

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

DECLARATION OF RESTRICTIONS (OUTPARCEL)

This Declaration of Restrictions is made and executed this 31 day of August 2004 by Alabaster Retail Property, L.L.C., an Alabama limited liability company (the "Owner").

WITNESSETH:

WHEREAS, Owner is the owner of the premises described on Exhibit "A" attached hereto (the "Outparcel") and is the owner of the premises known as White Stone Shopping Center in Shelby County, Alabama, ("Shopping Center"), which is described on Exhibit "B" attached hereto (the "Shopping Center Parcel"); and

WHEREAS, Owner desires to impose the restrictions on the use of the Outparcel as stated below.

NOW, THEREFORE, Owner hereby creates, establishes and imposes the following restrictions on the ownership, use, and enjoyment of the Outparcel.

1. Each grantee, tenant, or transferee from Owner, their successors and assigns (collectively called "Transferee"), and by the acceptance of a deed or lease to the Outparcel, shall be deemed to have all covenanted and agreed to all the terms and conditions of this Declaration.

2. Subject to delays as a result of force majeure, Transferee shall cause the construction of the building and any appurtenances, including parking areas and driveways, to commence within twelve (12) months of the acquisition of the Outparcel by the Transferee (herein called the "Acquisition Date") and, thereafter, to proceed with all reasonable diligence in construction of same and to use best reasonable efforts to open for business within twenty-four (24) months after date of commencing construction. If Transferee fails to commence construction or to complete construction within this construction timetable, as such period may be extended as a result of force majeure, Owner shall have the option of repurchasing the Outparcel from the Transferee by providing notice of its intent to do so for the original purchase price paid for the Outparcel by the Transferee. In the event of the exercise by Owner of such right of repurchase, Transferee shall provide Owner with a title insurance policy, at Owner's expense, in the amount of the purchase price reflecting the same state of title as when Transferee acquired title to the Outparcel. Each party shall pay its own attorney's fees associated with any such conveyance. The closing shall take place no longer than ninety (90) days after Owner has provided Transferee with notice of its intent to repurchase.

3. The Outparcel shall be used initially as a typical "Zaxby's Restaurant" for a period of at least thirty-six (36) months and as a restaurant for at least sixty (60) months (inclusive of the said thirty-six (36) month period) and not otherwise; provided in no event shall the use violate any

existing restrictions of public record affecting the Outparcel, and such business and any other business conducted on the Outparcel shall be conducted in a first class, reputable manner. Subsequent to the initial uses described above, the Outparcel shall be used only for commercial purposes normally carried in other similar type shopping centers, but shall not be used for any purpose which is not in harmony with the Shopping Center and shall not be used for any of the following purposes:

- (a) Any public or private nuisance;
- (b) Any noise or sound that is objectionable due to intermittence, beat frequency, shrillness, or loudness, other than the drive thru speaker;
- (c) Any obnoxious odor which shall not include odors customarily associated with normal restaurant operations;
- (d) Any noxious, toxic, or caustic or corrosive fuel or gas;
- (e) Any dust, dirt, or fly ash in excessive quantities;
- (f) Any unusual fire, explosion, or other damaging or dangerous hazard (including the storage, display, or sale of explosives or fireworks);
- (g) Any warehouse, funeral parlor, movie theater, bowling alley, or flea market;
- (h) Any assembling, manufacturing, distilling, refining, smelting, tanning, agriculture, or mining operations;
- (i) Any establishment receiving substantial revenues from selling or exhibiting pornographic materials;
- (j) Any mortuary;
- (k) Any massage parlor;
- (l) Any cafeteria, theater, bowling alley, billiard parlor, night club or other place of recreation or amusement or any business serving or selling alcoholic beverages;
- (m) Any use which is in conflict with any "exclusive" usage previously granted to any tenant of the Shopping Center Parcel or which is the same principal or primary use of any existing tenant of the Shopping Center Parcel, provided, however, that, within twenty (20) days after receipt of notice from a Transferee that such Transferee intends to transfer and convey the Outparcel to another Transferee (the "Acquiring Transferee"), Owner shall provide to the Acquiring Transferee (at the address provided to Owner in the notice from Transferee) a written statement of all uses of tenants in the Shopping

Center prohibited by this Section 3(m) with respect to such Acquiring Transferee if such Acquiring Transferee acquires title to the Outparcel within thirty (30) days of Acquiring Transferee's receipt of such written statement from Owner. The written statement provided by Owner to an Acquiring Transferee is effective only so long as such Acquiring Transferee owns title to the Outparcel;

- (n) Any use which violates the "Publix" Memorandum of Lease which is recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20030210000081140; and
- (o) Any use which violates the Declaration of Restrictions, Covenants and Conditions and Grant of Easements (White Stone Shopping Center) executed by Owner, which is recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20031124000768400 (herein "ECR").

4. Transferee shall pay to the Owner the sum of Five Hundred Dollars (\$500.00) on January 31, 2005, as a contribution to Owner for the use of certain areas of the Shopping Center Parcel pursuant to the ECR; and on each consecutive January 31 thereafter, Transferee shall pay to Owner an amount equal to the sum of the amount due and payable for the previous January 31 plus ten percent (10%) of such amount; it being understood that the contribution by Transferee to Owner shall automatically increase by ten percent (10%) each year over the amount due and payable for the immediately preceding January 31.

5. Transferee shall hold harmless, defend, and indemnify Owner, its successors and assigns, from and against any and all loss, liability, cost, and expense, including attorney's fees, costs and expenses, arising from or occasioned by (i) any and all claims, damages, or causes of action for injury to any person or persons or property, or loss of life, arising out of the use, operation, and maintenance of the Outparcel, including such as a result of the negligent act or misuse by the Transferee and/or its tenants, contractors, agents or employees, (ii) damages brought on account of any default by Owner under any lease of all or any portion of the Shopping Center Parcel or the ECR arising out of or based upon any default by Transferee under the terms of this Agreement, and (iii) any and all liabilities, damages, suits, penalties, judgments, and environmental cleanup, removal, response, assessment, and/or remediation costs and expenses arising from or on account of any contamination of the Outparcel or any release or threatened release of any hazardous substance, pollutant, contaminant or petroleum in, on, upon, from or under the Outparcel.

6. No noxious or offensive activity shall be carried on upon the Outparcel nor shall anything be done on the Outparcel that may be or become an annoyance or nuisance to the Owner, any tenants in the Shopping Center, or their employees, customers, or other business invitees.

7. All trash and garbage on the Outparcel shall be stored in adequate containers outside of the structure on the Outparcel provided it is properly contained and such container is properly screened, all as shown on building plans and plot plan approved by Owner in writing. No trash or

garbage shall be burned at any time in or about the Outparcel. If such garbage includes food and/or drink, then such trash and garbage shall be stored in a screened dumpster.

8. The Outparcel and all structures thereon shall be maintained in good order and good, clean, neat, and safe condition and all glass, including windows, doors, fixtures, and skylights shall be maintained in clean and good condition, and if broken or damaged shall be replaced promptly. The Outparcel shall be kept free of any accumulation of trash or debris.

9. No fence, wall, hedge, shrub or planting shall be placed or permitted to remain on the Outparcel except as approved by Owner.

10. Transferee shall install, preserve, and maintain on the Outparcel such shrubbery, trees, and other landscaping in an amount harmonious and consistent with the landscaping of the Shopping Center and shall cause such landscaping to be reasonably protected from vehicular traffic. The land which is not used for construction of the building or for paving shall be properly and attractively landscaped, watered and maintained so as to keep same in a good, proper and attractive condition.

11. All signs on the Outparcel shall comply with all of the following restrictions at all times:

- (a) All signs shall be maintained in first class condition and repair and shall be in compliance with all governmental and administrative agencies, statutes, rules, regulations and ordinances;
- (b) Except as may be set forth in the approved plans and specifications, the following kinds of exterior signs are prohibited: (i) any painted sign on walls, sign bands, storefronts or store windows; (ii) any wood or plywood sign except for temporary signs; (iii) any sign made of paper, cloth, or cardboard; (iv) any sign consisting of stickers, flags, or pennants; (v) any roof-mounted sign which protrudes higher than the peak of the roof; (vi) any flashing, pulsating, moving, or animated sign and any sign emitting any sound, smoke, or odor; (vii) any portable sign on the Outparcel or on the adjacent right-of-way to the Outparcel; (viii) any exposed neon lighting or other lighting tubes, bulbs, or devices; (ix) any sign perpendicular to the facade; or (x) any banners.
- (c) The content of all signs shall be limited to letters designating the store name, a corporate logo, and, if approved by Owner, a reader board that may contain slogans, symbols, markers, prices, items for sale, or other similar items;
- (d) No more than one building mounted sign shall be permitted on any one wall or facade of the building;
- (e) Except as may be otherwise approved by Owner, the length of any building mounted sign shall not exceed the lesser of: (i) 25% of the length of the wall

of the building upon which the sign is mounted, or (ii) six (6) feet, and the height of any such sign shall not exceed thirty-six (36) inches;

- (f) No sign or any portion thereof may project above a line twelve (12) inches below the top of the parapet or wall or building facade upon which it is mounted;
- (g) No more than one (1) permanently fixed, free-standing pylon sign shall be permitted on the Outparcel, which sign shall not exceed a maximum height of eighteen (18) feet above ground surface and a maximum width of six (6) feet, the sign panel thereof shall not exceed one hundred (100) square feet on each face and such pylon sign shall be constructed only of materials and shall be of a style matching that of the pylon sign, if any, that Owner may construct on the Shopping Center; and
- (h) No sign shall be on so called "portable" or similar type sign or have any bulbs or other forms of lighting that go on and off intermittently.

12. If Transferee desires to sell the Outparcel prior to the construction of a building thereon in accordance with the provisions hereof, then Owner shall have a first right of refusal to acquire the property on the same terms and conditions as offered by a bona fide third party purchaser provided, however, that a foreclosure by a lender under a mortgage or deed of trust encumbering the Outparcel, or the conveyance of the Outparcel by Transferee to a lender by a deed in lieu of foreclosure, shall not constitute an offer to purchase or sell the Outparcel for purposes of this Agreement and shall not create a right of first refusal for Owner. Owner shall exercise its right of refusal within fifteen (15) days of being informed in writing of an offer and the terms by Transferee. This right of refusal shall last until September 1, 2064. Notwithstanding anything contained herein to the contrary, the first right of refusal contained herein shall be subordinate to the prior right of first refusal, if any, contained in the franchise agreement between Transferee and Zaxby's Franchising, Inc., a Georgia corporation ("Zaxby's"), provided, however, if Zaxby's exercises its right of first refusal to acquire the Outparcel pursuant to said franchise agreement, then Zaxby's and its successors and assigns shall nevertheless be bound by the terms and provisions of this paragraph 12.

13. If Transferee goes dark and remains closed for a period of twelve (12) months, Owner shall have the option to repurchase the Outparcel at the Fair Market Value of the Outparcel. Fair Market Value shall be computed by a panel of three appraisers, one selected by Transferee, one selected by Owner, and the third selected by the other two appraisers. Each appraiser shall independently appraise the Outparcel with the Fair Market Value to be the average of the three (3) values.

Owner shall have the right to exercise the option for as long as the premises stay dark. This option shall expire on September 1, 2064. Notwithstanding anything contained herein to the contrary, the option to repurchase contained herein shall be subordinate to the prior option to repurchase, if any, contained in the franchise agreement between Transferee and Zaxby's, provided, however, if Zaxby's exercises its option to repurchase the Outparcel pursuant to said franchise

agreement, then Zaxby's and its successors and assigns shall nevertheless be bound by the terms and provisions of this paragraph 13.

14. In the event of any default in the performance by Transferee in the performance of any of its obligations, covenants, indemnities or agreements under this instrument, Owner may give notice thereof to Transferee, and if Transferee fails to cure the default within thirty (30) days thereafter (or if the same cannot be reasonably cured within thirty (30) days, fails to commence said cure within the thirty (30) day period and proceed diligently to cure same), Owner, at its option, may enter upon Outparcel and perform on behalf of Transferee the defaulted obligation, covenant, indemnity and agreement. Transferee reserves the right to contest whether a default by Transferee exists. Transferee shall bear all reasonable costs and expenses of Owner incurred in the performance of such defaulted obligation and the amount of such expenses plus interest thereon at fifteen percent (15%) per annum from the date of expenditure by Owner to the date of reimbursement by Transferee shall be payable by Transferee within thirty (30) days of written demand by Owner. Transferee shall also pay to Owner the reasonable costs of collection of such amounts, including reasonable attorneys' fees, if such amounts are not paid when due. Such amount, including interest and costs of collection, shall constitute a lien on the Outparcel until paid in full. Such lien shall have priority as of the date a Notice of Default specifying the default hereunder and the total amount due hereunder is executed and recorded by Owner but shall be subordinate and inferior to any mortgage encumbering the Outparcel as of the date first above written and to any mortgage hereafter recorded which is a lien against the Outparcel which is held by a bank, savings and loan association, insurance company, or other financial institution. Nothing in this paragraph 14 shall be deemed to limit any other remedy at law or in equity which Owner may have with respect to such default, including, without limitation, a suit or suits for injunction (whether temporary or permanent), specific performance and damages.

15. This instrument shall inure to the benefit of Owner, its successors and assigns, and shall be recorded in the public records of Shelby County, Alabama.

16. The obligations and benefits of Transferee under this instrument shall be binding upon and inure to the benefit of Transferee, its successors and assigns in and to the Outparcel, and all persons from time to time owning any interest in all or any portion of the Outparcel.

17. In no event shall this instrument be construed as combining the Outparcel and the Shopping Center Parcel into one lot for zoning purposes, it being agreed that as between the owners of the Outparcel and the Shopping Center Parcel that each parcel shall constitute a separate zoning lot and that any use of any such lot shall conform to parking and other zoning requirements without regard to the existence of this Agreement. This document does not create, and shall not be construed as creating, any easement between the Outparcel and the Shopping Center Parcel.

18. Invalidity of any one or more of the covenants, restrictions, or other terms contained herein by a judgment or court order in no way shall affect any of the other provisions which shall remain in full force and effect.

19. The covenants and restrictions created pursuant to this document shall become effective on the date hereof, shall be binding upon all parties hereto and all persons claiming by,

through, or under them, and shall constitute covenants running with the land burdened thereby, and shall be binding on such land and every part thereof or improvement thereof, and their respective successors and assigns, and shall inure to the benefit of Owner. The covenants, easements, and restrictions created by this Agreement shall automatically expire on September 1, 2064. Owner, and only Owner, shall have the right to obtain injunctive relief to enjoin any violation, or the continuation of a violation, of any of the restrictions, covenants, terms and conditions of this Agreement.

Nothing herein is intended to create or shall be construed to create any rights whatsoever for the benefit of the general public in the Outparcel or the Shopping Center Parcel or in any improvements constructed thereon.

"Owner" as used herein shall mean the declarant who executes this document and its successors and assigns of the Shopping Center Parcel.

20. Each owner, grantee, lessee, and occupant of all or any portion of the Outparcel shall be deemed by the acceptance of the conveyance, grant, lease, delivery, or possession thereof, to have accepted the covenants and restrictions provided in this Agreement and to have agreed to comply with the terms stated herein and to have accepted whatever right, title, or interest in the Outparcel so received subject to all the terms and conditions of this document.

21. Any notice, request, demand, approval, consent or other communication which Owner or Transferee may be required or permitted to give to the other parties shall be in writing and shall be mailed by certified mail, return receipt requested to the other party at the address specified below, or to such other address as either party hereof shall have designated by notice to the other:

If To Owner:	Alabaster Retail Property, L.L.C. c/o SC Management, Inc. Attention: Mr. Jake F. Aronov 3500 Eastern Boulevard Montgomery, Alabama 36116
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If To Transferee:	T&V LeBlanc, LLC 655 Pilgrim Mill Road Cumming, Georgia 30024
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22. This document may be modified in whole or in part only by a written instrument executed by the then Owner and Transferee of the Shopping Center Parcel and Outparcel, respectively.

23. This document shall not restrict any party's right to assign or convey its interest in its parcel or in this document to a mortgagee as additional security or collateral security. However, any and all mortgages granted to mortgagees on any parcel shall be subordinate and subject to this document and any person foreclosing any such mortgage or acquiring title to a parcel affected thereby shall do so subject to all of the terms of this document. Upon receipt of a written request by

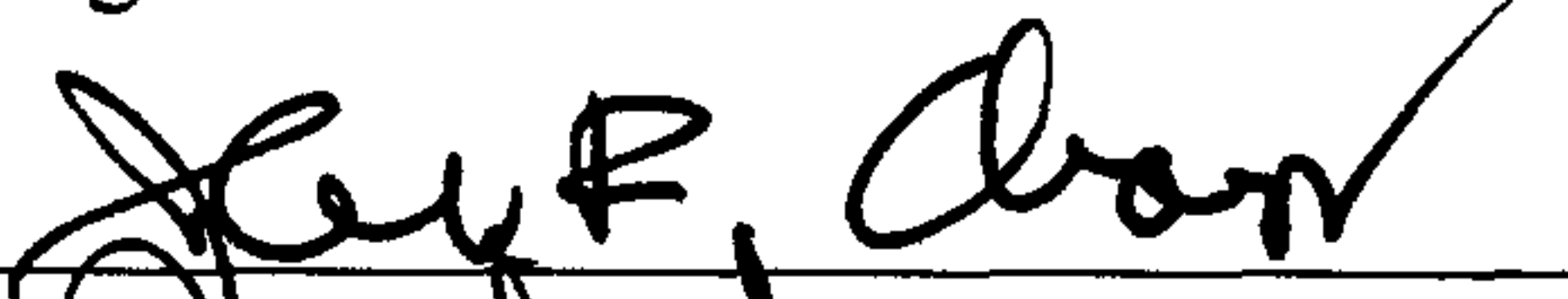
any party or by such mortgagee, all other parties shall thereafter send any such mortgagee, or the requesting party copies of all notices given in accordance with any provisions of this document. Once any such party or its mortgagee has so notified the other parties, no notices sent hereunder by any other party shall be binding on said mortgagee unless and until such mortgagee receives a copy thereof; provided, however, that such notices shall be effective as between the other parties in accordance with the terms and conditions contained in this document. Any notice given by or to any such mortgagee shall be given by the means set forth herein, and shall be deemed given, as provided in this document.

24. The provisions hereof are in addition to, and do not modify, amend, or abrogate, any covenants and restrictions now appearing of public record affecting title to the Outparcel, including but not limited to the ECR.

IN WITNESS WHEREOF, Owner has caused this Agreement to be duly executed and delivered on the day and year first above written.

ALABASTER RETAIL PROPERTY, L.L.C.,
an Alabama limited liability company

By: SC Management, Inc.
an Alabama corporation
Its Manager

By: 
Its: President

[ACKNOWLEDGEMENT BEGINS NEXT PAGE]

STATE OF ALABAMA)
 :
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Dale Aronov whose name as President of SC Management, Inc., an Alabama corporation, acting as Manager of Alabaster Retail Property, L.L.C., 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 the instrument, he, as such President and with full authority, executed the same voluntarily for and as the act of said corporation, acting as Manager of said limited liability company.

Given under my hand and official seal this 31 day of August, 2004.

Susan Flowers

Notary Public

My commission expires: 10-24-05

[NOTARY SEAL]

This instrument was prepared by:
Jeffrey W. Blitz, Esq.
Rushton, Stakely, Johnston & Garrett, P.A.
Post Office Box 270
Montgomery, Alabama 36101-0270
(334) 206-3100

Aronov\Alabaster\Zaxby's\Declaration\Declaration of Restrictions (8-31-04)
2940-289
083120041123

EXHIBIT "A"

(Legal Description - Outparcel)

Lot 3, according to the Map of the White Stone Center Subdivision, as said Map appears of record in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 33, at Pages 138-A and 138-B.

EXHIBIT "B"

(Legal Description - Shopping Center Parcel)

Lot 7, according to the Map of the White Stone Center Subdivision, as said Map appears of record in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 33, at Pages 138-A and 138-B.