


THIS INSTRUMENT PREPARED BY:

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AIG Baker Shopping Center Properties, L.L.C.

1701 Lee Branch Lane

Birmingham, Alabama 35242


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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND DECLARATION OF EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND DECLARATION OF EASEMENTS (this "Declaration") is made on this 18th day of October, 2006 (the "Effective Date"), by **AIG BAKER BROOKSTONE, L.L.C.**, a Delaware limited liability company (as defined in Section 1.4 below, the "Declarant").

RECITALS

WHEREAS, Declarant is the owner of a tract or parcel of land located in the City of Hoover, Shelby County, Alabama, on which Declarant constructed a shopping center known as Phase I of the "Village at Lee Branch" Shopping Center said parcel being referred to herein as the "Shopping Center Tract", and being described on Exhibit A attached hereto and shown on the site plan attached hereto as Exhibit C (as such site plan may be modified from time to time, the "Site Plan"); and

WHEREAS, Declarant is also the owner of certain tracts or parcels of land located adjacent and contiguous to the Shopping Center Tract, which Declarant intends to sell or lease, and which are designated on the Site Plan and hereinafter referred to as "Pad A" and "Pad B," and more particularly described in Exhibit B attached hereto (said parcels being hereinafter referred to individually as a "Pad" and collectively as the "Pads") (said Pads and Shopping Center Tract sometimes being referred to herein collectively as the "Shopping Center"); and

WHEREAS, in order to facilitate the development of the Shopping Center as an integrated commercial retail shopping center substantially as shown on the Site Plan, and to protect the retail character and intent of the development, Declarant hereby declares and imposes certain covenants, conditions and restrictions upon the Shopping Center Tract and the Pads; and

WHEREAS, Declarant expressly intends that each covenant stated herein shall constitute a covenant running with the land, and shall inure to the equal benefit of the owner of the Shopping Center Tract, and the owners of the Pads, and may inure to the benefit of any other entity which may acquire any interest, in whole or in part in the Shopping Center Tract or the Pads, as the case may be.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, the

Declarant does hereby impose and place upon the Property the following easements, covenants and restrictions:

ARTICLE I

DEFINITIONS

1.1 **Building.**

“Building” shall mean any enclosed structure placed, constructed or located on the Property, which for the purpose of this Declaration, shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

1.2 **Building Areas.**

“Building Areas” shall mean the limited areas of the Property within which Buildings are or may be constructed, placed or located, including, without limitation, all drive-thru lanes and trash enclosure areas.

1.3 **Common Areas.**

“Common Areas” shall mean all of the Shopping Center Tract other than the Building Areas, as such areas may change from time to time, and any improvements located thereon. Those portions of the Building Areas on the Shopping Center Tract which are not from time to time used or cannot be used for Buildings shall become part of the Common Areas for the uses permitted hereunder.

1.4 **Declarant.**

“Declarant” shall mean AIG Baker Brookstone, L.L.C., and, after compliance with the notice requirements set forth in Section 7.1, its successors and assigns who become owners of all or any portion of the Shopping Center Tract.

1.5 **Floor Area.**

“Floor Area” means the aggregate from time to time of the actual number of square feet of floor space in any Building designated or intended for use by an Owner or Occupant, whether or not actually occupied, measured from the exterior faces or the exterior lines of the exterior walls, store fronts, walls fronting on any enclosed malls or interior common area, corridors and service area (except party and interior common walls, as to which the center thereof instead of the exterior faces thereof shall be used). “Floor Area” shall include outdoor balconies, patios or other outdoor areas utilized for retail sales or food or beverage service (exclusive of any permitted drive through or walk-up, take-out food or beverage service).

1.6 **Hazardous Materials.**

“Hazardous Materials” shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

1.7 Improvements.

“Improvements” shall mean all Buildings and surrounding areas including without limitation all landscaping, entrances, exits, signs, driveways, parking areas and other improvements to be constructed or located on the Pads.

1.8 Occupant.

“Occupant” shall mean any Person, from time to time entitled to the use and occupancy of the Property, or any portion thereof, under an ownership right or any lease, sublease, license, concession or other similar agreement.

1.9 Intentionally Deleted.

1.10 Owner.

“Owner” shall mean, as of any time, the fee simple owner of a Pad at such time, and, after compliance with the notice requirements set forth in Section 7.1, its successors and assigns who become owners of all or any portion of the Pad. “Owners” shall mean, collectively, the fee simple owners of the Pads at such time, and, after compliance with the notice requirements set forth in Section 7.1, their successors and assigns who become owners of all or any portion of the Pads. Each Owner, by acceptance of a deed conveying ownership of and to its Pad, consents to all of the terms, conditions, rights and obligations hereunder.

1.11 Party.

“Party” shall mean, individually, the Declarant and the Owner and, after compliance with the notice requirements set forth in Section 7.1, their respective successors and assigns who become owners of all or any portion of the Property. “Parties” shall mean, collectively, the Declarant and the Owner and, after compliance with the notice requirements set forth in Section 7.1, their respective successors and assigns who become owners of all or any portion of the Property. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Property owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party shall be released from the obligations of this Declaration arising subsequent to the effective date of the transfer notice.

1.12 Permittee.

“Permittee” shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, tenants, subtenants, and concessionaires of Occupants and other persons who have business with owners of the Property insofar as their activities relate to the permitted use of such Property.

1.13 Person.

“Person” shall mean any individual, partnership, firm, association, corporation, limited liability company, trust or any other form of business or government entity.

1.14 Property.

“Property” shall mean, collectively, the Shopping Center Tract and the Pads, collectively.

1.15 Intentionally Deleted.

1.16 Staging Areas.

“Staging Areas” shall have the meaning assigned in Section 3.1(c).

1.17 Utility Lines.

“Utility Lines” shall mean those facilities and systems for the transmission of utility services, and including, without limitation, sanitary sewers, water (fire and domestic), gas, electrical, telephone and communication lines, storm drains, and all other facilities within the Property for the drainage and storage of surface water for the benefit of the Property.

ARTICLE II

EASEMENTS

2.1. Ingress, Egress and Parking. Declarant hereby grants, conveys, establishes and creates for the benefit of, and as an appurtenance to, the Pads, and for the benefit of the Owners thereof from time to time and their Permittees, a non-exclusive, perpetual easement for the ingress, egress, passage and parking of vehicles over and across the parking and driveway areas located in the Common Areas, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Common Areas, as the same may from time to time be constructed and maintained for such use. Declarant hereby grants, conveys, establishes and creates for the benefit of, and as an appurtenance to, the Shopping Center Tract and the Pads, and for the benefit of the Declarant, all Owners, and all Permittees, a non-exclusive, perpetual

easement for the passage and parking of vehicles over and across the parking and driveway areas located on the Pads, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Pads, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations, as well as other provisions contained in this Declaration:

(a) Declarant reserves the right to close off the Common Areas located within the Shopping Center Tract for such reasonable period of time as may be legally necessary, in the opinion of Declarant or its counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that in no event shall any such closing prevent access to any Pad, or access to and use of the minimum required parking required by law for any Pad, and prior to closing off any portion of the Common Areas located within the Shopping Center Tract, as herein provided, Declarant shall give written notice to the affected Owner(s) of its intention to do so, and shall use its commercially reasonable efforts to coordinate such closing with such Owner(s) so that no unreasonable interference in the passage of pedestrians or vehicles shall occur; and

(b) The Owners shall have the right to close off the parking and access areas located on their respective Pad for such reasonable period of time as may be legally necessary, in the opinion of the Owners or their counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that in no event shall any such closing prevent access to the Common Areas located within the Shopping Center Tract, or access to and use of the minimum required parking required by law for the Shopping Center Tract, and prior to closing off any Pad, as herein provided, the Owner closing off the parking and access to its Pad shall give written notice to Declarant and the other Owners of their intention to do so; and

(c) Each Party reserves the right to, at any time and from time to time, to exclude and restrain any Person who is not a Party or Permittee from using the Common Areas or the parking and access areas of the Pads, as the case may be; and

(d) In no event shall any Owner be entitled to store materials or personal property, or construct staging materials or construction facilities on, or park construction vehicles within, the Shopping Center Tract without Declarant's prior written consent or except as otherwise set forth herein. Notwithstanding the foregoing, Declarant hereby grants, conveys, establishes and creates for the benefit of, and as an appurtenance to, the Pads, and for the benefit of the Owners thereof from time to time and their Permittees, a temporary non-exclusive easement for the staging of construction and parking of construction vehicles over the Staging Areas. This temporary construction easement shall terminate upon the earlier of (i) six months from the date on which the initial Owner closes on the purchase and sale of its Pad from the Declarant (the "Closing"), or (ii) completion of all construction activities related to the construction of the initial Improvements on each Pad. Thereafter, each Owner shall obtain from Declarant approval for and the exact location of Staging Areas from Declarant for any later construction activities.

2.2 Utilities.

(a) Declarant hereby grants, conveys, establishes and creates for the benefit of, and as an appurtenance to, the Pads, and for the benefit of the Owners thereof from time to time and their Permittees, a non-exclusive perpetual easement in, to, over, under, along and across those portions of the Common Areas necessary for the tie-in and use of any Utility Lines installed by Declarant or its agents serving the Pads. Declarant hereby grants, conveys, establishes and creates for the benefit of, and as an appurtenance to, the Shopping Center Tract and the Pads, and for the benefit of the Declarant, all Owners, and all Permittees, a non-exclusive perpetual easement in, to, over, under, along and across those portions of the Pads necessary for the tie-in and use of any Utility Lines serving the Pads or the Shopping Center Tract.

(b) The Owners shall be responsible for all governmental impact fees due for development on their respective Pads, and the Owners shall, at their sole cost and expense, be responsible for tapping in and connecting to the Utility Lines serving the Pads, upon payment by said Owners of the standard tap in/ hook-up fees to the respective utility providers.

2.3 Storm Water. Declarant hereby grants, conveys, establishes and creates for the benefit of, and as an appurtenance to, the Shopping for the benefit of the Owners thereof from time to time and their Permittees, a non-exclusive perpetual right and easement to discharge surface storm drainage and/or runoff from the Pads over, upon and across the Common Areas and Utility Lines and into the water collection, retention and distribution facilities located in the Shopping Center Tract. Declarant hereby grants, conveys, establishes and creates for the benefit of, and as an appurtenance to, the Shopping Center Tract and the Pads, and for the benefit of the Declarant, all Owners, and all Permittees, a non-exclusive perpetual right and easement to discharge surface storm drainage and/or runoff from the Shopping Center Tract and Pads over, upon and across the Pads and Utility Lines and into the water collection, retention and distribution facilities located in the Shopping Center Tract.

2.4 Maintenance. Declarant hereby grants, conveys, establishes and creates for the benefit of, and as an appurtenance to, the Shopping Center Tract, and for the benefit of the Declarant and all Permittees of Declarant, a non-exclusive, perpetual easement over and across the parking, driveway and sidewalk areas located on the Pads, as the same may from time to time be constructed and maintained for such use, for the purpose of maintaining said areas in the event any Owner fails to maintain said areas, and for the purpose of maintaining the lighting poles located within the Pads, if any. For the purposes of consistency and uniformity, Declarant reserves the right to re-pave and re-stripe all or part of the Pad in the event Declarant is re-paving or re-striping any part of the Shopping Center Tract located around or adjacent to the Pads. In the event Declarant intends to do so, Declarant shall give notice of such work to the affected Owner, and Declarant shall coordinate with said Owner to schedule the work so as not to unreasonably interfere with said Owner's use and enjoyment of its Pad. The affected Owner shall reimburse the Declarant for its share of the cost of said work within 30 days of receipt of a bill and supporting documentation.

ARTICLE III

CONSTRUCTION

3.1 General Requirements.

(a) All construction activities performed within the Pads shall be performed in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof. All construction shall utilize new materials, and shall be performed in a good, safe, workman like manner.

(b) The construction activities on the Pads, if any, shall not:

(i) unreasonably interfere with the use, occupancy or enjoyment of any part of the Shopping Center by any occupant thereof; and

(ii) cause the Shopping Center or any Building located in the Shopping Center to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof, including, without limitation, all parking codes, regulations and ordinances.

(c) All Owners shall use a staging area designated and approved by Declarant prior to construction (the "Staging Areas"), and each Owner shall conduct its construction activities in such a manner so as to keep its construction activities solely within the designated Staging Areas, including, without limitation, all vehicles, workers, materials and scaffolding. All Staging Areas shall be fenced around the site of such construction of a size necessary to screen such construction from ground level view and all access thereto shall be limited to the ingress/egress entrance closest to the Pads. Parking for all motor vehicles involved in the construction shall only be allowed to park within the confines of the Staging Areas. All construction on the Pads shall be conducted in a manner as to minimize any interference with the construction or operation of the Shopping Center.

(d) Each Owner shall conduct its construction activities on its Pad in such a manner so as to minimize damage to the Shopping Center or the Common Areas. In the event any part of the Shopping Center Tract, the Common Areas or another Pad is damaged due to any Owner's construction activities conducted on its Pad, the damaging Owner shall promptly repair and restore the damaged area to the same condition as existed immediately prior to said Owner's construction activities. To the extent permitted by laws, each Owner shall and agrees to defend, indemnify and hold harmless Declarant from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person (including without limitation any damage to the Shopping Center Tract or another pad) arising out of or resulting from any construction activities performed or authorized by such indemnifying Owner; provided, however, that the foregoing shall not be applicable to either

events or circumstances caused by the negligence or willful act or omission of Declarant or its agents or anyone claiming by, through or under any of them.

(e) Each Owner shall commence construction of its Improvements as soon as reasonably practicable after acquisition and closing on said Owner's Pad, and shall thereafter continue to pursue such construction with due diligence to completion.

(f) In connection with the construction of improvements upon its Pad, each Owner shall regularly clean, as reasonably needed, the Staging Areas and the roadways and driveways used by its construction vehicles of mud, dirt and construction debris resulting from its construction, and upon completion of such construction activity shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

3.2 Building Restrictions.

(a) No sign or Building constructed, placed or erected on any Pad shall exceed one story in height; exceed a maximum height of twenty-eight feet (28') as measured from the finished floor level to the highest point on such building or structure (inclusive of the height of all types of projections or architectural treatments or embellishments thereon, such as, but without limitation, HVAC equipment, parapets, mansards, signs, satellite dishes, and antennae).

(b) The Floor Area of any Building constructed, placed or erected on any Pad shall not exceed the following sizes:

Pad A - 5,500 square feet

Pad B - 4,500 square feet

(c) No more than one Building shall be constructed, erected or placed on any Pad.

(d) No use or Building constructed on Pad A shall be permitted or conducted, as applicable, on the Property which requires more than 45 parking spaces per the applicable governmental codes and regulations.

(e) No use or Building constructed on Pad B shall be permitted or conducted, as applicable, on the Property which requires more than 45 parking spaces per the applicable governmental codes and regulations.

(f) Any Building constructed, erected or placed on the Property shall accommodate no more than two (2) business operations therein.

3.3 Signage.

(a) Declarant shall approve all Pad signage (including building mounted signage) prior to construction and installation as a part of the Plans (as hereinafter defined) in accordance with the provisions of Section 3.4 below. Subject to applicable governmental approvals and Declarant's right to approve as set forth below, each Owner shall have the right to install its standard corporate building signage on the Building to be constructed on the Property. Each Owner shall have the right, subject to applicable governmental approval and Declarant's reasonable approval, to make any improvements to its existing corporate signage to reflect any revised corporate identification. Any freestanding signage any Owner desires to erect must be submitted to Declarant with its Plans as set forth below, and approved by Declarant. The applicable governmental authorities may not permit freestanding signage (including, without limitation, directional signage) or may limit the amount of freestanding signage available in the Shopping Center Tract and on the Pads, and, as such, it shall not be unreasonable for Declarant to disapprove any freestanding signage.

(b) Declarant's signage approval shall be conditioned upon the following requirements: (i) the signage must not obstruct the view of the Shopping Center or another Occupant thereof; (ii) the signage must be architecturally compatible or harmonious with the architectural theme of the Shopping Center; (iii) the signage must meet the governmental and developmental requirements, including compliance with the approved sign criteria for the Shopping Center; and (iv) such signage shall not jeopardize Declarant's right to erect a monument or pylon sign for the Shopping Center. Owner shall remove any non-conforming signage upon written notice by Declarant.

(c) No exterior identification signs attached to any Building on a Pad shall be of the following type: (1) flashing, moving or audible signs; (2) signs employing exposed raceways (provided that the foregoing shall be permitted only for the installation of internally illuminated self-contained channel letters), exposed ballast boxes, or exposed transformers; or (3) paper or cardboard signs (other than professionally-prepared interior window signs advertising special sales within the subject premises), temporary signs (other than contractor's signs or grand opening signs), stickers or decals; provided, however, that the foregoing shall not prohibit the placement at the entrance of each such premises of (A) a small sticker or decal which indicates hours of business, emergency telephone numbers, credit cards accepted and other similar information and/or (B) a small sticker or decal which contains the words "No Solicitation" or words of like import.

3.4 Site Plan Approval.

(a) It is the intention of Declarant that all Improvements be constructed, installed, erected, operated and maintained so as to be consistent with standards of first class shopping center development and, in any case, compatible with and complementary to the improvements and landscaping within the Shopping Center Tract. Accordingly, the site layout of all Improvements, including initial construction and any exterior alterations on the Pads, exterior remodeling, or reconstruction of any improvements following the initial construction thereof (except for any reconstruction pursuant to plans previously approved by Declarant), shall be performed only in accordance with plans for such work approved by Declarant as set forth in this Section 3.4.

(b) No initial construction of any Improvements, including any structure, building, fence, wall, parking area facility, landscaping, driveway or sign shall be initiated or begun upon the Pads without Declarant's prior written approval of the Plans (as hereinafter defined), and upon Declarant's approval of such Plans, any construction shall be effected substantially in accordance with such the Approved Plans (as defined below). As used herein, the term "Plans" shall mean constructions plans, working drawings and specifications prepared under supervision of an architect and engineer licensed to practice architecture and engineering in the State of Alabama and shall include:

(i) A site plan showing location of all Buildings and other structures to be constructed on the Pads as well as location of all entrances, exits, signs, driveways, parking areas (including without limitation, parking space detail if applicable) and other pertinent material.

(ii) Complete details as to the grading, drainage, utility service, paving, exterior lighting, landscaping and screening.

(iii) Front, side and rear colored elevation drawings, including floor and roof plans, for all buildings and structures.

(iv) Wall sections.

(v) Detailed identification of construction materials and colors, including material and color samples.

(vi) Detailed signage drawings, including color samples, for any signage to be located on the Building.

(c) Declarant reserves to itself the sole and exclusive authority to approve such Plans or to disapprove the same for initial consideration, and Declarant will disapprove such proposed Plans only if it deems, in its reasonable discretion, (i) that the Improvements (including landscaping) contemplated by the Plans are not in accordance with the construction standards or the requirements required by the applicable governing authority or by occupants or

tenants in the Shopping Center Tract, (ii) that the Improvements will detract from the attractiveness of the Shopping Center or will be unsuitable, undesirable or inappropriate for aesthetic reasons, (iii) that the exterior design, color scheme, finish, proportions or style of architecture of the proposed Improvements are not compatible with the improvements in the Shopping Center Tract, or (iv) that the Plans do not include such information as is reasonably required by Declarant for the purposes of approving the proposed development of the Pads.

(d) Prior to construction, unless otherwise agreed by the Parties, the Owners shall provide Declarant with a minimum of two (2) sets of its Plans for Declarant's approval. Declarant shall have 15 days from receipt of the Plans to approve or disapprove the Plans. Declarant shall approve the Plans by causing both sets of Plans to be initialed on its behalf and returning one (1) set of Plans to the Owners (the "Approved Plans"). If Declarant fails to either approve the Plans or reject the Plans within said 15-day period, the Plans shall be deemed as approved by Declarant. If Declarant shall disapprove the Plans, it shall give its reasons therefore and the Owners shall not commence construction until the Plans have been revised so as to meet Declarant's reasonable objections or until Declarant and each Owner mutually consult to establish Approved Plans for the proposed Improvements on their respective Pad. If Declarant disapproves an Owner's Plans, said Owner shall have eight (8) days to resubmit such final site plan, addressing Declarant's disapproval. Declarant shall have the right to approve the Site Plan before any Owner seeks any required governmental approval. Upon receipt of final approval from Declarant of the Plans, said Owner shall seek the applicable governmental approval of the Plans with reasonable diligence and thereafter cooperate with the applicable governmental authorities with good faith and due diligence. Nothing contained herein shall prevent any Owner from seeking any applicable preliminary governmental approval of the Plans prior to receiving final approval of the Plans from the Declarant.

(e) The Owners shall construct the Improvements on their respective Pad in substantial compliance with the Approved Plans, subject to site modifications and zoning conditions. Declarant reserves the right to approve any material changes from the Approved Plans including but not limited to any material changes in the elevations and signage, and reserves the right to approve any plans to reconstruction or future alterations or renovations. Declarant acknowledges that the Owners shall have no obligation to commence construction solely based upon Declarant's approval of the Site Plan, however once construction has been commenced, the Owners shall have an obligation hereunder to complete the Improvements on their respective Pad in a timely fashion.

(f) In furtherance of the foregoing, but without limiting in any way the right of Declarant to approve all Plans as aforesaid, the foregoing standards shall be applicable:

(i) All exposed exterior surfaces of any Buildings on the Pads shall be properly finished prior to the occupancy or use of the same.

(ii) No used materials shall be incorporated in, on or into the exterior surfaces of any Buildings on the Pads without the express written consent of Declarant.

(iii) All Improvements on the Pads shall be construed and maintained at all times in accordance with all applicable building codes, ordinances, rules and regulations of all governmental authorities having jurisdiction therefor.

(iv) Storage tanks, cooling towers, vents, hoods, transformers, garbage dumpsters, loading docks and other loading and unloading facilities, and any other like structures or equipment located on the Pads shall be fully screened and hidden from public view. All roof top equipment shall be fully screened.

(g) No provision or requirement set forth herein shall constitute Declarant as an agent of any Owner relating to the compliance of the Approved Plans with any laws, rules, orders, ordinances, directions, regulations, and requirements of any federal, state, county and municipal authorities, now in force or which hereafter be in force, including but not limited to the Americans with Disabilities Act or 1990. Such approval by Declarant shall be to insure that the Improvements do not violate the restrictions set forth herein and are reasonably architecturally harmonious with the rest of the Shopping Center.

(h) The parking and access areas on the Pads, if any, shall be constructed substantially as shown on the Site Plan and shall not be altered in any manner without the prior written consent of Declarant. The Building layout on each Pad shall be exactly as shown on the Site Plan.

ARTICLE IV

MAINTENANCE

4.1 Maintenance of the Pads.

(a) From and after the date of Closing, each Owner shall maintain or cause to be maintained, the Improvements on their respective Pad in good condition and repair. The minimum standard of maintenance for the Improvements on the Pads shall be comparable to the standard of maintenance currently existing on the Shopping Center Tract and otherwise followed in other first class commercial shopping centers in the metropolitan City of Hoover, Alabama, area. Notwithstanding the foregoing, the Improvements on the Pads shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances. All materials used in the repair and/or replacement of any Improvements shall be at least equal to the quality of the materials used originally and shall maintain the architectural and aesthetic harmony of the Shopping Center Tract as a whole. The maintenance and repair obligation shall include, but not be limited to, the following:

(i) Keeping and maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(ii) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(iii) Maintaining, cleaning and replacing any necessary directional, stop or handicapped signs or markers; restriping any parking lots and drive lanes located on the Pads as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks, if any;

(iv) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(v) Maintaining all perimeter and exterior building walls, including, but not limited to, all parapets and retaining walls in a good condition and state of repair;

(vi) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and

(vii) Maintaining elements of the storm drainage system.

(b) After construction of building improvements upon any Pad, the Owner of such Pad shall maintain and keep, or cause to be maintained and kept, the exterior portions of such improvements, including service areas, loading docks and signage, in a good, clean, safe, sightly, and orderly condition and state of repair, reasonably free from odors and vermin, consistent with the standards of maintenance followed in other first-class retail developments of comparable size in the metropolitan area where the Shopping Center is located. All trash and garbage from the operation of business upon any Pad shall be stored in adequate containers, and areas near trash containers shall be maintained in a clean, neat and safe condition. Each Owner shall arrange or cause its tenants to arrange for regular removal of such trash or garbage from its Pad.

(c) In the event the Building or any of the Improvements upon any Pad are damaged by fire or other casualty (whether insured or not), the Owner upon whose Pad such Improvements are located shall promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Improvements so damaged, (ii) erect other Improvements in such location, or (iii) restore any remaining Improvements to an architectural whole, demolish any unrestored Improvements, remove all debris, and pave or grass and otherwise restore the area to a neat, orderly, sanitary and attractive condition. Each Owner shall have the option to choose among the aforesaid alternatives, but each Owner shall be obligated to perform one of such alternatives. Nothing herein shall limit the rights or obligations of any Owner and Occupant of a Pad under the terms of any lease or other separate agreement between such Owner and Occupant.

4.2 Liens on Shopping Center Tract. Each Owner shall, and by acceptance of a deed conveying ownership of a Pad agrees, to defend, indemnify and hold Declarant harmless from and against any mechanic's, materialman's and/or labor's liens filed on or against the Shopping Center Tract, and all costs, expenses and liabilities in connection therewith, including reasonable attorneys' fees and court costs, arising out of the maintenance and operation of each Owner's respective Pad, and in the event that the Shopping Center Tract or any portion thereof shall become subject to such a lien, the affected Owner shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to the lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

4.3 Common Area Obligations. Each Owner shall be obligated to make monthly payments of Owner's pro rata share of Declarant's continuing common area maintenance, real property taxes and assessments and public liability insurance with respect to the Common Areas. For purposes thereof, such items shall be incorporated as follows:

(a) **Common area maintenance.** The total costs incurred in the normal administration, operation and preventive and corrective maintenance of the Common Areas of the Shopping Center ("CAM"), including without limitation and by example only: the cost and expense of maintaining, repairing, restriping, lighting, signing, cleaning, sweeping, painting, removal of snow, ice, trash, debris; the costs and expense for utilities used or consumed; the costs of landscaping, including watering, planting, replanting, and replacing flowers, trees, shrubs, and planters; the cost and expense of rental or depreciation of machinery, equipment, fixtures and personal property used; the costs of capital expenses incurred and benefiting the Common Areas only, amortized over the useful life of the item; the repair or replacement of any paving, curbs, walkways, drains, pipes, conduits, lighting (including bulbs and ballasts) and similar items, incurred and benefiting the Common Areas only; security services, if any; property owner association fees, if any; the cost of personnel to implement maintenance services; and an administrative fee equal to fifteen (15%) of the total cost of operating and maintaining the Common Areas.

(b) **Real property taxes and assessments.** The total costs of any real property taxes and assessments (including without limitation sanitary sewer taxes, extraordinary or special assessments and all costs and fees [exclusive of any interest or late fees assessed for delinquent payment] and reasonable attorney's fees incurred in contesting or negotiating the same with public authorities), levied, imposed or assessed against or attributable to the Common Areas of the Shopping Center Tract during each calendar year ("Taxes"). Declarant shall use its best efforts to obtain a tax bill from the local taxing authority which bifurcates the land and the improvements. Owner shall be responsible for and shall pay to the appropriate taxing authority directly all real property taxes and assessments applicable to said Owner's Pad.

(c) **Public liability insurance.** The total cost to Declarant of all liability coverage carried by Declarant with respect to Common Areas of the Shopping Center Tract ("Insurance").

(d) **Owner's pro rata share.** An annual sum for Owner's portion of the annual CAM, Taxes and Insurance ("Owner's Share"), calculated by multiplying the applicable CAM, Taxes and Insurance, as determined by subsections (a) through (c) hereinabove, by a fraction, the numerator of which shall be the actual Floor Area of the Building on the Pad, and the denominator of which shall be the square footage of the total leasable and/or occupiable area within the Shopping Center. Owner's Share is subject to adjustment by Declarant based on the foregoing formula if the leasable and/or occupiable area of the Shopping Center is diminished by casualty, condemnation or similar takings or other events reducing the leasable and/or occupiable area or if the leasable and/or occupiable area is increased by additions to the Shopping Center.

(e) **Commencement.** The payment of Owner's Share shall commence on the earlier of (i) the day Owner opens its business to the public; or (ii) one-hundred (120) days after date of closing on the Pad from Declarant (the "Commencement Date"). Declarant shall establish the fiscal year for determining the payment of Owner's Share of CAM, Taxes and Insurance. Within thirty (30) days of the Commencement Date, and at least once per fiscal year thereafter, Declarant shall furnish Owner with a statement stating the total budget for the Common Areas. Once per fiscal year, Declarant shall have the right to increase Owner's Share by an amount not to exceed five percent (5%) of the total contribution made by Owner in the previous fiscal period. Owner shall pay to Declarant on the first day of each month during each calendar year the monthly installments of CAM, Taxes and Insurance based upon the amount of Owner's Share. Declarant's failure to timely submit such budget or the annual statement shall not affect Owner's obligation to pay it pro rata share during any period.

(f) **Audit Rights.** Each Owner shall have the right, upon thirty (30) days prior written notice, to audit Declarant's records pertaining to CAM, Taxes and Insurance billed to Owner within six months after Owner receives the annual reconciliation statement. If no such contest is made by written notice to Declarant, delivered within such six-month period, such charges for the fiscal year covered by the reconciliation statement shall be binding upon Owner in all respects. Said audit shall take place at Declarant's corporate office during normal business hours and shall occur no more than once in any calendar year. Such audit shall be conducted by an employee of said Owner or a certified public accountant retained by said Owner, at said Owner's expense, whose compensation is not contingent upon the results of such accountant's audit or the amount of any refund received by said Owner. If such audit discloses that the charges actually incurred by Declarant are less than those used by Declarant in the Owner's Share, then Declarant shall give said Owner a credit towards the next payment of said Owner's Share coming due for the amount said Owner paid in excess of its actual share. Each Owner hereby agrees to keep the results of any such audit confidential, and to require its auditor and its employees and each of their respective attorneys and advisors to likewise keep the results of such audit in strictest confidence. In particular, but without limitation, each Owner agrees: (i) not to disclose the results of any such audit to any past, current or prospective tenant of the Shopping Center; and (ii) to require its auditors, attorneys and anyone associated with such parties not to disclose the results of such audit to any past, current or prospective tenant of the Shopping Center; provided, however, Declarant hereby agrees that nothing in items (i) or (ii) above shall

preclude said Owner from disclosing the results of such audit in any judicial or quasi-judicial proceeding, or pursuant to any court order or discovery request, or to any current or prospective assignee of said Owner, or to any agent, representative or employee of Declarant who requests the same.

4.4 Liens on Pads. Declarant agrees to defend, indemnify and hold each Owner harmless from and against any mechanic's, materialman's and/or labor's liens filed on or against an Owner's Pad, and all costs, expenses and liabilities in connection therewith, including reasonable attorneys' fees and court costs, arising out of the maintenance and operation of the Shopping Center Tract, and in the event that any Pad or any portion thereof shall become subject to such a lien, the Declarant shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to the lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

ARTICLE V

OPERATION OF THE SHOPPING CENTER

5.1 Uses.

(a) The Pads shall be used for any lawful commercial retail purposes subject only to the restrictions set forth in this Declaration.

(b) During the term of this Declaration, no portion of the Pads shall be used for the uses or purposes as set forth in Exhibit D attached hereto.

(c) At all times, the Pads shall be operated in compliance with all applicable governmental rules, regulations, codes and ordinances, including without limitation those regulations regarding parking. At all times, the Pads shall be operated so that the entire Shopping Center remains in compliance with such codes. Once each Owner's Plans are initially approved by Declarant as set forth in Section 3.4 above, any changes in use which require additional parking shall be approved in writing by Declarant.

(d) Parking by employees of any Owner or Occupant shall be in designated "employee parking" areas, the location of which shall be determined by Declarant in the event Declarant deems it necessary to designate such areas; provided Declarant shall be under no obligation to do so.

5.2 Taxes. Each Owner, with regard to said Owner's Pad shall assess its Pad in its name as soon as practicable after Closing and shall thereafter have the responsibility to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real and personal property taxes and assessments which are levied against each Owner's Pad.

5.3 Insurance/Indemnification.

(a) Each Owner shall procure and maintain in full force and effect throughout the term of this Declaration general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each Owner's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Each Owner shall also name Declarant as an additional insured on its general liability insurance and deliver to Declarant a certificate of insurance evidencing such prior to its entry onto the Property. Each Owner shall provide to the Declarant its certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by each Owner which may cover other property in addition to the property covered by this Declaration. Such insurance shall provide that the same may not be cancelled without thirty (30) days prior written notice to the Declarant.

(b) Declarant shall procure and maintain in full force and effect throughout the term of this Declaration general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about the Shopping Center Tract, Declarant's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Declarant shall also name each Owner as an additional Insured on its general liability insurance and the Declarant shall provide to each Owner its certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Declarant which may cover other property in addition to the property covered by this Declaration.

(c) Each Owner shall, and by acceptance of a deed conveying ownership of a Pad covenants and agrees, to defend, protect, indemnify and hold harmless Declarant from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorneys' fees and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to property of any Person located on each Owner's Pad, except for claims caused by the negligence or willful act or omission of the Declarant or its Permittees.

(d) Declarant covenants and agrees, to defend, protect, indemnify and hold harmless each Owner from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorneys' fees and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to property of any Person located in the Shopping Center Tract, except for claims caused by the negligence or willful act or omission of the Owners or its Permittees.

5.4 Hazardous Materials. As of the Effective Date, neither the Owners nor the Declarant shall use, or permit the use of Hazardous Materials on or about, under the Pads, or the Shopping Center Tract, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all applicable federal, state and local laws governing the same. Each Owner and Declarant shall indemnify, protect, defend and hold harmless the other from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including, but not limited to, costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by such Owner or Declarant, occurring after the Effective Date hereof, whether or not in the ordinary course of business.

ARTICLE VI

DEFAULT

6.1 Default and Remedies.

(a) If any Party shall fail to perform any covenant or condition contained in this Declaration (the "Defaulting Party"), then any Party other than the Defaulting Party (the "Non-Defaulting Party") shall give the Defaulting Party at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default is not reasonably susceptible of being cured within said period of thirty (30) days, and the Defaulting Party shall have not in good faith have commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion), any Non-Defaulting Party may institute legal and/or equitable proceedings for full and adequate relief from the consequences of said default or threatened default.

(b) Except as specifically set forth herein, if Declarant shall fail to perform any covenant or condition contained in this Declaration, any Owner shall give Declarant at least thirty (30) days written notice (or in case of an emergency, such notice as is reasonable under the circumstances) of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default is not reasonably susceptible of being cured within said period of thirty (30) days, and Declarant shall have not have commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with continuity to completion, any Owner shall have the right, as its sole remedy (but not the obligation), to perform such obligations on behalf of the Declarant and Declarant shall reimburse the said Owner for the reasonable cost of said work after receipt of an invoice documenting such costs.

(c) Each Owner's obligation to pay its Owner's Share, together with interest thereon at the lesser of (i) the rate of ten percent (10%) per annum, or (ii) the maximum rate allowed by law, from the due date thereof if not paid when due, shall be secured by an equitable charge and lien on the Pad of the defaulting Owner as set forth herein. Any such lien shall be effective upon recording of a Lien Notice (as defined below) in the appropriate public records for Shelby

County, Alabama. Upon such recording, such lien shall be superior and prior to all other liens encumbering said Pad, except that such lien shall not be prior and superior to any mortgages, deeds of trust, or security deeds of record prior to the recording of such Lien Notice or any renewal extension or modification (including increases) of such prior recorded mortgages, deeds of trust, or security deeds, or to the interest of any party which has, prior to the recording of such Lien Notice, purchased said Pad and leased it back to the preceding owner, or its subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations thereunder in what is commonly referred to as a "sale-leaseback" transaction; and any purchaser at any foreclosure sale (as well as any grantee by deed in lieu of foreclosure) under any such mortgage or deed of trust shall take title subject only to liens accruing pursuant to this Section 4 after the date of such foreclosure sale or conveyance in lieu of foreclosure. Furthermore, the right of possession and leasehold interest or tenancy of any tenant or subtenant of any Pad encumbered by any lien accruing pursuant to this Section shall not be terminated, affected or disturbed by such lien or any foreclosure thereof. To evidence such lien, the Declarant shall prepare a written notice ("Lien Notice") setting forth (i) the amount owing and a brief statement of the nature thereof; and (ii) reference to this Declaration as the source and authority for such lien. The Lien Notice shall be signed and acknowledged by Declarant and shall be recorded in the appropriate records of Shelby County, Alabama. A copy of such Lien Notice shall be mailed to the Owner or reputed Owner within thirty (30) days after such recording. Any such lien may be enforced by judicial foreclosure upon said Pad in like manner as a mortgage on real property is judicially foreclosed under the laws of Alabama. In any foreclosure, the Owner shall be required to pay the reasonable costs, expenses and attorneys' fees in connection with the preparation and filing of the Lien Notice as provided herein, and all reasonable costs and reasonable attorneys' fees in connection with the foreclosure. Declarant shall mail a copy of any Lien Notice to any mortgagee of said Pad if Declarant has been notified of such mortgagee's interest and its name and address.

6.2 Self-Help. Any Non-Defaulting Party, after notice to the Defaulting Party and time to cure as herein permitted, shall have the right (but not the obligation) to perform such obligations on behalf of the Defaulting Party and the Defaulting Party shall reimburse the Non-Defaulting Party performing the work within thirty (30) days of receipt of an invoice documenting such costs. Any such claim for reimbursements shall be secured by a lien on the Defaulting Owner's Property which lien shall be effective upon recording of a notice thereof in the appropriate public records for Shelby County, Alabama. The lien shall be subordinate to any first mortgage/deed of trust then encumbering the Property in question, if said mortgage/deed of trust is properly recording in the Office of the Judge of Probate of Shelby County, Alabama, prior to recording of said lien.

ARTICLE VII

MISCELLANEOUS

7.1 Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next day delivery and



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provides a receipt or (d) by legible facsimile (followed by hard copy delivered in accordance with the preceding subsections (a)-(c)), and such notices shall be addressed as follows:

To Declarant:

AIG Baker Brookstone, L.L.C.
c/o AIG Baker Shopping Center Properties, L.L.C.
1701 Lee Branch Lane
Birmingham, AL 35242
Attn: Legal Department
Telephone No.: (205) 969-1000
Facsimile No.: (205) 969-9467

or to such other address as the Declarant may from time to time specify in writing to the other Parties. The address for notice to the Owner of each Pad shall be the address on file with the office of the County Assessor for delivery of ad valorem tax statements relating to each Owner's respective Pads, unless Declarant is otherwise notified. Any notice shall be effective only upon receipt (or refusal by the intended recipient to accept delivery). Notices sent or received by a party's designated counsel shall be deemed sent or received, as the case may be, to the applicable Party. A Party transferring all or any portion of its interest in the Property shall give notice to the other Party(s) of such transfer and shall include therein at least the following information: (1) the name and address of the new Party; (2) a copy of the legal description of the portion of the Property transferred; and (3) in the case of an Owner, an agreement by the transferee Owner to assume all obligations which accrue during its period of ownership.

7.2 Estoppel Certificate. Each Party, upon request by another Party, agrees that upon written request not more than once per annum, it will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

(a) whether it knows of any default under this Declaration by the requesting Person, and if there are known defaults, specifying the nature thereof;

(b) whether the Declaration has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and

(c) whether this Declaration is in full force and effect.

7.3 Mortgagee Protection. Any Party shall have the right to encumber its interest in its respective Property by mortgage or deed of trust, provided that such mortgage or deed of trust is subject to and subordinate to this Declaration.

7.4 Time. Time is of the essence in the performance of each of the Party's respective obligations contained herein.

7.5 Attorneys' Fees. If either Party hereto fails to perform any of its obligations under this Declaration or if any dispute arises between the Parties hereto concerning the meaning

or interpretation of any provision of this Declaration, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs (including costs of any trial or appeal therefrom) and reasonable attorneys' fees and disbursements.

7.6 Governing Law; Jurisdiction and Venue.

(a) **THIS DECLARATION SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA.**

(b) For the purposes of any suit, action or proceeding involving this Declaration, each Party hereby expressly submits itself to the jurisdiction of all federal and state courts sitting in the State of Alabama and consents that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered mail or by personal service, provided that a reasonable time for appearance is allowed, and each Party agrees that such courts shall have the exclusive jurisdiction over any such suit, action or proceeding commenced by any Party. In furtherance of such declaration, each Party agrees upon the request of another Party to discontinue (or agree to the discontinuance of) any such suit, action or proceeding pending in any other jurisdiction.

(c) Each Party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Declaration brought in any federal or state court sitting in the State of Alabama and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

7.7 Waiver of Trial by Jury.

EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS DECLARATION OR ANY OF THE DOCUMENTS EXECUTED IN CONNECTION HERewith, THE PROPERTY, OR ANY CLAIMS, DEFENSES, RIGHTS OF SET-OFF OR OTHER ACTIONS PERTAINING HERETO OR TO ANY OF THE FOREGOING.

7.8 Rights of Successors. The provisions of this Declaration will be binding upon Declarant and each Owner of the Pads, and their respective successors, heirs, assigns and mortgagees to the extent herein provided. Each covenant herein is made for the mutual and reciprocal benefit of the Pads and the Shopping Center Tract and constitutes a covenant running with the land and binds every owner now having or hereinafter acquiring an interest in the Pads or the Shopping Center Tract. This Declaration shall create privity of contract with and among Declarant and all grantees of all or any portion of the Property and their respective heirs, executors, administrators, successors and assigns. Each of the easements and restrictions created

by this Declaration are appurtenant to the property to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to said property.

7.9 Severability. The invalidation of any one of the covenants, conditions, restrictions or other provisions herein contained by judgment or court order shall in no way affect the remaining covenants, conditions, restrictions or other provisions hereof, and the same shall remain in full force and effect.

7.10 Joint Venture. Nothing herein shall be construed to make any Party a partner or party to a joint venture with any other Party, or to render any Party responsible or liable for the debts of any other Party. Nothing herein shall restrict a Party's right to sell, lease, mortgage or otherwise convey its interest in the Property; provided, however, upon any such conveyance, the successor in interest shall be subject to the terms, conditions and obligations set forth in this Declaration.

7.11 Modification. This Declaration may be modified, or amended in whole or in part only by a written and recorded instrument recorded in said public records and signed by Declarant only; provided, however, that in the event any such modification or amendment materially affects the rights or obligations of any Owner hereunder, materially affects said Owner's use of its Pad, materially affects the access, traffic flow, or parking on, or immediately adjacent to its Pad, or otherwise results in its Pad being in violation of any applicable laws, then the affected Owner's consent to such modification or amendment must be obtained in order for said modification or amendment to be effective as against said Owner. Nothing herein shall prohibit or restrict the Owners from entering into separate agreements which, as between such parties only, modify their respective rights and obligations under this Declaration.

7.12 Remedies. The rights established hereunder, and each of them, shall be enforceable at law or in equity, it being fully understood that an action for damages shall not be an adequate remedy for a breach of this Declaration. Any Party hereto shall be entitled to pursue injunctive relief or specific performance with respect to any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Declaration.

7.13 Merger of Title. The covenants, conditions, rights, privileges and easements established herein shall survive any merger of title to the Pads and the Shopping Center Tract.

7.14 Non-Waiver. The failure of Declarant to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which Declarant may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

7.15 Captions. The captions and paragraphs of this Declaration are for convenience only and are not intended to affect the interpretation or construction of the provisions herein stated.

7.16 Not a Dedication. Nothing in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever. It is the intention of the Declarant that this Declaration be strictly limited to and for the purposes expressed herein.

7.17 Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Shelby County Probate Office and shall remain in full force and effect for a period of seventy-five (75) years thereafter (such seventy-five [75] year period may be referred to as the "Initial Term"), subject to automatic extensions as hereinafter provided, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners and Declarant. The term of this Declaration shall be automatically extended for an additional seventy-five (75) years from and after the expiration of the initial term unless the record Owners and Declarant file a Notice of Termination of this Declaration in the Office of the Shelby County Probate Office, Alabama, no earlier than the date that is six (6) months prior to the expiration of the Initial Term and no later than the scheduled expiration date of the Initial Term, electing to terminate this Declaration and all of its terms and provisions (it being expressly agreed that a Notice of Termination filed before or after the aforementioned applicable dates shall not be effective for any purpose, and shall not result in a termination of this Declaration, unless executed by all Owners and the Declarant. Upon the filing of a Notice of Termination by the then record Owners and the Declarant, within the applicable time frames hereinabove established in this Section 7.17, all the easements, covenants, conditions and restrictions contained in this Declaration shall terminate as of the expiration of the Initial Term.

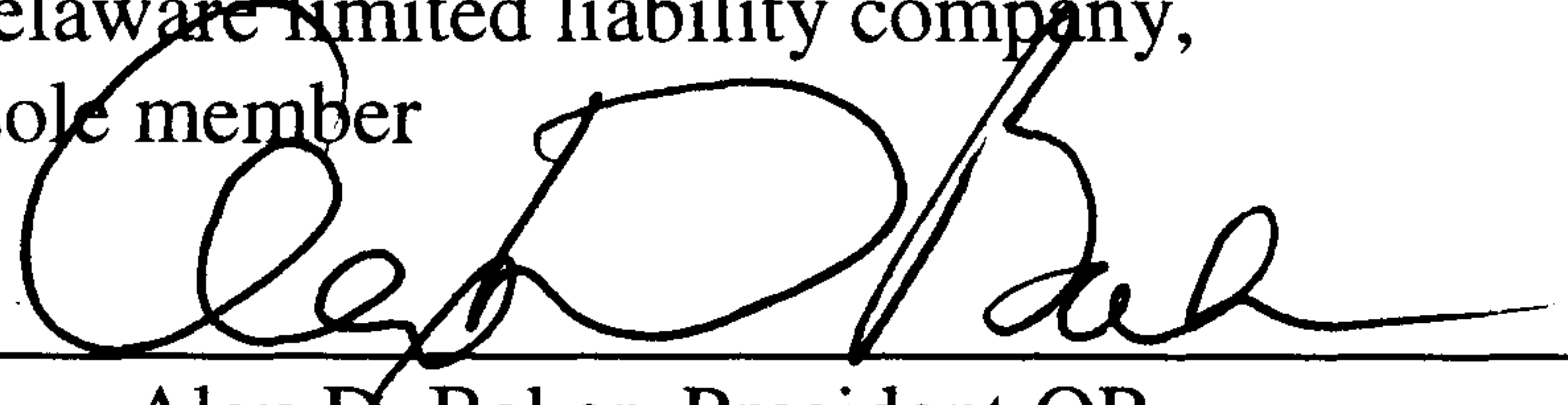
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IN WITNESS WHEREOF, the parties have executed this Declaration as of the Effective Date.

DECLARANT:

AIG BAKER BROOKSTONE, L.L.C.,
a Delaware limited liability company,

By: AIG Baker Shopping Center Properties, L.L.C.,
a Delaware limited liability company,
its sole member

By: 
Alex D. Baker, President OR
W. Ernest Moss, Executive Vice President

ACKNOWLEDGMENT FOR DECLARANT

STATE OF ALABAMA)
) SS:
COUNTY OF SHELBY)

On this 18 day of October, 2006, before me appeared Alex D. Baker, to me personally known, who being by me duly sworn, did say that he is the President of AIG Baker Shopping Center Properties, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware, the sole member of AIG Baker BROOKSTONE, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware and that said instrument was signed and sealed on behalf of said limited liability company by authority of its members, and said officer acknowledged said instrument to be the free act and deed of said limited liability company.

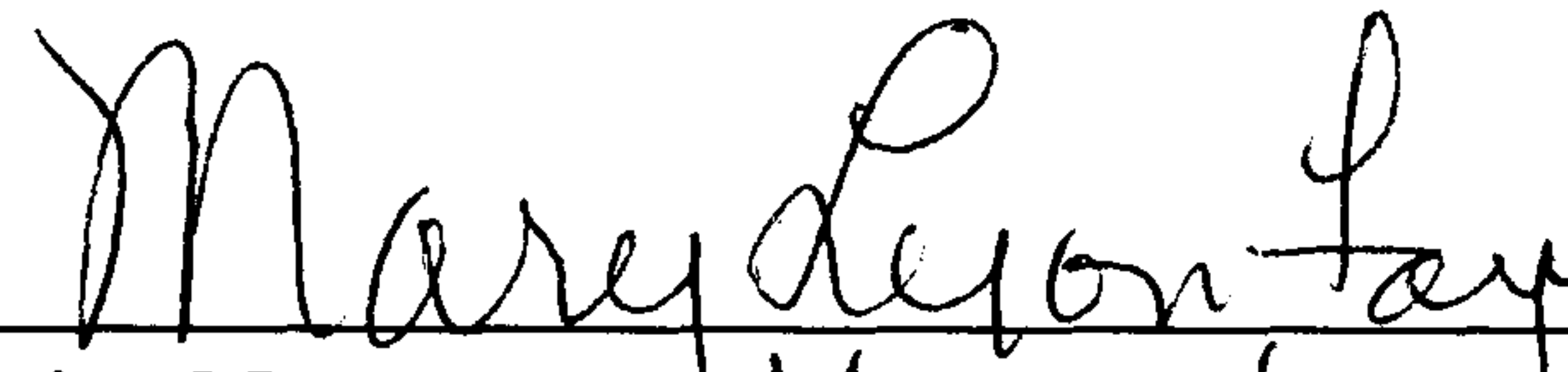

Print Name: Mary Lyon Fay
Notary Public, State at Large, Alabama
My Commission Expires: 3-29-08

EXHIBIT A

LEGAL DESCRIPTION OF SHOPPING CENTER TRACT

Lot 1C, according to the a re-subdivision of the Village at Lee Branch as recorded in Map Book 31, page 130 A and 130 B, in the Probate Office of Shelby County, being a re-subdivision of the Village at Lee Branch, Section 1, revision 1.



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EXHIBIT B

LEGAL DESCRIPTION OF THE PADS

Pad A

Lot 4A, according to the a re-subdivision of The Village at Lee Branch as recorded in Map Book 31, page 130 A and B, in the Probate Office of Shelby County, being a re-subdivision of the Village at Lee Branch, Section 1, revision 1.

Pad B

Lot 4B, according to the a re-subdivision of the Village at Lee Branch as recorded in Map Book 31, page 130 A and 130 B, in the Probate Office of Shelby County, being a re-subdivision of the Village at Lee Branch, Section 1, revision 1.



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EXHIBIT C
SITE PLAN

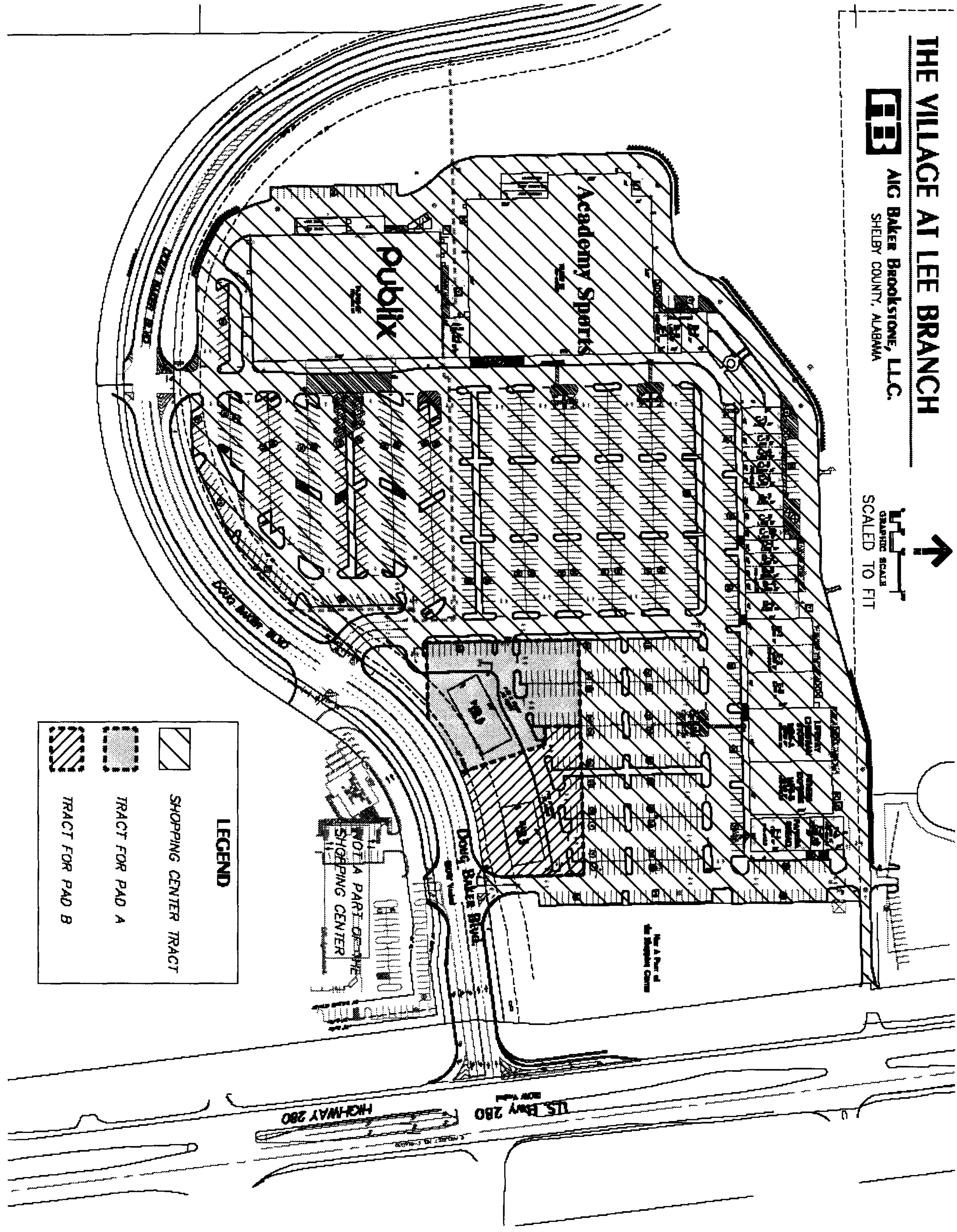


EXHIBIT D

PROHIBITED USES

A. No portion of the Property may be sold, leased, occupied or used for any of the following prohibited uses or operations that produce or are accompanied by the following characteristics:

1. any activity which constitutes a public or private nuisance or which generates excessive noise, litter, dust, dirt or odor;
2. any unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks);
3. warehouse operation, or any assembling, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation;
4. trailer court, mobile home park, lot for sale of new or used motor vehicles, labor camp, junk yard, stock yard or animal raising (other than pet shops); and
5. dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner.
6. laundromat, veterinarian, veterinary hospital or car washing establishment;
7. game room or arcade;
8. funeral establishment, mortuary or similar service;
9. auction or bankruptcy sale, except per order of court;
10. pawn shop;
11. outdoor circus or other outdoor entertainment use;
12. outdoor meetings, meeting hall or other place of assembly;
13. operation of "elephant trains" or similar transportation devices;
14. flea market, flea circus, surplus store or other operation for the sale of used goods
15. shooting gallery or gun range;
16. employment agency;
17. bar serving alcoholic beverages (except as an incident to a full service and full kitchen restaurant operation), nightclub, discotheque or dance hall;
18. massage parlor;

19. off-track betting establishment;
20. office purposes (except incidental to Owner's Intended Use)
21. residential purposes

22. a theater, auditorium, meeting hall, school, church or other place of public assembly, "flea market," gymnasium, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, facility for the sale, display, leasing or repair of motor vehicles, night club, adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not available for sale or rental to children under seventeen (17) years old because such inventory explicitly deals with or depicts human sexuality).

B. For so long as Academy Sports, its successors or assigns is operating a retail store in its premises in the Shopping Center selling sporting goods or sports apparel, sports footwear and related accessories, no portion of the Property may be sold, leased, occupied or used for any of the following uses:

1. as a store in the business of selling sporting goods or sports apparel, sports footwear and related accessories (it being understood and agreed that the incidental retail sale of sports footwear by a store primarily in the business of selling shoes or the incidental retail sale of sportswear by a store primarily in the business of selling apparel shall not violate this exclusive right, by example and not limitation, T. J. Maxx and Ross Stores shall not be businesses which violate this exclusive). Additionally, a family shoe store (such as Famous Footwear and Rack Room Shoes) shall be permitted to sell sports footwear, provided that [and notwithstanding the last sentence of this paragraph] such stores incidental sales of sports footwear constitute less than twenty percent (20%) of such operator's or tenant's gross sales and less than 1,250 square feet of display area inclusive of allocable aisle space. The incidental sale of such items in connection with the overall business of another operator or tenant shall not be deemed a violation of this paragraph. As used herein, "incidental sale" shall mean less than five percent (5%) of such operator's or tenant's gross sales and less than five hundred (500) square feet of such operator's or tenant's display area (inclusive of allocable aisle space).

2. any bowling alley; any arcade; any tavern or bar, except to the extent incidental to a restaurant operated primarily for on-premises consumption (incidental for this purpose being defined as less than 35% of such restaurant's gross sales; any health club spa or gymnasium; any night club or discotheque; any second hand store; any mobile home park or trailer court (except that this provision shall not prohibit the temporary use of construction trailers); any dumping, disposing, incineration or reduction of garbage (exclusive of dumpsters located in the rear of any building); any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; any central laundry or dry cleaning plant or Laundromat (except that this prohibition shall not be applicable to on-site service provided solely for pickup and delivery by the ultimate consumer); any automobile, truck, trailer, or R.V. sales, leasing, display or repair; any skating rink; any living quarters, sleeping apartments or lodging rooms; any veterinary hospital, animal raising facilities or pet shop (except that this prohibition only prohibits a pet shop if it is adjacent to the Academy premises); any mortuary; any pawn shop; any bingo club; any auction house; any flea market; a movie theater; any establishment selling or exhibiting pornographic materials; any use which is a public or private nuisance; and any restaurant other than fast food restaurants on Pad A and Pad B, not to exceed 9,000 square feet in the aggregate; provided that Declarant shall have the right to approve or deny any fast food use on any Pad, in its sole and absolute discretion and, in the event of an approval by Declarant, to determine the allocation of permitted square footage on each Pad.

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Shelby Cnty Judge of Probate, AL
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C. For so long as Publix, its successors or assigns is operating a retail store in its premises in the Shopping Center, no portion of the Property shall be used to:

1. (a) operate a grocery supermarket, bakery, delicatessen, and fish market; (b) sell drugs or other products which are required by law to be dispensed by a registered pharmacist; and (c) engage in retail sales of items of food for "off-premises" consumption.
2. adult entertainment, massage parlor, adult book store and a so called "head shop"
3. for any unlawful purpose, or in any way which would constitute a legal nuisance to adjacent tenants or occupants in the Shopping Center or surrounding areas
4. for the placement of any telecommunication towers

Notwithstanding the foregoing, the following shall not be prohibited on the Property: (i) a sit down restaurant offering prepared ready-to-eat food items for consumption either on or off the premises; (ii) a delicatessen or sandwich shop type restaurant (but not a bakery) which offers take out service as an incidental part of its restaurant operation, provided that at least seventy percent (70%) of the Leasable Floor Area of such restaurant (exclusive of kitchen or food preparation area) is utilized for seated dining purposes; (iii) a health food store or nutrition center, provided that the Leasable Floor Area devoted to such health food store or nutrition center shall not exceed 1,600 square feet, ice cream parlor or frozen yogurt store, franchise doughnut shop (equivalent to a Dunkin Donut or Krispy Kreme operation), candy store, or a pizza pickup or delivery outlet, all of which may offer the sale of food items for consumption on or off the premises; (iv) a combination gas station and convenience food store operation, provided that the Leasable Floor Area devoted to the sale of food and beverage products shall not exceed 1,500 square feet; PROVIDED, HOWEVER, the foregoing exception (iv) shall not permit a gas station/convenience food store that is owned by, operated by or controlled by another grocery supermarket entity or general merchandise retailer that also operates grocery supermarkets (such as WalMart), such entity's parent company or its subsidiaries or affiliates, and which gas station and convenience store operation is identified on the premises with such grocery supermarket name or the name under which such general merchandise retailer operates its grocery supermarkets within the State of Alabama; (v) a video rental or sale store (similar to a Blockbuster Video) which may offer the sale of items normally sold by movie theaters (i.e., popcorn or candy) for consumption off the premises; (vi) a coffee shop (equivalent to a Starbucks or Caribou Coffee) selling bakery items as an incidental part of its business; and (vii) a sit down restaurant offering breakfast and lunch items, including bagels and other items typically characterized as "bakery" items for sale and consumption off the premises (equivalent to a Panera Bread or Atlanta Bread Company), provided, however, (A) in no event shall said restaurant be allowed to sell meats or salads by the pound, and (B) at least seventy percent (70%) of the Leasable Floor Area of said restaurant (exclusive of kitchen or food preparation area) is utilized for seating dining purposes.

Any buildings or other improvements (including any pylon or monument sign) constructed on the Property shall not materially interfere with or alter the visibility of and public access to the Publix premises or the visibility of the Shopping Center pylon or monuments signs.

MORTGAGEE'S CONSENT AND SUBORDINATION

The undersigned, as the holder of that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement (the "Mortgage") executed by executed by AIG Baker Brookstone, L.L.C., Brookstone Townhomes, L.L.C., and AIG Baker East Village, L.L.C. (collectively, the "Mortgagor"), dated March 18, 2004, filed in the Office of the Judge of Probate of Shelby County, Alabama, under Instrument Number 20040322000146300, to Wachovia Corporation, North Carolina banking corporation, f/k/a SouthTrust Bank ("Mortgagee"), which said Mortgage encumbers the property described on Exhibit "A" and Exhibit "B", (1) consents to and approves the execution and delivery by the parties thereto of that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS (this "Declaration"), (2) subordinates to the rights of the parties under the Declaration any lien or security interest the undersigned may have by virtue of such recorded Mortgage and all amendments thereto, and (3) agrees that the foreclosure of such Mortgage will have no effect on the continuing validity and enforceability of the Declaration.

This Consent is made and given by Mortgagee by its acceptance and the recording hereof. Mortgagee hereby agrees to the following conditions and agreements until the Mortgage is cancelled of record, notwithstanding anything in the Declaration to the contrary:

(a) Nothing contained herein shall be deemed to impair in any manner or in any way the effect and lien of the Mortgage.

(b) Mortgagee shall have no liability under the Declaration in connection with any matter arising thereunder prior to the date Mortgagee takes possession of any part of the property described in the Declaration, and then only to the extent of such possession.

(c) Neither Mortgagee's execution and delivery hereof, nor anything contained herein, nor Mortgagee's review of the Declaration, nor anything contained in the Declaration shall be deemed to alter, modify, waive or change in any manner or way the obligations and duties of Mortgagor, as mortgagor, under and pursuant to the Mortgage, the indebtedness secured thereby, or any other instrument or document evidencing, securing, or otherwise relating to said indebtedness.

(d) Pursuant to the notice provisions of the Mortgage, Mortgagor agrees to give to Mortgagee any and all default notices given by or to the Mortgagor pursuant to the Declaration.

(e) Mortgagor shall not assign, convey, encumber, pledge, or otherwise transfer any of its rights, titles, or interests in, to or under the Declaration without the express written consent of Mortgagee.

Signed and delivered as of 10/11, 2006.

Wachovia Corporation, a North Carolina banking corporation, f/k/a SouthTrust Bank, an Alabama banking corporation

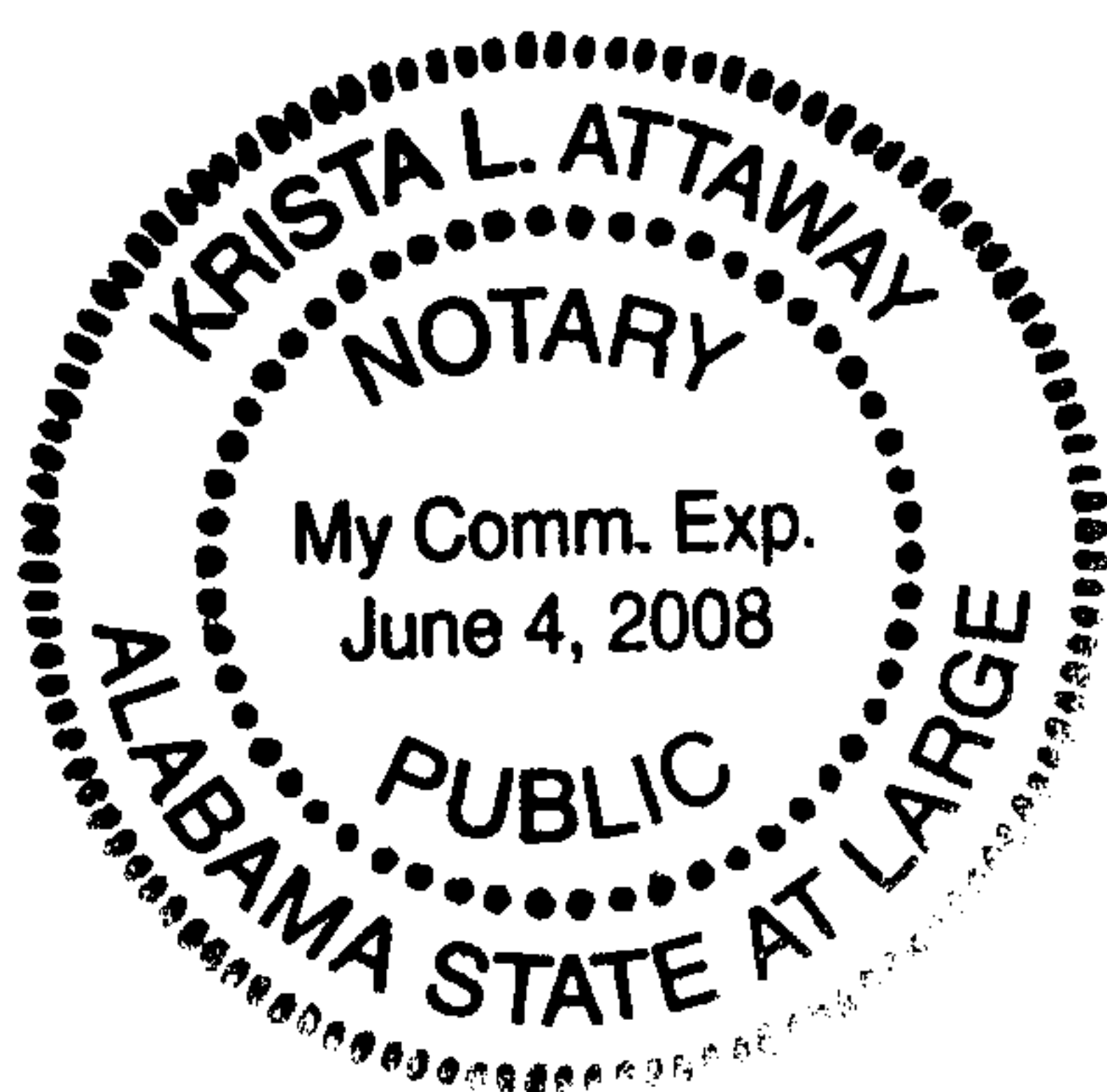
By: Miguel Buitrago

Name: MAYNARD BROTHERS

Title: VICE PRESIDENT

STATE OF Alabama)
COUNTY OF Jefferson) SS:

On this 11th day of October, 2006, before me appeared Maynard Brothers to me personally known, who being by me duly sworn, did say that he is the Vice President of Wachovia Corporation, a North Carolina banking corporation, f/k/a SouthTrust Bank and that said instrument was signed and sealed on behalf of said corporation with full authority, and said officer acknowledged said instrument to be the free act and deed of said corporation.



Krista L. Attaway
Print Name: Krista L. Attaway
Notary Public, State at Large, Alabama
My Commission Expires: 6-4-2008