

STATE OF ALABAMA     )  
                                  :  
COUNTY OF SHELBY     )

## **RESTRICTIVE USE AND RECIPROCAL EASEMENT AGREEMENT**

THIS RESTRICTIVE USE AND RECIPROCAL EASEMENT AGREEMENT (this “Agreement”) is made and entered into as of the 20 day of November, 2020, by and between **EBSCO INDUSTRIES, INC.**, a Delaware corporation, and **NAAMAN HOLDINGS, LLC**, an Alabama limited liability company.

### **RECITALS:**

Contemporaneously herewith, EBSCO, as hereinafter defined, has sold, transferred and conveyed to Owner, as hereinafter defined, that certain real property (the “Owner Property”) situated in Shelby County, Alabama which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference.

EBSCO owns the EBSCO Property, as hereinafter defined, which is situated adjacent to or in close proximity with the Owner Property, the development, sale and operation of which by EBSCO is directly related to the uses and type of Improvements, as hereinafter defined, undertaken by Owner with respect to the Owner Property.

Owner and EBSCO desire to (a) impose certain covenants, use restrictions, assessments and lien rights which affect the Owner Property, (b) impose certain use restrictions on the EBSCO Property, and (c) grant to each other certain easements relating to the development of the EBSCO Property and the Owner Property, respectively.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth and other good and valuable consideration, EBSCO and Owner do hereby agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

1.01 **Definitions.** In addition to the other definitions set forth in this Agreement, as used throughout this Agreement, the following defined terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

(a) “**Affiliate**” means as to any Person, any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate

family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term “control” (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than fifty percent (50%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise.

(b) “**Annual Maintenance Fee**” means the annual sum (on a calendar year basis) equal to One and 50/100 Dollars (\$1.50) per square foot of the gross square footage of all Buildings situated on the Owner Property, which amount shall be subject to annual increases beginning on January 1 of the calendar year following the date on which a Completed Building exists on the Owner Property and continuing each calendar year thereafter in an amount equal to one percent (1%) above the Annual Maintenance Fee for the immediately preceding calendar year. The payment of the Annual Maintenance Fee by Owner shall commence on the date on which Owner or any Tenant is open for business on the Owner Property, and shall be payable in equal monthly installments in advance on the first day of each month as provided in Article 5 below. Purchaser and Seller hereby agree, that the Annual Maintenance Fee for the first year shall not exceed \$12,500.00, notwithstanding the size of Purchaser’s building on the Property. Thereafter, the Annual Maintenance Fee shall increase by 1% annually.

(c) “**Applicable Rate**” shall have the meaning given to such term in Section 5.02(b) below.

(d) “**Assessments**” means, collectively, the Annual Maintenance Fee and any Individual Assessments.

(e) “**Building**” means any building or similar structure.

(f) “**Casualty/Condemnation**” means any fire or other casualty or any condemnation, taking or conveyance in lieu thereof by any Governmental Authority or other party having the right of eminent domain affecting any of the Owner Property or any Improvements thereto.

(g) “**City**” means the City of Hoover, Alabama, an Alabama municipal corporation.

(h) “**Common Areas**” means, collectively, all Private Roads, if any, all street lighting and common landscaping installed by EBSCO within any of the rights-of-way of any public roads or Private Roads, if any, within Tattersall Park, any signage erected by EBSCO for the benefit of Tattersall Park, and the EBSCO Storm Water Drainage Facilities.

(i) “**Completed Building**” means the date on which the City issues a certificate of occupancy for any Building on the Owner Property.

(j) “**EBSCO**” means EBSCO Industries, Inc., a Delaware corporation, and its successors and assigns, including any Permitted Assignee.



(k) **“EBSCO Parties”** means EBSCO, its agents, employees and contractors, and their respective successors and assigns, including any Permitted Assignee.

(l) **“EBSCO Property”** means all of that certain real property within Tattersall Park owned by EBSCO as of the date hereof which is more particularly described in **Exhibit B** attached hereto and incorporated herein by reference. The EBSCO Property does not include the Owner Property. Except for the easements granted herein with respect to the Private Roads, if any, any Common Signage, and the EBSCO Storm Water Drainage Facilities, this Agreement does not create any easements, rights-of-way or other real property interests in favor of Owner or the Owner Property in any of the EBSCO Property or Tattersall Park.

(m) **“EBSCO Storm Water Drainage Facilities”** means the (i) underground storm water drainage lines, pipes, conduit, manholes, ponds located on, under or within the rights-of-way of any of the Private Roads, and (ii) off-site storm water detention facilities shown on the Site Plan.

(n) **“Event of Default”** means any violation of, or the failure to timely and completely observe and perform, any of the terms and provisions of this Agreement by Owner or any Owner Parties, which violation or failure to timely and completely observe and perform is not cured within 30 days following the giving of written notice by EBSCO to Owner; provided, however, that if such violation or failure to timely and completely observe and perform cannot, with reasonable diligence, be fully and completely remedied and cured within such 30-day period, then Owner shall have a reasonable period of time to cure the same (but in no event more than 60 days from the date of written notice of such violation or failure to observe or perform is given by EBSCO to Owner).

(o) **“Governmental Authority”** means any and all City, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities, including, without limitation, the Alabama Department of Transportation and the Alabama Department of Environmental Management.

(p) **“Governmental Requirements”** means any and all statutes, ordinances, code provisions, rules, regulations, requirements and directives of any Governmental Authority, including, without limitation, all environmental and storm water laws, statutes, ordinances, code provisions, rules, regulations, requirements and directives.

(q) **“Improvements”** means and refers to any Buildings, structures or devices constructed, erected or placed on the Owner Property which in any way affect, alter or change the exterior appearance of the Owner Property or any previous Improvements constructed thereon or which may be seen from any of the EBSCO Property or any public or private roads (including the Private Roads) adjacent to or in close proximity with the Owner Property, including, by way of illustration and not limitation, all Buildings, sheds, foundations, Utility Lines, water features, retention or detention areas, patios, roads, driveways, walkways, paving, curbing, parking areas, lighting, shrubbery, landscaping, fences, screening, walls, signs and signage of any kind (whether temporary or permanent or “for sale”, “for lease” or other similar signage) and any other artificial or man-made changes or alterations to the natural condition of the Owner Property as well as any fixtures, appurtenances, personal property or other devices,

installed, erected, constructed, attached, placed or maintained on the exterior of any Buildings or other structures situated on the Owner Property.

(r) **“Individual Assessments”** shall have the meaning given to such term in Section 5.04 below.

(s) **“Mortgage”** means, with an initial capital letter, any first mortgage, first deed of trust or other first-in-priority security device encumbering the Owner Property held by any Person which is not an Affiliate of Owner.

(t) **“Owner”** means Naaman Holdings, LLC, and its successors and assigns.

(u) **“Owner Parties”** means Owner, its agents, employees and contractors, any Tenants, and their respective agents, employees, independent contractors, licensees, and invitees, and their respective successors and assigns.

(v) **“Owner Storm Water Drainage Facilities”** means the underground storm water drainage lines, pipes, conduit, manholes, and any storm water detention or retention ponds located or constructed on the Owner Property.

(w) **“Permitted Assignee”** means (i) an owners’ association established for any of the EBSCO Property, (ii) any owner of any of the EBSCO Property or any portion of Tattersall Park, (iii) any Governmental Authority or (iv) any successors and assigns of the foregoing.

(x) **“Permitted Uses”** means (subject to conformity with the applicable zoning ordinances) the operation on the Owner Property, as the sole and exclusive use of the Owner Property, of a skin cancer and reconstructive surgery and dermatology clinic engaged in the practice of providing (and teaching) dermatology services, including, but not limited to, treatment of skin cancers, constructive surgery, aesthetic general procedures and facial surgical procedures, oral maxillofacial surgery, tattoo removal, “cool sculpting”, facial resurfacing, and the sale of products typically sold at a dermatology practice provided, however, that following the completion of construction of the clinic and the operation of such clinic on the Owner Property for at least (1) day, the use of the Owner Property may be changed to another acceptable use so long as the same does not violate any exclusive use rights (or prohibited uses) granted by EBSCO at any time with respect to any other property within the EBSCO Property or Tattersall Park. Except as set forth above, any other uses of the Owner Property must be approved in writing by EBSCO, in its commercially reasonable discretion exercised in good faith, which approval shall not be unreasonably withheld.

(y) **“Person”** means, with a capital letter, any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

(z) **“Plans”** means, collectively, the Preliminary Plans, as defined in Section 2.03(b) below, and the Final Plans, as defined in Section 2.03(b) below.



(aa) **“Private Roads”** means, subject to the provisions of Sections 3.02(b)(v) and 3.04 below, (i) Tattersall Boulevard, as currently shown on the Site Plan, and (ii) any future private roads or streets within the EBSCO Property (other than any such private roads or streets situated within the boundary of any subdivided lot reflected on a subdivision plat executed by EBSCO and recorded in the Probate Office), which are reflected as “private roads” on any future subdivision plats executed by EBSCO and recorded in the Probate Office which provide vehicular ingress to and egress from any of the EBSCO Property or the Owner Property which are then open for use by the general public.

(bb) **“Probate Office”** means the Office of the Judge of Probate of Shelby County, Alabama.

(cc) **“Site Plan”** means the site plan attached hereto as Exhibit C and incorporated herein by reference which reflects the approximate locations of the Private Roads and the storm water detention pond which constitutes part of the EBSCO Storm Water Drainage Facilities.

(dd) **“Storm Water Drainage Easement”** shall have the meaning given to such term in Section 3.05(a) below.

(ee) **“Tattersall Park”** means the real estate development situated in the City of Hoover, Shelby County, Alabama, commonly known as Tattersall Park situated along U.S. Highway 280 and Alabama State Highway 119 which includes, among other real property, the Owner Property and the EBSCO Property.

(ff) **“Tenant”** means any person or entity occupying any portion of the Owner Property or any Improvements thereto as a tenant, subtenant, licensee or sublicensee.

(gg) **“Utility Easement Area”** means those areas designated as easement areas on the subdivision plat of Tattersall Park Resurvey No. 3, as recorded in Map Book 49, Page 81A, in the Probate Office which run along and within the boundaries of the Owner Property.

(hh) **“Utility Lines”** means all lines, pipes, wiring, conduit, equipment, machinery and other apparatus and appurtenances necessary or required to provide any and all Utility Services.

(ii) **“Utility Services”** means all publicly or privately owned or operated master television and/or cable television systems (including, without limitation, internet, broadband, WI-FI and other communication, security and similar services) and electrical, natural gas, telephone, water and sanitary sewer services, storm drains and storm sewer and drainage systems.

1.02 **Rules of Construction.** For the purposes of this Agreement, except as otherwise expressly provided herein to the contrary or unless the context otherwise requires:

(a) The terms “include”, “including”, and similar terms shall be construed as if followed by the phrase “without being limited to”.

(b) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or other subdivision or Exhibit.

(c) All Recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated in this Agreement by reference.

## ARTICLE 2

### USE RESTRICTIONS; APPROVAL OF PLANS; AND UNDERGROUND UTILITIES

2.01 Use Restrictions Affecting Owner Property. Owner does hereby covenant and agree that the Owner Property shall be used solely for the Permitted Uses and for no other uses or purposes whatsoever. Owner acknowledges and agrees that (1) Owner’s agreement to limit the use of the Owner Property solely to the Permitted Uses constitutes material consideration for EBSCO to sell the Owner Property to Owner; and (2) any material violation of the foregoing covenant and agreement by Owner will have a material adverse effect on EBSCO, the EBSCO Property and the businesses which may be conducted on the EBSCO Property.

2.02 Additional Use Restrictions Applicable to Owner Property. Owner acknowledges and agrees that the following use restrictions shall also be applicable to the Owner Property:

(a) For so long as a Walk-Ons restaurant is open for business within any of Tattersall Park, no portion of the Owner Property may be used, leased, rented, sold or occupied for any of the following uses or purposes:

(i) A sports-themed restaurant which utilizes (1) football, basketball, baseball, soccer, tennis and golf terms or images in its name or signage or (2) football, basketball, baseball, soccer, tennis and golf as its primary interior décor;

(ii) A restaurant which describes itself as a “bistreaux”, creole, bayou or Cajun restaurant;

(iii) A restaurant whose Primary Business, as herein defined, features Cajun/Louisiana Cuisine, as herein defined, as its primary menu items. As used herein, the term “Primary Business” means that more than twenty-five percent (25%) of the gross sales derived from the operation of a restaurant is from the sale of Cajun/Louisiana Cuisine. As used herein, the term “Cajun/Louisiana Cuisine” means the sale of the following items: Jambalaya, Gumbo, Andouille, Etouffee, Cajun Po-Boys, Boudin, Crawfish, Red Beans and Rice, and Alligator; or

(iv) Any of the following uses: Buffalo Wild Wings, Hooters, Twin Peaks, Tilted Kilt, Quaker Steak & Lube, Fox & Hound, Millers Alehouse, Beef O’Brady’s, BJ’s Brewhouse, Champps Kitchen and Bar or Glory Days Grill.



(b) For so long as a Publix grocery store is open for business within any of Tattersall Park, no portion of the Owner Property may be used, leased, rented, sold or occupied as a full-line grocery store, a full-service delicatessen, and/or a full-service drug store; provided, however, that the foregoing shall not mean or include any of the following: (i) a sit down restaurant offering prepared ready-to-eat food items for consumption either on or off the premises; (ii) a “quick serve” or “fast casual” restaurant, serving prepared ready to eat food items for consumption on or off the premises (such as, without limitation, McDonald’s, Wendy’s, Chick-fil-A or Burger King); (iii) a delicatessen or sandwich shop type restaurant which offers take out service as an incidental part of its restaurant operation, provided that at least seventy percent (70%) of the leasable floor area of such delicatessen or sandwich shop type restaurant (exclusive of storage, kitchen or food preparation areas) is utilized for seated dining purposes; (iv) a health food store or nutrition center, provided that the leasable floor area devoted to such health food store or nutrition center does not exceed 1,600 square feet; or (v) an ice cream parlor or frozen yogurt store, coffee shop, franchise doughnut shop (equivalent to a Dunkin’ Donut or Krispy Kreme or similar operation), bagel shop, candy store, or a pickup or delivery outlet (such as pizza or Chinese delivery), all of which may offer the sale of food items for consumption on or off the premises.

(c) For so long as a Taco Bell restaurant is open and operating within Tattersall Park, the Owner Property may not be used, leased, rented, sold or occupied as a quick service taco restaurant.

(d) INSERT OTHER GRANTED RESTRICTIONS

## 2.03 Approval of Plans.

(a) In order to preserve the architectural and aesthetic appearance of the Owner Property and the EBSCO Property and to protect and promote the value of the EBSCO Property, no Improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on the Owner Property which affect the exterior appearance of the Owner Property or any Buildings or other Improvements thereon unless the Plans for the same have been submitted to and approved by EBSCO in accordance with the remaining terms and provisions of this Section 2.03. In addition to, and not in limitation of, the rights of EBSCO to approve the Plans for any Improvements on the Owner Property, EBSCO shall also have the right to approve (i) the height of all Buildings to be constructed on the Owner Property, (ii) any and all antennae, dishes, and other apparatus which may be constructed or installed on the exterior of any Buildings or any other portions of the Owner Property visible from any of the EBSCO Property or any public or private roads (including the Private Roads) adjacent to or in close proximity with the Owner Property, (iii) all grading, excavation and fill work to be undertaken on the Owner Property, (iv) the finished floor elevations of any Buildings to be constructed on the Owner Property, and (v) all curb cuts and access points for traffic into and out of the Owner Property, including any access points to other portions of the EBSCO Property, to any real property adjacent to the Owner Property or to any of the public or private roads (including the Private Roads).

(b) Prior to the commencement of any Building or other Improvements on the Owner Property, Owner shall submit to EBSCO for review and approval preliminary plans and

specifications (collectively, the “Preliminary Plans”) reflecting the following: (i) a preliminary site development plan reflecting the proposed location of all Buildings, parking areas, and driveways to be constructed on the Owner Property and (ii) conceptual exterior elevation plans for all Buildings to be constructed on the Owner Property.

(c) To the extent EBSCO approves the Preliminary Plans, then Owner shall submit to EBSCO as final plans and specifications (collectively, the “Final Plans”) the following: (i) a professionally and accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, any Buildings to be constructed on the Owner Property, the location of all driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any set-back requirements applicable to the Owner Property; (ii) a foundation plan, floor plans, and lighting plans (including specifically, any exterior lighting to be utilized with respect to the Owner Property); (iii) exterior elevation drawings (including finished floor elevations) of the front, back and sides of all Buildings or other Improvements to be constructed on the Owner Property; (iv) written specifications and, if requested by EBSCO, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of any Buildings or other Improvements to be constructed on the Owner Property; (v) a landscaping plan; and (vi) a signage plan.

(d) EBSCO shall have the right to disapprove any of the Plans upon any ground which is consistent with the objectives and purposes of this Agreement, including purely aesthetic considerations, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed or implemented for the EBSCO Property, objection to the location of any proposed Improvements on any the Owner Property, objection to the color scheme, materials, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvements or any other matter which, in the reasonable judgment of EBSCO would render the proposed Improvements inharmonious with the general plan of development contemplated for the EBSCO Property. If EBSCO rejects any Plans submitted to it, it shall provide the reasons for such rejection. EBSCO shall have the right to approve any submitted Plans with conditions or stipulations. Notwithstanding anything provided herein to the contrary, Owner may make interior improvements and alterations within any Buildings situated on the Owner Property without the necessity or requirement that the approval or consent of EBSCO be obtained so long as such improvements and alterations do not affect the exterior appearance of any Building or other exterior Improvements on the Owner Property.

(e) Any and all approvals to be granted by EBSCO with respect to any Improvements to be constructed on the Owner Property must be in writing, which approval shall not be unreasonably withheld, conditioned or delayed. In the event EBSCO fails to approve in writing any proposed Plans within thirty (30) days after such Plans have been submitted to EBSCO, then the same shall be deemed to have been disapproved; provided, however, that in the event EBSCO fails to approve or disapprove in writing any proposed Plans within thirty (30) days after such Plans have been submitted to EBSCO, then the following shall be applicable:

(i) If EBSCO has not approved or disapproved in writing any proposed Plans submitted by Owner to EBSCO within 30 days after the submission of such Plans, then Owner may provide written notice (the “Requested”



Approval Notice”) to EBSCO, which Requested Approval Notice shall specify, in bold, all capital letters, a reference stating: **“THIS IS A SECOND REQUEST FOR A RESPONSE FROM EBSCO EITHER APPROVING OR DISAPPROVING THE PLANS AND SPECIFICATIONS (COLLECTIVELY, THE “PLANS”) DESCRIBED IN EXHIBIT A ATTACHED HERETO FOR IMPROVEMENTS TO BE MADE TO THE OWNER. IF EBSCO DOES NOT DISAPPROVE THE PLANS IN A WRITTEN RESPONSE GIVEN WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS LETTER, THEN THE PLANS SHALL BE DEEMED APPROVED BY EBSCO”**; and

(ii) If, within thirty (30) days following the giving of the Requested Approval Notice (containing the above-specified information) EBSCO does not, in writing, approve or disapprove such previously submitted Plans, then such previously submitted Plans shall be deemed to be approved by EBSCO.

(f) Any revisions, modifications or changes in any Plans previously approved by EBSCO for any Improvements to the Owner Property must be approved by EBSCO in the same manner specified above. The foregoing approvals shall extend to and include all landscaping to be installed within the Owner Property, any subsequent exterior removals, alterations or construction of any Improvements, including landscaping, signage and parking, and any reconstruction following any Casualty/Condemnation. Notwithstanding anything provided herein to the contrary, no approvals from EBSCO shall be required to undertake any interior alterations, additions or improvements to any Buildings situated on the Owner Property.

2.04 **Subsurface Conditions**. The Owner Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by EBSCO for any Building or other Improvements on the Owner Property shall not be construed in any respect as a representation or warranty by EBSCO to Owner or any Owner Parties that the surface or subsurface conditions of the Owner Property are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of Owner to determine the suitability and adequacy of the surface and subsurface conditions of the Owner Property for the construction of any contemplated Improvements thereon.

2.05 **Limitation of Liability**. Notwithstanding anything provided herein to the contrary, (a) neither EBSCO, any of the EBSCO Parties nor any agent, employee, representative, shareholder, partner, officer or director of EBSCO or any of the EBSCO Parties shall have any liability of any nature whatsoever for, and (b) Owner, for itself and all Owner Parties, does hereby irrevocably and unconditionally waive and release EBSCO, all of the EBSCO Parties and each agent, employee, representative, shareholder, partner, officer and director of EBSCO or any of the EBSCO Parties from, any and all damage, loss, action, cause of action, liability, expense or prejudice suffered, claimed, paid or incurred by Owner or any of the Owner Parties on account of (i) any defects in any Plans submitted to, reviewed or approved by EBSCO in accordance with the provisions of this Article 2, (ii) any defects, structural or otherwise, in any Improvements constructed by Owner on the Owner Property, (iii) except as set forth in Section 2.02(e) above, the failure of EBSCO to approve or the disapproval of any Plans submitted by Owner to EBSCO

for approval pursuant to the provisions of this Article 2, (iv) the construction or performance of any work related to such Plans, (v) bodily injuries (including death) to any Owner or any Owner Parties, or any damage to any Buildings, Improvements or the personal property of Owner or any Owner Parties which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Buildings or other Improvements or the Plans therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under the Owner Property) and (vi) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by Owner or any Owner Parties arising out of or in connection with the use and occupancy of Owner Property or any Improvements situated thereon.

**2.06 Requirement for Underground Utility Lines.**

(a) Any and all Utility Lines constructed, installed, operated, repaired or replaced on or within any portion of the Owner Property shall be located and maintained below ground at all times; provided, however, that the foregoing shall not be applicable to (i) temporary overhead Utility Lines utilized by Owner solely during the construction or re-construction of any Improvements on the Owner Property, (ii) subject to the provisions of Section 2.06(b) below, utility meters, generators, transformers, heating, ventilating and air conditioning equipment and any other equipment or similar external components of mechanical systems (collectively, the "Owner External Utility Equipment") necessary to provide any Utility Services to any Improvements on the Owner Property, (iii) manholes and manhole covers, (iv) storm drainage inlets, (v) any exterior lighting for the Owner Property so long as all meters, transformers and other equipment for the same are screened from view from the EBSCO Property or any public or private roads (including the Private Roads) adjacent to or in close proximity with the Owner Property or (vi) any irrigation systems for the Owner Property.

(b) EBSCO acknowledges that the Owner Property will be open to public view and that full screening of the Owner External Utility Equipment may not be fully achievable; however, Owner covenants and agrees that any and all Owner External Utility Equipment which may be constructed, installed or located on any of the Owner Property or any Buildings situated thereon shall, to the greatest extent practicable, be screened from view from the EBSCO Property or any public or private roads (including the Private Roads) adjacent to or in close proximity with the Owner Property utilizing screening materials reasonably approved by EBSCO. The foregoing obligations of Owner shall extend to and include the construction of parapet walls and other devices on the roof of, or on top of, any Buildings on the Owner Property which may contain any Owner External Utility Equipment.

**2.07 Enforcement and Remedies.** In the event any of the provisions of this Article 2 are breached or are not otherwise being complied with in all respects by Owner or any Owner Parties, then EBSCO shall have the rights set forth in Section 5.03 below.

**2.08 Compliance Certification.** EBSCO (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by EBSCO, furnish to Owner a certificate in writing setting forth whether all necessary approvals have been obtained from EBSCO pursuant to the provisions of this Article 2 and whether any



Building or Improvements have been constructed in accordance with the provisions of this Article 2.

### ARTICLE 3

#### GRANT OF EASEMENTS

##### 3.01 Grant of Utility Easement to EBSCO.

(a) Subject to the terms and provisions of Section 3.01(b) below, Owner does hereby grant to EBSCO, for the benefit of the EBSCO Property, a permanent, perpetual and non-exclusive easement, over, across, through, under and upon the Utility Easement Area for the purposes of constructing, installing, erecting, repairing, replacing, relocating, maintaining and operating from time to time any and all Utility Lines necessary or required to provide any and all Utility Services to any of the EBSCO Property; provided, however, that neither EBSCO nor any of its successors and assigns shall have any obligation to construct any of the foregoing improvements within the Utility Easement Area. The exercise of the easement rights granted to EBSCO in this Section 3.01 shall be exercised in such a manner so as not to unreasonably disrupt any Utility Services to any Improvements on the Owner Property or any business being conducted on the Owner Property.

(b) Any and all Utility Lines constructed, installed, operated, repaired or replaced on or within any portion of the Utility Easement Area by EBSCO or any of its successors and assigns shall be located and maintained below ground at all times; provided, however, that the foregoing shall not be applicable to any of the following (collectively, the "EBSCO External Utility Equipment"): (i) utility meters, transformers and any other equipment necessary to provide any Utility Services to any of the EBSCO Property, but only to the extent the same are no higher than five (5) feet in height within any portion of the Utility Easement Area, (ii) manholes and manhole covers, (iii) storm drainage inlets, or (iv) any irrigation systems constructed within the Utility Easement Area.

(c) The terms and provisions of this Section 3.01 shall constitute covenants running with the Owner Property which shall be binding upon and inure to the benefit of Owner and EBSCO and their respective successors and assigns.

##### 3.02 Grant of Non-Exclusive Easements to Private Roads.

(a) Subject to the remaining terms and provisions of this Agreement, EBSCO does hereby grant to Owner and the Owner Parties a permanent, perpetual and non-exclusive easement over, across, through, and upon the Private Roads, in common with EBSCO, its successors and assigns, and all other parties having any rights or interests therein or to whom similar easement rights have been or will be granted by EBSCO.

(b) Notwithstanding anything provided herein to the contrary, the easement rights granted to Owner and the Owner Parties by EBSCO pursuant to Section 3.02(a) above, shall be exercised by Owner and the Owner Parties subject to the following:

(i) EBSCO shall have the right to install directional signage, stop signs and other traffic signage in order to promote safety and orderly flow of traffic over and upon any of the Private Roads;

(ii) EBSCO shall have the right, in its sole and absolute discretion, to temporarily close any portions of any Private Roads so long as such closure does not adversely affect ingress or egress to and from the Owner Property;

(iii) EBSCO and Owner, for themselves and their respective successors and assigns, covenant and agree that no fences or other obstructions shall be erected, placed, installed or permitted on, across or upon any portion of the Private Roads; provided, however, that the foregoing shall not prohibit EBSCO from erecting temporary barriers or fences which may be necessary or required in connection with the construction or maintenance of any Private Roads so long as such action does not materially, adversely affect ingress or egress to and from the Owner Property;

(iv) All vehicular traffic on or within any Private Roads shall be subject to the applicable provisions of the laws of the State of Alabama, the City and any other Governmental Authority having jurisdiction thereof concerning the operation of motor vehicles. In addition, EBSCO is authorized to promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for such Private Roads, including the right to deny, limit or prohibit vehicular access via any of the Private Roads. EBSCO shall also be entitled to enforce any such rules and regulations by establishing such enforcement procedures as it deems reasonably necessary or appropriate, including hiring security or traffic patrols which have the right to levy fines for the violation of any such traffic rules and regulations. All vehicles of any kind and nature which are operated on any of the Private Roads shall be operated (1) in accordance with all reasonable rules and regulations adopted from time to time by EBSCO and (2) in a careful, prudent, safe and quiet manner with due consideration for the rights of all other persons authorized to use the Private Roads; and

(v) EBSCO shall have the right, in its sole and absolute discretion, without any further approvals or consents from Owner or the holder of any Mortgage, to dedicate any of the Private Roads as public roadways to any Governmental Authority in accordance with the provisions of Section 3.04 below, in which event the easement rights granted and created pursuant to this Section 3.02 shall automatically terminate, be deemed null and void and of no further force or effect as to any portion of the Private Roads dedicated to and accepted by any Governmental Authority as a public roadway.

(c) Subject to the rights reserved by EBSCO pursuant to Sections 3.02(b)(v) and 3.04 hereof, above, the terms and provisions of this Section 3.02 shall be (i) covenants running with the Owner Property which shall be binding upon and inure to the benefit of Owner



and EBSCO and their respective successors and assigns and (ii) shall pass with title to the Owner Property as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated.

3.03 **Grant of Easement to Governmental Authorities.** Subject to the provisions of Section 3.04 below, EBSCO does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and non-exclusive easement over, across, through and upon all of the Private Roads, if any, for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

3.04 **Reservation of Controlled Access Easement.** Notwithstanding anything provided to the contrary in this Agreement, EBSCO (a) does hereby establish and reserve the right, in its sole and absolute discretion, at any time and from time to time, to dedicate any of the Private Roads to any Governmental Authority designated by EBSCO without requirement that the approval or consent of Owner, any Owner Parties or the holder of any Mortgage be obtained and (b) shall be and hereby is authorized and entitled to execute any and all agreements, documents, instruments and subdivision plats pursuant to which any of the Private Roads are submitted for dedication as public roadways. Owner, and the holder of any Mortgage encumbering the Owner Property, do hereby irrevocably appoint EBSCO as its respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the dedication of any of the Private Roads to any Governmental Authority as public roadways for and in the name of Owner and the holder of any Mortgage in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner or the holder of any Mortgage and be binding on Owner and the holder of any Mortgage and their respective successors and assigns and anyone having any interest in any the Owner Property.

3.05 **Grant of Storm Water Drainage Easement to Owner.**

(a) Subject to the remaining terms and provisions of this Agreement, EBSCO does hereby grant to Owner, for the benefit of the Owner Property, a permanent, perpetual and non-exclusive easement (the "Storm Water Drainage Easement") for the purposes of (i) connecting the Owner Storm Water Drainage Facilities to the EBSCO Storm Water Drainage Facilities and (ii) discharging and transporting storm water from the Owner Property into the EBSCO Storm Water Drainage Facilities.

(b) The Storm Water Drainage Easement granted to Owner by EBSCO pursuant to Section 3.05 above shall be exercised by Owner subject to the following terms and conditions:

(i) All Owner Storm Water Drainage Facilities shall be located and maintained underground at all times (other than manholes which may be located at ground level);

(ii) Owner shall be solely responsible for all costs and expenses of constructing, installing, operating, maintaining and replacing the Owner Storm Water Drainage Facilities;

(iii) Owner shall (1) utilize best management practices in connection with any construction, maintenance, repair and replacement of any of the Owner Storm Water Drainage Facilities and (2) comply with, and cause all other Owner Parties to comply with, all Governmental Requirements applicable to the discharge of storm water drainage into the EBSCO Storm Water Drainage Facilities;

(iv) Owner shall promptly repair and replace any portions of the EBSCO Storm Water Drainage Facilities which may be damaged or destroyed in connection with the construction, installation and operation of the Owner Storm Water Drainage Facilities; and

(v) Owner shall and does hereby indemnify, agree to defend and hold EBSCO harmless from and against any and all claims, demands, actions, losses, liabilities, damages, fines, penalties and other costs, costs and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses and other legal costs which EBSCO may suffer, pay or incur as a result of, arising out of or by virtue of (1) any injury or damage to person (including death) or property caused by any act or omission of Owner or any of the Owner Parties in connection with the exercise of the Storm Water Drainage Easement, (2) the construction of the Owner Storm Water Drainage Facilities or the connection of the Owner Storm Water Drainage Facilities to the EBSCO Storm Water Drainage Facilities or (3) the violation of any Governmental Requirements in connection with the construction, operation, maintenance, repair or replacement of any Owner Storm Water Drainage Facilities, the connection of any Owner Storm Water Drainage Facilities to the EBSCO Storm Water Drainage Facilities or the discharge of storm water into the EBSCO Storm Water Drainage Facilities. Notwithstanding anything provided herein to the contrary, Owner shall have no obligation to indemnify, defend or hold EBSCO harmless for any damage to the EBSCO Storm Water Drainage Facilities caused by or resulting from the initial construction of the EBSCO Storm Water Drainage Facilities by EBSCO or the failure of EBSCO to maintain the EBSCO Storm Water Drainage Facilities.

(c) EBSCO shall have the right, in its sole and absolute discretion, without any further approvals or consents from Owner or the holder of any Mortgage, to dedicate any of the EBSCO Storm Water Drainage Facilities to any Governmental Authority.



(d) The easements, rights and privileges granted in Section 3.05 above shall pass with title to the Owner Property as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated.

3.06 **Reservation of General Access and Maintenance Easement.** EBSCO does hereby establish and reserve for itself and its successors and assigns a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon the Owner Property for the purposes of (a) providing ingress to and egress from the Owner Property for the purposes of (i) inspecting the Owner Property and any Improvements thereon in order to determine compliance with the provisions of this Agreement and (ii) the performance of the duties of EBSCO hereunder, including, without limitation, taking any action required or permitted to be taken by EBSCO pursuant to any of the terms or provisions of this Agreement; provided, however, that upon completion and occupancy of any Building on the Owner Property, then, except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, only upon advance notice to Owner and (b) mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon EBSCO to perform any of the foregoing actions.

3.07 **No Easement for Light, Air or View.** No easements for light, air or view shall be deemed to be created or exist in favor of Owner or Owner's Property over, upon, through or across any portion of the EBSCO Property.

3.08 **Assignment to Permitted Assignee.** EBSCO shall have the right, in its sole and absolute discretion, to transfer and assign to any Permitted Assignee all of its rights, easements and obligations under this Agreement without any requirement that the consent or approval of Owner or the holder of any Mortgage be obtained.

## ARTICLE 4

### **MAINTENANCE OBLIGATIONS; CASUALTY/CONDEMNATION**

#### 4.01 **Maintenance Obligations EBSCO.**

(a) Subject to the provisions of Sections 4.01(b), 4.01(c), 4.02(c) and 4.04 hereof, EBSCO shall be solely responsible for operating and maintaining the Common Areas in good condition and repair and in accordance with all applicable Governmental Requirements.

(b) Notwithstanding anything provided in this Agreement to the contrary, to the extent EBSCO dedicates any of the Common Areas to any Governmental Authority, then the obligations of EBSCO set forth in Section 4.01(a) above shall automatically terminate and EBSCO shall have no further obligations under Section 4.01(a) above with respect to any of the Common Areas dedicated to any Governmental Authority.

(c) EBSCO shall have the right, in its sole and absolute discretion, to transfer and assign to any Permitted Assignee all of its rights, easements and obligations under this

Agreement without any requirement that the consent or approval of Owner or the holder of any Mortgage be obtained.

4.02 **Maintenance Obligations of Owner.**

(a) Except to the extent the Owner Property or any Improvements thereto may then be subject to an existing Casualty/Condemnation, Owner, for itself and its successors and assigns, covenants and agrees to cause the Owner Property and all Improvements thereto to be operated and maintained at all times in a good condition and state of repair, substantially similar to other first-class retail or retail/office building mixed use developments within the greater Birmingham-Hoover, Alabama metropolitan area, and in accordance with all applicable Governmental Requirements, which maintenance obligations shall include, without limitation, the following:

(i) Drives and Parking Areas. Maintaining and repairing all paved surfaces and curbs within the Owner Property in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resurfacing and resealing and restriping parking lots, parking spaces, and drive lanes within the Owner Property as often as shall be necessary to maintain parking space designation and traffic direction;

(ii) Debris and Refuse. Weekly removing papers, debris, filth, refuse, ice and snow within the parking areas and drives of the Owner Property, but in any event to the extent necessary to constitute commercially reasonable efforts to keep the parking areas and drives on the Owner Property in a first-class, clean and orderly condition; provided, however, that trash and/or garbage removal from any Improvements on the Owner Property shall be removed from the Owner Property on a regular, routine basis no less than once a week;

(iii) Lighting. Maintaining, cleaning, repairing and replacing all exterior lighting and signage facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, illuminating the parking areas of the Owner Property or which provide illumination for any signage on the Owner Property or any Improvements thereto;

(iv) Landscaping. Maintaining and replacing all exterior landscape plantings, trees and shrubs within the Owner Property in an attractive and thriving condition, trimmed and reasonably weed-free; providing water for landscape irrigation within all landscaped areas of the Owner Property through a properly maintained system; and promptly replacing all damaged, diseased or dead landscaping on the Owner Property; and

(v) Buildings. Maintaining the exterior areas on all Buildings on the Owner Property and all Building signage in good condition and repair, which obligations include, without limitation, repainting/staining all painted areas on any such Buildings on a routine basis, reroofing such Buildings on a routine



basis and maintaining and replacing as needed all lighting and light fixtures within any Building signage.

(b) If, for any reason other than a then existing Casualty/Condemnation, the daily operations of the Improvements cease for any reason, Owner covenants and agrees to continue to maintain the Owner Property and all Improvements thereto in accordance with the terms, provisions and requirements of Section 4.02(a) above and this Section 4.02(b), including, specifically, operating all light fixtures within any Buildings on the Owner Property and all parking lot lighting on the Owner Property each and every day during the same business hours of operation utilized by a majority of any other business operating within any of the EBSCO Property. In no event shall any windows or doors to any Buildings on the Owner Property be boarded, covered or removed except in connection with any restoration work following any Casualty/Condemnation.

(c) In the event that EBSCO, in its reasonable discretion, determines that any maintenance, cleaning, repair or replacement for which EBSCO is responsible hereunder is caused by either the negligence or willful act of Owner or any Owner Parties, then, Owner shall, within 30 days following written notice from EBSCO to Owner, complete any maintenance, cleaning, repair or replacement work reasonably determined by EBSCO (and described in such written notice) to have been caused by the negligence or willful acts of Owner or any Owner Parties.

#### 4.03 Casualty/Condemnation.

(a) In the event any Improvements on the Owner Property are damaged, destroyed or subject to any Casualty/Condemnation, Owner, for itself, its successors and assigns, covenants and agrees to promptly remove any Improvements damaged or destroyed by any such Casualty/Condemnation and any debris resulting from such Casualty/Condemnation and provide a sightly barrier around the Owner Property, as reasonably approved by EBSCO, and shall perform one of the following alternatives:

(i) Repair or restore the Improvements so damaged to a complete unit in accordance with the terms and provisions of this Agreement;

(ii) Demolish the damaged Improvements and erect new Improvements in accordance with the terms and provisions of this Agreement; or

(iii) Demolish both the damaged portions of such Improvements and the balance of all Improvements remaining on the Owner Property and clear away all debris and all such Improvements from the Owner Property in accordance with the terms and provisions of Section 4.03(d) below.

(b) Within 120 days from the date of any such Casualty/Condemnation, Owner shall give notice to EBSCO of which alternative it elects. Should Owner fail to timely give such notice, then Owner shall be deemed to have elected to rebuild and restore all Improvements on the Owner Property which have been damaged or destroyed by such Casualty/Condemnation.

(c) If Owner elects to repair, replace and rebuild following any Casualty/Condemnation pursuant to the provisions of either Section 4.03(a)(i) or Section 4.03(a)(ii) above (or Owner is deemed to have elected to rebuild and restore pursuant to Section 4.03(b) above), then Owner shall commence the required repair, replacement and rebuilding work within six (6) months following the date of the occurrence of such Casualty/Condemnation, or sooner if possible, and thereafter use due diligence to cause all Improvements which Owner has elected to repair, replace or rebuild to be completed (which completion shall be evidenced by the issuance by the City of a certificate of occupancy for such Improvements) within 18 months after the date of such Casualty/Condemnation. Any such repair, replacement or rebuilding following such Casualty/Condemnation shall be in accordance with all of the terms and provisions of this Agreement, including, specifically, the provisions of Article 2 above. Following the completion of any such repair, replacement or rebuilding of any Improvements, Owner shall maintain the Owner Property and all Improvements thereto in accordance with the terms and provisions of Section 4.02 above.

(d) To the extent any Improvements on the Owner Property are not repaired or reconstructed following any Casualty/Condemnation in accordance with the terms and provisions of Sections 4.03(a)(i) or 4.03(a)(ii) above, then, within a reasonable time after the occurrence of such Casualty/Condemnation, but in no event more than 180 days from the date of such Casualty/Condemnation, Owner shall (i) complete the demolition of all Improvements on the Owner Property, (ii) remove all such Improvements and any other debris from the Owner Property, and (iii) landscape all of the Owner Property in accordance with landscaping plans reasonably approved by EBSCO. Following the completion of the foregoing, Owner (or its successors and assigns) shall thereafter maintain the Owner Property and Improvements in accordance with the terms and provisions of Section 4.02 above.

4.04 **Remedies for Breach.** Except for instances whereby the Owner or any Owner Parties are unable to fully observe and perform all of their respective duties and obligations under Article 4 due to a governmental prohibition and/or directive, in the event Owner or any Owner Parties violate or fail to timely and fully observe and perform all of their respective duties and obligations under this Article 4, then EBSCO shall have the rights set forth in Section 5.03 below.

## ARTICLE 5

### **ASSESSMENTS; DEFAULTS AND REMEDIES**

5.01 **Assessments and Creation of Lien.** Owner does hereby covenant and agree to pay to EBSCO (a) the Annual Maintenance Fee in equal monthly installments each year in accordance with the terms and provisions of Section 5.02 below and (b) Individual Assessments which may be assessed pursuant to the terms and provisions of Sections 5.03 and 5.04 below. All Assessments, together with late charges, as provided in Section 5.02(b) below, and interest at the Applicable Rate, as provided in Sections 5.02(b) and 5.03(b) below, and all court costs and attorneys' fees and expenses incurred by EBSCO to enforce or collect any Assessments, shall be an equitable charge and a continuing lien upon the Owner Property, which lien may be enforced in the manner provided in Section 5.05 below. Owner shall be personally liable for the payment of all Assessments coming due while Owner is the owner of the Owner Property and Owner's



grantee shall take title to the Owner Property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from such grantee's grantor any amounts paid by such grantee to EBSCO which were the legal obligations of the grantor. All Assessments, together with late charges, if any, and interest at the Applicable Rate, as specified in Sections 5.02(b) and 5.03(b) below, court costs and attorneys' fee and expenses incurred with respect thereto by EBSCO, shall also be personal obligation of the person who was the owner of the Owner Property at the time such Assessments and other costs and chargers were assessed or incurred. All Assessments shall be payable in all events without offset, diminution or abatement by reason of any Casualty/Condemnation with respect to the Owner Property or any of the Common Areas or for any other cause or reason of any nature whatsoever.

**5.02 Annual Maintenance Fee.**

(a) Owner covenants and agrees to pay to EBSCO the Annual Maintenance Fee each year in equal monthly installments, in advance, commencing on the first to occur of either (i) the date on which Owner or any Tenant is open for business on the Owner Property or (ii) 18 months from the date of this Agreement. Thereafter, the Annual Maintenance Fee shall be paid by Owner to EBSCO in equal monthly installments, in advance, on the first day of each month. EBSCO shall, on or about January 1 of each year, provide to Owner written notice of the amount of each monthly installment of the Annual Maintenance Fee due and payable by Owner on the first day of each month in such applicable calendar year.

(b) In the event any monthly installment of the Annual Maintenance Fee is not paid in full by Owner to EBSCO by the first day of each month and such failure continues for more than five (5) days following written notice of such failure (provided that no more than two (2) written notices shall be given by EBSCO to Owner during any calendar year), then (i) Owner shall be deemed in default hereunder and (ii) a late fee in the amount of \$100 shall automatically be levied and assessed against Owner after the tenth day of each and every month that any monthly installment of the Annual Maintenance Fee has not been paid in full and (iii) if any portion of any installment of the Annual Maintenance Fee remains unpaid for more than 30 days (1) the remainder of the Annual Maintenance Fee for the remainder of the then applicable calendar year shall immediately become due and payable, (2) the unpaid portion of the Annual Maintenance Fee (including the remainder of the Annual Maintenance Fee for the remainder of the then applicable calendar year) shall accrue simple interest at the lesser of twelve percent (12%) per annum or the highest rate which may be charged by law (the "Applicable Rate") after the 30<sup>th</sup> day and continuing until the same has been paid in full and (3) EBSCO shall have the right to enforce its lien and foreclosure rights as set forth in Sections 5.01 and 5.05 hereof.

(c) In the event EBSCO employs an attorney or otherwise takes any legal action attempting to collect any portion of the Annual Maintenance Fee which is not paid by Owner prior to the invocation of a late fee, then Owner shall pay all reasonable attorneys' fees and expenses, court costs and all other expenses paid or incurred by EBSCO in collecting any unpaid portions of the Annual Maintenance Fee. The lien and equitable charge upon the Owner Property for the Annual Maintenance Fee shall also include all late fee charges, interest at the Applicable Rate and all reasonable attorneys' fees and expenses, court costs and all other

expenses paid and incurred by EBSCO in attempting to collection any unpaid Annual Maintenance Fee.

5.03 **Event of Default and Remedies.**

(a) Upon the occurrence of any Event of Default, EBSCO shall have the right, but not the obligation, to take any and all action necessary or required to cure such Event of Default, including, without limitation, (i) seek injunctive relief, without the necessity of posting any bond or other security, (ii) through its designated agents, employees, agents, representatives and independent contractors, enter upon the Owner Property and take any and all action necessary to extinguish such violation or cure such Event of Default and/or (iii) exercise any and all other rights and remedies available to EBSCO at law or in equity.

(b) Any and all costs and expenses paid or incurred by EBSCO as a result of or to cure any Event of Default by Owner or any Owner Parties, including, without limitation, attorneys' fees and expenses, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners, contractors, subcontractors and any other out-of-pocket costs and expenses of EBSCO, shall bear interest at the Applicable Rate from and after the date any such costs or expenses are incurred by EBSCO until the same are paid in full by Owner, shall be a personal obligation of Owner, shall constitute Individual Assessments to Owner which shall be payable as provided in Section 5.04 below and shall be enforceable against Owner and the Owner Property pursuant to the lien and foreclosure rights set forth in Sections 5.01 and 5.05 below.

5.04 **Individual Assessments.** Any and all costs and expenses incurred by EBSCO pursuant to Section 5.03(b) above as a result of any Event of Default by Owner or any Owner Parties, together with interest at the Applicable Rate, as provided in Section 5.03(b) above, shall constitute individual assessments (collectively, "Individual Assessments") against the Owner Property which shall be due and payable no later than 30 days following the given of written notice by EBSCO to Owner of the amount of such Individual Assessments and, if not timely paid in full, shall be enforceable against Owner and the Owner Property pursuant to the lien and foreclosure rights set forth in Sections 5.01 and 5.05 below. Owner covenants and agrees to promptly pay in full all Individual Assessments levied or assessed to Owner or the Owner Property.



5.05 **Non-Payment of Assessments; Remedies of EBSCO.**

(a) Owner does hereby covenant and agree to pay to EBSCO all Assessments provided for in this Agreement. All Assessments shall include the late fees and interest at the Applicable Rate as provided in Sections 5.02(b) and 5.03(b) above. In the event any monthly installment of the Annual Maintenance Fee remains unpaid for more than 30 days, then all remaining monthly installments of the Annual Maintenance Fee for the remainder of the then applicable calendar year shall be immediately due and payable in full and shall accrue interest at the Applicable Rate after the 30<sup>th</sup> day following the due date of the first monthly installment of the Annual Maintenance Fee which has not been paid.

(b) In the event EBSCO employs an attorney or otherwise takes any legal action attempting to collect any amounts due hereunder from Owner, then Owner shall pay all reasonable attorneys' fees and expenses, court costs and all other expenses paid or incurred by EBSCO in collecting any unpaid Assessments. The lien and equitable charge upon the Owner Property for Assessments shall also include all late fee charges, interest at the Applicable Rate and all reasonable attorneys' fees and expenses, court costs and all other expenses paid and incurred by EBSCO in attempting to collection any unpaid Assessments.

(c) In the event any portion of the then applicable monthly installment of the Annual Maintenance Fee remains unpaid for more than 30 days (as provided in Section 5.02(b) above) or any Individual Assessments are not paid in full within 30 days following written notice from EBSCO to Owner (as provided in Section 5.04 above), then Owner shall be deemed in default hereunder, in which event, in addition to all other rights and remedies provided at law or in equity, EBSCO may, at any time thereafter, undertake any or all of the following remedies:

(i) EBSCO may commence and maintain a suit at law against Owner to enforce such charges and obligations for Assessments and any such judgment rendered in such action shall include the then applicable late fee charge and interest at the Applicable Rate, together with reasonable attorneys' fees and expenses, court costs and all other expenses paid or incurred by EBSCO in collecting such unpaid Assessments; and/or

(ii) EBSCO may enforce the lien created pursuant to Sections 5.01 and 5.05(d) hereof in the manner hereinafter provided.

(d) There is hereby created a continuing lien on the Owner Property and all Improvements thereto, with power of sale, in favor of EBSCO which secures the payment to EBSCO of any and all Assessments levied against or upon the Owner Property, all late fees or charges, interest at the Applicable Rate and all reasonable attorneys' fee and expenses, court costs and all other expenses paid or incurred by EBSCO in collecting any Assessments. If any portion of any Assessments remains unpaid for more than 30 days following the due date for the payment of such Assessments, then, in either event, at any time thereafter, EBSCO may, but shall not be obligated to, make written demand on the Owner which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included in a single lien. If such delinquency is not paid in

full within ten (10) days after the giving of such demand or, even without giving demand, EBSCO may file a claim of lien and perfect its lien against the Owner Property which claim shall contain the following information and be recorded in the Probate Office:

- (i) The name of Owner;
- (ii) The legal description, and street address, if any, of the Owner Property upon which the lien claim is made;
- (iii) The total amount claimed to be due including late fee charges, interest at the Applicable Rate, collection costs and attorneys' fees and expenses incurred to date, and a statement, if applicable, that such charges and expenses shall continue to accrue and be charged until full payment has been received by EBSCO; and
- (iv) A statement that the claim of lien is made by EBSCO pursuant to this Agreement and is claimed against the Owner Property in an amount equal to that stated therein.

The lien provided for herein shall be in favor of EBSCO and may foreclosed at any time following the filing of such lien in the Probate Office in the same manner as a foreclosure of a mortgage on real property containing a power of sale under the laws of the State of Alabama, as the same may be modified or amended from time to time. EBSCO shall have the right and power to bid at such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell the Owner Property. Owner shall be deemed to (1) grant to and vest in EBSCO and its agents, the right and power to exercise the power of sale granted herein to foreclose the lien created herein, (2) grant to and vest in EBSCO and its agents, the right and power to bring all actions against Owner personally for the collection of all amounts due from Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

5.06 **Subordination of Lien**. Notwithstanding anything provided herein to the contrary, but subject to the remaining terms and provisions of this Section 5.06, the lien for Assessments and other charges authorized herein with respect to the Owner Property is and shall be subordinate to the lien of any Mortgage, but only to the extent that the Mortgage is recorded in the Probate Office prior to the filing of the claim of lien by EBSCO pursuant to Section 5.05(d) above. When the holder of any Mortgage exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in the Owner Property, then, notwithstanding anything provided herein to the contrary, the holder of such Mortgage or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any unpaid amounts owing as the Annual Maintenance Fee which have accrued and remain unpaid for any period of time prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such holder was recorded in the Probate Office prior to the filing of the claim of lien by EBSCO pursuant to Section 5.05(d) above and (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to the Owner Property from and after the date of such foreclosure sale. The foregoing shall not relieve Owner from the personal obligation to



pay all Assessments and other charges levied, assessed or incurred by EBSCO and EBSCO shall have the right to pursue all rights and remedies against Owner notwithstanding the foreclosure of a Mortgage on the Owner Property.

5.07 **Certificates**. EBSCO (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by EBSCO, furnish to any Owner a certificate in writing setting forth whether the Assessments for which Owner is responsible have been paid, and, if not paid, the outstanding amount due and other costs and expenses due from Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

5.08 **Non-Exclusive Remedies**. Notwithstanding anything provided to the contrary in this Agreement, the rights and remedies granted to EBSCO pursuant to the terms and provisions of this Agreement upon the occurrence of any default or Even of Default by Owner or any Owner Parties are in addition to, and shall not be deemed to limit, any other rights and remedies available to EBSCO at law or in equity.

5.09 **Default by EBSCO or Permitted Assigns**. In the event EBSCO (or any Permitted Assignee) fails to perform any of its obligations under this Agreement and such failure is not cured within 30 days following the giving of written notice by Owner to EBSCO (or any Permitted Assignee), then, subject to the remaining terms and provisions of this Section 5.09, Owner shall have the right to exercise any and all rights and remedies available to Owner at law or in equity. Notwithstanding the foregoing, (a) if any failure to perform by EBSCO (or any Permitted Assignee) cannot, with reasonable diligence, be fully and completely remedied and cured within 30 days following the given of written notice by Owner to EBSCO (or any Permitted Assignee), then EBSCO (or any Permitted Assignee) shall have a reasonable period of time to cure the same (but in no event more than 90 days from the date that written notice of such failure to perform is given by Owner) and (b) in no event shall EBSCO (or any Permitted Assignee) be liable for any loss of profits or any punitive, speculative or consequential damages as a result of any failure to perform under this Agreement.

## ARTICLE 6

### **MISCELLANEOUS PROVISIONS**

#### 6.01 **Successors and Assigns**.

(a) The easements, covenants, restrictions, assessments, liens, and provisions contained in the Agreement are intended to touch and concern the Owner Property and the EBSCO Property and shall run with title to the Owner Property and the EBSCO Property, shall be perpetual (except as otherwise provided to the contrary in this Agreement), and shall be binding upon, and inure to the benefit of, Owner, EBSCO and their respective successors and assigns. In addition, Owner shall have the right to transfer and assign its rights and obligations under this Agreement to any tenant or subtenant of the Owner Property provided that Owner shall remain primarily liable for the payment and performance of all obligations hereunder.

(b) Notwithstanding anything provided in this Agreement to the contrary, EBSCO reserves the right, in its sole and absolute discretion, to transfer and assign its rights, interests and obligations under this Agreement to any Permitted Assignee. Any such transfer of EBSCO's rights, interests and obligations under this Agreement shall be evidenced by a written assignment and assumption agreement recorded in the Probate Office and, following the effective date of such assignment and assumption, such Permitted Assignee shall be solely responsible for the exercise and enforcement of all rights granted to EBSCO hereunder and for the performance of all obligations of EBSCO thereafter arising or accruing hereunder, and EBSCO shall have no further liability or obligation hereunder arising or accruing after the effective date of such assignment and assumption.

6.02 **Amendments**. This Agreement may not be amended or modified except by an instrument in writing executed by the then owner of the Owner Property and EBSCO (or any Permitted Assignee of EBSCO). The then owner of the Owner Property is responsible for making sure any mortgagee of its property who is required to sign an amendment to this Agreement does so.

6.03 **Notices**.

(a) All notices required or permitted hereunder shall be in writing and shall be served on all of the parties hereto at the following addresses:

If to EBSCO: EBSCO Industries, Inc.  
1 Mt Laurel Avenue, Suite 200  
Birmingham, Alabama 35242  
Attention: EBSCO Realty (c/o Brooks Knapp)  
Fax: (205) 408-8906  
Email: bknapp@ebsco.com

With a copy to: Bradley G. Siegal  
Maynard, Cooper & Gale, P.C.  
1700 Regions Harbert Plaza  
1901 6<sup>th</sup> Avenue North  
Birmingham, Alabama 35203  
Fax: (205) 714-6785  
Email: bsiegal@maynardcooper.com

If to Owner: Naaman Holdings, LLC  
5221 Cahaba Valley Cove  
Birmingham, AL 35242  
Fax: 205-533-7385  
Email: [eb@naamanclinic.com](mailto:eb@naamanclinic.com)  
[jbailey@naamanclinic.com](mailto:jbailey@naamanclinic.com)



With a copy to: Frank C. Galloway III  
Galloway, Scott & Hancock, LLC  
2200 Woodcrest Place, Suite 310  
Birmingham, AL 35209  
Fax: (205) 949-5581  
Email: [fcg3@gallowayscott.com](mailto:fcg3@gallowayscott.com)

(b) Any such notices shall be deemed to be sufficiently given or served upon any party hereto when (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above, (iii) deposited with a nationally recognized overnight delivery courier service for next business day delivery and addressed as set forth above, (iv) sent by facsimile transmission during regular business hours of any business day, in which case notice shall be deemed given upon confirmation of transmission of such facsimile notice, or (v) sent by electronic mail (email) to the email address set forth above, in which case notice shall be deemed given upon confirmation of transmission of such email notice. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

#### 6.04 Miscellaneous.

(a) This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral agreements and undertakings of the parties relating to the subject matter of this Agreement.

(b) The paragraph headings and captions used herein are for convenience of reference only and shall in no way define, limit, describe or restrict the scope or intent of this Agreement or in any way affect the terms or provisions hereof.

(c) Whenever the context requires or permits, the use of the masculine gender shall be deemed to include the feminine, the singular shall include the plural and vice versa.

(d) If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(f) Time is of the essence in the performance of all obligations of each party to this Agreement.

(g) The parties hereto and their respective counsel have participated in the drafting and redrafting of this Agreement and the general rules of construction which would construe any provisions of this Agreement in favor of or to the advantage of one party as opposed to the other as a result of one party drafting this Agreement as opposed to the other or in resolving any conflict or ambiguity in favor of one party as opposed to the other on the basis

of which party drafted this Agreement are hereby expressly waived by all parties to this Agreement.

(h) EBSCO and Owner, for themselves and their respective successors and assigns, covenant and agree to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, which may be reasonably requested by any party to this Agreement for the purpose of and in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

(i) No delay or omission in the exercise of any right accruing upon any default by any party hereto shall impair the rights of any other party hereto or be construed to be a waiver thereof by either party, and every such right may be exercised at any time during the continuance of such default. A waiver of a breach of, or a default in, any of the terms and conditions of the Agreement shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement.

(j) In the event of any default by any party hereto in the prompt, timely and complete performance of its obligations hereunder, then (i) the non-defaulting party shall have the right, at its option, to exercise any and all rights and remedies available to such party at law or in equity and (ii) the defaulting party agrees to pay to the non-defaulting party all reasonable attorneys' fees, costs and expenses incurred by the non-defaulting party in enforcing the terms and provisions of this Agreement.

(k) Nothing contained in this Agreement and no action by the parties hereto will be deemed or construed to create the relationship of principal and agent, or a partnership, joint venture or any association between the parties hereto. Except for any successors and assigns of the parties hereto and any Permitted Assignee, this Agreement does not create any rights or obligations in favor of any third parties who have not executed this Agreement.

*[The remainder of this page has been intentionally left blank]*



IN WITNESS WHEREOF, EBSCO and Owner have executed this Agreement on the date stated above.

**EBSCO:**

**EBSCO INDUSTRIES, INC.,**  
a Delaware corporation

By: Brooks Knapp  
Printed Name: Brooks Knapp  
Its: Vice President

STATE OF ALABAMA       }  
                                  Shelby  
COUNTY OF JEFFERSON   }

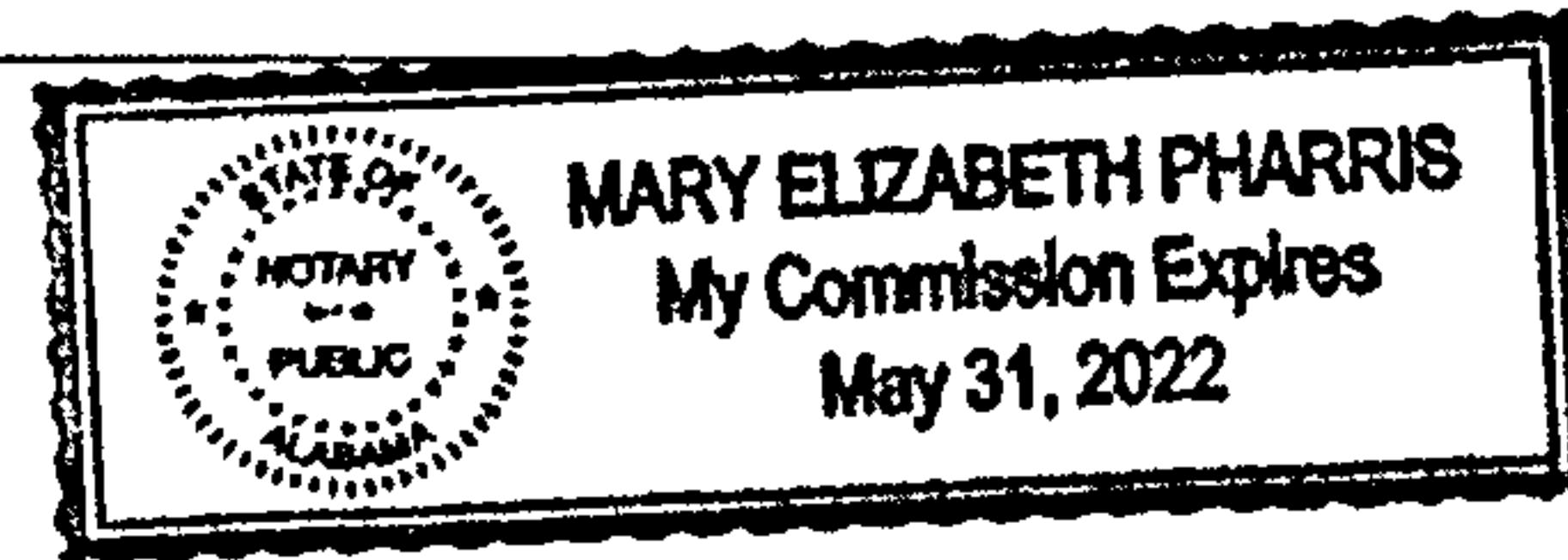
ss:

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Brooks Knapp, whose name as Vice President of EBSCO INDUSTRIES, INC., a Delaware corporation, 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 this instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 19<sup>th</sup> day of November, 2020.

[NOTARIAL SEAL]

Mary Elizabeth Pharris  
Notary Public  
My Commission Expires:







20201120000534070 11/20/2020 03:54:02 PM RESTCOVN  
29/33

**EXHIBIT A TO RESTRICTIVE USE AGREEMENT**

**Legal Description of Owner Property**

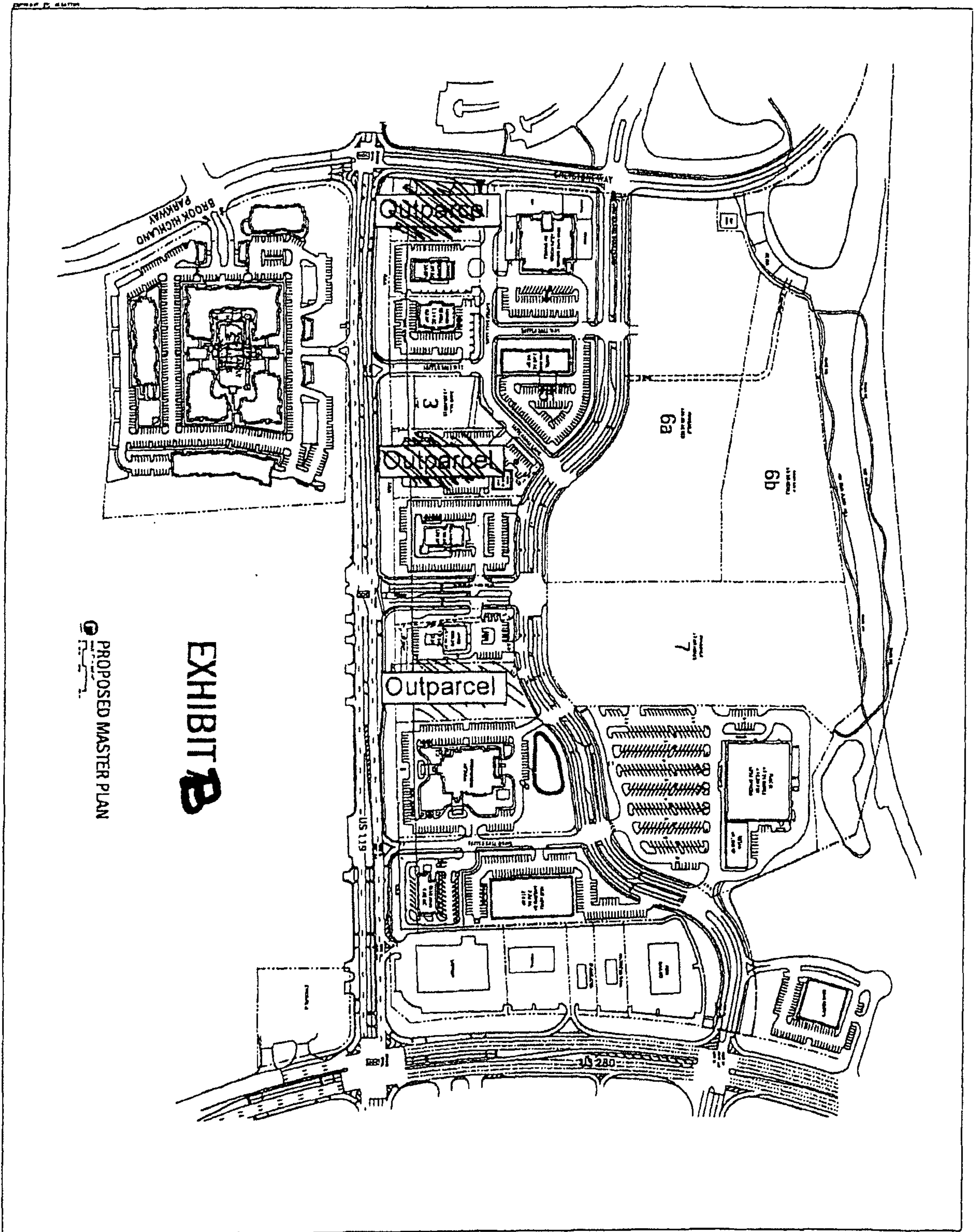
Lot 4, according to the Survey of Tattersall Park Resurvey No. 3, as recorded in Map Book 49, Page 81A & B, in the Probate Office of Shelby County, Alabama.

20201120000534070 11/20/2020 03:54:02 PM RESTCOVN  
30/33

**EXHIBIT B TO RESTRICTIVE USE AGREEMENT**

**Legal Description/Site Plan of EBSCO Property**





NOTE: EBSO PROGRAM SHOWN IN ATTACHED LINES

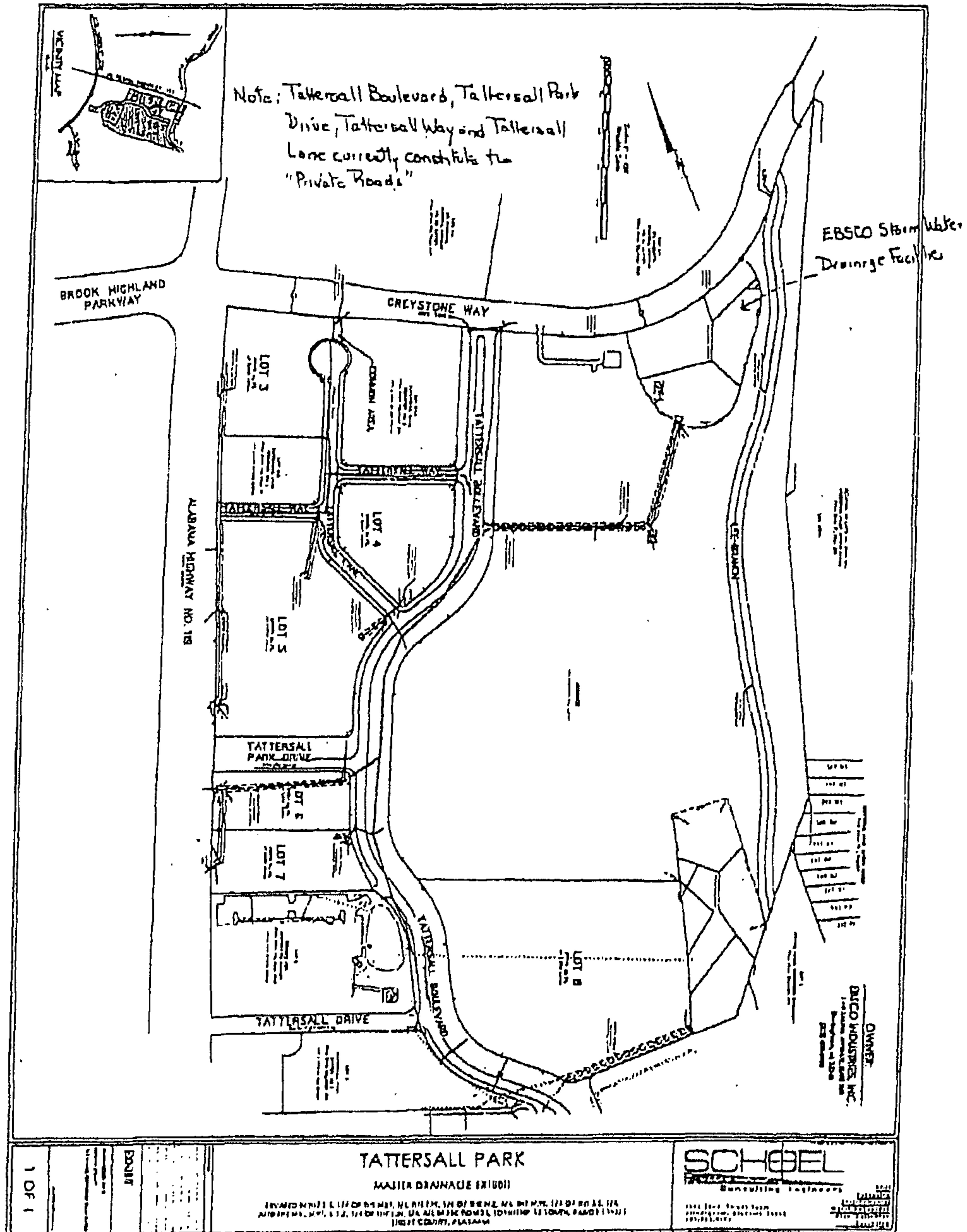
**EXHIBIT C TO RESTRICTIVE USE AGREEMENT**

**Site Plan**

See Attached.



Exhibit "C"



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
11/20/2020 03:54:02 PM  
\$118.00 CHERRY  
20201120000534070

Allen S. Bayl



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
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Allen S. Bayl