICTIONS (the "DER"), (2) subordinates to the rights of the parties under the DER any lien or security interest the undersigned may have by virtue of such recorded Mortgage and all amendments thereto, and (2) agrees that the foreclosure of such Mortgage will have no effect on the continuing validity and enforceability of the DER.

This Consent is made and given by Mortgagee and "Owner" (as defined in the DER) by their acceptance and the recording hereof. Mortgagee and Owner (by its acceptance and recording hereof) hereby agree to the following conditions and agreements until the Mortgage is cancelled of record, notwithstanding anything in the DER to the contrary:

(a) Nothing contained herein shall be deemed to impair in any manner or in any way the effect and lien of the Mortgage, which Owner, by the acceptance hereof, hereby specifically ratifies and confirms.

(b) Mortgagee shall have no liability under the DER in connection with any matter arising thereunder prior to the date Mortgagee takes possession of any part of the property described in the DER, and then only to the extent of such possession.

(c) Neither Mortgagee's execution and delivery hereof, nor anything contained herein, nor Mortgagee's review of the DER, nor anything contained in the DER shall be deemed to alter, modify, waive or change in any manner or way the obligations and duties of Owner, as mortgagor, under and pursuant to the Mortgage, the indebtedness secured thereby, or any other instrument or document evidencing, securing, or otherwise relating to said indebtedness.

(d) Pursuant to the notice provisions of the Mortgage, Owner agrees to give to Mortgagee any and all default notices given by or to the Owner pursuant to the DER.


(e) Owner shall not assign, convey, encumber, pledge, or otherwise transfer any of its rights, titles, or interests in, to or under the DER without the express written consent of Mortgagee.

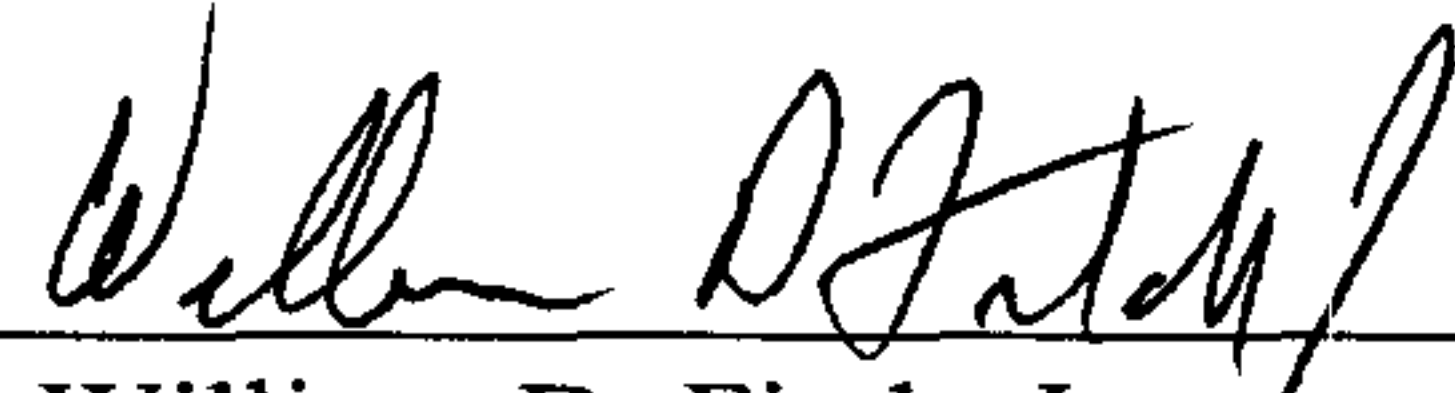
Signed and delivered as of May 26, 2004.


SouthTrust Bank, an Alabama banking

corporation

Witnesses:


Print name: WESLEY D. FULBRIGHT

By: 
Name: William D. Fitch, Jr.
Its: Group Vice President

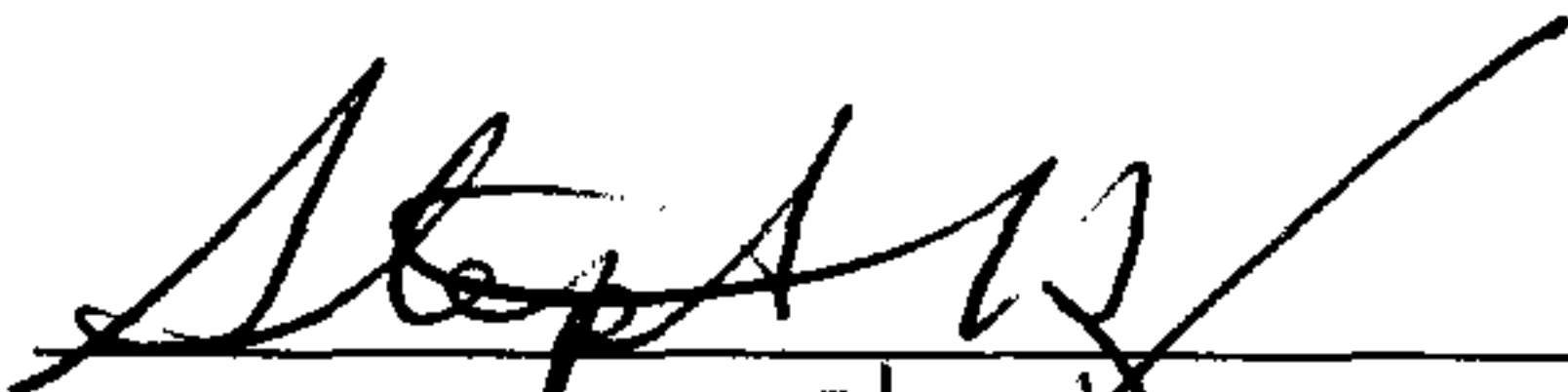

Print Name: LYNN A. JOHNSON

STATE OF GEORGIA)

COUNTY OF ~~FULTON~~) Dekalb

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that William D. Fitch, Jr., whose name as Group Vice President of SouthTrust Bank, an Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority executed the same voluntarily for and on behalf of said corporation.

GIVEN under my hand and official seal, this 26th day of May, 2004.


Print Name: Stephanie Henry
Notary Public

[NOTARY STAMP OR SEAL]

