

20050923000496010 1/6 \$26.00
Shelby Cnty Judge of Probate, AL
09/23/2005 10:26:52AM FILED/CERT

This instrument was prepared by:
Kevin Moulton
Senior Counsel
Movie Gallery US, Inc.
900 West Main St.
Dothan, AL 36301

STATE OF ALABAMA)
SHELBY COUNTY)

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration") is made as of the 12th day of September, 2005 by Alabaster Retail Property, L.L.C., an Alabama limited liability company, (the "Declarant").

RECITALS

WHEREAS, Declarant is the fee owner of that certain real property located in Shelby County, Alabama, and more particularly described on Exhibit A, attached hereto and incorporated herein (the "Property");

WHEREAS, Declarant has developed a shopping center on the Property;

WHEREAS, Declarant and Movie Gallery US, Inc. ("Movie Gallery"), a Delaware corporation, have entered into a lease for a free standing building in the shopping center located on the Property (the "Leased Premises"), sometimes referred to as Space 37, on September 12, 2005 (date) (the "Lease");

WHEREAS, Declarant has granted to Movie Gallery an exclusive for the retail rental and sale of movies and video games for the Property as specifically described in Exhibit A attached hereto;

DECLARATION

NOW, THEREFORE, Declarant does hereby declare, and establish the covenants and restrictions hereinafter set forth.

Declarant represents, warrants and covenants that it is the owner in fee of the Property and has a good right to execute this Declaration.

(9-8-2005)

1. **RESTRICTIVE COVENANTS.** Declarant hereby covenants and agrees that so long as Movie Gallery is not in default beyond any applicable grace or cure periods provided in the Lease (and if Movie Gallery is in default, Declarant shall be diligently exercising, or shall have diligently exercised, its remedies therefor except that this shall not be construed to require Declarant to terminate this Lease, re-enter the Leased Premises and/or evict Movie Gallery for the following exclusive rights to be ineffective), during the Term (as defined in the Lease and as set out below) of the Lease and any extension or holdover terms, Declarant grants to Movie Gallery exclusive rights on the Property for the sale or rental of movies, including, but not limited to movies on video cassette tapes and digital video disks, and video games, including any other medium(s) of delivery of movies and/or video games that are a technological evolution of the home entertainment industry; provided, however, that this provision shall not apply to (a) the sale and/or rental by any of Declarant's other tenants, or by owners or occupants of the Property or any portion thereof, of video hardware, including, but not limited to, video cassette recorders and players, video game players, DVD players and other video hardware products that are the technological evolution of the foregoing, magazines, concessions, audio books, or discs (whether digital, analog or laser provided that the discs do not contain movies or games) (b) the anchor tenant, namely Publix, the anchor tenant's premises and any other tenant leasing more than 20,000 of space (excluding Hasting's or any other tenant with a similar product mix as Hasting's); (c) the existing tenants in the Center, namely Compliments, Head Start Family Hair Salon, Nail Star, Subway, SunTime, Tanuki's, Yu Garden, Bark Avenue and Women of Fashion; or (d) incidental sales by Declarant's other tenants or owners or occupants of the Property or any portion thereof (incidental being defined for purposes of this provision as being one hundred (100) square feet or less of such tenant's, owner's or occupant's actual display space). In addition, if Movie Gallery ceases the sale of video games, Movie Gallery's exclusive shall not apply to sale of video games if Movie Gallery does not reinstate such use within one hundred and eighty (180) days after written notice from Declarant. Furthermore, in the event Movie Gallery ceases operations, as provided for under Paragraph 40C of the Lease (excluding closure due to casualty or for remodeling or repairs), Movie Gallery's exclusive shall not apply if Movie Gallery does not reopen for business within one hundred twenty (120) days after written notice from Declarant.

2. **AGREEMENTS RUN WITH LAND.** For the term of this Declaration, both the benefits and the burdens of all covenants, restrictions, benefits and obligations established by this Declaration shall run with and bind the lands described herein, and shall be binding upon and inure to the benefit of any and all owners thereof and their respective tenants, licensees, invitees, employees, personal representatives, heirs, successors and assigns.

3. **INTERPRETATION.** The restrictions set forth herein shall be narrowly construed, and shall be interpreted so as to allow unfettered use and benefit of the Property, subject only to the express restrictions set forth above.

4. **SEVERABILITY.** If any term, covenant or restriction established by this Declaration shall be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby, and each term, covenant and restriction shall be valid and enforceable to the fullest extent permitted by law.

(9-8-2005)

5. **TERM.** Unless earlier terminated or modified in accordance with the terms of the Declaration, the term of the Declaration shall run coterminous with the Term of the Lease. The Lease Term shall begin on the Commencement Date, which shall be defined as the earlier of sixty (60) days from the date hereof or when Movie Gallery opens for business in its space, and shall continue for seven (7) lease years thereafter; provided, if said first lease year does not end on the last day of a calendar month, the first lease year shall be extended to the end of said month, and each succeeding twelve (12) month period thereafter shall be deemed a lease year. In addition, Movie Gallery has the option under the lease to extend the Term of the Lease for no more than two (2) successive terms of three (3) years each, as more particularly set out in the Lease; provided, however, in the event that Movie Gallery exercises said options, and thereafter, the then existing landlord and Movie Gallery enter into an agreement for an extension of the Lease for an additional period of time or a new lease, this Declaration shall continue in full force and effect so long as Movie Gallery occupies the Leased Premises pursuant to a valid, written lease.


6. **RECORDATION OF TERMINATION.** Declarant, and/or its successors and assigns, may amend this Declaration and file such amendment of record to reflect any termination or modification of this Declaration that is made in accordance with the terms of the Lease or any subsequent lease.

IN WITNESS WHEREOF, Declarant has caused this DECLARATION OF COVENANTS AND RESTRICTIONS to be executed under seal as of the day and year first above written.

DECLARANT:

Alabaster Retail Property, LLC (SEAL)
an Alabama limited liability company

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

By: 
Its: As Vice President

STATE OF ALABAMA)
COUNTY OF Montgomery)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that OWEN ARONOV, of SC Management Inc., an Alabama corporation, the manager of Alabaster Retail Property, L.L.C., an Alabama limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, [s]he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation acting in its capacity as manager of said limited liability company.

Given under my hand and official seal, this 9th day of Sept., 2005.

Janice B. Nix
Notary Public
My Commission Expires: 11-8-08




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EXHIBIT A

Lots 4, 7, 8A and 9, all according to the Map of the White Stone Center as said map is recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 33, at Page 138-A and Page 138-B.

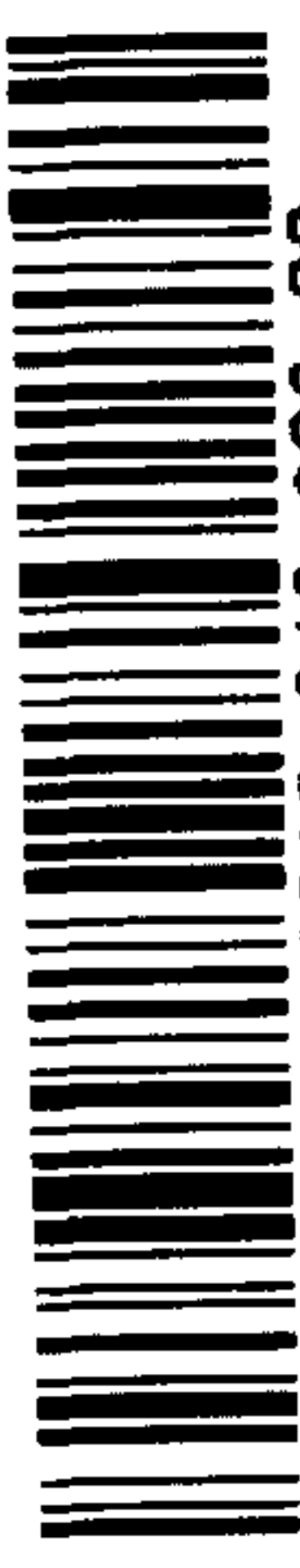
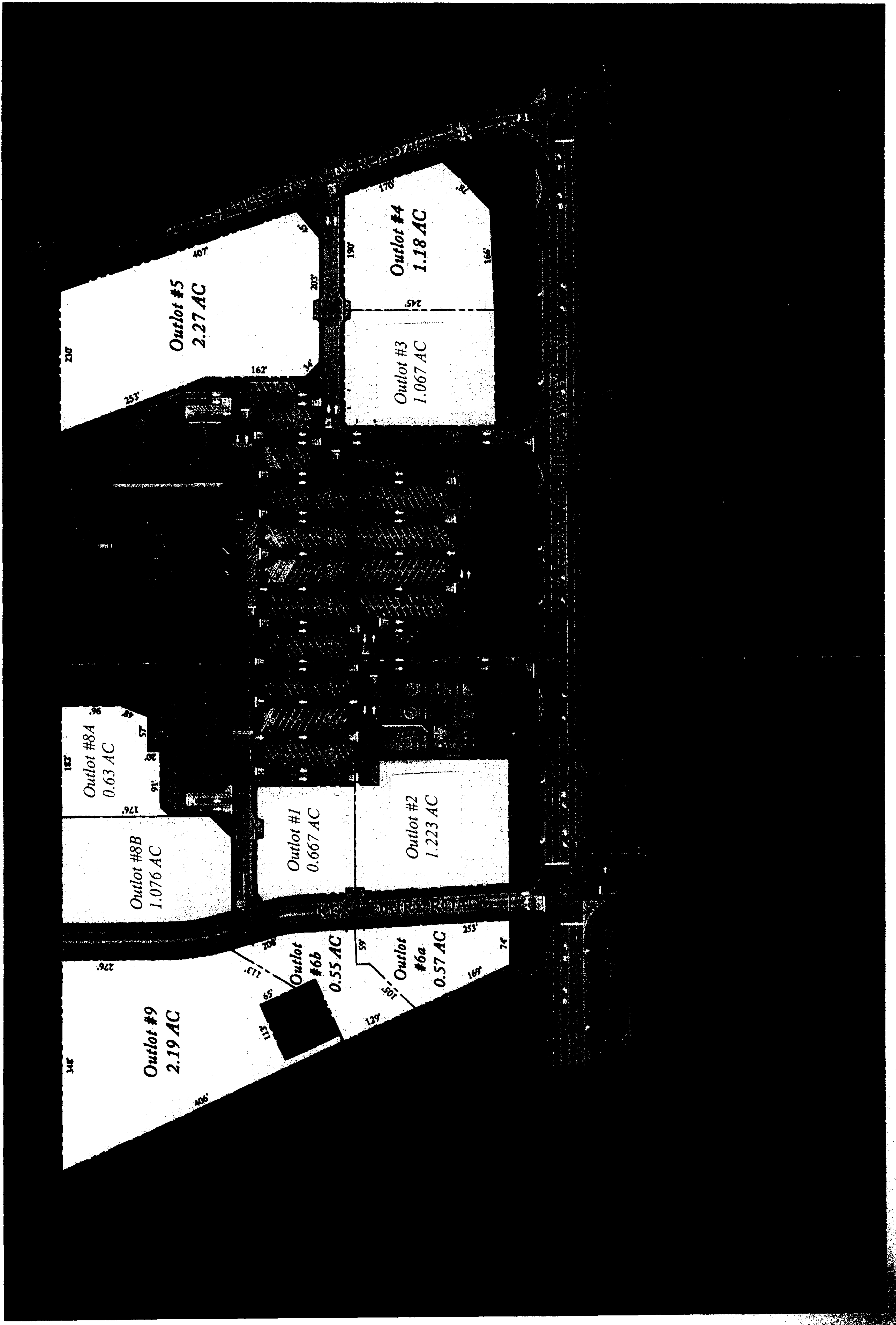
AND

A portion of Lot 6, according to the Map of the White Stone Center as said map is recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 33, at Page 138-A and Page 138-B, which portion is generally shown as "Outlot 6b" on Exhibit "B" attached hereto and made a part hereof. Exhibit B indicates the proposed location of the line subdividing said Lot 6. Lot 6 has not yet been subdivided, however upon the recordation in the Office of the Judge of Probate of Shelby County, Alabama of a map of such subdivision, this restriction shall automatically, and without the necessity of any further documentation, be spread and released (as the case may be) so that it thereafter affects the lot that is generally shown on Exhibit B as Outlot 6b and does not affect any other portion of Lot 6.


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Exhibit "B"



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