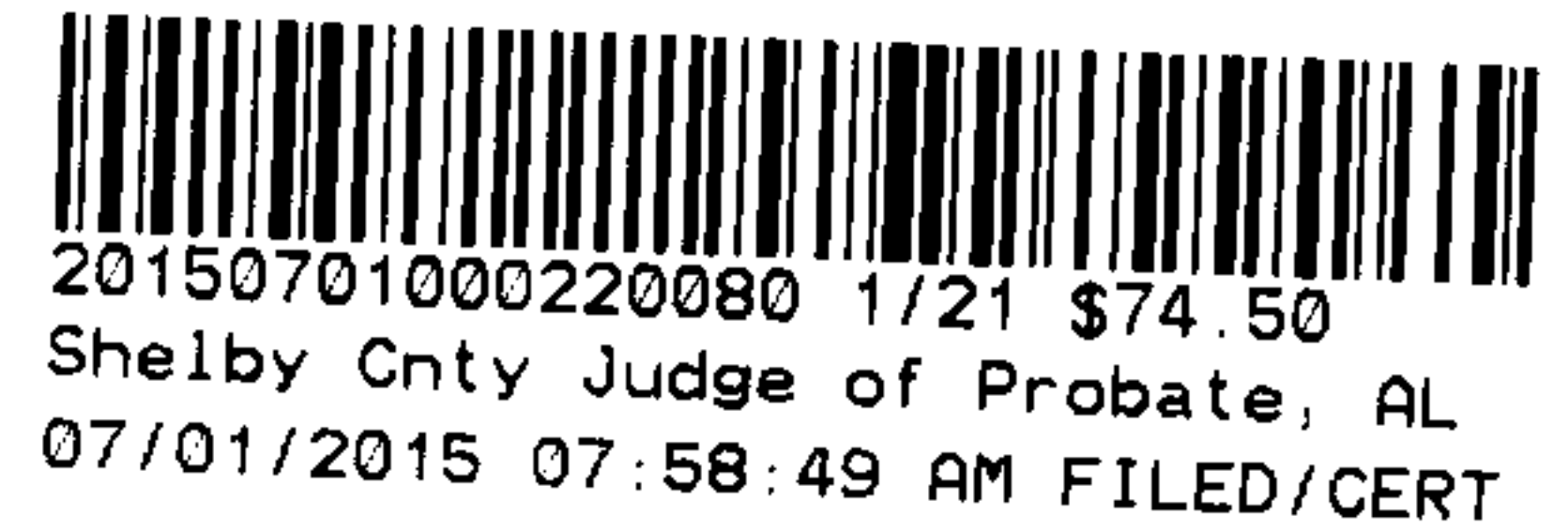


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**RECIPROCAL EASEMENT  
AND OPERATING AGREEMENT ("REA")**



**RE: 102 Inverness Plaza  
Inverness Plaza Shopping Center  
Hoover, Alabama**

**THIS AGREEMENT AND DECLARATION** (this "**Declaration**") dated June 29, 2015 (the "Effective Date") is made by INV PLAZA LLC, a Delaware limited liability company, hereinafter known as "**Shopping Center Owner**" or "**Declarant**".

**WITNESSETH:**

**WHEREAS**, Shopping Center Owner recorded that certain Reciprocal Easement and Operating Agreement on April 16, 2015 in the Office of the Probate Judge of Shelby County as Instrument 20150416000122850 (the "**Original REA**");

**WHEREAS**, the Shopping Center Owner desires to terminate the Original REA and replace it with the REA contained herein.

**WHEREAS**, Shopping Center Owner is the owner of a parcel of land located in Hoover, Alabama, known as Inverness Plaza ("the **Shopping Center**"), and shown on the site plan attached hereto as **Exhibit "A"** and more particularly described in **Exhibit "B"** attached hereto; and

**WHEREAS**, that parcel of real property located at 102 Inverness Plaza in the City of Hoover, County of Shelby, State of Alabama, bearing tax parcel number 02-7-36-0-001-027.002 (hereinafter the "**Outparcel**"), the legal description and a map of which is attached hereto as **Exhibit "C"** constitutes a portion of the Shopping Center; and

**WHEREAS**, Shopping Center Owner desires to impose certain covenants and restrictions on the use of the Outparcel and to reserve and to grant certain easements as herein stated;

**WHEREAS**, any owner of fee title to the Outparcel (other than the Declarant) is hereinafter known as "**Outparcel Owner**" and that part of the Shopping Center owned by the Declarant is hereinafter referred to as the "**Owner Parcel**";

**NOW, THEREFORE**, Shopping Center Owner hereby imposes the following covenants and restrictions on the use and enjoyment of the Outparcel and Outparcel Owner, by acceptance of a deed of conveyance to the Outparcel, does hereby agree that its ownership and use of the Outparcel shall be subject to the following terms and conditions.

**I. Grant of Easements**



**1.1** The Shopping Center Owner does hereby establish and grant for use in common by the Shopping Center Owner, its successors, assigns, tenants and licensees, and any such tenant's or licensee's customers, employees, agents, contractors, licensees and invitees, a non-exclusive, irrevocable, easement over, across, through and upon the Common Areas located on the Shopping Center as depicted on **Exhibit "A"** for the purposes of ingress and egress, parking and access to the Outparcel, the Shopping Center and adjacent public roadways. Shopping Center Owner hereby grants, bargains, sells and conveys to Outparcel Owner, its successors and assigns, for use by their respective customers, invitees, licensees, agents, contractors, and vendors, a non-exclusive, irrevocable easement over, across, through and upon the Shopping Center as depicted on Exhibit A for purposes of ingress and egress, parking and access to the Outparcel, the Shopping Center and adjacent public roadways. The Declarant, as owner of the Shopping Center, reserves for itself, its successors and assigns as provided in Section 11.2 below, the right at any time and from time to time **(a)** to change the areas, locations and arrangements of parking areas and other Common Areas; **(b)** to enter into, modify and terminate easements and other agreements pertaining to the maintenance and use of the parking areas and other Common Areas; **(c)** to close any or all portions of the Common Areas to such extent and from such time as may, in the sole discretion of the Shopping Center Owner, be legally necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; **(d)** to close temporarily, if necessary, any part of the Common Areas in order to discourage non-customer parking; **(e)** to make changes, additions, deletions, alterations or improvements in and to such Common Areas; and **(f)** to adopt reasonable rules and regulations by which Outparcel Owner shall abide relating to the use of the Common Areas. Notwithstanding items (a) to (f) above, the Declarant shall not alter (or approve or consent for others to alter) the size of the Outparcel or materially and adversely affect the location of Improvements on the Outparcel, or materially and adversely deny or impede reasonable ingress to and egress from the Outparcel from adjacent roadways and access roads. Additionally, the Declarant shall make no material alterations to the **Critical Access Roads**, as depicted on **Exhibit "A"** without the approval of Outparcel Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

## **II. Common Area Maintenance and Operating Costs**

**2.1 Definition of Common Area.** As used herein, the term "**Common Area**" shall include the parking area, service drives and service roads, traffic islands, landscaped areas, hard-scaped areas, loading and service areas, sidewalks, and signage, as well as drainage facilities and lighting facilities servicing any one or more of the aforesaid areas.

**2.2 Common Area Maintenance.** The Shopping Center Owner shall maintain all parts of the Common Area, including all improvements and landscaping thereon, in good condition and repair, free of debris, rubbish and weeds. Notwithstanding anything to the contrary provided herein, the Shopping Center Owner shall not maintain any portions of the Common Area located on the Outparcel.

**2.3 Common Area Payment.** The Outparcel Owner acknowledges that the Shopping Center Owner will incur certain expenses to maintain the Common Areas pursuant to Section 2.1 above ("**Common Area Maintenance Costs**"), including, without limitation, the costs and expenses to sweep, to clean; to remove debris, snow and ice; to maintain, restripe and



repair the parking areas; to light the Common Areas; to maintain Common Area signage; to provide Common Area utilities and to maintain any related improvements; to repair and maintain access roads; to repair and to maintain sidewalks (including periodic steam cleaning); to provide insurance for the Common Area and any improvements located thereon; plus all other reasonable costs or expenses incurred by the Shopping Center Owner in operating, managing and equipping the Common Areas, including an administrative fee not to exceed fifteen percent (15%) of an aggregate of all such costs. As such, the Outparcel Owner, shall pay Shopping Center Owner, or such other person as Shopping Center Owner may designate, a common area payment ("**Common Area Payment**"), annually beginning on the Effective Date and on each and every anniversary date of the Effective Date thereafter or on such other date as the Shopping Center Owner shall designate in writing to the Outparcel Owner. The Common Area Payment shall be equal to the product obtained by multiplying Common Area Maintenance Costs for each year by a fraction, the numerator of which shall be the number of acres contained in the Outparcel (1.24 acres) and the denominator of which is the total acreage of the Shopping Center combined with the Outparcel (15.41 acres) (subject to adjustment in the event of casualty or condemnation as provided herein). No event of Force Majeure shall ever give rise to a delay in the Outparcel Owner's payment of the Common Area Payment.

### **III. Use of the Outparcel**

**3.1 Operating Covenant.** The Improvements, as defined below, on the Outparcel shall only be operated for retail use, and for no other purpose whatsoever without the prior written consent of the Declarant. Such operation shall be conducted in a high quality and first class manner.

**3.2 Use Restrictions.** Outparcel Owner shall not allow the Improvements on the Outparcel to be operated in a manner that (i) causes or creates a nuisance, (ii) is obnoxious, or (iii) generally detracts from the general first-class retail nature of the Shopping Center, including, but not limited to the restrictions as set forth in **Exhibit "D" ("Prohibited Uses")**. In addition, the Outparcel Owner, at its own expense, shall comply with all restrictions of record.

**3.3 Recapture Right.** In addition to any of the rights Shopping Center Owner may have as provided in this Declaration, Outparcel Owner grants to Shopping Center Owner the right and option to repurchase the Outparcel and all Improvements thereon for a purchase price (the "**Option Price**") equal to the "fair market value" of the same (the "**Option**") in the event that the Outparcel Owner, its assignees or lessees, shall fail to operate in accordance with Section 3.1 for a period of three (3) consecutive years (other than in conjunction with Permitted Closure Periods, as defined below). Such Option may be exercised by delivery of written notice to the Outparcel Owner given within ninety (90) days after the expiration of such three (3) year period and prior to delivery of written evidence and notice to the Shopping Center Owner of an executed lease agreement with a third party to open a business on the Outparcel in compliance with the requirements of this Declaration. The "fair market value" shall mean: (i) that amount agreed to by Shopping Center Owner and Outparcel Owner within the fifteen (15) day period after Shopping Center Owner gives notice of its intent to exercise this Option to recapture or (ii) in the event that the parties cannot agree, then that amount determined by appraisal as hereafter



provided. In the event of item (ii) above, each party, at its cost and by giving notice to the other party, shall appoint a MAI appraiser, with at least 5 years' commercial appraising experience in the area in which the Shopping Center is located to appraise and to set the fair market value. The two appraisers shall meet promptly and attempt to set the fair market value. If the two appraisers are unable to agree within thirty (30) days after the second appraiser has been appointed, they shall elect a third appraiser meeting the qualifications stated in this paragraph within ten (10) days after the last day the two appraisers are given to set the fair market value. Within twenty-one (21) days after the selection of the third appraiser, a majority vote of the appraisers shall set the fair market value. If a majority of the appraisers are unable to set the fair market value within such period of time, the three appraisals shall be added and their total divided by three; the resulting quotient shall be fair market value. If any party shall fail to select an appraiser within ten (10) days following notice from the other party, the party giving such notice may choose an appraiser on behalf of the other party. Each party shall be responsible for the cost of the appraiser selected by (or for) it and one-half of the cost of the third appraiser. As used herein, the term "**Permitted Closure Periods**" shall mean temporary closures due to (a) casualty, condemnation or other Force Majeure delay, or (b) remodeling or repairs, or (c) reconstruction or remodeling for lease to a new tenant not to exceed three hundred sixty-five (365) days.

#### IV. Intentionally Deleted

#### V. Outparcel Maintenance

**5.1 Maintenance.** The Outparcel Owner shall maintain and keep the Improvements and the Outparcel in a first-class condition and state of repair, normal wear and tear excepted, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this Declaration. Outparcel Owner shall store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible, and to arrange for regular removal of such trash or garbage.

(a) The Outparcel Owner shall maintain or cause to be maintained the Outparcel in good condition and in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances and the provisions of this Declaration.

(b) The minimum standard of maintenance for the Outparcel shall be comparable to that followed in other first-class retail developments of comparable size and quality located on Highway 280 and within two (2) miles of the Shopping Center, and shall include, but not be limited to, the following:

- (i) Maintain, repair and resurface all drive and parking areas to keep the same in a smooth and evenly covered condition and periodically sweep, clean and re-stripe the same;
- (ii) Remove papers, debris, filth, refuse, ice and snow from the drive and parking areas to the extent necessary to keep the same in a first-class, clean, and orderly condition;



- (iii) Install and maintain appropriate directional signs and markers, and replace the same as necessary;
- (iv) Illuminate the drive and parking areas, and maintain and replace lighting facilities, bulbs and ballasts;
- (v) Maintain all landscaped areas, including the area between the Outparcel and U.S. Highway 280 and Valleydale Road and other landscaping as necessary and maintain any automatic sprinkler system serving the landscaped areas;
- (vi) Outparcel trash and garbage shall be in screened containers and provide for regular collection of same; and
- (vii) Maintain, clean and repair all storm drains, utility lines, sewers, and other utility systems and services located on the Outparcel that exclusively serve the Outparcel.

**5.2 General Outparcel Construction Restrictions.** Any buildings, pylon or monument signs constructed on the Outparcel shall be subject to the following restrictions: (i) no more than one building shall be constructed on the Outparcel and such building shall accommodate only one (1) business operation therein unless multiple business operations can be operated from the building in compliance with code with the number of parking spaces located only on the Outparcel; (ii) no building sign or structure shall exceed twenty-five (25) feet in height; (iii) the rentable floor area of any or all buildings constructed on the Outparcel shall not exceed the square footage of the **Permissible Building Area** set forth on **Exhibit "A"**; (iv) any building shall comply with all governmental rules, regulations, ordinances, and laws; (v) any pylon or monument signs erected or constructed on the Outparcel shall not obstruct visibility of the Shopping Center or the pylon or monument sign identifying the Shopping Center or the tenants of the Shopping Center; and (vi) "reader board" type signs and billboards shall be prohibited on the Outparcel. Shopping Center Owner stipulates that the existing Improvements on the Outparcel are deemed acceptable and approved.

## **VI. Covenants Regarding Construction on the Outparcel**

**6.1 Improvements.** Any existing improvements, building or improvements to be renovated, constructed or reconstructed on the Outparcel or any exterior renovations, alterations, additions or deletions to any improvements on the Property (collectively the "**Improvements**") must be completed in accordance with a site plan and elevations approved by the Shopping Center Owner, whose approval shall not to be unreasonably withheld or delayed (the "**Approved Plans**"), and with all requirements of record and all requirements of local authorities. No material modifications, alterations, deletions or additions to the Approved Plans shall be made without Shopping Center Owner's prior written approval. Within ten (10) business days



following receipt of the plans or revised plans, Shopping Center Owner shall either approve or provide Outparcel Owner specific detailed objections.

## **6.2 Construction Activities.**

(a) Outparcel Owner agrees that all construction activities performed by it shall be performed in accordance with the Approved Plans, requirements of record, all applicable laws, rules, regulations, orders, and ordinances of the city, county, state and federal governments, or any department or agency thereof. Outparcel Owner further agrees that it shall be solely responsible for all impact fees, including utility impact fees, related to the construction or reconstruction and development or redevelopment of the Property.

(b) Outparcel Owner agrees that its construction activities shall not:

- (i) unreasonably interfere with construction work being performed on any part of the Shopping Center;
- (ii) unreasonably interfere with tenants or occupants of the Shopping Center and their ability to do business in the Shopping Center or the ability of their customers and employees to use the Common Areas for the purposes thereof; or
- (iii) cause Shopping Center Owner to be in violation of any law, rule, regulation, order or ordinance applicable to the Shopping Center.

(c) Outparcel Owner and Shopping Center Owner will coordinate traffic control during Outparcel Owner's construction of all Improvements, which traffic control shall be conducted at Outparcel Owner's sole cost and expense.

**6.3 Construction Staging Area.** All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only within the Outparcel and shall be reasonably screened and stored in accordance with any staging rules and regulations imposed by Shopping Center Owner on the Shopping Center.

**6.4 Covenants with Respect to Construction.** Outparcel Owner shall maintain the Outparcel in accordance with the following: (a) all utilities serving the Outparcel must be extended entirely underground and there shall be no lines, services, poles, wires or other utility facilities, whether similar or dissimilar, which shall be constructed or permitted to remain above ground level; (b) decorative screening and/or landscaping will be provided as necessary in order to obscure from public view all trash rooms, trash holding receptacles, loading and service areas, mechanical and electrical equipment, storage facilities and bins, and other building appurtenances which may be aesthetically undesirable; and (c) appropriate screening shall be provided to screen roof-mounted equipment, roof vents and other appurtenances from public view.



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**6.5     Construction Indemnity.** Outparcel Owner shall defend, indemnify and hold harmless Shopping Center Owner and its employees, agents and tenants from all damages, liens, claims, actions and proceedings and costs incurred (including reasonable attorneys' fees and costs of suit) resulting from the performance of any construction or maintenance activities performed or authorized by Outparcel Owner.

## **VII.     Indemnity and Insurance**

**7.1     Indemnity.** The Outparcel Owner shall indemnify and hold harmless the Shopping Center Owner, and the employees, tenants and agents of Shopping Center Owner with respect to all losses, claims, suits, actions, damages, and liability (including costs and expenses of defending against all of the aforesaid) arising (or alleged to arise) from any act or omission of Outparcel Owner or Outparcel Owner's tenant, agents, employees, assignees, subleases, contractors, customers or invitees, or arising from any injury to or death of any person or persons or damage to or destruction of the property of any person or persons occurring in or about the Outparcel, and Outparcel Owner assumes responsibility for the condition of the Outparcel and the Improvements and agrees to give Shopping Center Owner written notice in the event of any material damage, defect or disrepair to the exterior of Improvements or landscaping on the Outparcel Owner's Outparcel. The Shopping Center Owner shall indemnify and hold harmless the Outparcel Owner, and the employees, tenants and agents of Outparcel Owner with respect to all losses, claims, suits, actions, damages, and liability (including costs and expenses of defending against all of the aforesaid) arising (or alleged to arise) from any act or omission of Shopping Center Owner or Shopping Center Owner's tenant, agents, employees, assignees, subleases, contractors, customers or invitees, or arising from any injury to or death of any person or persons or damage to or destruction of the property of any person or persons occurring in or about the Shopping Center or Outparcel.

**7.2     Liability Insurance.** The Outparcel Owner shall take out and to maintain (or cause to be taken out and maintained), commercial general liability insurance coverage with minimum limits of \$2,000,000.00 per occurrence and \$5,000,000.00 annual aggregate, which commercial general liability policy shall include (a) coverage for bodily injury and death, property damage and products liability coverage; and (b) fire legal liability coverage with respect to the Outparcel. Such policy shall be written on a form at least as broad as the applicable ISO form and shall name Shopping Center Owner and its designated property manager (and any affiliates, subsidiaries, successors and assigns designated by Shopping Center Owner) as additional insured(s). Outparcel Owner may meet the limits of liability indicated by means of an umbrella liability policy. Shopping Center Owner may require that the limits of the insurance required to be maintained by Outparcel Owner be increased from time to time to the extent that an increase is necessary to provide reasonably adequate coverage in view of inflation, an increase in judgments or awards or any other relevant factors as reasonably determined by Shopping Center Owner, provided that Shopping Center Owner may not require any such increase more often than once in any period of five (5) consecutive years.



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**7.3     Outparcel Insurance.** The Outparcel Owner shall take out and maintain (or cause to be taken out and maintained) at all times an all risk policy or Special Causes of Loss Form of insurance on the Improvements, including its alterations, additions, fixtures, equipment, merchandise, removable trade fixtures and other property placed on the Outparcel with a limit of or in an amount not less than the full replacement value thereof, less the cost of excavations, foundation, footings and underground tanks, conduits, pipes, piling and other underground items. Such policy shall be written on a form at least as broad as the applicable Insurance Services Offices (“ISO”) form and shall contain a replacement cost endorsement.

**7.4     General Clauses Concerning Insurance.**

(a) Each insurance policy carried pursuant to the foregoing provisions shall be issued by an insurance company that is rated as A X or better by A. M. Best Company.

(b) Such insurance may be included in general coverage under policies which also include the coverage of other property in which Outparcel Owner has an insurable interest.

(c) Each such insurance policy or a certificate with respect to the policy shall be delivered to Shopping Center Owner.

(d) Outparcel Owner may self-insure any or all of the amounts required to be carried herein with deductibles in amounts to be determined by Outparcel Owner in Outparcel Owner’s sole discretion.

**7.5     Shopping Center Owner Insurance.**

During the Term, Shopping Center Owner is to carry and maintain the following types of insurance, in the amount specified and in the form hereinafter provided.

(a) Special Peril Insurance covering the Shopping Center Improvements, and all improvements hereto, insuring against loss or damage to the extent of the full insurable value thereof; which insurance shall provide protection against perils that are covered under standard insurance industry practices within the classification of all risk or special property damage insurance, including, but not limited to, the fire and extended coverage perils, vandalism, malicious mischief, sprinkler leakage, water damage, collapse, the boiler and machinery perils, and against other such perils as Shopping Center Owner may from time to time determine.

(b) To the extent Shopping Center Owner has any employees performing work in connection with the Shopping Center, Shopping Center Owner shall maintain Workers’ Compensation Insurance providing statutory benefits to employees of Shopping Center Owner in the state where the Shopping Center is located to provide coverage and limits as required by statute.

(c) Shopping Center Owner is to maintain comprehensive general liability insurance covering claims for bodily injury or death, property damage or personal injury arising



from the use of the Shopping Center, however caused, with per occurrence limits of not less than \$2,000,000 for bodily injury and \$2,000,000 for property damage.

(d) If requested by Outparcel Owner, Shopping Center Owner is to furnish Outparcel Owner with a certificate of insurance for each required coverage, and renewal thereof, showing that the required insurance is in force.

(e) Shopping Center Owner will carry insurance with a minimum A.M. Best rating of A X.

## **VIII. Eminent Domain and Casualty**

**8.1 Eminent Domain.** In the event the whole or any portion of the Common Area located on the Owner Parcel shall be taken by right of eminent domain or any similar authority of law (a “**Taking**”), the entire award for the value of the land and improvements so taken shall belong to the Shopping Center Owner, mortgagees, as their interest may appear, and no other party shall have a right to claim any portion of such reward by virtue of any interest created by this Declaration to the extent that it would reduce the award to the Shopping Center Owner. Outparcel Owner may file a collateral claim with the condemning authority over and above the value of the land being so taken to the extent any damage suffered by such party resulting from the severance of the land or improvements so taken in such claim shall not operate to reduce the award applicable to the parcel or property so taken.

**8.2 Casualty.** In the event any of the Improvements on the Outparcel are damaged by fire or other casualty (whether insured or not), the Outparcel Owner shall promptly remove the debris resulting from such event and provide an attractive barrier and within a reasonable time thereafter shall either (i) repair or restore the Improvements so damaged, such repair or restoration to be performed in accordance with the Approved Plans and all provisions of this Declaration, or (ii) erect other building improvements in such location, in accordance with plans and specifications subject to Shopping Center Owner’s approval as set forth in **Article VI**, or (iii) demolish the Improvements and restore the area to an attractive condition. The Outparcel Owner shall have the option to choose which of the foregoing alternatives to perform, but Outparcel Owner shall be obligated to perform one of such alternatives. The Outparcel Owner shall give notice to the Shopping Center Owner within sixty (60) days from the date of such casualty of which alternative it has selected. If the Outparcel Owner does not give Shopping Center Owner notice, as required herein, and commence work on the selected alternative within a timely fashion, Shopping Center Owner shall have the option to repurchase the Outparcel from the Outparcel Owner for “fair market value” as defined herein.

## **IX. Default and Remedies**

**9.1 (a)** If the Outparcel Owner fails to comply with any provision of this Declaration, then the Shopping Center Owner may, upon thirty (30) days prior written notice, proceed to cure the default (and shall have a license to do so) by the payment of money or performance of some other action for the account of the Outparcel Owner. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) the Outparcel Owner



cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, the Outparcel Owner begins to cure such default with such time period and diligently pursues such action to completion. The thirty (30) day notice period shall not be required if, using reasonable judgment, the Shopping Center Owner deems that an emergency exists which requires immediate attention. In the event of such an emergency, the Shopping Center Owner shall give whatever notice to the Outparcel Owner is reasonable under the circumstances.

(b) Within fifteen (15) business days following written demand (including providing copies of invoices reflecting costs), the Outparcel Owner shall reimburse the Shopping Center Owner for any sum reasonably expended by the Shopping Center Owner to cure the default, together with interest thereon per annum at the rate of eight percent (8%). If such amount is not paid within sixty (60) days following demand, it shall, together with interest thereon and costs of collection thereof, thereupon become a continuing lien on the Outparcel which shall bind such Outparcel until such amount is paid, at which time Shopping Center Owner will record a release of such lien after written request by Outparcel Owner.

(c) In the event either party shall institute any action or proceeding against the other party relating to the provisions of this Declaration, or to any default hereunder, or to collect any amounts owing hereunder, or in the event an arbitration proceeding is commenced by agreement of the parties to any dispute, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for reasonable costs and expenses incurred by the successful litigant in connection with such action or proceeding and any appeals therefrom, including reasonable attorney's fees and court costs.

(d) All remedies are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity. Each party shall also have the right to restrain by injunction any violation or threatened violation by any other Party of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term covenant, or condition is not adequate.

## **X. TERM**

**10.1** This Declaration and the rights, obligations and liabilities created herein shall extend for a term of fifty (50) years from the date hereof and shall automatically be extended for terms of one (1) year each thereafter unless either party elects to terminate this Declaration more than six (6) months prior to the automatic extension date. Notwithstanding the foregoing, to the extent required for access to public roadways, the ingress and egress easements (but no other easements) contained in **Article I** hereof shall be perpetual to the extent permitted by law and unless otherwise specified herein. Upon termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by provisions of the Declaration, except as related to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that a party may have against any other party with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.



## **XI. MISCELLANEOUS**

**11.1 Estoppel Certificate.** The Shopping Center Owner and the Outparcel Owner (each a "Party") agree that within ten (10) days of written request from time to time of the other Party, it will issue to a prospective mortgagee of such other Party or to a prospective successor Party to such other party, an estoppel certificate stating:

(a) whether the party to whom the request has been directed knows of any default by the requesting party under this Declaration, and if there are known defaults, specifying the nature thereof;

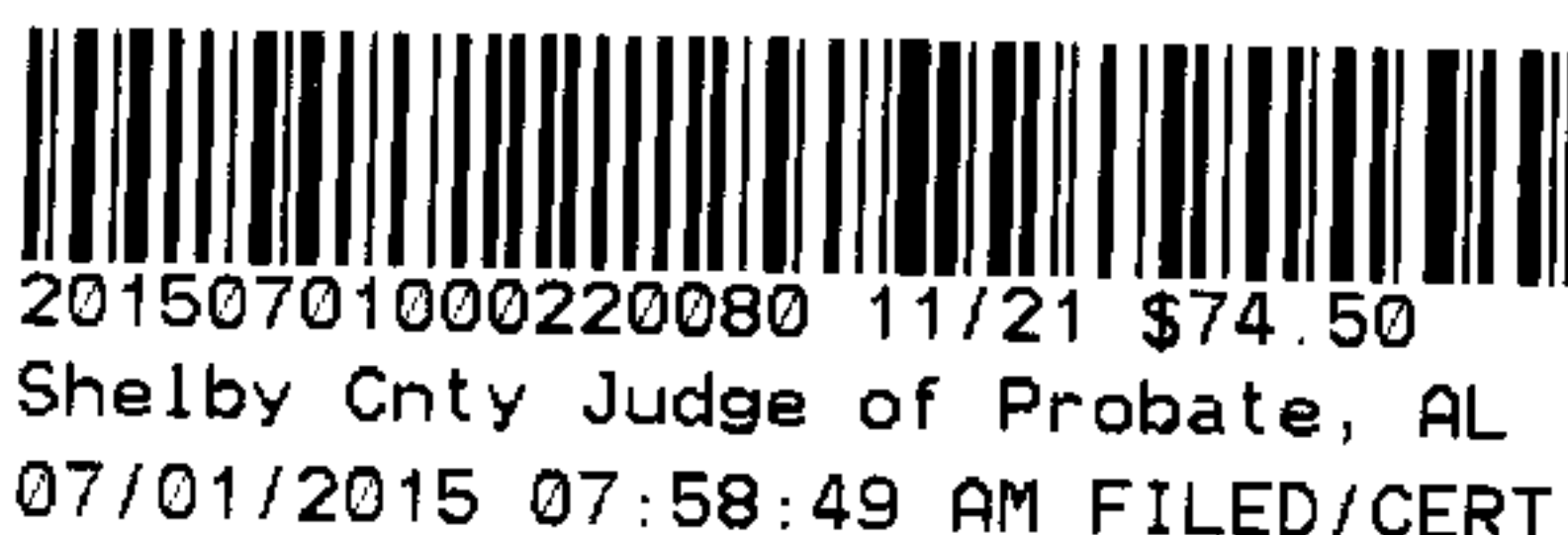
(b) whether this Declaration has been assigned, modified or amended in any way by such party (and if it has, then stating the nature thereof); and

(c) that to the requested party's knowledge this Declaration as of that date is in full force and effect.

Such statement shall act as a waiver of any claim by the party furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claims asserted against a bona fide mortgagor or other lienholder or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the party furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such party to disclose correct and/or relevant information.

**11.2 Binding Effect.** The terms of this Declaration shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become parties hereunder. The use of the term "**Shopping Center Owner**" or "**Declarant**" shall refer to Inv Plaza LLC, and its assigns and successors in interest with respect to the ownership of the Owner Parcel as designated on **Exhibit "B"**. The use of the term "**Outparcel Owner**" shall refer to the Outparcel Owner, and its assigns and successors in interest with respect to the ownership of the Outparcel.

**11.3 Liability.** The parties shall be liable for the performance of their respective obligations under this Declaration, and injunctive and other relief, including specific performance, shall be available to enforce such obligations. However, upon any sale or conveyance of the Outparcel, the Shopping Center or any portion of the Shopping Center to a third party, the Shopping Center Owner and/or the Outparcel Owner, as the case may be, who shall have sold its respective parcel, shall be forever released of any of its obligations hereunder (except for any obligation which shall have accrued at the time of such transfer), and such obligations arising thereafter shall be enforceable only against the party who shall acquire title to such respective parcel.





**11.4 Singular and Plural.** Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

**11.5 Negation of Partnership.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

**11.6 Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any party hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained herein.

**11.7 Severability.** Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.


**11.8 Amendments.** This Declaration may be amended by, and only by, a written agreement signed by all of the then current parties and shall be effective only when recorded in the appropriate land evidence records where the Outparcel is located. No consent to the amendment of this Declaration shall ever be required of any person other than the parties, nor shall any person other than the Shopping Center Owner have any right to enforce any of the provisions hereof.

**11.9 Captions and Capitalized Terms.** The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Declaration.

**11.10 Notices.** Any notice or other instrument required or permitted to be given or delivered under the terms of this Declaration shall be deemed to have been given and delivered, upon receipt, when deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, addressed as follows:

IF TO SHOPPING CENTER OWNER:

c/o Fortress Investment Group  
1345 Avenue of the Americas, 46th Floor  
New York, NY 10105  
Attention: General Counsel – Credit Funds  
Fax No.: 917-639-9672  
Email: gc.credit@fortress.com

  
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with a copy to:

Bayer Properties, L.L.C.  
2222 Arlington Avenue  
Birmingham, Alabama 35205  
Attention: General Counsel

IF TO OUTPARCEL OWNER: At the address designated for delivery of tax notices on the Deed to the Outparcel.

Such notices may also be sent: (a) by overnight delivery using a nationally recognized overnight courier, in which case notice shall be effective upon receipt; or (b) by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

**11.11 Declaration Shall Continue Notwithstanding Breach.** It is expressly agreed that no breach of this Declaration shall (i) entitle any Party to cancel, rescind or, otherwise terminate this Declaration or (ii) defeat or render invalid the lien of any mortgage made in good faith and for value as to any part of the Outparcel. However, such limitation shall not affect in any manner any rights or remedies to which a party may be entitled hereunder by reason of any such breach.

**11.12 Time.** Time is of the essence of this Declaration.

**11.13 Nonwaiver.** The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall be deemed a waiver of any rights or remedies which that party 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.

**11.14 Mortgage Subordination.** Any mortgage, deed of trust, or deed to secure debt affecting the Outparcel, shall at all times be subject and subordinate to the terms of this Declaration, and any party foreclosing any such mortgage, deed of trust or deed to secure debt, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Declaration.

**11.15 Applicable Law/Construction.** This Declaration shall be governed, construed, applied and enforced in accordance with the laws of the State of Alabama. By acceptance of a deed to the Outparcel, the Outparcel Owner acknowledges that the Outparcel Owner and its counsel have reviewed and accepted this Declaration and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Declaration or any exhibits or amendments hereto.

**11.15 Entire Agreement.** This Declaration, including the Exhibits hereto, set forth the entire understanding and agreement with respect to the Outparcel, and the Improvements.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties have caused this Declaration to be executed effected as of the day and year first above written.

**INV PLAZA LLC,  
a Delaware limited liability company**

By: 

Name: Andrew Osborne

Its: Authorized Signatory Authorized Signatory

*[Notary acknowledgements appear on the following page]*



STATE OF TEXAS

)

) SS:

COUNTY OF DALLAS

)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Andrew Osborn whose name as Authorized Signatory of **INV PLAZA LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such Authorized Signatory, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

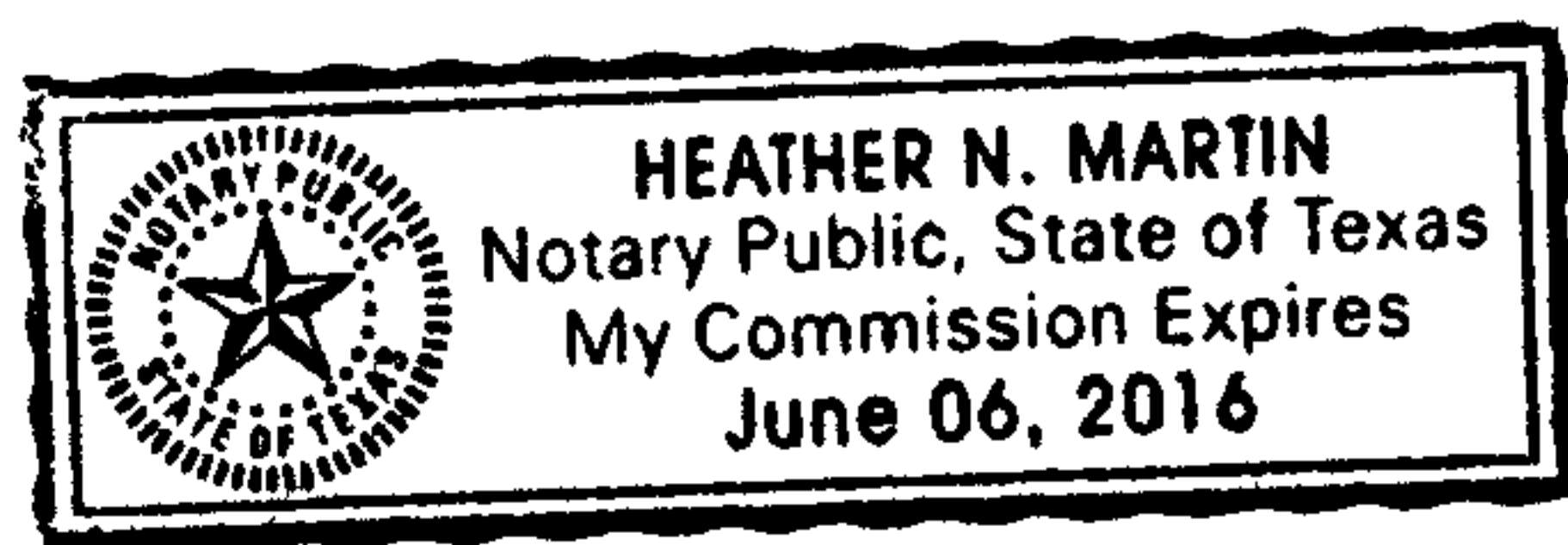
Given under my hand this the 15 day of June, 2015.

Heather N. Martin

Notary Public

[SEAL]

My commission expires: \_\_\_\_\_.



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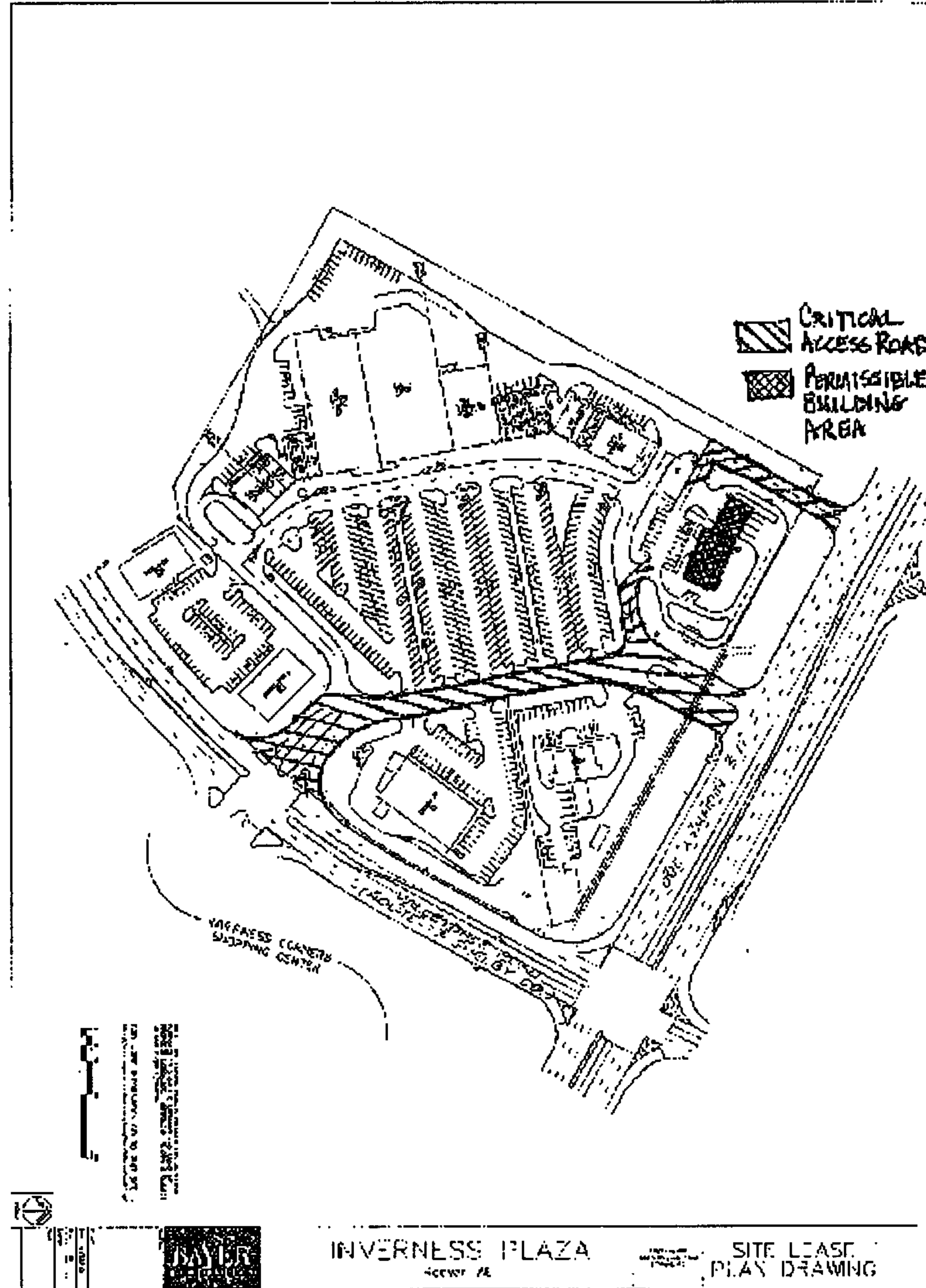
### **SCHEDULE OF EXHIBITS to REA**

1. Exhibit A: Shopping Center Site Plan
2. Exhibit B: Shopping Center Description
3. Exhibit C: Outparcel Description
4. Exhibit D: Prohibited Uses



**EXHIBIT "A" to REA**

**"Inverness Plaza"  
(Site Plan)**



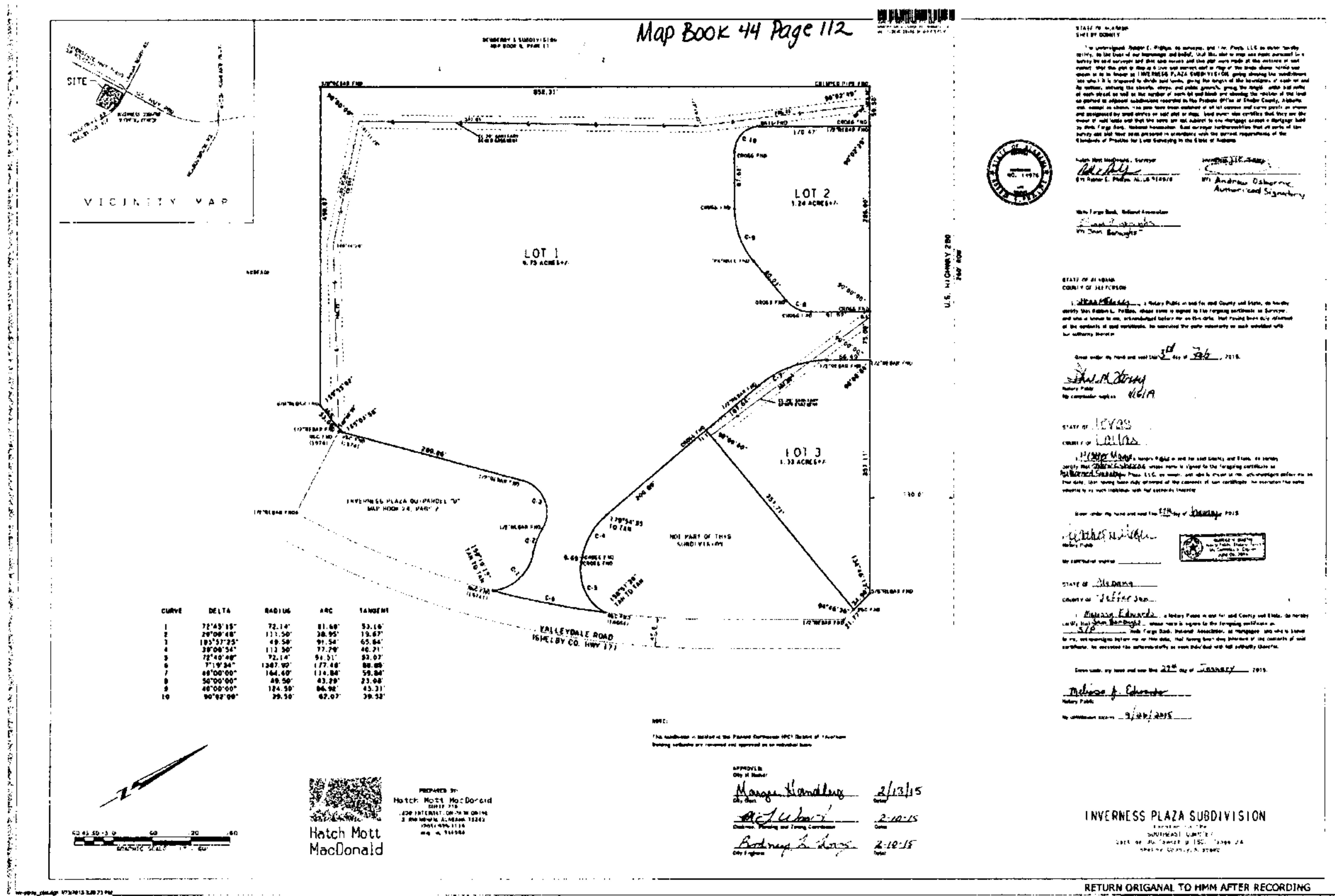
B JSS03 1354371 v1  
1018182-055006  
B JSS03 1354371 v8  
1018182-055006

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# EXHIBIT "B" to REA

## "Shopping Center Description"

Lot 1 on the plat below.

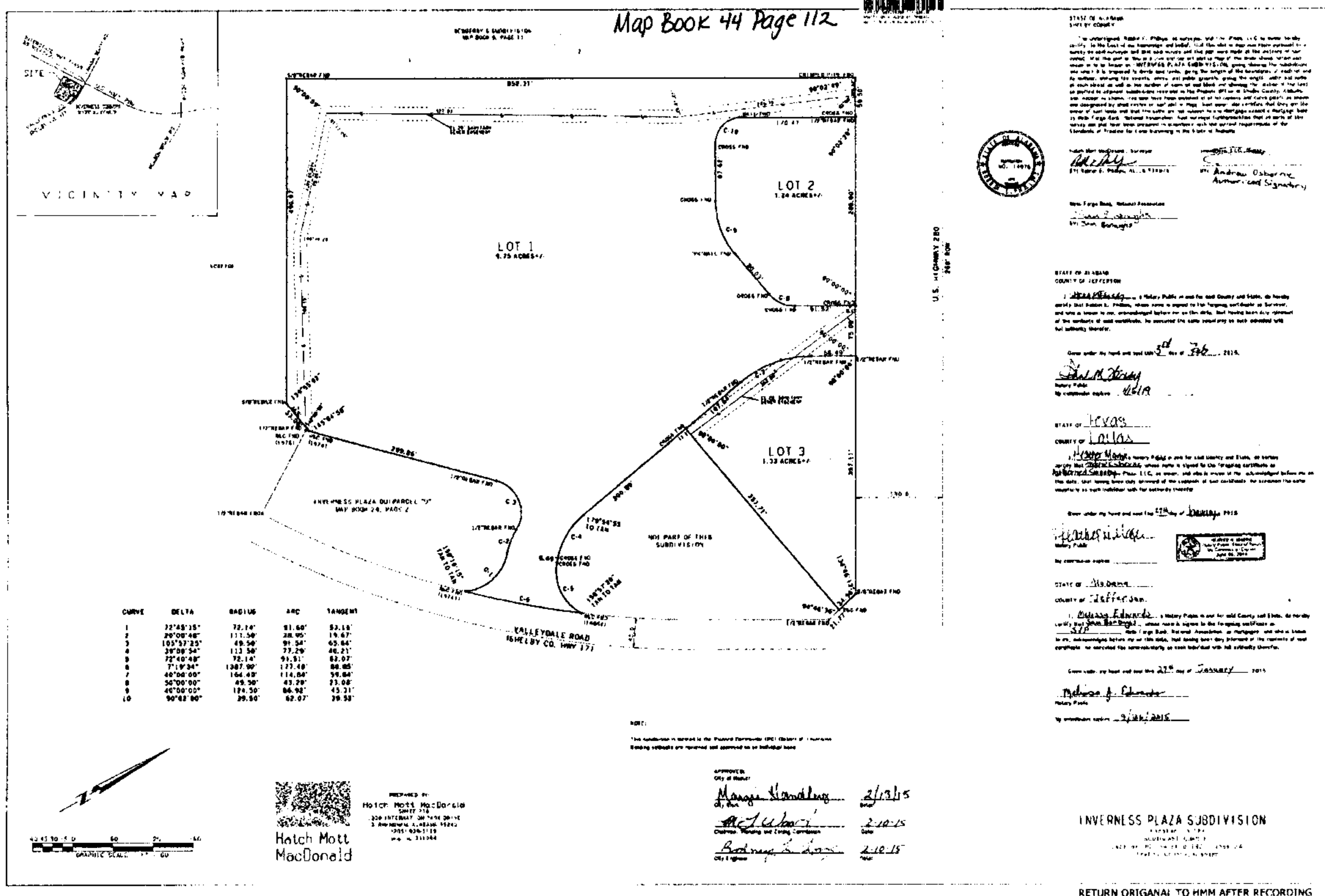


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B JSS03 1354371 v8  
1018182-055006



**Lot 2 on the plat below.**



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B JSS03 1354371 v8  
1018182-055006

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## **EXHIBIT "D" to REA**

### **"Prohibited Uses"**

Outparcel Owner shall be bound by, and shall prohibit any tenant of the Outparcel from violating, the following and such future restrictions given to other tenants or occupants of the shopping center as Shopping Center Owner may from time to time give written notice to Outparcel Owner.

Outparcel Owner shall not allow the Improvements on the Outparcel to be operated as any of the following:

- (a) health club, physical fitness club, gymnasium or tanning service;
- (b) dance studio, or dance hall;
- (c) bar, discotheque, night club lounge, or after hours club;
- (d) teen lounge, or social encounter club;
- (e) a billiard or pool hall, or bowling alley;
- (f) skating or roller rink;
- (g) arcade; internet sweepstakes café, bingo or electronic or other game parlor or gambling establishment;
- (h) movie theater (legitimate or other), or video rental operation;
- (i) any establishment renting, selling or exhibiting pornographic materials, or the sale, lease, rental or display of pornographic or "adult" material;
- (j) business, medical or professional offices exceeding 8,000 square feet (collectively "Professional Office Use");
- (k) abortion, HIV, or drug rehabilitation facility/clinic, excluding, however, medical or general health or medical clinic or facility not to exceed 4,000 square feet;
- (l) any automobile, truck trailer or recreational vehicle sales; leasing, display or repair; sale, lease, rental or repair of cars, motor vehicles and/or boats;
- (m) church, temple, mosque, or other place of religious worship or gathering;
- (n) schools, learning centers or daycare centers;
- (o) massage parlor (except for an upscale, first class facility such as Massage Envy, Tonya Jones or similar retailers);
- (p) any industrial, manufacturing or storage business;
- (q) tattoo parlor;
- (r) banquet hall, public auditorium or other public entertainment facility;
- (s) government service office;
- (t) tobacco or a so called "head shop", or facility for the sale of paraphernalia for use with illicit drugs;
- (u) exterior "pay" telephones;
- (v) "Dollar" type discount stores'
- (w) sit-down restaurant, unless sufficient parking spaces to meet zoning requirements are located on the Outparcel;
- (x) any central laundry, dry cleaning plant, or Laundromat;
- (y) any residential use, including but not limited to living quarters, sleeping apartments or lodging rooms;



- (z) car wash;
- (aa) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (bb) any pawn shop, second hand store, or flea market, except for upscale consignment furniture or clothing, such as, for example (but without limitation) Plato's Closet'
- (cc) outdoor amusement facility;
- (dd) any warehouse or wholesale and/or distribution operation;
- (ee) sporting event or other sports facility
- (ff) billboards;
- (gg) any mobile home park, trailer court, labor camp, junkyard or stockyard (except this provision shall not prohibit the temporary use of construction trailers during periods of construction);
- (hh) any dumping, disposing, incineration or reduction of garbage (except this provision shall not prohibit the temporary use of construction trailers during periods of construction);
- (ii) any veterinary hospital, animal raising facilities or pet shop, except pet food and supplies stores to the extent such stores do not offer live animals for sale;
- (jj) any funeral home, blood bank or mortuary;
- (kk) or cell phone tower;
- (ll) any check-cashing service;
- (mm) any gas station;
- (nn) any gun range;
- (oo) any operation selling fireworks;
- (pp) any copy, printing or shipping establishment such as Kinko's or FedEx Kinko's;
- (qq) any business selling alcoholic beverages for off-premises consumption, and related goods;
- (rr) any grocery store or supermarket;
- (ss) operation of a store which devotes more than ten percent (10%) of its floor area (except for a general athletic shoe store such as Foot Locker, for whom the limit shall be fifteen percent (15%), which in no event shall exceed 2,000 square feet, to the sale of golf and tennis products or services related to such products; provided that the foregoing restriction shall not apply to and Shopping Center Owner may lease space in the Shopping Center to DSW and Famous Footwear; or
- (tt) notwithstanding the foregoing, the prohibited uses contained on this Exhibit D that are required by the terms of existing tenant leases by and between the Shopping Center Owner and any tenant at the Shopping Center as of the Effective Date (each an "Existing Tenant Lease") shall terminate and be of no further force or effect upon the termination or expiration of the applicable Existing Tenant Lease.



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