

STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

**STATUTORY WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, That in consideration of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, to the undersigned grantor, METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation (the "Grantor"), in hand paid by MOUNTAINVIEW, LLC, an Alabama limited liability company (the "Grantee"), the receipt and sufficiency of which is hereby acknowledged, the said Grantor does by these presents, grant, bargain, sell and convey unto said Grantee, its successors and assigns, that certain real estate situated in Shelby County, Alabama, and described on Exhibit "A" attached hereto and by reference made a part hereof (hereinafter referred to as the "Property").

This conveyance is subject to the following:

1. Taxes and assessments for the year 2006, and subsequent years.
2. Easements and private access drive as shown on the recorded plat of Inverness Corners Outparcel "E", as recorded in Map book 26, page 84, in the Probate office of Shelby County, Alabama.
3. Easements as shown on the recorded plat of Pier 1 Imports Survey, as recorded in map Book 21, page 13, in the Probate Office of Shelby County, Alabama.
4. Rights of others in and to the use of Private Access Roads as shown by the Shelby County Tax Assessor's Maps.
5. Agreement with the City of Hoover recorded in Instrument Real 365, page 876, in the Probate Office of Shelby County, Alabama.
6. Easements to Daniel U.S. Properties Limited Partnership, II, as recorded in Instrument 1999-29882, in the Probate Office of Shelby County, Alabama.
7. Right of Way granted to Alabama Power Company by instrument recorded in Instrument 1993-30343; Volume 320, page 22; Volume 342, pages 367 and 373; Real 34, page 626 and Real 84, page 317 in the Probate Office of Shelby County, Alabama.
8. License Agreement recorded in Instrument 1999-50023, in the Probate Office of Shelby County, Alabama.

Shelby County, AL 10/19/2005  
State of Alabama

01239257.1

Deed Tax: \$600.00

*Hartman & Springfield*

9. Agreement recorded in Instrument 1999-50024, in the Probate Office of Shelby County, Alabama.
10. Reciprocal Easement Agreement recorded in Instrument 20031205000788530, in the Probate Office of Shelby County, Alabama.
11. Coal, oil, gas and other mineral interests in, to or under the Property.
12. Less and except any portion of subject property lying within a road right of way.
13. The covenants, conditions and restrictions set forth in the Declaration of Protective Covenants attached hereto as Exhibit B and made a part hereof.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

The Grantor hereby covenants and agrees with Grantee, its successors and assigns, that the Grantor, its successors and assigns, will warrant and defend the above described real estate against the lawful claims (unless otherwise noted above) of all persons claiming by, through, or under the Grantor, but not further or otherwise.

All of the purchase price recited above was paid from the proceeds of a purchase money mortgage executed simultaneously with the delivery of this deed.



IN WITNESS WHEREOF, each of the Grantor and the Grantee has by its respective duly authorized officer set its signature and seal, this the 13 day of October, 2005.

GRANTOR:

METROPOLITAN LIFE INSURANCE  
COMPANY, a New York corporation

By: Victor W. Turner  
Its: Vice Pres. and Director

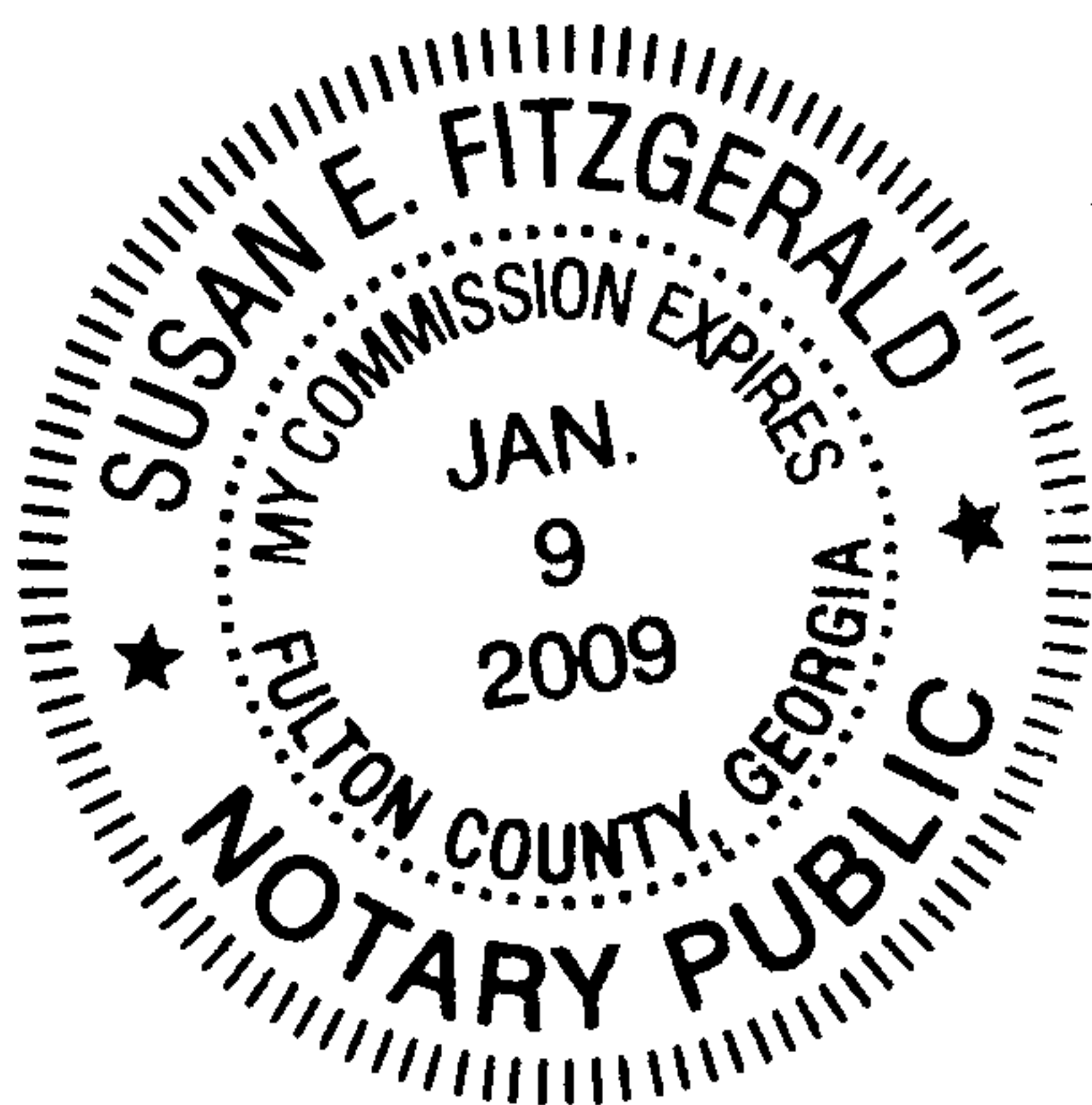
STATE OF Georgia }  
COUNTY OF Fulton }

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Victor W. Turner as Vice President/Director of Metropolitan Life Insurance Company, a New York 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 this instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 13<sup>th</sup> day of October, 2005.

Susan E. Fitzgerald  
Notary Public

[SEAL]





20051019000543980 4/31 \$701.00  
Shelby Cnty Judge of Probate, AL  
10/19/2005 02:19:15PM FILED/CERT

**GRANTEE:**

~~mountainview LLC.~~  
~~MOUNTAINVEIW, LLC,~~  
an Alabama limited liability company

By: [Signature]

Its: member

STATE OF Alabama }  
COUNTY OF Jefferson }

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that T Wayne Graves, as Member of MOUNTAINVEIW, 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 this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as member of said limited liability company.

Given under my hand and official seal, this the 14<sup>th</sup> day of October, 2005.

[Signature]  
Notary Public

[SEAL]

This instrument prepared by:  
Thomas C. Clark III  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2602  
(205) 254-1000



**Exhibit A**

(Legal Description)

Beginning at the Southeastern corner of Section 36, Township 18 South, Range 2 West Shelby County, Alabama and running with the Southern boundary of the SE  $\frac{1}{4}$  (36-18-2) North 87°53'19" West for 738.99 feet to a point; thence leaving Southern boundary and running 3 new lines to-wit: (1) North 02°05'06" East for 237.48 feet to a point; (2) North 18°46'03" East for 349.83 feet to a point; (3) North 83°44'08" East for 158.27 feet to an iron pin on the Southeastern corner of property of First National Bank; thence with property of First National Bank for 4 courses to-wit: (1) a curve to the right with a chord bearing of North 85°48'24" East for 34.11 feet (R=184.50 feet; L=34.16 feet) to a point; (2) South 88°47'47" East for 88.60 feet to a point; (3) a curve to the left with a chord bearing of North 52°42'13" East for 168.70 feet (R=135.50 feet; L=182.10 feet) to a point; (4) a compound curve to the left with a chord bearing of North 01°52'10" West for 88.37 feet (R=160.50 feet; L= 89.53 feet) to a point; thence 3 courses with private road to-wit: (1) North 72°09'04" East for 33.85 feet to a point; (2) North 16°23'44" West for 23.62 feet to a point; (3) North 31°51'47" East for 46.24 feet to a point in the boundary of Inverness Corner Out Parcel E and Pier One Imports, North 28°42'18" East for 254.51 feet to an iron pin on the Southern right of way for U.S. 280; thence with U.S. 280 a curve to the left with a chord bearing of South 66°26'58" East for 33.20 feet (R=3474.05 feet; L=33.20 feet) to an iron pin; thence leaving U.S. 280 and running with the Eastern boundary of Lot 1 (MB 24-5) Lot 2D-2 (MB 21-92) and Lot 2D-3A (MB 25-143) South 00°10'47" East for 1086.51 feet to the Point of Beginning.

Less and except any part of subject property lying within a road right of way.

## **EXHIBIT B**

This **EXHIBIT B** is attached to and by reference made a part of that certain Statutory Warranty Deed dated October 14, 2005, from **METROPOLITAN LIFE INSURANCE COMPANY**, a New York corporation (hereinafter referred to as "Grantor") to **MOUNTAINVIEW, LLC**, an Alabama limited liability company (hereinafter referred to as "Grantee").

### **DECLARATION OF PROTECTIVE COVENANTS**

Grantor hereby establishes, solely for the benefit of itself or any successor Inverness Developer (as defined below), if any, the covenants and restrictions set forth herein (the "Covenants and Restrictions"). In addition, Grantor and Grantee hereby covenant and agree that the conveyance herein of the property and estates granted by the within and foregoing Statutory Warranty Deed (hereinafter "Property") is subject to, held and shall be held, conveyed, hypothecated or encumbered, rented, used, occupied and improved subject to the Covenants and Restrictions, which shall run with the land and shall be binding upon Grantee, the heirs, legal representatives, successors and assigns of Grantee, and all parties (including without limitation the purchaser of each Condominium (as defined herein)) having or acquiring any right, title, or interest in and to the real property and any part or parts thereof subject to such Covenants and Restrictions. The term "Inverness" as used herein shall mean all those tracts and parcels of land located in the City of Hoover, Shelby County, Alabama, and more particularly described in Exhibit "B-1" attached hereto and made a part hereof. The term "Inverness Developer" as used herein shall mean any entity or person which (i) owns at least three of the following projects within Inverness: Inverness Corners Shopping Center; Inverness Plaza Shopping Center; Inverness Country Club and Facilities; Inverness Cliffs



Apartments; Lake Heather Reserve; Inverness Landing Apartments; Office Buildings #10, #22, #31, #40, #42, #44 and #104 (which, for purposes of this provision, shall collectively constitute one "project"); and (ii) has the majority responsibility for enforcing development standards within Inverness.

## **ARTICLE I**

### **MUTUALITY OF BENEFIT AND OBLIGATION**

**1.1 Mutuality.** The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every Condominium in the Development (as defined below) and are intended to create mutual, equitable servitudes upon each of said Condominiums in favor of each and all the other Condominiums therein, to create reciprocal rights between the respective owners of said Condominiums and to create a privity of contract and estate between the grantees of said Condominiums, their heirs, successors and assigns.

## **ARTICLE II**

### **COMMENCEMENT OF CONSTRUCTION AND REQUIREMENTS OF CONSTRUCTION**

**2.1 Permitted Uses.** The Development shall be constructed and used only for the following purposes:

2.1.1 As (i) a first-class residential condominium development containing no more than one hundred twenty five (125) condominium units; and (ii) a first-class office condominium development containing no more than 17,000 square feet of office condominiums; together with one outparcel located thereon, which outparcel shall be used either as a Class A restaurant location (of 6,000 to 7,000 square feet of space) or for the location of other first class commercial or retail use compatible with the Inverness Corners Shopping Center; provided, however, that the following uses shall not be permitted: (i) grocery stores, (ii) low cost providers, area discount department stores, (iii) a home improvement



center, (iv) apartments, (v) commercial office buildings, (vi) Sams Wholesale or (vii) Costco.

2.1.2 Any use hereunder shall comply with all laws, ordinances, rules, regulations and requirements of any governmental authority or agency having jurisdiction over the Property, including those relating to the use, maintenance, storage and disposal of "hazardous substances" (as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act, and the rules and regulations promulgated pursuant thereto, as may be amended from time to time), contaminants, oil, radioactive or other materials, the removal of which is required or the maintenance of which is prohibited, penalized or regulated by any governmental unit.

2.1.4 The Property shall not be used or occupied (a) as a nightclub, bar (not incidental to a permitted restaurant), Chili's Restaurant, restaurant incorporating more than ten (10) coin-operated amusements or showing adult movies to its customers, theater, discotheque, or social encounter bar/restaurant such as Hooters, as Hooters is presently operated in the metropolitan Birmingham, Alabama area (provided, however, restaurants such as Houston's, Ruby Tuesday, Canyon Café, etc. shall be expressly permitted hereunder), (b) for any business or use which creates strong, unusual or offensive odors (except cooking odors), fumes, dust or vapors; is a public or private nuisance; emits noise or sounds which are objectionable due to intermittent beat, frequency, shrillness or loudness; or creates unusual fire, explosives or other hazards, (c) as a bowling alley; billiard parlor; funeral parlor or mortuary; flea market; coin-operated laundromat; laundry "dry- cleaning" plant or laundry "dry-cleaning" full service operation or any other operation that employs dry-cleaning chemicals standard to the industry; industrial manufacturing facilities; automobile, RV, truck or trailer dealership; skating rink;



adult bookstore or establishment selling, exhibiting or distributing nude, pornographic or obscene materials, including, without limitation, massage parlor; topless or nude bar or lounge; so called head shop (provided, however, a modern bookstore such as Borders, Barnes & Noble and Books-a-Million shall be expressly permitted hereunder); amusement arcade or game room; body and fender shop; off-track betting parlor; or kennel or pet store having outdoor boarding facilities; (d) as a motor vehicle service station or establishment for the repair or maintenance of motor vehicles; (e) as a provider of medical services, including but not limited to pregnancy termination clinic, planned parenthood and federally or state funded (in whole or part) medical services; (f) adult day care, child care; and (g) church or religious use.

**2.2 Time of Commencement; Inverness.** Grantee shall commence construction on the Property of the Development within eighteen (18) months from the date of execution of the within and foregoing Statutory Warranty Deed (the "Deed"). The Property conveyed by the Deed is hereby declared to be and is designated as part of Inverness. Commencement of construction shall be defined as grading of the Property to completion, or other tangible initiation of work by Grantee.

**2.3 Plans; Condominium Documents.**

2.3.1 Plans. Grantee intends to construct on the Property (hereinafter, the "Development"): (i) a first-class residential condominium development containing no more than one hundred twenty five (125) condominium units; and (ii) a first-class office condominium development containing no more than 17,000 square feet of office condominiums; together with one outparcel located thereon, which outparcel shall be used either as a Class A restaurant location (of 6,000 to 7,000 square feet of space) or for the location of other first class commercial or retail use compatible with the Inverness Corners



Shopping Center. Any condominium building constructed on the Property shall hereinafter be referred to as a "Building." Grantee hereby agrees that construction of any Building and any other improvements to be located on the Property shall substantially conform with the exterior plans and appearance specifications, if any, approved by Grantor in the manner provided below.

2.3.1 Condominium Documents. Grantee intends to form a condominium and condominium association in connection with the Development. Grantee hereby agrees that, prior to commencing construction of the Development, Grantee's Declaration of Condominium and any other documents related to the formation of the condominium and the condominium association (collectively, the "Condominium Documents") shall be subject to the review and approval of Grantor. In addition, none of the Condominium Documents may be altered, modified or amended without the prior written approval of Grantor.

2.4 Intentionally Omitted.

2.5 Plan Approval. Construction of any Building or site development of the Property shall not commence unless and until Grantee has obtained from Grantor, in the manner set forth herein below, Grantor's unqualified and unconditional approval of any and all preliminary and final exterior plans and appearance specifications, as hereinafter described, relating to such construction of the Building and site development on the Property, including, without limitation, plans and specifications for the exterior of the Building, for the parking areas, for driveways, for lighting, for ingress and egress designs, for signs to be placed on the exterior of the Building or on the Property, including color, location, nature and size, for landscaping, and for all other items relating to the exterior appearance of the Building and the site development on the Property. The scope of review by Grantor shall be limited to exterior



appearance only and shall not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any similar or dissimilar factors. Commencement of construction prior to receipt of a Letter of Approval of the Grantor, a copy of which must be signed by the Grantee, and returned to the Grantor for retention, is strictly prohibited. In the event the Grantor no longer owns property within Inverness, Grantor shall give notice to Grantee to indicate the party (which owns Property in Inverness) to whom the proposed plans are to be forwarded. All such plans and specifications shall be submitted to Grantor for Grantor's review and approval or disapproval in the following manner:

2.5.1 Preliminary Plans and Specifications. Grantee will submit to Grantor, for Grantor's review and approval or disapproval, preliminary plans of the exterior of the Building; specifications for exterior materials of the Building; and a site plan of the Property (showing all proposed improvements, grades, curbs, curb cuts, landscaping, lighting, and location of exterior signs) (the "Site Layout"). The site grading plan shall provide sufficient detail so as to enable the Grantor to relate to finished grade conditions around the proposed Building. Within twenty (20) business days from the date Grantor receives all such preliminary plans and specifications in whole, Grantor will give Grantee written notice of Grantor's approval or disapproval thereof. If such notice is not so given within such period of time, Grantor shall be deemed to have approved such preliminary plans and specifications. Any approval by Grantor, whether actual or implied, of such preliminary plans or specifications or both shall in no event obligate Grantor to approve the final plans and specifications.

2.5.2 Final Plans and Specifications. Grantee will submit to Grantor, for Grantor's review and approval or disapproval, final plans, specifications and samples (if the same materially deviate from the preliminary plans and specifications) which shall include,



without limitation, working drawings of all improvements to the Property, the exterior of the Building, final specifications of exterior materials of the Building, working drawings of the front, sides and rear exterior elevations of the Building, detailed landscaping plans, and detailed plans for exterior signs and for lighting (collectively, the "Final Plans"). Within twenty (20) business days from the date Grantor receives all such final plans and specifications, Grantor will give Grantee written notice of Grantor's approval or disapproval thereof. If such notice is not so given within such period of time, Grantor shall be deemed to have approved such final plans and specifications. The construction of the Building and the development of the site shall be in strict compliance with said final plans and specifications submitted to and approved by Grantor, if any.

**2.6 Additional Construction.** From and after the time the Building is completed in accordance with the provisions of Sections 2.3 through 2.5, or otherwise completed, Grantee will not construct any additional buildings without first procuring Grantor's consent to the exterior components thereof.

**2.7 Modification to Building.** Any material modifications of the exterior of the Building or of the site development of the Property which are proposed by Grantee subsequent to Grantor's approval of the final plans and specifications in accordance with Section 2.5.2 will be in character with the final plans and specifications so approved by Grantor and compatible with the architecture of other structures and with the site development (including, without limitations, signs, driveways, curbs, and landscaping) of Inverness, including without limitation Inverness Corners and Inverness Plaza. Grantee shall make no such material and adverse modification unless and until Grantee first obtains Grantor's approval of preliminary and final plans and specifications therefor. Grantor's approval of such preliminary and final plans and



specifications shall be obtained in the same manner set forth in Section 2.5, except that Grantor shall give Grantee written notice of its approval or disapproval of such plans within fifteen (15) business days of its receipt of all plans and specifications.

**2.8 Signs.** Any exterior sign(s) will conform to the Hoover Overlay District Regulations. Any free standing signage shall be subject to Grantor's sole approval.

**2.9 Disapproval of Plans.** In the event Grantor ever disapproves any preliminary or final plans or specifications of the Building or of any modification of the Building or of the site development, or disapproves of any other plans or specifications required to be submitted by Section 2.5 through 2.8, Grantor shall specify in detail those objections which Grantor may have to same.

2.9.1 The factors which Grantor may consider in determining the approval or disapproval of any preliminary and final plans and specifications are to include the following:

- (a) Building and architectural standards concerning the exterior of the Building and all improvements exterior thereto;
- (b) Aesthetics (including design, appearance, color, size, location, finish, lighting, proportions, and graphics of signage);
- (c) Exterior or exposed materials;
- (d) Site Layout; and
- (e) Compatibility (including architectural, signage, and landscaping)

with existing improvements and property contained within Inverness.

2.9.2 If Grantor repurchases the Property pursuant to Section 5.1 or Section 5.2 below;

(a) The purchase price shall be the same price Grantee paid for the Property.

(b) The closing of the repurchase shall take place within thirty (30) days at a time and place in Birmingham, Alabama, designated by Grantor by written notice to Grantee at least five (5) business days prior thereto.

(c) At closing, the purchase price (as provided in Paragraph 2.9.2(a) above) shall be paid by Grantor to Grantee in immediately available funds (including, without limitation, a cashier's check).

(d) At closing, Grantee shall deliver to Grantor a Statutory Warranty Deed, duly executed by Grantee, conveying insurable fee simple title to the Property, free and clear of all liens and encumbrances, subject only to the exceptions contained herein affecting the Property and those exceptions more particularly set forth in the Statutory Warranty Deed executed and delivered by Grantor to Grantee in connection with Grantee's purchase of the Property.

(e) At closing, all real property and ad valorem taxes and other taxes and assessments levied upon or assessed against the Property for the year in which the closing occurs shall be prorated as of the closing date.

(f) Grantee will deliver exclusive possession of the Property on the closing date subject to those matters set forth in subparagraph (d) above.

(g) After the above-referenced closing, this declaration of Covenants and Restrictions shall be null and void.

**2.10 Drainage Provisions.** The following provisions shall apply to drainage:



2.10.1 In connection with the construction of the Building and of any modifications thereof and of any additional buildings and with the site development of the Property, Grantee shall make such provision for drainage of the Property affected by such construction and development as is satisfactory to any appropriate county, municipal, or governmental agencies having authority over such construction and development. In addition, Grantee shall not permit its development of the Property to increase the drainage velocity of stormwater from the Property into Lake Heather, and Grantee must take all measures necessary in order to prevent such increase in drainage velocity, including the installation of one or more detention ponds on the Property, if necessary. Further, Grantee hereby covenants and agrees to hold Grantor harmless against any and all loss, cost, damage, or injury which Grantor shall ever suffer or endure because of Grantee's failure to make adequate provisions for drainage of the Property after said proposed construction and development.

2.10.2 Existing drainage shall not be altered in such a manner as to divert the flow of water onto an adjacent lot or lots, unless approved by the adjacent lot owner(s) and/or the proper government authorities. Grantor shall work with the Grantee and in accordance with the governing body/authority concerning any changes to drainage and procure requisite approvals from the proper agencies prior to any alteration of existing drainage.

**2.11 Design Criteria, Structure.**

2.11.1 It is the intent of the Grantor and Grantee that the Development generally present a traditional architectural environment. The following types of exterior materials, among others, are acceptable, subject to final approval of the actual appearance of such materials by the Grantor:

- (a) Brick;

- (b) Stone;
- (c) Natural-colored asphalt shingles or slate roofing. White roofing of any material is not acceptable;
- (d) Paint, in natural colors or earthtones; and
- (e) stucco, E.I.F.S. and hard coat, but only in the form of "accent" materials.

In intent, this criteria frowns upon the practice of placing materials on the sides and back of a residence that are essentially different from the front elevation.

2.11.2 No window-mounted air conditioning units shall be allowed.

2.11.3 Electrical distribution shall be underground and no overhead wiring (electrical, telephone, cable or otherwise) shall be permitted, except for temporary utilities for construction purposes.

2.11.4 No exterior radio or television antennas or satellite dishes larger than eighteen (18) inches shall be allowed on the roof of the Building. Any satellite dishes allowed within the Development shall not be visible from Valleydale Road, Inverness Corners Shopping Center, Inverness Plaza Shopping Center, Inverness Center Drive or Highway 280.

2.11.5 All plumbing, heating and exhaust ventilation piping or other equipment shall be located on the roof of the Building and shall not be visible from Valleydale Road, Inverness Corners Shopping Center, Inverness Plaza Shopping Center, Inverness Center Drive, Highway 280 or Lake Heather Estates.

2.11.6 Concrete paving is preferred and suggested for driveway surfaces. Where possible, brick or stone walkways are encouraged.



2.11.7 Any chimneys shall have finished caps of the basic exterior finish material or a fabricated metal cap of a color and finish to match the basic exterior finish material.

2.11.8 No exposed metal areas of the Building or related equipment shall be of a reflective or silver finish and all such metal shall be of either a factory painted finish or a dark anodized finish which blends with adjoining areas.

2.11.9 During construction, all vehicles, including those delivering supplies, must enter the building site only on driveways approved by the Grantor and such vehicles must be parked on the portion of the Property where the construction is underway so as to not unnecessarily damage trees.

2.11.10 Chain link or wire type fences of any type may not be used for any purpose. Any fencing used in or about the Building shall be of brick, stone and/or ornamental Iron type construction.

2.11.11 No outside clotheslines shall be allowed.

2.11.12 There shall be no signs nailed to trees at any time.

2.11.13 All proposed exterior redecorating, including painting, must be approved by the Grantor or its successors or assigns.

2.11.14 Drainage of surface waters, storm water and/or foundation drains may not be connected to sanitary sewers.

2.11.15 Existing drainage shall not be altered in any manner, and specifically shall not be altered in such a manner as to divert the flow of water onto adjacent property.

2.11.16 There shall be no detached auxiliary structures, or other types of exterior unconnected structures which are of a temporary nature, including, but not limited to, storage sheds, trailers or tents.

**2.12 Limits of Liability.** Neither the Grantor, nor any architect nor agent thereof, shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. It is specifically agreed that the scope of review by the Grantor shall be limited to appearance only and shall not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards or any other similar or dissimilar factors. Neither the Grantor nor any officer, director or shareholder thereof shall be liable to any Condominium owner for any action taken or omitted to be taken by the Grantor or the individual officers, directors or shareholders thereof in the performance of their respective duties hereunder

### **ARTICLE III**

#### **REPAIR OF DAMAGE; INDEMNITY**

**3.1** Grantee shall repair, restore, or replace, as Grantor shall direct, any property, whether personal or real, by whomever owned, which is damaged, destroyed, or injured in any way by Grantee, its agents, representatives, designees, employees, or successors or assigns, in connection with the construction of the Building or the site development on the Property, including, without limitation, any right-of-way curbs, median curbs, signs, or pavement in the rights-of-way of dedicated or undedicated roads within; and Grantee hereby agrees to indemnify and hold Grantor harmless from any and all liabilities, claims, and losses resulting from or arising in connection with any such damage, destruction, or injury.



**ARTICLE IV**  
**MAINTENANCE**

**4.1 Maintenance of Property.** Before such construction of the Building is commenced, during such construction, and after such construction is completed, the Property and areas contiguous to road right of ways including Inverness Corners Shopping Center (and its outparcels) and Highway 280 rights-of-way and any future access roads, shall be kept grassed, mowed, and otherwise maintained by Grantee in an attractive appearance and to a level of quality equal to or better than maintenance of other sites or common areas maintained by Grantor throughout Inverness. In the event Grantee fails to keep the Property so grassed, mowed, and maintained, Grantor, its representatives, agents, or employees shall have the right, after seven (7) days' notice to Grantee, to enter onto the Property and perform all work needed or desired in order to maintain the Property in the manner provided. Such entrance upon the Property for such purposes shall not be a trespass. Grantee hereby agrees to pay Grantor such documented costs and expenses as Grantor shall incur by so acting to maintain the Property within ten (10) days from the receipt by Grantee of a statement from Grantor for any such work.

**4.2 Maintenance During Construction.** The following provisions shall be observed:

4.2.1 Dust abatement and erosion control measures shall be provided by the Grantee or owner in all stages of construction.

4.2.2 All building debris, stumps, trees, etc., must be removed from the Property by builder as often as necessary to keep the Property attractive. Such debris shall not be dumped in any area of Inverness.

4.2.3 During construction, all vehicles, including those delivering supplies, must be parked on the building lot where the construction is under way so as to not unnecessarily damage any other adjacent property.

## **ARTICLE V**

### **RIGHT OF REPURCHASE**

#### **5.1 Failure to Begin Construction; Failure to Obtain Approval of Final Plans.**

In the event (i) Grantee shall not have commenced construction within the time period set out in Section 2.1, or (ii) Grantor shall disapprove the Final Plans and the parties are unable to agree upon such Final Plans within twenty (20) business days after Grantor's written disapproval thereof, Grantor shall have the right, but not the obligation, to repurchase the Property for an amount not to exceed the purchase price paid Grantor for the Property as set forth in Section 2.9.2 and Section 5.3.

**5.2 Resale.** In the event that (i) the Grantee desires to convey the Property to any party which is not Grantee's parent, subsidiary, an affiliated corporation or any entity which is directly or indirectly controlled by a parent, subsidiary or affiliated corporation prior to the expiration of eighteen (18) months after the purchase from Grantor, and (ii) the Grantee and/or its transferee has not begun construction of the Building thereon within such eighteen (18) month period, Grantor shall have and retains the option to purchase the Property from Grantee as set forth in Sections 2.9.2 and 5.3 hereof at an amount not to exceed the purchase price paid to Grantor for the Property as set forth in Section 2.9.2 and 5.3 hereof. Grantee shall give Grantor written notice of Grantee's desire to sell the Property and Grantor shall have thirty (30) days after receipt thereof to give notice to Grantee of its intent to repurchase.



**5.3     Time to Repurchase.** In the event Grantor, in its sole election and at its sole discretion, so elects to repurchase the Property under the provisions of Section 5.1 or 5.2, Grantor shall give Grantee written notice of such election to repurchase within thirty (30) days after the date which is eighteen (18) months from the date hereof. If Grantor does not so notify Grantee within such thirty (30) day period, Grantor shall be deemed to have waived its right of repurchase under Section 5.1 and/or 5.2, as the case may be. In the event Grantor declines to exercise its right to repurchase under Section 5.1 or 5.2, as the case may be, or fails to notify Grantee within such thirty (30) day period, then Grantee shall be free to construct on the Property such Building as shall be compatible with other buildings in Inverness and shall be free to choose such site development plan as shall be compatible with other portions of said surrounding Inverness common area, subject to the provisions of Article II. In the event Grantor gives notice of the intent to repurchase pursuant to Sections 5.1 or 5.2 to Grantee within the applicable thirty (30) day period, the closing of the repurchase by Grantor shall be consummated.

## **ARTICLE VI**

### **GENERAL RESTRICTIONS**

**6.1     Nuisances.** No noxious, offensive, or illegal activities shall be carried on upon any parcel nor shall anything be done on any parcel, which may be or may become an annoyance or nuisance to Inverness Corners Shopping Center.

**6.2     Mining, etc.** No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon the Property and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on

the Property; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on the Property.

**6.3     Antennas.** All outside radio and television antennas shall be properly screened.

**6.4     Trash.** No trash, garbage, or other refuse shall be dumped, stored, or accumulated on the Property. Trash, garbage or other waste shall not be kept on the Property, except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened by shrubbery or other appropriate material as not to be visible from any road or lake within sight distance of the parcel at any time except during refuse collection. No outside burning of wood, leaves, trash, garbage or other refuse shall be permitted.

**6.5     Advertising Structures.** All signs, billboards or advertising structures of any kind shall be prohibited unless approved in writing by Grantor.

**6.6     Access.** The Property shall be accessed solely from the Inverness Corners Shopping Center.

**6.7     Animals.** No animals, livestock or poultry of any kind or description except the usual household pets shall be kept on the Property; provided, however, that no household pet may be kept on the Property or in any Condominium for breeding or commercial purposes; provided further, that any household pets must be kept on a leash when permitted to be outside the Building.

## **ARTICLE VII** **ENFORCEMENT**

**7.1** In the event of a violation or breach of any of these restrictions, or any amendments thereto by any property owner, or agent of such owner, the Inverness Developer,



if any (who shall have been identified as such in writing), shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages or other charges, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of any aggrieved party to invoke an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a difference violation. Grantor shall not be responsible in any way for any delay or failure to enforce or seek to enforce any violation or breach of any of these restrictions or amendments thereto.

7.2 Each and every Condominium owner and future Condominium owners, in accepting a deed or contract for any Condominium or Condominiums in the Development agrees to adhere to these Protective Covenants governing the Development. If said Condominium owner(s) does not adhere to said covenants and legal action is taken against the party in violation of said covenants, then the Condominium owner(s) in violation agrees to pay all attorney fees and other associated costs incurred by other parties in pursuing legal action to remedy violations of these covenants.

### **ARTICLE III**

#### **GRANTEE'S INDEMNIFICATION AGREEMENT**

8.1 Grantee agrees to repair, restore, or replace, as Grantor shall direct, any property, whether personal or real, by whomever owned which is damaged, destroyed, or injured in any way by Grantee, its agents, representatives, designees, employees, or successors or assigns, in connection with the initial development and construction of the Development and the dwelling units therein, including, without limitation, any damage to right-of-way curbs,



median curbs, signs, or pavement in the rights-of-way of dedicated or undedicated roads within the Inverness community, and Grantee hereby agrees to indemnify and hold Grantor harmless from any and all liabilities, claims and losses resulting from or arising in connection with any such damage, destruction, or injury.

**ARTICLE IX**  
**GRANTEE'S ACCEPTANCE AND INDEMNIFICATION AGREEMENT**

9.1 The grantee of any Condominium subject to the coverage of these restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purpose thereof, whether from Grantee or a subsequent owner of such Condominium, shall accept such deed or other contract upon and subject to each and all of these restrictions and the agreements herein contained.

9.2 Each and every Condominium owner and future Condominium owner, in accepting a deed or contract for any Condominium or Condominiums in the Development, whether from Grantee or a subsequent owner of such Condominium agrees to indemnify and reimburse Grantee or Grantor, as the case may be, for any damage caused by such Condominium owner, or the contractor, agent or employees of such Condominium owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by Grantor or Grantee, or for which Grantor or Grantee has responsibility, at the time of such damage.

9.3 Each and every Condominium owner and future Condominium owner, in accepting a deed or contract for any Condominium or Condominiums in the Development, whether from Grantee or a subsequent owner of such Condominium, agrees and covenants to release, indemnify protect and hold harmless the Grantor, its successors and assigns, and its agents, directors and employees (all of whom are included in the term "Grantor" for the



purposes of this Section 10.3) from and against any and all claims, and demands by such owner, any member of his or her family, their employees, agents, guests, invitees, licensees, contractors, and employees or for damages to property and injury or death which may arise out of or be caused directly or indirectly by such owner's Condominium or Condominiums, and/or the use of or construction on said Condominium or Condominiums by said owner, any member of his or her family, their guests, agents, invitees, licensees, contractors, or employees or subcontractors of such contractors, or by any other person whomsoever. The indemnification by such owner as set forth above shall also cover any and all expenses of Grantor, including attorneys' fees, resulting from any claims or demands.

**9.4** Each and every Condominium owner and future Condominium owner, in accepting a deed or contract for any Condominium or Condominiums in the Development, whether from Grantee or a subsequent owner of such Condominium, agrees and covenants to release, indemnify, protect and hold harmless the Grantor, its successors and assigns, and its agents, directors and employees (all of whom are included in the term "Grantor" for the purposes of this Section 10.4) from and against any, and all liability, claims and causes of action whether arising at law or in equity because of any past or future subsidence, if any, of the land so conveyed, and any and all damage or destruction of property and injury to or death of any person located in, on, or under the surface of or over land so conveyed, as the case may be, by reason of any exercise of any past mining and removing of minerals from the land so conveyed, and/or adjacent and nearby lands, or from any soil, subsoil or other conditions.

**9.5** Each and every Condominium owner and future Condominium owner, in accepting a deed or contract for any Condominium or Condominiums in the Development, whether from Grantee or a subsequent owner of such Condominium, agrees, in connection with



the construction of any improvements on such Condominium or Condominiums, to exercise due care, and to assure that any contractors of such owner, or employees and subcontractors of such contractors, will exercise due care and will comply with any and all governmental rules, regulations, codes and ordinances relating to safety, so as to protect the safety and health of the public, and the safety and health of such owner, his or her family, and any such contractor and its employees and subcontractors.

## **ARTICLE X** **TERM AND MODIFICATION**

**10.1** These covenants and restrictions shall run with the land and can be changed, modified, amended, altered or terminated only by a duly recorded written instrument executed by the Grantor, its successors and assigns, until twenty (20) years from the date hereof, and, thereafter by the then record owners (including mortgagees and other lien holders of record, if any) of two-thirds (2/3's) of the number of Condominiums of this Development.

## **ARTICLE XI** **SEVERABILITY**

**11.1** Every one of the restrictions is hereby declared to be independent of, and severable from the rest of the restrictions and of and from every other one of the restrictions and of and from every combination of the restrictions. Invalidation by any court of any restriction in this instrument shall in no way affect any of the other restrictions which shall remain in full force and effect.

**11.2** Grantee may include in any contract or deed hereinafter made or entered into, such modifications and/or additions to these protective covenants and restrictions, which will by their nature raise the standards of the Development, subject to written approval by Grantor.

## **ARTICLE XII**



### **CAPTIONS**

12.1 The captions preceding the various paragraphs and subparagraphs of these restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form, shall be taken to mean or apply to the feminine or to the neuter.

### **ARTICLE XIII** **NOTICES**

13.1 Any notice required to be sent to the Grantee or to any Condominium owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States mail, postage paid, to the address of the Grantee or such Condominium owner at the time of such mailing.

### **ARTICLE XIV** **GOVERNING LAW**

14.1 Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration of Protective Covenants as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

### **ARTICLE XV** **RECIPROCAL NEGATIVE EASEMENTS**

15.1 Grantor and Grantee covenant and agree that the hereinabove provided restrictions shall not encumber or restrict or burden, either as reciprocal negative easements or as implied covenants or as restrictive covenants or as equitable servitudes or as any other right



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Shelby Cnty Judge of Probate, AL  
10/19/2005 02:19:15PM FILED/CERT

or interest or claim, any other properties owned in part or entirely by Grantor and which may benefit from the hereinabove provided restrictions, it being the intention of Grantor and Grantee that only the Property shall be restricted thereby. Grantor hereby expresses its general intent to use these same restrictions, as they may be modified, on other property in Inverness, as it may be specifically designated by deed as such from time to time.

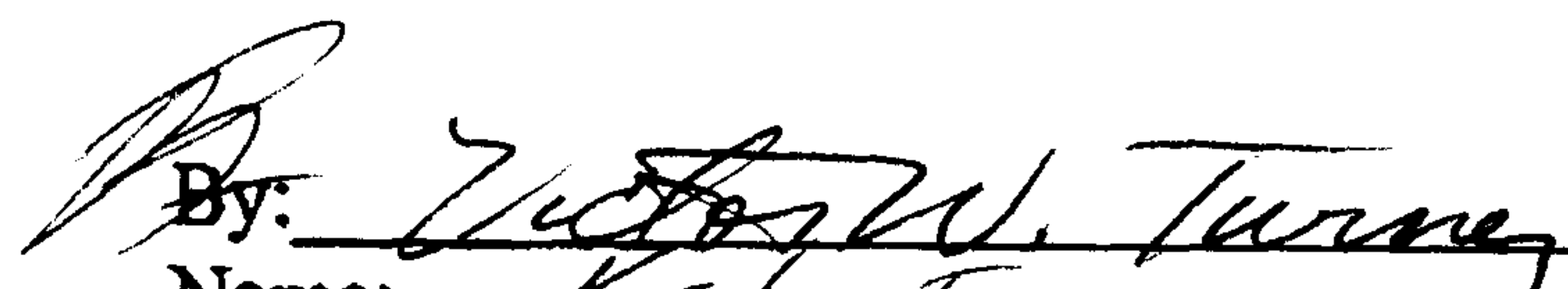


IN WITNESS WHEREOF, METROPOLITAN LIFE INSURANCE COMPANY, a  
New York corporation, has caused these restrictions to be properly executed and recorded in  
the Office of the Judge of Probate of Shelby County, Alabama.

Signed, sealed and delivered  
by Grantor in the presence of:

GRANTOR: METROPOLITAN LIFE  
INSURANCE COMPANY,  
a New York corporation

  
\_\_\_\_\_  
Witness

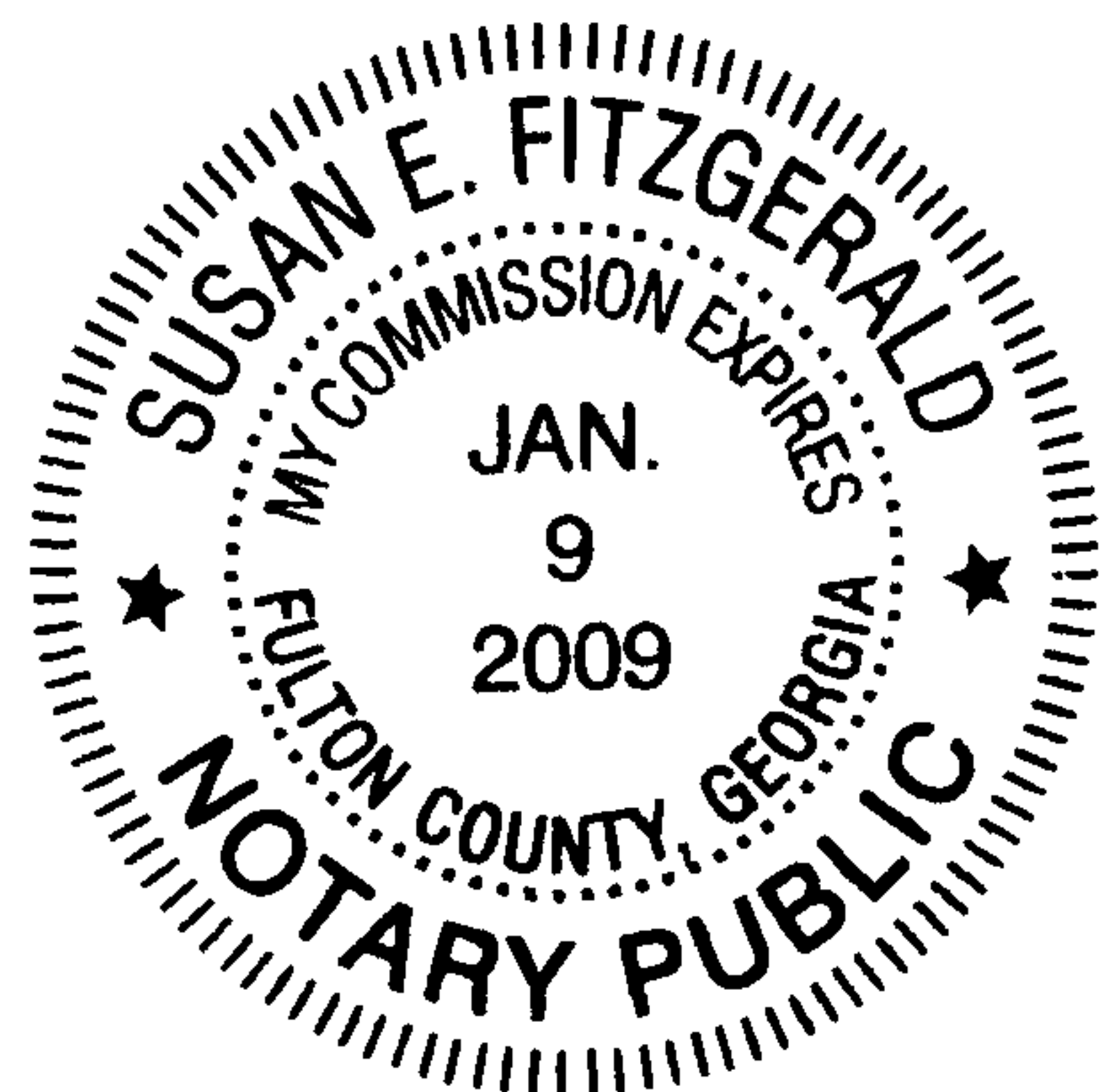
By:   
Name: Victor W. Turner  
Title: Vice President - Director

STATE OF Georgia }  
COUNTY OF Fulton }

I, the undersigned authority, a Notary Public in and for said County in said State,  
hereby certify that Victor W. Turner of Metropolitan Life Insurance Company, a  
New York 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 this instrument,  
he, as such officer and with full authority, executed the same voluntarily for and as the act of  
said corporation.

Given under my hand and official seal, this the 13<sup>th</sup> day of October, 2005.

[SEAL]



Susan E. Fitzgerald  
Notary Public

Signed, sealed and delivered  
by Grantee in the presence of:

GRANTEE:  
MOUNTAINVIEW, LLC,  
an Alabama limited liability company

J L Holt III

By: J L Holt III  
Name: J L Holt III  
Title: member

STATE OF Alabama }  
COUNTY OF Jefferson }

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J Wayne Graves, as Member of Mountainview, 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 this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 14<sup>th</sup> day of October, 2005.

J L Holt III  
Notary Public  
8/4/09

[SEAL]



EXHIBIT B 1

# INVERNESS

*An investment of*  
**MetLife** Real Estate  
DEVELOPED, MANAGED AND LEASED BY  
**TAYLOR & MATHIS**

