

20051219000652290 1/11 \$3041.00  
Shelby Cnty Judge of Probate, AL  
12/19/2005 08:21:55AM FILED/CERT

Send Tax Notice To:  
I & G Inverness Retail, L.L.C.  
c/o LaSalle Investment Management, Inc.  
200 East Randolph Drive, 44th Floor  
Chicago, IL 60601  
Attn: Brian Gorz

STATE OF ALABAMA     )  
                                  )  
COUNTY OF SHELBY    )

### **STATUTORY WARRANTY DEED**

THIS IS A STATUTORY WARRANTY DEED executed and delivered as of the 15th day of December, 2005, by **METROPOLITAN LIFE INSURANCE COMPANY**, a New York Corporation, (hereinafter referred to as the "Grantor"), to **I&G INVERNESS RETAIL, L.L.C.**, a Delaware limited liability company (the "Grantee").

KNOW ALL MEN BY THESE PRESENTS:

That in consideration of the sum of Ten Dollars (\$10.00) in hand paid by Grantee to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, the Grantor does by these presents, grant, bargain, sell and convey unto Grantee the real estate situated in Shelby County, Alabama and more particularly described on Exhibit "A" attached hereto.

TOGETHER WITH all appurtenances thereto belonging or in anywise appertaining and all right, title and interest of Grantor in and to any and all roads, alleys and ways bounding such property.

This conveyance is subject to the following:

1. Taxes for the year 2005, a lien, but not yet due and payable.
2. Mineral and mining rights not owned by the Grantor.
3. Any applicable zoning ordinances.
4. Easements, rights-of-ways, reservations, agreements, restrictions and setback lines of record as set forth on Exhibit "B" attached hereto and by reference made a part hereof.
5. Declaration of Protective Covenants attached hereto as Exhibit "C".

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.

IN WITNESS WHEREOF, THE SAID Grantor, by its Vice President, who is authorized to execute this conveyance, has hereto set its signature and seal as of the 15<sup>th</sup> day of December, 2005.

**GRANTOR:**

**METROPOLITAN LIFE INSURANCE COMPANY,**  
a New York corporation

Attest:

By: Kathy B. Atkinson  
Name: Kathy B. Atkinson  
Its: Assistant Secretary

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

[CORPORATE SEAL]

STATE OF GEORGIA  
COUNTY OF FULTON

I, Kathleen D. Coady, a Notary Public in and for said County, in said State, hereby certify that Victor W. Turner, as Vice President of **METROPOLITAN LIFE INSURANCE COMPANY**, a New York corporation, signed to the foregoing conveyance, and who is known to me, acknowledged before on this day, that being informed of the contents of this conveyance, 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 12<sup>th</sup> day of December, 2005.



Notary: Kathleen D. Coady  
Print Name: Kathleen D. Coady

THIS INSTRUMENT PREPARED BY:

Kathy B. Atkinson, Esq.  
Metropolitan Life Insurance Company  
2400 Lakeview Parkway, Suite 400  
Alpharetta, Georgia 30004  
678-319-2109


**EXHIBIT A**

**SITE 35**

All that piece or tract of land lying at the northwestern intersection of Inverness Central Drive and Alabama Hwy. 17 (A.K.A. Valleydale Road) in Shelby County mostly in Section 36, Township 18 South, Range 2 West near the City of Birmingham and more particularly described as:

Commencing at the southwest corner of the SE 1/4 of Section 36, Township 18 South, Range 2 West and running with the west line of southeast 1/4 N00°02'56"W for 771.46 feet to an iron pin, being the southwestern corner of property now or formerly of Industrial Development Board of Vincent which is the Point of Beginning. Thence running with Industrial Development Board of Vincent for two (2) courses to-wit: (1) S60°54'05"E for 257.28 feet to an iron pin; (2) N29°05'55"E for 643.67 feet to an iron pin passing iron pin at 499.95 feet; thence turning and running with Inverness Plaza shopping center (various owners) for four (4) courses to-wit: (1) S60°54'59"E for 490.07 feet to an iron pin; (2) N79°00'03"E for 53.06 feet to an iron pin; (3) S44°05'01"W for 5.13 feet to an iron pin; (4) S33°00'02"E for 146.34 feet to a point passing an iron pin at 141.34 feet on the western right of way of Valleydale Road; thence with Valleydale Road for six (6) courses to-wit: (1) S56°42'04"W for 75.86 feet; (2) a curve to the left with a chord bearing of S43°23'36"W for 782.62 feet (R=700.00 feet; L=789.71 feet); (3) S29°46'38"W for 308.33 feet; (4) N60°13'22"W for 25.00 feet; (5) S30°04'05"W for 148.12 feet; (6) a curve to the right with a chord bearing of S77°28'22"W for 116.30 feet (R=86.00 feet; L=127.71 feet) thence leaving Valleydale Road and running with the northern right of way of Inverness Center Drive for four (4) courses to-wit: (1) N59°59'05"W for 87.02 feet; (2) a curve to the left with a chord bearing of N67°31'16"W for 269.50 feet (R=1027.50 feet; L=270.30 feet); (3) N75°03'26"W for 147.31 feet; (4) a curve to the right with a chord bearing of N68°02'57"W for 116.52 feet (R=477.50 feet; L=116.81 feet); thence leaving Inverness Center Drive and running with Site 31 of Inverness Center N32°05'34"E for 835.84 feet to the Point of Beginning.

Contains 20.15 acres more or less and is

  
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**EXHIBIT B**

**PERMITTED EXCEPTIONS  
VACANT SITE 35**

1. Easement(s)/Right(s) of Way granted Alabama Power Company recorded in Deed Book 327, page 881; Instrument Number 1993-28301 as shown on survey prepared by Freeland-Clinkscates & Associates, Inc. of N.C., Drawing Number H25104, dated April 26, 2005 and last revised December 12, 2005.
2. Agreement to the City of Hoover as recorded in Real Volume 314, page 561 and Real Volume 365, page 876.
3. Restrictions contained in Statutory Warranty Deed as recorded under instrument no. 1999-13028.

## **EXHIBIT "C"**

This **EXHIBIT C** is attached to and by reference made a part of that certain Statutory Warranty Deed dated December 15<sup>th</sup> 2005, from **METROPOLITAN LIFE INSURANCE COMPANY**, a New York corporation (hereinafter referred to as "Grantor") to **I&G INVERNESS RETAIL, L.L.C.**, a Delaware 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 the 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 until terminated in accordance with Article VII below and until such time shall be binding upon Grantee, the heirs, legal representatives, successors and assigns of Grantee, and all parties 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 "C-1" attached hereto and made a part hereof. The term "Inverness Developer" as used herein shall mean Metropolitan Life Insurance Company so long as it owns any property within the Inverness or any assignee of Metropolitan Life Insurance Company.

## **ARTICLE I**

### **COMMENCEMENT OF CONSTRUCTION**

1.1 Plans. Grantee hereby agrees that construction of any improvements to be located on the Property (the "Development") shall substantially conform with the exterior plans and appearance specifications, if any, approved by Grantor in the manner provided in ARTICLE II hereinbelow.

1.2 Inverness. The Property conveyed by the within and foregoing Statutory Warranty Deed is hereby declared to be and is designated as part of Inverness.

## **ARTICLE II**

### **PERMITTED USES, PLAN APPROVAL**

2.1 Permitted Uses. The Development to be constructed on the Property shall be so constructed and used only for the following purposes:

- 2.1.1 Retail users and/or other compatible uses commonly found in high quality shopping centers; provided however, that the following uses shall not be permitted: (i) for a home improvement center or (ii) for the sale of lumber, hardware items, plumbing supplies and electrical supplies except for the incidental sale of such items; or

2.1.2 Except as set forth in Section 2.2.1, any other uses as may be permitted under the applicable zoning laws which is approved by the City of Hoover. Grantor covenants and agrees, on behalf of itself and on behalf of anyone who succeeds to Grantor's interest herein as the Inverness Developer, that it will not oppose any application by Grantee for such approval.

2.2 Compliance with Applicable Laws. 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.

2.3 Prohibited Uses. The Property shall not be used or occupied (a) 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, (b) 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; (c) as a motor vehicle service station or establishment for the repair or maintenance of motor vehicles, except as part of or incidental to other services such as tire, batter or other service centers for a Walmart or Sears store, or (d) as a pregnancy termination clinic.

2.4 Quality of Appearance. The exterior of the Development and the site development on the Property will be planned and constructed to a level of quality and appearance comparable to the other Class A high quality developments in the Highway 280 Corridor. Grantor acknowledges that exteriors consisting of architectural block, stucco or brick shall be at all times acceptable materials. All utilities serving the Property or the Development or both shall be underground except for temporary utilities for construction purposes and Grantee shall pay any additional costs to any utility company for such underground service; all exterior lighting placed on the Property or the Development shall conform to those types of lighting, which are compatible with similar high quality developments in the U.S. Highway 280 Corridor.

2.5 Plan Approval. Construction of the Development 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 Development and site development on the Property, including, without limitation, plans and specifications for the exterior of the Development. 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 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 Inverness, Grantor shall give notice to Grantee to indicate any new Inverness Developer 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 front exterior elevation, of the Development; specifications for exterior materials of the Development; 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"). Within twelve (12) 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, which approval shall not be unreasonably withheld and shall not be denied if the design of the Development is consistent with the design of other similar types of modern Class A developments in the U.S. Highway 280 Corridor. 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; provided, however, Grantor may not disapprove anything which is consistent with the Site Layout approved by Grantor.

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 Development, final specifications of exterior materials of the Development, working drawings of the front elevation of the Development, detailed landscaping plans, and detailed plans for exterior signs and for lighting (collectively, the "Final Plans"). Within twelve (12) 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 which approval shall not be unreasonably withheld and shall not be denied if the design of the Development is consistent with the design of other similar types of modern Class A developments in the U.S. Highway 280 Corridor or is consistent with the plans approved by Grantor as provided above. 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 Development and the development of the site shall be in substantial compliance with said final plans and specifications submitted to and approved by Grantor, if any.

2.6 Signs. Any exterior sign(s) will conform to the Hoover Overlay District Regulations.

2.7 Disapproval of Plans. In the event Grantor ever disapproves any preliminary or final plans or specifications for the Development or for any modification of the Development or of the site development, or disapproves of any other plans or specifications required to be submitted by Section 2.4 through 2.5, Grantor shall specify in detail those objections which Grantor may have to same. 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 Development and all improvements exterior thereto;
- (b) Aesthetics;
- (c) Exterior or exposed materials; and
- (d) Site Layout.

2.8 Drainage Provisions. The following provisions shall apply to drainage:

2.8.1 In connection with the construction of the Development 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. 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 to the extent within Grantee's reasonable control.

2.8.2 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) or the proper government authorities.

### **ARTICLE III** **REPAIR OF DAMAGE; INDEMNITY**

3.1 Grantee shall repair, restore, or replace 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 Development 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 construction of the Development is commenced, during such construction, and after such construction is completed, the Property, including areas contiguous to road right of ways 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 similar projects in the U.S. Highway 280 Corridor. In the event Grantee fails to keep the Property so grassed, mowed and maintained, which failure is not cured with fifteen (15) days after written notice from Grantor to Grantee, Grantor, its representatives, agents, or employees shall have the right to enter onto the Property at reasonable times and perform all work needed or desired in order to maintain the Property in the manner provided above; provided, however, Grantee shall be excused from such obligations to the extent Grantee is prevented from performing such obligations due to force majeure events. Such entrance upon the Property for such purposes shall not be a trespass. Grantee hereby agrees to pay Grantor such reasonable and 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 contractor 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** **GENERAL RESTRICTIONS**

5.1 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 the Inverness area.

5.2 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.

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

5.4 Trash. No trash, garbage, or other refuse shall be dumped or, except in sanitary containers or garbage compactor units, stored or accumulated on the Property. 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.

## **ARTICLE VI** **ENFORCEMENT**

6.1 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.

## **ARTICLE VII** **DURATION AND AMENDMENT**

7.1 The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of the Inverness Developer, its successors and assigns for so long as there is an Inverness Developer, but in no event beyond (a) March 25, 2019 with respect to the Restrictions set forth in Section 2.1.1 above and (b) the date which is twenty (20) years from the date hereof with respect to the other Restrictions set forth in this Declaration (collectively the "Restriction Period"), unless waived in writing by the Inverness Developer; provided, however, this Declaration shall automatically terminate without any further act of any party at such time that there no longer exists any Inverness Developer.

7.2 The This Declaration may be modified or amended by the written consent of (i) Grantor, its successors or assigns, or any successor Inverness Developer and (ii) the then-current owner of the Property, which modification or amendment shall become effective upon the filing of same in the real property records of Shelby County, Alabama.

**ARTICLE VIII**  
**RECIPROCAL NEGATIVE EASEMENTS**

8.1 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 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.

**ARTICLE IX**  
**ESTOPPEL CERTIFICATES**

9.1 Within ten (10) days following the receipt of a written request from time to time from Grantee, Grantor shall issue an estoppel certificate to Grantee or its designees which shall confirm (a) that this Declaration is in full force and effect and whether it has been modified or amended in any way (and if it has, then stating the nature thereof), (b) whether the Grantee is in default under this Declaration and, if so, specifying the nature thereof, (c) whether any money is currently owed by Grantee under this Declaration and, if so, how much, and (d) such other matters as Grantee may reasonably request.

**ARTICLE X**  
**SEVERABILITY**

10.1 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 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.

**ARTICLE XI**  
**LIMITATION ON LIABILITY**

11.1 Grantee's liability hereunder is limited to its interest in the Property; and, in the event Grantee transfers its interest in the Property, Grantee shall be relieved from any obligation hereunder accruing from and after such transfer provided the transferee agrees to assume such liability.

Shelby County, AL 12/19/2005  
State of Alabama

Deed Tax: \$3000.00