

20051010000525290 1/13 \$47.00
Shelby Cnty Judge of Probate, AL
10/10/2005 08:17:19AM FILED/CERT

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

DECLARATION OF RESTRICTIONS (REMAINING OUTPARCELS)

This Declaration of Restrictions is made and executed as of this 5th day of October, 2005 by and between Alabaster Retail Property, L.L.C., an Alabama limited liability company ("Alabaster"), and Schilleci White Stone, LLC, an Alabama limited liability company ("Schilleci").

WITNESSETH:

WHEREAS, Alabaster is the owner of Lot 4 ("Lot 4"), Lot 5 ("Lot 5"), Lot 6 ("Lot 6"), Lot 8A ("Lot 8A") and Lot 9 ("Lot 9") according to the Map of 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 (said Lot 4, Lot 5, Lot 6, Lot 8A and Lot 9 are hereinafter sometimes referred to collectively as the "Outparcels" and, separately, as an "Outparcel");

WHEREAS, Alabaster is this day selling and conveying to Schilleci Lot 7 according to said Map of 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 (hereinafter referred to as the "Shopping Center Parcel");

WHEREAS, Alabaster has previously developed a retail shopping center on the Shopping Center Parcel (said shopping center, as the same may exist from time to time, is hereinafter sometimes referred to as the "Shopping Center"); and

WHEREAS, as a condition to said sale, Alabaster has agreed to impose certain covenants and restrictions on the ownership, use and enjoyment of the Outparcels for the benefit of Schilleci and its successors and assigns as owner of the Shopping Center Parcel (as used herein, the term "Owner" shall mean and refer to Schilleci and its successors and assigns as owner of the Shopping Center Parcel, but shall not include any mortgagee or tenant of the Shopping Center Parcel or any part thereof unless and until said mortgagee or tenant acquires fee simple title to the Shopping Center Parcel by foreclosure, deed in lieu of foreclosure or otherwise).

NOW, THEREFORE, Alabaster hereby creates, establishes and imposes the following restrictions on the ownership, use, and enjoyment of the Outparcels for the benefit of the Owner of the Shopping Center Parcel.

1. Each grantee, tenant, or transferee of an Outparcel from Alabaster, and its and their respective successors and assigns in interest in and to said Outparcel (hereinafter sometimes referred to collectively as the "Transferees" and, separately, as a "Transferee"), by the acceptance of a deed or lease to an Outparcel, shall be deemed to have all covenanted and agreed to all the terms and conditions of this Declaration.

Noted

2. In no event shall any Outparcel be used for any use that would violate any existing restrictions of public record affecting said Outparcel, including but not limited to the restrictions contained in that certain Declaration Of Restrictions, Covenants and Conditions and Grant of Easements (White Stone Shopping Center) dated November 14, 2003, and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Instrument No. 20031124000768400 (the "ECR"), and any business conducted on any such Outparcel shall be conducted in a first-class, reputable manner. Each 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 a 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, theater (including both motion picture and performing), 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, billiard parlor, night club or other place of recreation or amusement or any business serving or selling alcoholic beverages; provided, however, that a convenience store may be permitted to sell beer and wine in closed containers for off-premises consumption, and a restaurant shall be allowed to sell alcoholic beverages as an incidental use in connection with the operation of a full-service restaurant provided that said restaurant shall not violate any of the restrictions contained in Section 9.1.1 or any other provisions of the ECR;

- (m) 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;
- (n) Any use which violates the ECR; and
- (o) Any use which violates the "Movie Gallery" Declaration of Covenants and Restrictions recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Instrument No. 20050923000496010.

2.A. Lot 4, Lot 5 and Lot 8A shall not be used for 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 Alabaster or any subsequent Transferee of Lot 4, Lot 5 or Lot 8A that Alabaster or such subsequent Transferee of said Lot 4, Lot 5 or Lot 8A intends to transfer and convey said 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 2.A with respect to such Acquiring Transferee if such Acquiring Transferee acquires title to said 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 said Lot 4, Lot 5 or Lot 8A. The provisions of this Section 2.A shall not apply with respect to Lot 6 or Lot 9.

3. Following the initial sale or lease of each Outparcel from Alabaster to a Transferee, said Transferee and its successors and assigns in interest in and to said Outparcel shall pay Owner a contribution for the use of certain areas of the Shopping Center Parcel pursuant to the ECR on January 31 following the date of the commencement of construction on said Outparcel, and on January 31 of each year thereafter; provided, however, that no contribution shall be due with respect to Lot 5 or Lot 8A unless said Lot 5 or Lot 8A (as the case may be) is improved and developed in such a manner that will provide direct vehicular access between said lot and the Shopping Center Parcel. The amount of the contribution payable to Owner for each such Outparcel on January 31 following the initial sale or lease of said Outparcel shall be in the following amounts:

<u>Outparcel:</u>	<u>Amount of Initial Contribution:</u>
Lot 4	\$750.00
Lot 5	\$250.00
Lot 6	\$N/A
Lot 8A	\$250.00
Lot 9	\$N/A

On each consecutive January 31 thereafter, the Transferee of said Outparcel shall pay to Owner an amount equal to the sum of the amount of the contribution due and payable on the previous January 31 plus ten percent (10%) of such amount; it being understood that the contribution to the Owner by

the Transferee of each such Outparcel shall automatically increase by ten percent (10%) each year over the amount due and payable for the immediately preceding January 31.

4. The Transferee of each Outparcel 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 such 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 such 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 such Outparcel or any release or threatened release of any hazardous substance, pollutant, contaminant or petroleum in, on, upon, from or under such Outparcel.

5. No noxious or offensive activity shall be carried on upon any Outparcel nor shall anything be done on any such 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.

6. All trash and garbage on each such Outparcel shall be stored in adequate containers outside of the structure on said Outparcel provided it is properly contained and such container is properly screened, all as shown on building plans and plot plan to be approved by Owner in writing. No trash or garbage shall be burned at any time in or about any such Outparcel. If such garbage includes food and/or drink, then such trash and garbage shall be stored in a screened dumpster.

7. Each such 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. Each such Outparcel shall be kept free of any accumulation of trash or debris.

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

9. Each Transferee shall install, preserve, and maintain on its 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.

10. All signs on each such 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) sixteen (16) feet, and the height of any such sign shall not exceed forty-eight (48) 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.

11. 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



20051010000525290 6/13 \$47.00
Shelby Cnty Judge of Probate, AL
10/10/2005 08:17:19AM FILED/CERT

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 11 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.

12. This instrument shall inure to the benefit of Owner, and its successors and assigns in title as owner of the Shopping Center Outparcel (but not any mortgagee or tenant of the Shopping Center Parcel or any part thereof unless and until such mortgagee or tenant acquires fee simple title to the Shopping Center Parcel by foreclosure, deed in lieu of foreclosure or otherwise), and shall be recorded in the public records of Shelby County, Alabama.

13. The obligations and benefits of the respective Transferees under this instrument shall be binding upon and inure to the benefit of said Transferees and their respective successors and assigns in interest in and to their respective Outparcels. Notwithstanding anything to the contrary provided herein, no Transferee shall have any obligations or benefits with respect to any Outparcel other than the Outparcel with respect to which such Transferee has an ownership or leasehold interest.

14. In no event shall this instrument be construed as combining the Outparcels and the Shopping Center Parcel into one lot for zoning purposes, it being agreed that as between the owners of the Outparcels 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 Agreement does not create, and shall not be construed as creating, any easement between the Outparcels and the Shopping Center Parcel.

15. 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.

16. 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 for the benefit of the Shopping Center Parcel and as a burden upon each such Outparcel, and shall be binding on each such Outparcel and each Transferee thereof, and his, her, its or their respective successors and assigns in interest in and to said Outparcel, and shall inure to the benefit of the Owner and its successors and assigns as owner of the Shopping Center Parcel (but not any mortgagee or tenant of said Shopping Center Parcel or any part thereof unless and until such mortgagee or tenant acquires fee simple title to the Shopping Center Parcel by foreclosure, deed in lieu of foreclosure or otherwise). The covenants, easements, and restrictions created by this Agreement shall automatically expire on September 1, 2065. 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 Outparcels or the Shopping Center Parcel or in any improvements constructed thereon.

17. Each owner, grantee, lessee, and occupant of all or any portion of each such 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.

18. The covenants and restrictions imposed under or by virtue of this Agreement shall apply only with respect to the Outparcels, and shall not be deemed to create any common scheme that would restrict the Shopping Center Parcel or any other parcel or parcels of real property heretofore or hereafter owned by the Owner.

19. 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: Schilleci White Stone, LLC
c/o JMS Realty, LLC
1761 Platt Place
Montgomery, AL 36117
Attention: Robert S. Hogan

If To Transferee: Alabaster Retail Property, L.L.C.
c/o SC Management, Inc.
Attention: Mr. Jake F. Aronov
3500 Eastern Boulevard
Montgomery, Alabama 36116

20051010000525290 8/13 \$47.00
Shelby Cnty Judge of Probate, AL
10/10/2005 08:17:19AM FILED/CERT

20. This Agreement may be modified in whole or in part only by a written instrument executed by the then Owner of the Shopping Center Parcel (but not any mortgagee or tenant of the Shopping Center Parcel unless and until said mortgagee or tenant acquires fee simple title to the Shopping Center Parcel by foreclosure, deed in lieu of foreclosure or otherwise), and by the then owner of the Outparcel with respect to which this Agreement is being modified (but not including any owner or owners of any other Outparcels that are subject to this Agreement). The Owner of the Shopping Center Parcel shall have and does hereby expressly reserve the right to modify, amend or waive the covenants and restrictions contained in this Agreement in whole or in part with respect to any one or more of said Outparcels by entering into a written agreement in recordable form with the owner or owners of the Outparcel or Outparcels with respect to which said covenants and restrictions are being modified, amended or waived, without the necessity of obtaining any consents or approvals from either (a) any mortgagee or tenant of the Shopping Center Parcel or of the Outparcel with respect to which said covenants and restrictions are being modified, amended or waived, or (b) any owners, mortgagees or tenants of any other Outparcels or of any other real property whatsoever.

21. This Agreement shall not restrict any party's right to assign or convey its interest in its parcel or in this Agreement 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 Agreement 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 Agreement. 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 Agreement. 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 Agreement. 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 Agreement.

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

23. This Agreement may be executed and acknowledged in multiple counterparts, all such executed and acknowledged counterparts shall constitute the same Agreement, and the signature and notary acknowledgement of any party to any counterpart shall be deemed a signature to and notary acknowledgement of, and may be appended to, any other counterpart.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, Alabaster and Owner have caused this Agreement to be duly executed and delivered as of 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: Jennifer P. Aubrey
Name: Jennifer P. Aubrey
Title: Secretary

SCHILLECI WHITE STONE, LLC,
an Alabama limited liability company

By: Schilleci White Stone Management, Inc.
an Alabama corporation,
Its Manager

By: _____
Name: _____
Title: _____

[ACKNOWLEDGEMENT BEGINS NEXT PAGE]



20051010000525290 10/13 \$47.00
Shelby Cnty Judge of Probate, AL
10/10/2005 08:17:19AM FILED/CERT

IN WITNESS WHEREOF, Alabaster and Owner have caused this Agreement to be duly executed and delivered as of the day and year first above written.

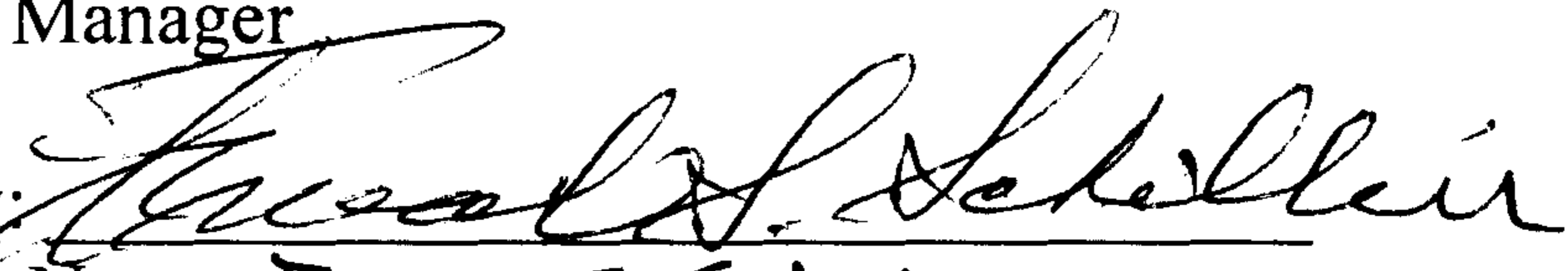
ALABASTER RETAIL PROPERTY, L.L.C.,
an Alabama limited liability company

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

By: _____
Name: _____
Title: _____

SCHILLECI WHITE STONE, LLC,
an Alabama limited liability company

By: Schilleci White Stone Management, Inc.
an Alabama corporation,
Its Manager

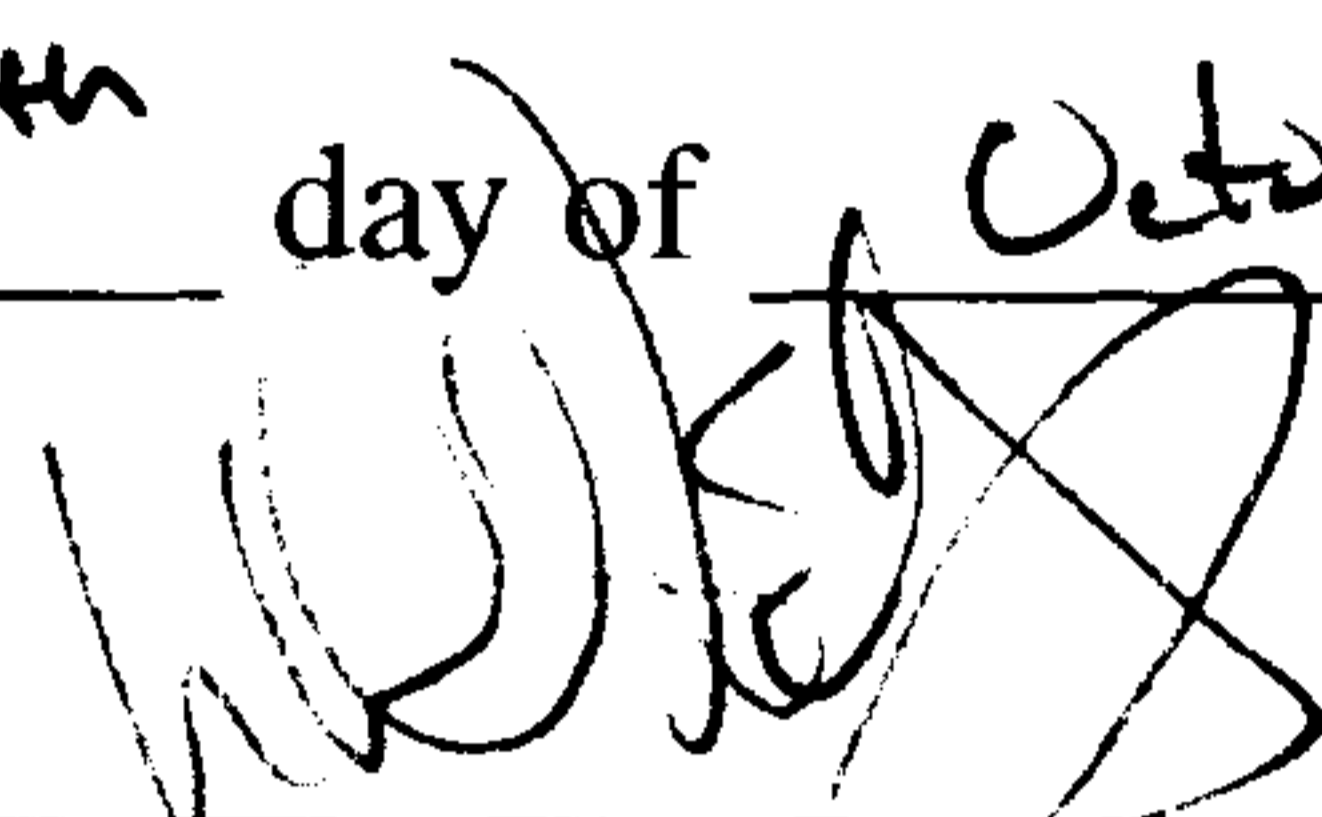
By: 
Name: Frank S. Schilleci
Title: President

[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 Jennifer P. Autrey whose name as Secretary 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/she, as such officer 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 5th day of October, 2005.



Notary Public

My commission expires: 8/29/07

[NOTARY SEAL]

STATE OF ALABAMA)
:
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that _____ whose name as _____ of Schilleci White Stone Management, Inc., an Alabama corporation, acting as Manager of Schilleci White Stone, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer 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 _____ day of _____, 2005.

Notary Public

My commission expires: _____

[NOTARY SEAL]

20051010000525290 12/13 \$47.00
Shelby Cnty Judge of Probate, AL
10/10/2005 08:17:19AM FILED/CERT

STATE OF ALABAMA)
:
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that _____ whose name as _____ 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/she, as such officer 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 _____ day of _____, 2005.

[NOTARY SEAL]

Notary Public

My commission expires: _____

STATE OF ALABAMA)
:
COUNTY OF MONTGOMERY)


I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Franks Schille, whose name as President of Schilleci White Stone Management, Inc., an Alabama corporation, acting as Manager of Schilleci White Stone, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer 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 5th day of October, 2005.

[NOTARY SEAL]

Sandra M. McKinley
Notary Public

My commission expires: 6/26/06


20051010000525290 13/13 \$47.00
Shelby Cnty Judge of Probate, AL
10/10/2005 08:17:19AM FILED/CERT

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
100520051016