

**THIS INSTRUMENT PREPARED BY:**

**John J. Ginley III, Esq.**  
**Morris, Manning & Martin, LLP**  
**3343 Peachtree Road, N.E.**  
**Atlanta, Georgia 30326**

**DECLARATION OF LIMITED USE RESTRICTIONS**

**THIS DECLARATION OF LIMITED USE RESTRICTIONS** (this "Agreement") is made on this 29 day of June, 2007 (the "Effective Date"), between **AIG BAKER BROOKSTONE, L.L.C.**, a Delaware limited liability company ("Declarant I") and **AIG BAKER EAST VILLAGE, L.L.C.**, a Delaware limited liability company ("Declarant II"; together with Declarant I shall be collectively referred to as the "Declarants" as further defined in Section 1.1 below).

**RECITALS**

**WHEREAS**, Declarant I is the owner of a tract or parcel of land located in the City of Hoover, Shelby County, Alabama, on which Declarant I owns a shopping center known as Phase I of the "Lee Branch Shopping Center" said parcel being referred to herein as the "Shopping Center Tract I", and being described on Exhibit A attached hereto; and

**WHEREAS**, Declarant II is the owner of a tract or parcel of land located in the City of Hoover, Shelby County, Alabama, on which Declarant II owns a shopping center known as Phase II of the "Lee Branch Shopping Center" said parcel being referred to herein as the "Shopping Center Tract II", and being described on Exhibit B attached hereto; and

**WHEREAS**, in order to protect the use rights of certain retail tenants located in the Shopping Center (as hereinafter defined), Declarants hereby declare and impose certain limited use restrictions upon the Property (as hereinafter defined); and

**WHEREAS**, Declarants expressly intend that each covenant stated herein shall constitute a covenant running with the Property, and shall inure to the equal benefit of the owner of the Shopping Center Tract I and the owner the Shopping Center Tract II, their successors and assigns, 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 I and the Shopping Center Tract II, 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 Declarants do hereby impose and place upon the Property, the following limited use restrictions:

## **ARTICLE I**

### **DEFINITIONS**

#### **1.1 Declarant.**

"Declarants" shall mean collectively AIG Baker East Village, L.L.C. and AIG Baker Brookstone, L.L.C. and their successors and assigns who become owners of all or any portion of the Shopping Center Tract I or the Shopping Center Tract II, respectively.

#### **1.2 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.

#### **1.3 Party.**

"Party" shall mean the Declarants and 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 Agreement arising subsequent to the effective date of the transfer notice.

#### **1.4 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.

#### **1.5 Person.**

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

#### **1.6 Property.**

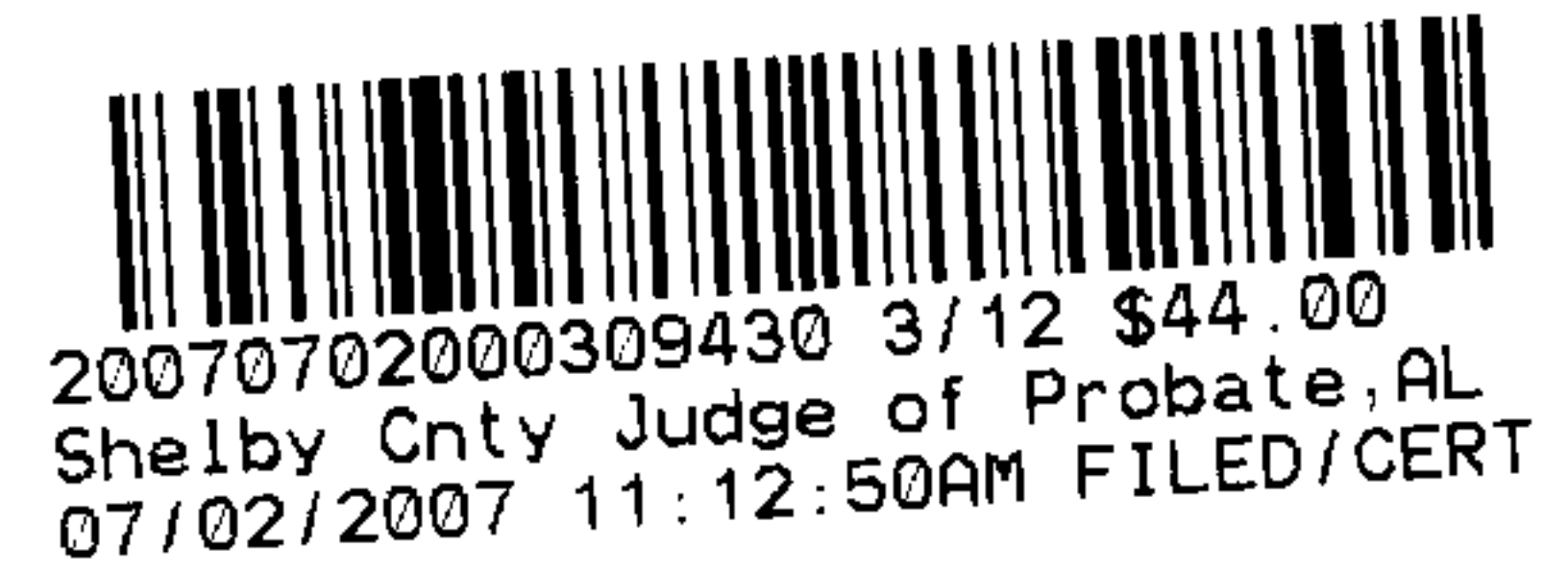
"Property" shall mean, collectively, the Shopping Center Tract I and the Shopping Center Tract I, collectively.

#### **1.7 Shopping Center.**

"Shopping Center" shall mean that certain commercial shopping complex, located in the City of Hoover, County of Shelby, State of Alabama, and commonly known as The Village at Lee Branch Shopping Center, which is comprised of the following parcels of real property:



- (a) the Shopping Center Tract I; and
- (b) the Shopping Center Tract II.



## ARTICLE II

### LIMITED USE RESTRICTIONS

#### 2.1. Use Restriction to be Recorded Against Shopping Center Tract I.

(a) Declarant II has agreed that, so long as Royal Foods, L.L.C. d/b/a Copa's ("Copa's") is operating an Italian cuisine restaurant in the Shopping Center Tract II and is not in default under the terms of its lease beyond any applicable notice and cure period, it shall not at anytime hereafter directly enter into a lease with a tenant for space within the Shopping Center Tract II, or in the Shopping Center Tract I, to a restaurant whose primary menu item is pizza. This covenant is a personal covenant between Declarant II and Copa's and shall not restrict any other tenant of the Shopping Center from changing its use, subleasing its premises or assigning its lease to a party that will compete with Copa's business, unless such assignment or subleasing is directly between Declarant II and such subtenant or sublessee (with Declarant II further agreeing that to the extent it has the right to consent to and thus prevent any such assignment or subletting, it will withhold its consent to protect the personal covenant granted herein), nor shall such covenant prohibit Declarant II from entering into a lease with a tenant containing an "open" use clause or other use clause not restricting a tenant's use (*i.e.*, a provision permitting the tenant to operate for any use or any lawful use or words of similar import) provided that Declarant II does not actually know, at the time of the execution of such lease, such tenant, in fact, intends to compete with Copa's business.

(b) In consideration of the mutual restrictions and other consideration contained in this Agreement, Declarant I hereby agrees personally with Declarant II that, so long as Copa's is operating an Italian cuisine restaurant in the Shopping Center Tract II and is not in default under the terms of its lease beyond any applicable notice and cure period, Declarant I shall not at anytime hereafter directly enter into a lease with a tenant for space within the Shopping Center Tract I to a restaurant whose primary menu item is pizza. This covenant is personal between Declarant I and Declarant II, shall not give Copa's any rights of enforcement hereunder or as a third-party beneficiary, shall not restrict any other tenant of the Shopping Center from changing its use, subleasing its premises or assigning its lease to a party that will compete with Copa's business, unless such assignment or subleasing is directly between Declarant I and such subtenant or sublessee (with Declarant I further agreeing that to the extent it has the right to consent to and thus prevent any such assignment or subletting, it will withhold its consent to protect the personal covenant granted herein), nor shall such covenant prohibit Declarant I from entering into a lease with a tenant containing an "open" use clause or other use clause not restricting a tenant's use (*i.e.*, a provision permitting the tenant to operate for any use or any lawful use or words of similar import).

#### 2.2 Use Restriction to be Recorded Against Shopping Center Tract II.

(a) Declarant I agrees that, so long as Red Hawk Windward, LLC d/b/a Moe's Southwest Grill ("Moe's") is operating a Southwestern theme restaurant from its premises and is not in default under the terms of its lease beyond any applicable notice and cure period, it shall not hereafter enter into any lease with a tenant for space within the Shopping Center Tract I or Shopping Center Tract II,



which has as its "primary use" the operation of a quick serve, freshly prepared Southwestern cuisine restaurant, such as by way of example, those businesses currently operating under the trade names Baja Fresh, Chipotle Mexican Grill, Maui Taco and/or Qdoba Mexican Grill. Subject to the rights of the existing tenants of the Shopping Center, this language shall not: (a) be construed as Declarant I granting Moe's an exclusive to operate the only "quick serve, freshly prepared" Southwestern cuisine restaurant within the Shopping Center; (b) prohibit Declarant I from leasing space within the Shopping Center to a full-service, sit-down Mexican theme cuisine restaurant; and/or (c) prohibit Declarant I from entering into a lease containing a "open" use clause or other use clause not restricting a tenant's use (*i.e.*, a provision permitting any use or any lawful use or words of similar import) provided that Declarant I does not actually know, at the time of the execution of such lease, such tenant, in fact, intends to compete with Moe's business.

(b) In consideration of the mutual restrictions and other consideration contained in this Agreement, Declarant II hereby agrees personally with Declarant I that, so long as Moe's is operating a Southwestern theme restaurant from its premises and is not in default under the terms of its lease beyond any applicable notice and cure period, Declarant II shall not hereafter directly enter into any lease with a tenant for space within the Shopping Center Tract I or Shopping Center Tract II, which has as its "primary use" the operation of a quick serve, freshly prepared Southwestern cuisine restaurant, such as by way of example, those businesses currently operating under the trade names Baja Fresh, Chipotle Mexican Grill, Maui Taco and/or Qdoba Mexican Grill. This covenant is personal between Declarant I and Declarant II, shall not give Moe's any rights of enforcement hereunder or as a third-party beneficiary, shall not restrict any other tenant of the Shopping Center from changing its use, subleasing its premises or assigning its lease to a party that will compete with Moe's business, unless such assignment or subleasing is directly between Declarant II and such subtenant or sublessee (with Declarant II further agreeing that to the extent it has the right to consent to and thus prevent any such assignment or subletting, it will withhold its consent to protect the personal covenant granted herein), nor shall such covenant prohibit Declarant II from entering into a lease with a tenant containing an "open" use clause or other use clause not restricting a tenant's use (*i.e.*, a provision permitting the tenant to operate for any use or any lawful use or words of similar import).

(c) Declarant I agrees that, so long as Tommy W. Haralson and Sandra D. Haralson d/b/a Monkey Toes ("Monkey Toes") is operating a specialty children's shoe store from its premises and is not in default under the terms of its lease beyond any applicable notice and cure period, it shall not at anytime hereafter directly enter into a lease with a tenant for space within the Shopping Center, for the operation of a specialty children's shoe store. This covenant is a personal covenant between Declarant I and Monkey Toes and shall not restrict any other tenant of the Shopping Center Tract I or Shopping Center Tract II from changing its use, subleasing its premises or assigning its lease to a party that will compete with Monkey Toes' business, unless such assignment or subleasing is directly between Declarant I and such subtenant or sublessee (with Declarant I further agreeing that to the extent it has the right to consent to and thus prevent any such assignment or subletting, it will withhold its consent to protect the personal covenant granted herein), nor shall such covenant prohibit Declarant I from entering into a lease with: (i) a tenant containing an "open" use clause or other use clause not restricting a tenant's use (*i.e.*, a provision permitting the tenant to operate for any use or any lawful use or words of similar import) provided that Declarant I does not actually know, at the time of the execution of such lease, such tenant, in fact, intends to compete with Monkey Toes' business; or (ii) a national shoe store which has as part of its inventory children's shoes, including, by way of example, those businesses currently operating as Famous Footwear, Rack Room Shoes, Shoe Carnival and Payless ShoeSource.

(d) In consideration of the mutual restrictions and other consideration contained in this Agreement, Declarant II hereby agrees personally with Declarant I that, so long as Monkey Toes is operating a specialty children's shoe store from its premises and is not in default under the terms of its lease beyond any applicable notice and cure period, Declarant II shall not hereafter directly enter into



any lease with a tenant for space within the Shopping Center Tract I or Shopping Center Tract II, which has as its "primary use" a specialty children's shoe store. This covenant is personal between Declarant I and Declarant II, shall not give Monkey Toes any rights of enforcement hereunder or as a third-party beneficiary, shall not restrict any other tenant of the Shopping Center from changing its use, subleasing its premises or assigning its lease to a party that will compete with Monkey Toes' business, unless such assignment or subleasing is directly between Declarant II and such subtenant or sublessee (with Declarant II further agreeing that to the extent it has the right to consent to and thus prevent any such assignment or subletting, it will withhold its consent to protect the personal covenant granted herein), nor shall such covenant prohibit Declarant II from entering into a lease (i) with a tenant containing an "open" use clause or other use clause not restricting a tenant's use (*i.e.*, a provision permitting the tenant to operate for any use or any lawful use or words of similar import), or (ii) with a national shoe store which has as part of its inventory children's shoes, including, by way of example, those businesses currently operating as Famous Footwear, Rack Room Shoes, Shoe Carnival and Payless ShoeSource.

### ARTICLE III

#### DEFAULT

**3.1 Default.** If any Party shall fail to perform any covenant or condition contained in this Agreement (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.

**3.2 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 automatically be subordinate to any first mortgage/deed of trust then encumbering the Property in question, if said mortgage/deed of trust is properly recorded in the Office of the Judge of Probate of Shelby County, Alabama, prior to recording of said lien.

### ARTICLE IV

#### MISCELLANEOUS

**4.1 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 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 I: 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

To Declarant II: AIG Baker East Village, 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 Parties may from time to time specify in writing to the other Party. 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.

**4.2 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 Agreement by the requesting Person, and if there are known defaults, specifying the nature thereof;
- (b) whether the Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and
- (c) whether this Agreement is in full force and effect.

**4.3 Intentionally Left Blank.**

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

**4.5 Attorneys' Fees.** If either Party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, 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 there from) and reasonable attorneys' fees and disbursements.

**4.6 Governing Law; Jurisdiction and Venue.**



(a) **THIS AGREEMENT 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 Agreement, 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 agreement, 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 Agreement 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.

**4.7 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 AGREEMENT 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.

**4.8 Rights of Successors.** The provisions of this Agreement will be binding upon Declarants 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 Shopping Center Tract I and the Shopping Center Tract II and constitutes a covenant running with the land and binds every owner now having or hereinafter acquiring an interest in the Shopping Center Tract I or the Shopping Center Tract II. This Agreement shall create privity of contract with and among Declarants and all grantees of all or any portion of the Property and their respective heirs, executors, administrators, successors and assigns.

**4.9 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.

**4.10 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 Agreement.

**4.11 Modification.** This Agreement 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 Declarants only.

**4.12 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 Agreement. 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 Agreement.

**4.13 Non-Waiver.** The failure of Declarants 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 Declarants 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.

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

**4.15 Not a Dedication.** Nothing in this Agreement 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 Declarants that this Agreement be strictly limited to and for the purposes expressed herein.

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

**DECLARANT I:**

**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: *W. Ernest Moss*  
W. ERNEST MOSS  
Executive Vice President

**DECLARANT II:**

**AIG BAKER EAST VILLAGE, 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: *W. Ernest Moss*  
W. ERNEST MOSS  
Executive Vice President



ACKNOWLEDGMENT FOR DECLARANT I

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Shelby Cnty Judge of Probate, AL  
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STATE OF ALABAMA       )  
                                  )SS:  
COUNTY OF SHELBY       )

On this 28<sup>th</sup> day of June 2007, before me appeared W. Ernest Moss, to me personally known, who being by me duly sworn, did say that he is the Exec Vice 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.

Cristine K. Byrd  
Print Name: Cristine K. Byrd  
Notary Public, State At Large, Alabama  
My Commission Expires: 7-2-07

ACKNOWLEDGMENT FOR DECLARANT II

STATE OF ALABAMA       )  
                                  )SS:  
COUNTY OF SHELBY       )

On this 28<sup>th</sup> day of June 2007, before me appeared W. Ernest Moss, to me personally known, who being by me duly sworn, did say that he is the Exec Vice 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 East Village, 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.

Cristine K. Byrd  
Print Name: Cristine K. Byrd  
Notary Public, State At Large, Alabama  
My Commission Expires: 7-2-07




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Shelby Cnty Judge of Probate, AL  
07/02/2007 11:12:50AM FILED/CERT

**EXHIBIT A**

**LEGAL DESCRIPTION OF SHOPPING CENTER TRACT I**

Lot 1C, according to the re-subdivision of The Village at Lee Branch, as recorded in Map Book 31,  
Page 130A&B, in the Probate Office of Shelby County, Alabama



  
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Shelby Cnty Judge of Probate, AL  
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**EXHIBIT B**

**LEGAL DESCRIPTION OF SHOPPING CENTER TRACT II**

A parcel of land situated in the Southeast 1/4 of the Northwest 1/4 and the Northeast 1/4 of the Southwest 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, said consisting of Lot 5A of "A RESUBDIVISION OF THE VILLAGE AT LEE BRANCH" as recorded in Map Book 31, Pages 130A & 130B, in the Probate Office of Shelby County, Alabama