

**AGREEMENT REGARDING  
MAINTENANCE OBLIGATIONS FOR PAD C -  
THE VILLAGE AT LEE BRANCH - PHASE II**

**THIS AGREEMENT REGARDING MAINTENANCE OBLIGATIONS FOR PAD C – THE VILLAGE AT LEE BRANCH – PHASE II** is made as of the 21<sup>st</sup> day of June, 2004, by AIG BAKER EAST VILLAGE, L.L.C., a Delaware limited liability company (hereinafter referred to as “AIGB”) having a principal business address of 1701 Lee Branch Lane, Birmingham, Alabama;

**WITNESSETH:**

**WHEREAS**, AIGB is the owner of a certain tract or parcel of land located in the city of Hoover, Shelby County, Alabama, which property is more particularly described in **Exhibit A** attached hereto (said property being hereinafter referred to as the “Pad C”); and

**WHEREAS**, AIGB intends to develop, sell or lease Pad C for commercial uses; and

**WHEREAS**, AIGB is also the owner of a certain tract or parcel located adjacent and contiguous to Pad C upon which a shopping center commonly known as “The Village Lee Branch – Phase II” is or will be built, said parcel being more particularly described on **Exhibit B** attached hereto (the “Shopping Center”); and

**WHEREAS**, AIGB desires to establish and create certain obligations to facilitate the beneficial development and operation of Pad C within the Shopping Center.

**NOW THEREFORE**, AIGB, for itself, its successors and assigns, hereby declares that Pad C shall be held, occupied, used, rented, enjoyed, transferred, conveyed, mortgaged, and otherwise encumbered subject to the following covenants, easements, rights and restrictions set forth in this Agreement Regarding Maintenance Obligations for Pad C – The Village Lee Branch – Phase II (the “Agreement”).

1. **Definitions.** In addition to any terms whose definitions are fixed and defined elsewhere in this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the following meaning:

“**AIGB**” shall mean AIG Baker East Village, L.L.C., a Delaware limited liability company, and its successors in title to the Shopping Center only.

“**Building**” shall mean any enclosed structure placed, constructed or located on Pad C.

“**Closing**” shall mean the date on which fee simple title in and to Pad C changes from AIGB to the initial Pad Owner, as evidenced by the recording of a deed from AIGB to the



initial Pad Owner.

“Occupant” shall mean any individual, partnership, firm, company, association, corporation, trust, or any other form of entity, including any Owner, from time to time entitled to the use and occupancy of any portion of a Parcel or of a Building on any Parcel by virtue of ownership thereof or under any deed, lease, sublease, license, concession agreement, or other similar agreement.

“Owner” shall mean, as of any time, each fee simple owner of any Parcel at such time, including without limitation AIGB, and, after compliance with the notice requirements set forth below, their respective successors and assigns who become owners of all or any portion of any Parcel. Each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Parcel 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 Owner shall be released from the obligations of this Agreement arising subsequent to the effective date of the transfer notice.

“Pad Owner” shall mean, as of any time, from and after the date of Closing, each fee simple owner of Pad C at such time, not including AIGB.

“Parcel” shall mean, individually, the Shopping Center or Pad C; and “Parcels” shall mean, collectively, the Shopping Center and Pad C.

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

“Shared Common Facilities” shall mean all of the drive isles, accessways and parking lots located from time to time in the Shopping Center, as such areas may change from time to time.

## 2. **Shared Common Facility Obligations.**

(a) The Pad Owner shall be obligated to make monthly payments of the Pad Owner’s Share (as defined below) of the following:

(i) **Common area maintenance (“CAM”).** The total costs incurred in the normal administration, operation and preventive and corrective maintenance of the Shared Common Facilities, 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. It is understood that the Pad Owner shall have no obligation for any CAM related to the buildings within the Shopping Center or on any real estate not included in the Shared Common Facilities.

(ii) **Real property taxes and assessments ("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 Shared Common Facilities during each calendar year. (AIGB shall use its best efforts to obtain a tax bill from the local taxing authority which bifurcates the land and the improvements). The Pad Owner shall be responsible for and shall pay to the appropriate taxing authority directly all real property taxes and assessments applicable to Pad C and improvements located thereon. It is understood that the Pad Owner shall have no obligation for any taxes imposed on the buildings within the Shopping Center or on any real estate not included in the Shared Common Facilities.

(iii) **Public liability insurance ("Insurance").** The total cost total cost to AIGB of all liability coverage carried by AIGB with respect to the land which encompasses the Shared Common Facilities.

(b) **Pad Owner's pro rata share ("Pad Owner's Share").** The Pad Owner shall be responsible for the Pad Owner's portion of the annual CAM, Taxes and Insurance limited to and determined by multiplying the applicable CAM, Taxes and Insurance by a fraction, the numerator of which shall be the square footage of Pad C, and the denominator of which shall be the square footage of the total leasable and/or occupiable area within the Shopping Center. The Pad Owner's Share is subject to adjustment by AIGB based on the foregoing formula if 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.

(b) The payment of the Pad Owner's Share shall commence on the earlier of (i) the day the Pad Owner opens its business to the public; or (ii) one-hundred (120) days after Closing (the "Commencement Date"). AIGB shall establish the fiscal year for determining the payment of the Pad Owner's Share of CAM, Taxes and Insurance. Within thirty (30) days of the Commencement Date, and at least once per fiscal year thereafter, AIGB shall furnish the Pad Owner with a statement stating the total budget for the Shared Common Facilities. At least once per fiscal year, AIGB shall have the right to increase the Pad Owner's Share by an amount not to exceed five percent (5%) of the total contribution made by the Pad Owner in the previous fiscal period (if expenses have so increased). The Pad Owner shall pay to AIGB on the first day of each month during each calendar year the monthly installments of CAM, Taxes and Insurance based upon the amount of the Pad Owner's Share. AIGB's failure to timely submit such budget or the annual statement shall not affect the Pad Owner's obligation to pay it pro rata share during any period.



3. **Default.** Except as specifically set forth herein, if the Pad Owner shall fail to perform any covenant or condition contained in this Agreement, AIGB shall give the defaulting Pad Owner 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 Pad Owner 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), AIGB may institute legal and/or equitable proceedings for full and adequate relief from the consequences of said default or threatened default.

4. **Remedies.** The Pad Owner's obligation to pay its Share, together with interest thereon at the lesser of (i) the rate of ten percent (10%) per annum, or (ii) the maximum rate allowed by law from the due date thereof if not paid when due, shall be secured by an equitable charge and lien on Pad C of the defaulting Pad Owner as set forth herein. Any such lien shall be effective upon recording of a Lien Notice (as defined below) in the appropriate public records for Shelby County, Alabama. Upon such recording, such lien shall be superior and prior to all other liens encumbering Pad C, except that such lien shall not be prior and superior to any mortgages, deeds of trust, or security deeds of record prior to the recording of such Lien Notice or any renewal extension or modification (including increases) of such prior recorded mortgages, deeds of trust, or security deeds, or to the interest of any party which has, prior to the recording of such Lien Notice, purchased Pad C and leased it back to the preceding owner, or its subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations thereunder in what is commonly referred to as a "sale-leaseback" transaction; and any purchaser at any foreclosure sale (as well as any grantee by deed in lieu of foreclosure) under any such mortgage or deed of trust shall take title subject only to liens accruing pursuant to this Section 4 after the date of such foreclosure sale or conveyance in lieu of foreclosure. Furthermore, the right of possession and leasehold interest or tenancy of any tenant or subtenant of Pad C encumbered by any lien accruing pursuant to this Section 4 shall not be terminated, affected or disturbed by such lien or any foreclosure thereof. To evidence such lien the AIGB shall prepare a written notice ("Lien Notice") setting forth (i) the amount owing and a brief statement of the nature thereof; and (ii) shall reference to this Agreement as the source and authority for such lien. The Lien Notice shall be signed and acknowledged by AIGB and shall be recorded in the appropriate records of Shelby County, Alabama. A copy of such Lien Notice shall be mailed to the Pad Owner or reputed Pad Owner within thirty (30) days after such recording. Any such lien may be enforced by judicial foreclosure upon Pad C in like manner as a mortgage on real property is judicially foreclosed under the laws of Alabama. In any foreclosure, the Pad Owner shall be required to pay the reasonable costs, expenses and attorneys' fees in connection with the preparation and filing of the Lien Notice as provided herein, and all reasonable costs and reasonable attorneys' fees in connection with the foreclosure. AIGB shall mail a copy of any Lien Notice to any mortgagee of Pad C if AIGB has been notified of such mortgagee's interest and its name and address.



5. **Notices.** Every notice, demand, consent, approval, or other communication required or permitted to be given to any Owner shall be in writing and shall be given, delivered, or served, either by personal delivery, by recognized overnight courier service with receipt, or by certified U.S. mail, return receipt requested, addressed to the intended recipient at the address most recently furnished by such Owner for the giving of notices hereunder. In the event of a sale of any Parcel, the new Owner of such Parcel shall give written notice to the Owners of each other Parcel of the name and address of such new Owner. Until such time as any Owner shall receive such a notice of the address of a new Owner, the previous Owner or, if no such previous Owner is known, AIGB shall be deemed to be the agent for such new Owner for purposes of notices hereunder. Current notice addresses are:

To AIGB:                   AIG Baker East Village, L.L.C.  
1701 Lee Branch Lane  
Birmingham, Alabama 35242  
Attn: Legal Department  
Telephone: (205) 969-1000  
Telecopy: (205) 969-9467

6. **Estoppel Certificate.** Each Owner 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 Agreement by the requesting Person, and if there are known defaults, specifying the nature thereof;

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

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

7. **Rights of Successors.** The provisions of this Agreement will be binding upon AIGB and each Owner or Occupant of the Parcels, 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 Shopping Center and Pad C and constitutes a covenant running with the land and binds every Owner now having or hereinafter acquiring an interest in the Shopping Center or Pad C. This Agreement shall create privity of contract with and among AIGB and all grantees of all or any portion of the Shopping Center or Pad C and their respective heirs, executors, administrators, successors and assigns. Each of the easements and restrictions created by this Agreement are appurtenant to the property to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to said property.

8. **Term.** This Agreement shall be effective as of the date first above written and shall continue in full force and effect for the lesser of (i) ninety nine (99) years and (ii) the



maximum period as may be permitted under the laws of the State of Alabama. In no event shall a breach or default under the provisions of this Agreement result in the termination hereof.

9. **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 Agreement. Without limiting the foregoing, any Owner and any Occupant benefited by the terms of this Agreement or particular provisions hereof 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 Agreement.

10. **Amendments.** This Agreement may be amended by, and only by, a written agreement executed by AIGB and the Pad Owner, if Closing has occurred, which shall be deemed effective only when recorded in the public real estate records of the county in which the Shopping Center is located. Nothing herein shall prohibit or restrict the Owners of any Parcels from entering into separate agreements which, as between such parties only, modify their respective rights and obligations under this Agreement.

11. **Non-Waiver.** The failure of any 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 that 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.

12. **Severability.** All rights provided herein may be exercised only to the extent that the exercise thereof does not violate then applicable law and shall be limited to the extent necessary to render the remaining covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein or the application thereof to any person or circumstance shall be held illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

13. **Governing Law.** This instrument shall be construed in accordance with the laws of the State of Alabama.

14. **Waiver of Trial by Jury.** EACH PARTY HERETO OR IN THE FUTURE SUBJECT OT THIS AGREEMENT, WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY OF THE DOCUMENTS EXECUTED IN CONNECTION HEEWITH, THE PROPERTIES, OR ANY CLAIMS, DEFENSES, RIGHTS OF SET-OFF OR OTHER ACTIONS PERTAINING HERETO OR TO ANY OF THE FOREGOING.

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IN WITNESS WHEREOF, AIGB has executed this Agreement under seal as of the day and year first above written.

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

Witnesses:

Amy E. McMullen  
Mike W. Wooten

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 OR

W. Ernest Moss, Executive Vice President

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Alex D. Baker, whose name as President of AIG Baker Shopping Center Properties, L.L.C., sole member of AIG Baker East Village, L.L.C., a Delaware 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 the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this the 21st day of June, 2004.

Mary Lyon Fan

Notary Public

My Commission Expires: 3-29-08

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(Notarial Seal)

Prepared by:

Amy E. McMullen, Esq.

AIG Baker Shopping Center Properties, L.L.C.

1701 Lee Branch Lane

Birmingham, Alabama 35242

**EXHIBIT A**

**LEGAL DESCRIPTION OF PAD C**

Lot 2 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 SHOPPING CENTER**

Lot 1 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.