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Loan No.: 1012198

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**PREPARED BY, RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Christopher J. Maurer, Esq.
Reed Smith LLP
136 Main Street, Suite 250
Princeton, New Jersey 08540

(Space Above For Recorder's Use)

**PURCHASE MONEY
MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

NAME AND ADDRESS OF MORTGAGOR:	INV CORNERS LLC INV PLAZA LLC c/o Bayer Properties, L.L.C. 2222 Arlington Avenue Birmingham, Alabama 35205 Organizational Numbers: 5566914 (Inv Corners LLC) 5566915 (Inv Plaza LLC)
NAME AND ADDRESS OF LENDER:	WELLS FARGO BANK, NATIONAL ASSOCIATION 3100 West End Avenue, 9 th Floor Suite 900, MAC: W1021-090 Nashville, Tennessee 37203-1320
PROPERTY ADDRESSES / ABBREVIATED LEGAL DESCRIPTION:	<u>Corners</u> : 101-1350 Inverness Corners, Hoover, Shelby County, Alabama <u>Plaza</u> : 102-180 Inverness Plaza, Hoover, Shelby County, Alabama Additional legal description on <u>Exhibits "A-1"</u> and <u>"A-2"</u> of this document.
ASSESSOR'S PROPERTY TAX PARCEL NUMBERS:	<u>Corners</u> : Tax Parcel Numbers 02-7-36-0-001-027-008 (Main); 02-7-36-0-001-027-012 (Re/Max); 02-7-36-0-001-027-015

	(Buffer); 02-7-36-0-001-027-007 (Kohl's); 02-7-36-0-001-027-010 (Chili's); and 02-7-36-0-001-027-009 (First Commercial Bank). <u>Plaza</u> : Tax Parcel Numbers 02-7-36-0-001-027-001, 02-7-36-0-001-027-002, and 02-7-36-0-001-027-003.
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THIS INSTRUMENT COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. THE MAILING ADDRESSES OF THE SECURED PARTY AND THE DEBTOR ARE WITHIN.

THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THIS INSTRUMENT IS \$30,100,000.00.


THIS MORTGAGE SECURES A NOTE WHICH PROVIDES FOR A
VARIABLE INTEREST RATE

**MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING
(Alabama)**

THIS **MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING** (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented in accordance with its terms, referred to as this "Security Instrument"), made as of August 12, 2014, is granted by **INV CORNERS LLC**, a limited liability company organized under the laws of the State of Delaware (hereinafter referred to as "Corners") and **INV PLAZA LLC**, a limited liability company organized under the laws of the State of Delaware (hereinafter referred to as "Plaza"), and hereinafter Corners and Plaza shall be collectively referred to as the "Mortgagor"), for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION** (hereinafter, collectively with its successors or assigns, referred to as the "Lender").

ARTICLE 1. GRANT

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Security Instrument, Mortgagor, respectively, irrevocably grants, bargains, conveys, sells, assigns and mortgages to Lender and its successors and assigns forever, with power of sale and right of entry and possession: (a) the fee simple interest of Corners in and to all of that real property located in the City of Hoover, County of Shelby, Alabama, described on Exhibit "A-1" attached hereto and made a part hereof (hereinafter referred to as the "Corners Parcel") and (b) the fee simple interest of Plaza in and to all of that real property located in the City of Hoover, County of Shelby, Alabama, described on Exhibit "A-2" attached hereto and made a part hereof (hereinafter referred to as the "Plaza Parcel"), together with the Collateral (as defined herein), all buildings and other improvements, fixtures and equipment now or hereafter located on the real property and all right, title, interest, and privileges of Mortgagor now owned or hereafter acquired in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, licenses and permits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in,


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on or under the real property, and all appurtenances, easements, estates, tenements, hereditaments, privileges, rights and rights of way appurtenant or related thereto; all buildings and other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (hereinafter referred to as the "Improvements"); all interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

TO HAVE AND TO HOLD the Property, the Collateral and all the rights, easements, profits and appurtenances and other property described above, together with all proceeds, products, replacements, additions, substitutions and renewals to or of any or all of the foregoing belonging unto and to the use of the Lender, its successors and assigns, in fee simple forever;

PROVIDED, ALWAYS, that if Mortgagor shall pay unto Lender the principal of and interest on the "Note" (as such term is hereinafter defined), when and as the same shall become due and payable whether by acceleration or otherwise, and shall pay all "Secured Obligations" (as such term is hereinafter defined), and performs all obligations on its behalf contained in this Security Instrument, the "Loan Agreement" (as such term is hereinafter defined) or any of the other documents evidencing any of the Secured Obligations, then and in that case, the Property and the Collateral hereby conveyed and all rights and interests therein and thereto shall revert to Mortgagor and the estate, right, title and interest of Lender therein shall thereupon cease, determine and become void and in such case Lender shall execute and deliver to Mortgagor at Mortgagor's cost, an appropriate release and discharge of this Security Instrument in form to be recorded.

- 1.2 **ADDRESS.** The address of the Property (if known) is (a) with respect to Corners, 101-1350 Inverness Corners, Hoover, Shelby County, Alabama, and (b) with respect to Plaza, 102-180 Inverness Plaza, Hoover, Shelby County, Alabama. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Security Instrument on the Property as described on Exhibits "A-1" or "A-2" attached hereto.
- 1.3 **WARRANTY OF TITLE; USE OF PROPERTY.** Mortgagor represents and warrants that, except as disclosed to Lender in a writing which refers to this warranty, (a) Corners lawfully holds and possesses fee simple title to the Corners Parcel and (b) Plaza lawfully holds and possesses fee simple title to the Plaza Parcel, without limitation on the right to encumber, and that, except for Permitted Liens (as defined in the Loan Agreement), this Security Instrument is a first and prior lien on the Property.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Mortgagor makes this Security Instrument for the purpose of securing the payment and performance of the following obligations (collectively "Secured Obligations"):

- (a) Payment to Lender of all sums at any time owing, with interest thereon, according to the terms of that certain Promissory Note (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Note") dated of even date herewith, in the principal amount of Thirty Million One Hundred Thousand and 00/100 (\$30,100,000.00) Dollars executed by Mortgagor, as

maker, and payable to the order of Lender, as payee; and

- (b) Payment and performance of all covenants and obligations of Mortgagor under this Security Instrument; and
- (c) Payment and performance of all covenants and obligations on the part of Mortgagor under that certain Loan Agreement (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented pursuant to its terms, referred to as the "Loan Agreement") dated of even date herewith executed by and between Mortgagor and Lender; and
- (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Security Instrument; and
- (e) Payment and performance of all "Future Advances" (as such term is hereinafter defined); and
- (f) Payment and performance of all obligations of Mortgagor under or in connection with any "Swap Agreement", as defined in the Loan Agreement, at any time entered into between Mortgagor and Lender, together with all modifications, extensions, renewals and replacements thereof; and
- (g) All modifications, extensions, novations and renewals of any of the obligations secured hereby, provided each is in writing, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes;

provided, however, that the maximum principal indebtedness, including Future Advances, secured hereby will not exceed \$30,100,000.00, outstanding from time to time.

- 2.1 **OBLIGATIONS**. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations together with all costs of collecting the Secured Obligations.
- 2.2 **INCORPORATION**. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.
- 2.3 **FUTURE ADVANCES**. This Security Instrument is given to secure Future Advances. Future Advances means any loan of money from Lender to Mortgagor made within twenty (20) years from the date of this Security Instrument. The total amount of such loan or loans may increase or decrease from time to time, provided that the maximum principal indebtedness, including Future Advances, secured hereby will not exceed \$30,100,000.00, outstanding from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Mortgagor hereby absolutely and irrevocably assigns and transfers to Lender all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases, subleases, licenses or occupancy agreements of the Property or any portion thereof, and all other agreements of any kind relating to the management, leasing, operation, use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof (hereinafter referred to as the "Leases"); and (b) the rents, revenue, income, receipts, reserves, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases (hereinafter referred to as the "Payments"). The term "Leases", as referred to herein, shall also include all subleases and other agreements for the use or occupancy of the Property, options, rights of first refusal or guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This assignment is intended to be and constitutes a present, unconditional and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

Nothing contained in this Security Instrument is intended to diminish, alter, impair, or affect any other rights and remedies of Lender, including but not limited to, the appointment of a receiver, nor shall any provision in this section diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth herein. In addition, this assignment shall be fully operative without regard to value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Mortgagor to Lender, and shall be in addition to any rights at law or in equity. Further, except for the notices required hereunder, if any, Mortgagor hereby waives any notice of default or demand for turnover of rents by Lender, together with any rights, if any, to apply to a court to deposit the Payments into the registry of the court or such other depository as the court may designate.

- 3.2 **GRANT OF LICENSE.** Lender confers upon Mortgagor a revocable license (hereinafter referred to as a "License") to administer the Leases and to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon the occurrence and during the continuance of a Default, the License shall be automatically revoked and Lender may collect and apply the Payments pursuant to that certain Section hereof entitled Application of Other Sums without notice and without taking possession of the Property. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Lender. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, which notice or demand states that a Default exists, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Lender. During the existence of a Default, Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation under the Loan Documents (as defined in the Loan Agreement), whether existing on the date hereof or hereafter arising. Collection of any Payments by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable

for any waste committed on the Property by the tenants under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or under any duty to produce rents or profits. Except as a result of Lender's gross negligence or willful misconduct, Lender shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Lender, or any of its respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Lender hereunder; or (ii) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

- 3.4 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that, as of the date hereof and, where such tenant estoppel letters have been received by Mortgagor, based on the content of said tenant estoppel letters, except as otherwise disclosed to Mortgagee in writing, (a) there are no Leases in effect with respect to the Property which have not been disclosed in writing to Lender, with complete copies thereof having been provided to Lender, (b) all existing Leases are in full force and effect and are enforceable by Mortgagor in accordance with their respective terms, and no breach or default, or, to Mortgagor's knowledge, no event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of Mortgagor and, to Mortgagor's knowledge, any other party, (c) to Mortgagor's knowledge, and except as disclosed to Lender in writing prior to the date hereof, and except as expressly provided in the Leases, no rent or other payment under any existing Lease has been paid by any tenant for more than one (1) month in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised; and (d) none of the landlord's interests under any of the Leases has been transferred or assigned by Mortgagor except to Mortgagee.
- 3.5 **COVENANTS.** Mortgagor covenants and agrees to comply with the requirements for leasing the Property as set forth in the Loan Agreement.
- 3.6 **ESTOPPEL CERTIFICATES.** Within thirty (30) days after written request by Lender, Mortgagor shall obtain and shall deliver to Lender and to any party designated by Lender estoppel certificates executed by Mortgagor and by each of the tenants under and subject to (and as any requirement for an estoppel certificate may be limited or expanded, as the case may be, by) the terms of such tenant leases certifying (if such be the case and to the best of Mortgagor's knowledge) to certain matters relating to the Leases, including, without limitation (but subject as aforesaid to tenant leases): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date and amount of each tenant's most recent payment of rent and other charges; (c) that, to Mortgagor's knowledge, there are no uncured defaults, defenses or offsets outstanding, or stating those claimed by Mortgagor or tenants under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Lender.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Lender a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (hereinafter collectively referred to as the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the

Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts (including impound accounts, if any), accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, domain names and other intellectual property, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Lender to Mortgagor under any Swap Agreement; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

Notwithstanding the foregoing to the contrary, the term "Collateral" shall not be deemed to include any personal property owned by any tenant, subtenant, or other occupant of the Property (unless Mortgagor is such a tenant, subtenant, or other occupant).

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, it is intended by Mortgagor and Lender that this Security Instrument constitutes a fixture filing filed with the real estate records of Shelby County, Alabama, under the Uniform Commercial Code, as amended or recodified from time to time, from the state wherein the Property is located (hereinafter referred to as the "UCC") For purposes of this fixture filing, the "Debtor" is the Mortgagor and the "Secured Party" is the Lender. A description of the land which relates to the fixtures is set forth in Exhibits "A-1" and "A-2" attached hereto. Mortgagor, respectively, is the record owner of such land.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that, except for Permitted Liens: (a) Mortgagor has good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Mortgagor's principal place of business is located at the address set forth on the cover page of this Security Instrument.
- 4.3 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Lender deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Lender prior express written notice thereof; (c) to cooperate with Lender in perfecting all security interests granted herein and

in obtaining such agreements from third parties as Lender deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Lender is authorized to file financing statements in the name of Mortgagor to perfect Lender's security interest in the Collateral.

- 4.4 **RIGHTS OF LENDER.** In addition to Lender's rights as a "Secured Party" under the UCC, Lender may, but shall not be obligated to, at any time: (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) during the existence of a Default, upon notice to Mortgagor and at Mortgagor's expense, insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; (c) during the existence of a Default, without notice to Mortgagor and at Mortgagor's expense, inspect the Collateral; and (d) during the existence of a Default, upon notice to Mortgagor and at Mortgagor's expense, endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral.

Upon the occurrence and during the continuance of a Default, then in addition to all of Lender's rights as a "Secured Party" under the UCC or otherwise at law and in addition to Lender's rights under the Loan Documents:

- (a) Lender may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Lender at a place reasonably convenient to Mortgagor and Lender; (ii) without prior notice, except as required by applicable laws, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license or otherwise dispose of any or all of the Collateral, and store the same at locations acceptable to Lender at Mortgagor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
- (b) Lender may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Lender may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
- (c) Any proceeds of any disposition of any Collateral may be applied by Lender to the payment of expenses incurred by Lender in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Lender toward the payment of the Secured Obligations in such order of application as Lender may from time to time elect.

Notwithstanding any other provision hereof, Lender shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Lender unless Mortgagor shall make an express written election of said remedy under the UCC or other applicable law. Mortgagor agrees that Lender shall have no obligation to process or prepare any Collateral for sale or other disposition. Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice.

- 4.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Lender as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Lender may, without the obligation to do so, in Lender's name, or in the name of Mortgagor, prepare,

execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to any of the Collateral.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation for which it is responsible hereunder or under the Loan Agreement when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may adversely affect Lender's rights in the Property, subject to Mortgagor's rights to contest as set forth in the Loan Agreement, and following written notice to Mortgagor of such failure of performance and the applicable grace period provided in Section 13.1 of the Loan Agreement within which to cure such failure, then Lender may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to protect the value of the Property and Lender's rights in the Property, including the retaining of counsel, and any amount so expended by Lender will be added to the Secured Obligations and will be payable by Mortgagor to Lender on demand, together with interest thereon from the date demanded until paid at the then-applicable interest rate provided in the Note.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Mortgagor's rights to contest payment of taxes or assessments as may be provided in the Loan Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Lender by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Lender pursuant to any Secured Obligation; provided, however, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Lender and which are measured by and imposed upon Lender's income or gross receipts, and Mortgagor shall have no obligation to pay any capital stock or franchise taxes.
- 5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall promptly discharge any lien not approved by Lender in writing and not a Permitted Lien that has or may attain priority over this Security Instrument within the time for such discharge and subject to rights to contest payment or assessment as set forth in the Loan Agreement. Subject to the provisions of the Loan Agreement regarding Permitted Liens, Mortgagor shall pay when due all obligations secured by, or which may become, liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or Collateral, or any interest therein, whether senior or subordinate hereto.
- 5.4 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**
- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Lender and shall be paid directly to Lender: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Lender to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the

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foregoing. Subject to applicable law, Lender may, in its sole and absolute discretion, but subject to the provisions of Section 5.4(b) below, apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Lender, without payment of the Exit Premium or other prepayment premium or fee (other than breakage provided for in any Swap Agreement entered into at any time between Mortgagor and Lender in connection with the Loan), and/or Lender may release all or any part of the proceeds to Mortgagor upon any conditions Lender may impose. So long as no Default exists, Mortgagor may adjust, compromise and settle all claims and awards assigned to Lender hereunder which do not exceed \$500,000.00 without the Lender's consent and for claims and awards assigned to Lender which exceed \$500,000.00 with Lender's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. If a Default exists, Lender may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Lender; provided, however, in no event shall Lender be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Lender or its employees or agents.

- (b) Notwithstanding any of the terms, conditions, and provisions of Section 5.4(a) above to the contrary, Lender shall permit insurance or condemnation proceeds to be used for repair or restoration of the Property, provided that no Default exists and all of the following conditions have been satisfied by Mortgagor (but subject, however, to the provisions of Section 5.4(c) below): (i) the deposit with Lender of such additional funds which Lender reasonably determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period), net of sums otherwise available for payment of operating expenses and debt service; (ii) the establishment of an arrangement for lien releases and disbursement of funds based on Lender's then-current construction loan requirements; (iii) the delivery to Lender of plans and specifications for the work, a guaranteed maximum or fixed price contract for the work signed by a general contractor reasonably acceptable to Lender; (iv) a cost breakdown for the work, all of which shall be reasonably acceptable to Lender; (v) Mortgagor shall pay as and when due all of the Lender's costs and expenses incurred in connection with the collection and disbursement of said insurance or condemnation proceeds, including, without limitation, inspection, engineering and legal fees; (vi) the work is reasonably expected to be completed on or prior to the Maturity Date; and (vii) the delivery to Lender of evidence acceptable to Lender (A) that after completion of the work, the income from the Property (including, without limitation, any applicable rental loss insurance) will be sufficient to pay all expenses and debt service for the Property (B) of the continuation of Leases acceptable to and required by Lender; (C) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (D) that there has been no material adverse change in the financial condition or credit of Mortgagor and any guarantors since the date of this Security Instrument; and (E) of the satisfaction of any additional conditions that Lender may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within sixty (60) days of receipt by Lender of such insurance or condemnation proceeds, then Lender may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Lender in its sole discretion may choose.
- (c) Notwithstanding anything to the contrary contained in this Security Instrument or the other Loan Documents, (i) if the insurance proceeds or condemnation award at issue do(es) not exceed \$500,000.00 in the aggregate, and no Default is then outstanding,

such proceeds or award shall be paid directly to Mortgagor for use in the restoration of the Property, without any requirement that the conditions set forth and described in Section 5.4(b) above be satisfied, and (ii) so long as no Default is then outstanding, rental loss insurance shall be paid directly to Mortgagor and may be used by Mortgagor to pay the Secured Obligations or other expenditures made in operating, maintaining, managing and owning the Property without any requirement that the conditions set forth and described in Section 5.4(b) above be satisfied.

- 5.5 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Subject to the provisions of the Loan Agreement, Mortgagor covenants: (a) to insure the Property and Collateral against such risks as Lender may require as set forth in the Loan Agreement, and, following Lender's written request, to provide evidence of such insurance to Lender, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Property and Collateral in good condition and repair; (c) not to remove or demolish the Property or Collateral or any part thereof, not to alter or add to the Property or Collateral, except in connection with TI Work and such other work as does not materially and adversely affect the value of the Property and in connection with the removal of obsolete personal property, provided such personal property is replaced with property of equivalent value and utility if necessary for the use and operation of the Property; (d) to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Lender elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in that certain Section hereof entitled Damages, Insurance and Condemnation Proceeds; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit physical waste of the Property or Collateral; and (g) to do all other acts which from the character or use of the Property or Collateral may be reasonably necessary to maintain and preserve its value.
- 5.6 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Lender hereunder against all adverse claims which threaten the validity or priority of the lien of this Security Instrument. Mortgagor shall give Lender prompt notice in writing of the written assertion of any such claim, of the filing of any such action or proceeding, of the occurrence of any material damage to the Property or Collateral and of any condemnation offer or action with respect to the Property or Collateral.
- 5.7 **ACTIONS BY LENDER.** Lender, without liability therefor and without notice, may: (a) release all or any part of the Property from this Security Instrument; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Security Instrument.
- 5.8 **DUE ON SALE; ENCUMBRANCE.** Certain Transfers (as defined in the Loan Agreement) of equity interests in Mortgagor and interest in the Property are prohibited in accordance with the terms, conditions, and provisions of Article 14 of the Loan Agreement and may permit Lender to declare the Secured Obligations immediately due and payable in accordance with the terms, conditions and provisions of the Loan Agreement.
- 5.9 **RELEASE OF ASSIGNMENT.** When the Property has been fully released or discharged, the last such release or discharge shall operate as a reassignment of all future rents, issues and profits of

the Property to the person or persons legally entitled thereto.

- 5.10 **SUBROGATION**. Lender shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to the Loan Documents or by the proceeds of any loan secured by this Security Instrument.
- 5.11 **RIGHT OF INSPECTION**. Subject to the rights of tenants under Leases of the Property, Lender, its agents, representatives and employees, may enter any part of the Property at, provided on Default exists, any reasonable time on, provided no Default exists, reasonable notice to Mortgagor, absent exigent circumstances, for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof and the other Loan Documents.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT**. For all purposes hereof, the term "Default" shall have the meaning ascribed to such term in the Loan Agreement and is subject to any grace, notice and/or cure period provided in the Loan Agreement.
- 6.2 **RIGHTS AND REMEDIES**. At any time during the existence of a Default, Lender shall have each and every one of the following rights and remedies in addition to Lender's rights under the other Loan Documents or under any Swap Agreement between Mortgagor and Lender:
- (a) With or without notice, except as otherwise expressly provided in or required under the Loan Documents, to declare all Secured Obligations (other than Swap Agreements) immediately due and payable.
 - (b) Pursuant to the terms of a Swap Agreement between Mortgagor and Lender, terminate such Swap Agreement.
 - (c) With or without notice, except as otherwise expressly provided in or required under the Loan Documents, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor and, in connection therewith, to enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Lender under this Security Instrument; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Lender, is or may be senior in priority to this Security Instrument, the judgment of Lender being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; or (iv) to employ counsel, accountants, contractors and other appropriate persons.
 - (d) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations.
 - (e) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security

for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment. The receiver shall have such rights as are approved by the court which may include the right to sell the Property or any part thereof.

- (f) To enter upon, possess, control, lease, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate, enforce or modify Leases of the Property upon such terms and conditions as Lender deems proper, to make repairs, alterations and improvements to the Property as necessary, in Lender's sole judgment, to protect or enhance the security hereof.
- (g) To resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Lender determines in its sole discretion.
- (h) To foreclose this Security Instrument as now provided by law in case of past due mortgages, and Lender shall be authorized, at its option, whether or not possession of the Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale by publication in some newspaper of general circulation published in the county wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as Lender may from time to time elect to sell) in front of such county's courthouse door, at public outcry, during the legal hours of sale, to the highest bidder for cash. Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Security Instrument and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Secured Obligations secured hereby shall have been paid in full.
- (i) Upon sale of the Property at any foreclosure sale, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, to the extent permitted by law, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of

money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Lender; and (z) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

- (j) Commence an action to recover any of the Secured Obligations that from time to time remains unpaid or unsatisfied.
- (k) Exercise any and all remedies at law, equity, or under the Note, Security Instrument or other Loan Documents for such Default.

6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Lender, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

6.4 **APPLICATION OF OTHER SUMS.** All sums received by Lender under this Security Instrument other than those described in that certain Section hereof entitled Rights and Remedies or that certain Section hereof entitled Grant of License, less all costs and expenses incurred by Lender or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Lender shall determine in its sole discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.

6.5 **NO CURE OR WAIVER.** Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Lender or any receiver shall cure or waive any breach, Default or notice of Default under this Security Instrument, or nullify the effect of any notice of Default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other Defaults), or limit or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of or security interests created by this Security Instrument.


6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Lender promptly upon written demand all costs and expenses of any kind incurred by Lender pursuant to this Article (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of demand until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein.

- 6.7 **REMEDIES CUMULATIVE.** All rights and remedies of Lender provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any of the other Loan Documents. No failure on the part of Lender to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Lender in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Lender may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Lender shall not waive the agreement contained herein that time is of the essence, nor shall Lender waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

ARTICLE 7. INTENTIONALLY OMITTED

ARTICLE 8. MISCELLANEOUS PROVISIONS


- 8.1 **NOTICES.** All notices, demands, or other communications under this Security Instrument and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Security Instrument). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

<u>Mortgagor:</u>	c/o Bayer Properties, L.L.C. 2222 Arlington Avenue Birmingham, Alabama 35205 Attention: General Counsel
<u>With copies to:</u>	<p>Baker Donelson 420 20th Street North Suite 1600 Birmingham, Alabama 35203 Attention: Denise Killebrew, Esq.</p> <p>and</p> <p>Fortress Investment Group 1345 Avenue of the Americas, 46th Floor New York, New York 10105 Attention: Constantine Dakolias</p> <p>and</p> <div style="text-align: right;">  20140820000261320 15/25 \$45236.00 Shelby Cnty Judge of Probate, AL 08/20/2014 02:23:55 PM FILED/CERT </div>

	<p>Fortress Investment Group 5221 N. O'Connor Boulevard Irving, Texas 75309 Attention: Andrew Osborne</p> <p>and</p> <p>Kirkland & Ellis 300 North LaSalle Chicago, Illinois 60654-6436 Attention: Daniel Perlman, Esq.</p>
<u>Lender:</u>	<p>Wells Fargo Bank, National Association 3100 West End Avenue, 9th Floor Suite 900, MAC: W1021-090 Nashville, Tennessee 37203-1320 Attention: Mr. Sam Boroughs, Senior Vice President Loan #: 1012198</p>
<u>With a copy to:</u>	<p>Wells Fargo Bank, National Association Minneapolis Loan Center 608 Second Avenue South, 11th Floor MAC: N90303-110 Minneapolis, Minnesota 55402-1916 Attention: Disbursement Administrator</p> <p>and</p> <p>Reed Smith LLP 136 Main Street, Suite 250 Princeton, New Jersey 08540 Attention: Christopher J. Maurer, Esq.</p>

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

- 8.2 **ATTORNEYS' FEES AND EXPENSES; ENFORCEMENT.** If the Note is placed with an attorney for collection or if an attorney is engaged by Lender to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, reinforcement of rights and remedies, then in all events, Mortgagor agrees to pay to Lender all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 8.3 **NO WAIVER.** No previous waiver and no failure or delay by Lender in acting with respect to the terms of the Note or this Security Instrument shall constitute a waiver of any breach, default, or failure of condition under the Note, this Security Instrument or the obligations secured thereby. A waiver of any term of the Note, this Security Instrument or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.


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- 8.4 **SEVERABILITY**. If any provision or obligation under this Security Instrument shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Security Instrument and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of this Security Instrument.
- 8.5 **HEIRS, SUCCESSORS AND ASSIGNS**. Except as otherwise expressly provided under the terms and conditions herein, the terms of this Security Instrument shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto, including, without limitation, subsequent owners of the Property or any part thereof; provided, however, that this Section does not waive or modify the provisions of that certain Section entitled Due on Sale or Encumbrance.
- 8.6 **ATTORNEY-IN-FACT**. Mortgagor hereby irrevocably appoints and authorizes Lender as Mortgagor's attorney-in-fact, which agency is coupled with an interest, and as such attorney-in-fact Lender may, without the obligation to do so but only during the existence of a Default, execute and/or record in Lender's or Mortgagor's name any notices, instruments or documents that Lender deems appropriate to protect Lender's interest under any of the Loan Documents.
- 8.7 **TIME**. Time is of the essence of each and every term herein.
- 8.8 **GOVERNING LAW AND CONSENT TO JURISDICTION**. This Security Instrument shall be governed by the laws of the State of Alabama. Mortgagor hereby consents to the jurisdiction of any federal or state court within the State of Alabama having proper venue and also consent to service of process by any means authorized by Alabama or federal law.
- 8.9 **JOINT AND SEVERAL LIABILITY**. The liability of all persons and entities obligated in any manner hereunder and under any of the Loan Documents shall be joint and several.
- 8.10 **HEADINGS**. All article, section or other headings appearing in this Security Instrument are for convenience of reference only and shall be disregarded in construing this Security Instrument.
- 8.11 **COUNTERPARTS**. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 8.12 **DEFINED TERMS**. Unless otherwise defined herein, capitalized terms used in this Security Instrument shall have the meanings attributed to such terms in the Loan Agreement.
- 8.13 **RULES OF CONSTRUCTION**. The word "Mortgagor" as used herein shall include both the named Mortgagor and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named "borrower" under the Note and the other Loan Documents. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Security Instrument is executed by more than one person, the term "Mortgagor" shall include all such persons. The word "Lender" as used herein shall include Lender, its successors, assigns and affiliates. The term "Property" and "Collateral" means all and any part of the Property and Collateral, respectively, and any interest in the Property and Collateral, respectively.

- 8.14 **USE OF SINGULAR AND PLURAL; GENDER.** When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.
- 8.15 **EXHIBITS, SCHEDULES AND RIDERS.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Security Instrument by such attachment for all purposes.
- 8.16 **INCONSISTENCIES.** In the event of any inconsistencies between the terms of this Security Instrument and the terms of the Loan Agreement or Note, including without limitation, provisions regarding collection and application of Property revenue, required insurance, tax impounds, and transfers of the Property, the terms of the Loan Agreement or Note, as applicable, shall prevail.
- 8.17 **MERGER.** No merger shall occur as a result of Lender's acquiring any other estate in, or any other lien on, the Property unless Lender consents to a merger in writing and in accordance with the terms of the Loan Agreement.
- 8.18 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property and Collateral, hereby waives all rights to have the Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation marshalled upon any foreclosure of the lien of this Security Instrument or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Lender shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or other property as a whole or in separate parcels, in any order that Lender may designate.
- 8.19 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Security Instrument and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference.

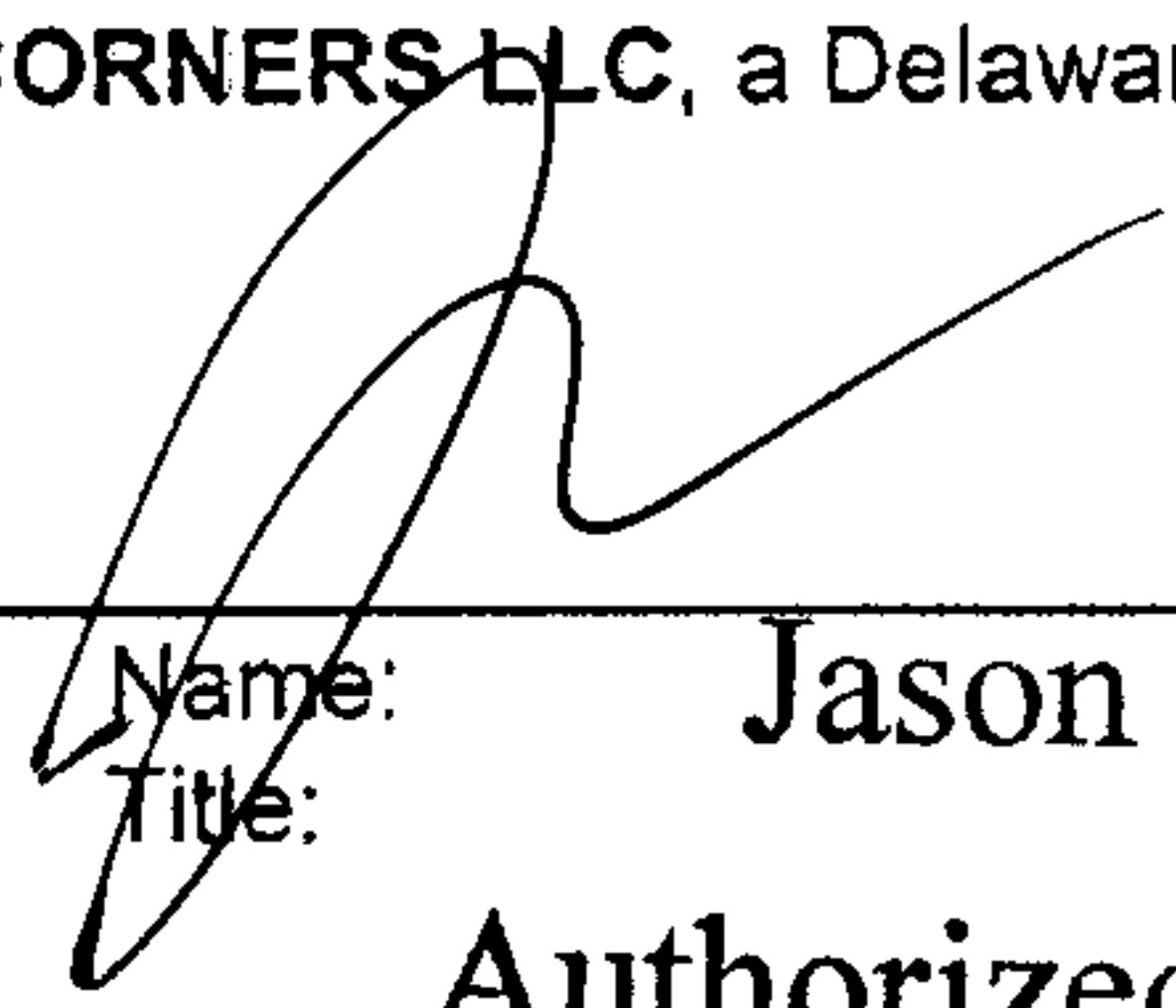
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IN WITNESS WHEREOF, Mortgagor has executed this Security Instrument as of the date set forth above.

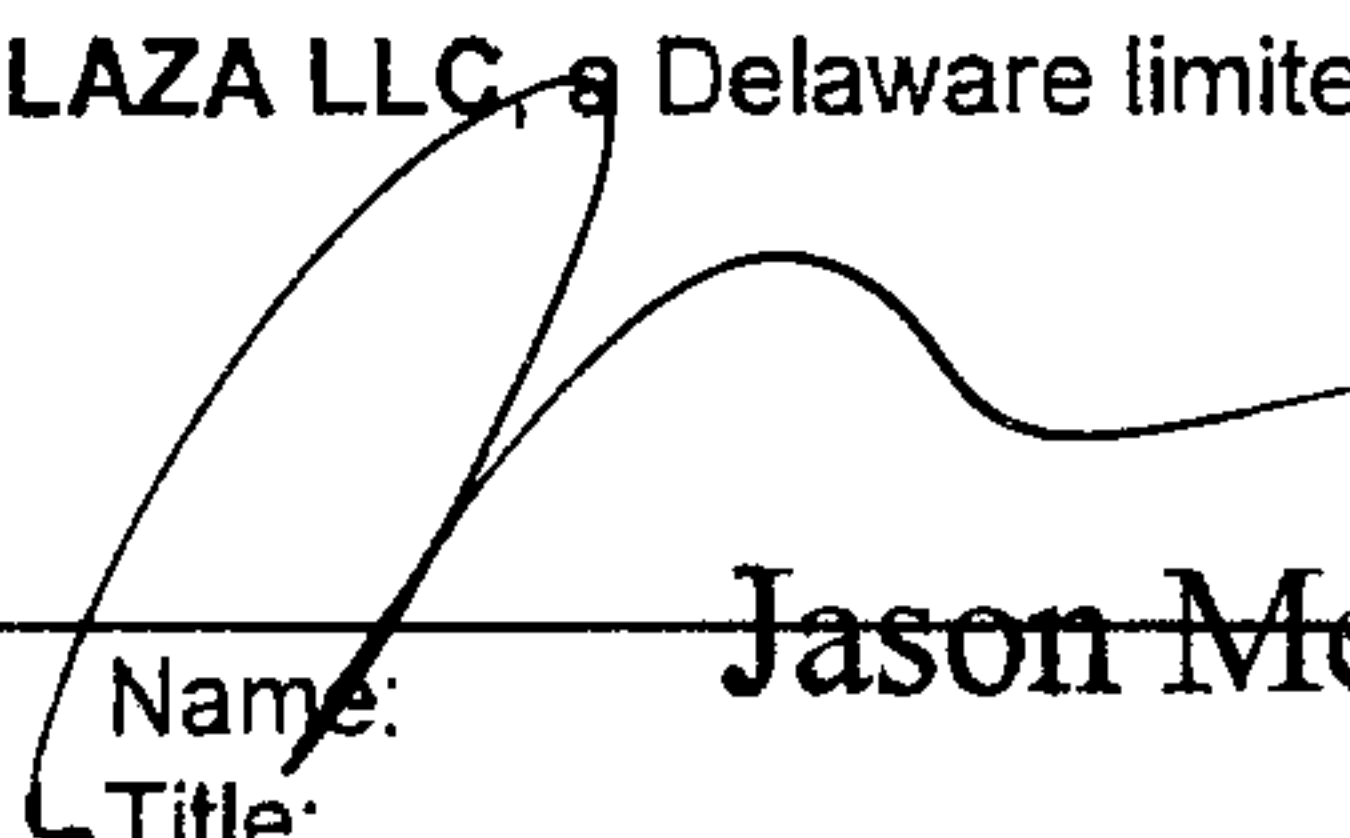
"MORTGAGOR"

INV CORNERS LLC, a Delaware limited liability company

By: 
Name: Jason Meyer
Title:

Authorized Signatory

INV PLAZA LLC, a Delaware limited liability company

By: 
Name: Jason Meyer
Title:

Authorized Signatory

STATE OF New York)
New York COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jason Meyer, whose name as Authorized Signatory of INV Corners LLC a[n] Delaware limited liability company is signed to the foregoing mortgage, security agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, in his/her capacity as such Authorized signatory and with full authority, executed the same voluntarily for and as the act of INV Corners LLC.

Given under my hand this the 8th day of August, 2014.

[NOTARIAL SEAL]

Kathleen A. Halvey
 Notary Public
 My Commission Expires: 1/6/16

KATHLEEN A. HALVEY
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01HA6179532
 Qualified In New York County
 My Commission Expires January 06, 2016

STATE OF New York)
New York COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jason Meyer, whose name as Authorized Signatory of INV Plaza LLC a[n] Delaware limited liability company is signed to the foregoing Mortgage Security Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, in his/her capacity as such Authorized signatory and with full authority, executed the same voluntarily for and as the act of INV Plaza LLC.

Given under my hand this the 8th day of August, 2014.

[NOTARIAL SEAL]


Kathleen A. Halvey
 Notary Public
 My Commission Expires: 1/6/16

KATHLEEN A. HALVEY
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01HA6179532
 Qualified in New York County
 My Commission Expires January 06, 2016

EXHIBIT "A-1" - DESCRIPTION OF CORNERS PARCEL

**Exhibit "A-1" to MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND
FIXTURE FILING by INV CORNERS LLC and INV PLAZA LLC in favor of WELLS FARGO BANK,
NATIONAL ASSOCIATION, dated August 12, 2014.**

See Attached.


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The land referred to herein below is situated in the County of Shelby, State of Alabama, and is described as follows:

TRACT I: Inverness Corner Shopping Center

Parcel 1 (Fee):

All that piece, parcel or tract of land and being at the southeastern intersection of the U.S. Highway 280 and County Road 17 known as Valleydale Road in Shelby County, Alabama, and being more particularly described as follows:

Beginning at a point on the southern edge of Valleydale Road (Route 17 Shelby County) and running with Valleydale Road fourteen (14) calls, to-wit: N 33°47'02"E for a distance of 212.20 feet to a point; thence North 30°13'44"E for a distance of 146.44 feet to a point; thence with a curve to the right with a chord bearing and distance of N33°33'44"E, 253.25 feet (R=1482.42 feet; AL=253.56 feet) to a point; thence a curve to the right with a chord bearing and distance of N42°28'26"E, 127.10 feet (R=1057.56 feet, AL=127.18 feet) to a point; thence with a curve to the right with a chord bearing and distance of N49°13'27"E, 220.45 feet (R=1527.67 feet; AL=220.65 feet) to a point; thence a curve to the right with a chord bearing and distance of N55°39'08"E, 147.90 feet (R=1968.19 feet; AL=147.93 feet) to a point; thence a curve to the left with a chord bearing and distance of N54°54'30"E, 173.97 feet (R=1326.78 feet; AL=174.10 feet) to a point; thence a curve to the left with a chord bearing and distance of N48°42'29"E, 157.02 feet (R=1554.42 feet; AL=157.08 feet) to a point; thence with a curve to the left with a chord bearing and distance of N42°39'05"E, 271.82 feet (R=1482.42 feet; AL=272.20 feet) to a point; thence with a curve to the left with a chord bearing and distance of N33°56'25"E, 54.11 feet (R=1482.42 feet; AL=54.12 feet) to a point; thence S57°06'20"E for a distance of 5.00 feet to a point; thence N31°40'47"E for a distance of 63.06 feet to a point; thence North 29°21'44"E for a distance of 36.77 feet to a point; thence N29°01'23"E for a distance of 200.22 feet to a point at the intersection of Valleydale Road and U.S. Highway 280; thence running with U.S. Highway 280 for two (2) courses, to-wit: S64°07'08"E for a distance of 69.95 feet to a point; thence S60°56'53"E for a distance of 172.15 feet to a point; thence leaving U.S. Highway 280 and running with property of Schlotzsky's Realty for eight (8) courses to-wit: S29°00'44"W for a distance of 225.82 feet to an iron pin; thence running S74°00'05"W for a distance of 21.45 feet to a point; thence running N60°54'51"W for a distance of 11.83 feet to an iron pin; thence running S30°26'19"W 5.61 feet to a point; thence running a curve to the left with a chord bearing and distance of S39°06'56"E, 92.82 feet (R=50.00 feet; AL=118.95 feet) to a point; thence running N72°43'57"E for a distance of 23.89 feet to an iron pin; thence running with a curve to the right with a chord bearing and distance of S88°16'49"E 143.89 feet (R=220.50 feet; AL=146.58 feet) to an iron pin; thence North 29°01'47"E for a distance of 197.77 feet to a point on the southern margin of U.S. Highway 280; thence running with U.S. Highway 280 for two (2) calls, to-wit: S60°56'53"E for a distance of 234.60 feet to an iron pin; thence S61°19'38"E for a distance of 77.00 feet to an iron pin; thence leaving U.S. Highway 280 and running with Pier One Imports for six (6) courses, to-wit: S28°42'18"W for a distance of 110.80 feet to a point; thence running with a curve to the left with a chord bearing and distance of S17°53'25"W, 37.07 feet (R=99.92 feet; AL=37.29 feet) to a point; thence running S61°16'32"E for a distance of 191.05 feet to a point; thence with a curve to the right with a chord bearing and distance of S16°17'42"E, 42.43 feet (R=30.00 feet; AL=47.12 feet) to a point; thence running S28°42'18"W for a distance of 74.30 feet to a point; thence running N89°45'04"E for a distance of 17.14 feet to an iron pin; thence running S31°51'47"W for a distance of 46.24 feet to an iron pin; thence S16°23'44"E for a distance of 22.63 feet to an iron pin; thence S72°09'04"W for a distance of 33.85 feet to an iron pin; thence running with First National Bank of Shelby County for twelve (12) courses, to-wit: a curve to the left with a bearing and distance of N34°22'07"W, 91.27 feet (R=160.50



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feet; AL=92.55 feet) to a point; thence S53°07'30"E for a distance of 9.55 feet to a point; thence running a curve to the left with a chord bearing and distance of N79°48'56"W, 31.44 feet (R=35.00 feet; AL=32.61 feet) to a point; thence running S73°35'14"W for a distance of 2.93 feet to a point; thence running a curve to the left with a chord bearing and distance of S66°53'41"W, 32.18 feet (R=140.00'; AL=32.25') to a point; thence run South 60°17'44"W for a distance of 10.54 feet to a point; thence running a curve to the right with a chord bearing and distance of S67°20'21"W, 24.52 (R=100.00 feet; AL=24.59 feet) to a point; thence running S74°28'33"W for a distance of 4.21 feet to a point; thence running with a curve to the left with a chord bearing and distance of S58°05'08"W, 30.31 feet (R=54.00 feet; AL=30.72 feet) to a point; thence running S41°52'54"W for a distance of 65.95 feet to a point; thence running with a curve to the left with a bearing and distance of S66°39'35"W, 57.35 feet (R=112.00 feet AL=57.99 feet) to a point; thence running S09°29'50"E for a distance of 163.23 feet to an iron pin; thence running with Parcel 36 for three (3) courses, to-wit: S83°45'52"W for a distance of 158.30 feet to an iron pin; thence running S18°47'15"W for a distance of 349.69 feet to an iron pin; thence running with property now or formerly of Investments Associates (formerly Met Life Insurance Company) for ten (10) courses, to-wit: S02°05'56"W for a distance of 237.37 feet to an iron pin; thence running N87°53'19"W for a distance of 590.29 feet to a point; thence running S00°21'07"E for a distance of 4.08 feet; thence running S85°52'52"W for a distance of 126.86 feet to a point; thence running S82°35'48"W for a distance of 122.74 feet to a point; thence running S84°24'44"W for a distance of 336.12 feet to a point; thence running S30°29'58"W for a distance of 6.13 feet to a point; thence running with a curve to the right with a chord bearing and distance of N80°13'35"W, 118.64 feet (R=201.26 feet; AL=120.43 feet) to an iron pin; thence running N63°00'24"W for a distance of 115.34 feet to a point; thence running with a curve to the left with a bearing and distance of S73°22'00"W, 110.36 feet (R=80.00 feet; AL=121.78 feet) to an iron pin; thence N60°07'50"W for a distance of 12.00 feet to the Point or Place of Beginning.

Parcel 2 (Easement):

Non-exclusive access easements as described in Reciprocal Easement Agreement by and between Metropolitan Life Insurance Company and Investment Associates, LLC, dated November 25, 2003 and recorded in Instrument No. 20031205000788530.

Parcel 3 (Easement):

Non-exclusive easements for access, ingress, egress, and utilities as described in Reciprocal Easement Agreement by and between Metropolitan Life Insurance Company and Pier Group, Inc. dated April 30, 1996 and recorded in Instrument #1996-14793.




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EXHIBIT "A-2" - DESCRIPTION OF PLAZA PARCEL

**Exhibit "A-2" to MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND
FIXTURE FILING by INV CORNERS LLC and INV PLAZA LLC in favor of WELLS FARGO BANK,
NATIONAL ASSOCIATION, dated August 12, 2014.**

See Attached.


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TRACT II: Inverness Plaza

Parcel 1 (Fee):

All that piece or tract of land lying at the southwestern intersection of U.S. Highway 280 and County Road 17, known as Valleydale Road in Shelby County, Alabama and more particularly described as follows:

Beginning at an iron pin marking the northeastern corner of Parcel 2 as shown in Plat Book 9, Page 11, located on the southwestern right of way of U.S. Highway 280; thence running with U.S. Highway 280, S60°56'31"E for 777.70 feet to an iron pin, passing "X's" in concrete: (1) at 59.50 feet and 345.50 feet (corner of leased property to AmSouth Bank); (2) at 420.56 feet (edge of ingress-egress road and NW corner of property leased to Compass Bank); thence continuing with U.S. Highway 280, S15°50'49"E for 34.90 feet to an iron pin; thence leaving U.S. Highway 280 and running with property of WEC 2000 A-1, LLC for five (5) courses to-wit: (1) S79°07'59"W for 357.86 feet to an "X" in concrete; (2) S10°52'11"E for 200.89 feet to an "X" in concrete; (3) a curve to the left with a chord bearing of S30°22'38"E for 75.80 feet (R=113.50 feet; AL=77.29 feet); (4) S49°53'05"E for 6.69 feet; (5) a non-radial curve to the left with a chord bearing of S86°15'37"E for 85.58 feet (R=72.14 feet; AL=91.62 feet) to an iron pin on the western right of way of Valleydale Road; thence with Valleydale Road, a curve to the right with a chord bearing of S40°03'14"W for 177.19 feet (R=1392.42 feet; AL=177.31 feet); thence leaving Valleydale Road and running with property of HWY. 280 LLC, known as Outparcel "D" in Map Book 24, Page 02 for four (4) courses, to-wit: (1) a curve to the left with a chord bearing of N13°35'36"W for


85.58 feet (R=72.14 feet; AL=91.61 feet); (2) reverse curve to the right with a chord bearing of N39°57'58"W for 38.75 (R=111.50 feet; AL=38.95 feet); (3) third reverse curve to the left with a chord bearing of N82°56'16"E for 79.04 feet (R=149.50 feet; AL=91.54 feet); (4) S44°05'01"W for 289.86 feet to an iron pin; thence leaving Outparcel "D" and running with Inverness Site 35 for two (2) courses, to-wit: (1) S79°00'03"W for 53.06 feet to an iron pin; (2) N60°54'59"W for 490.07 feet to an iron pin in property boundary with Parcel 1 of Map Book 9, Page 11; thence leaving Site 35 and running with the eastern boundary of Parcels 1 and 2 as shown in Map Book 9, Page 11, N29°06'51"E for 852.31 feet to the Point of Beginning. All curves should be considered non-radial.

This description is the remainder of Inverness Plaza Shopping Center located in Section 36, Township 18 South, Range 2 West of Shelby County, Alabama after exception out those properties transferred to:

- (a) CVS Pharmacy in Instrument No. 200000035573
- (b) Hwy. 280 LLC in Instrument No. 1998-00020068, known as Outparcel "D" as recorded in Map Book 24, Page 2.

Parcel 2 (Easement):

Non-exclusive access and utility easements Reciprocal Easement Agreement by and between Metropolitan Life Insurance Company and Mountainview, LLC dated October 14, 2005 and recorded in Instrument #2005101900054400.


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