

After recording please return to:

Brian P. Cain, Esq.
Holt Ney Zatcoff & Wasserman, LLP
100 Galleria Pkwy., Suite 1800
Atlanta, Georgia 30339

**DECLARATION OF EASEMENTS
COVENANTS, CONDITIONS, AND RESTRICTIONS
(Inverness Corners Lot 1B-2)**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made this 20th day of July, 2022, by BRANCH INVERNESS ASSOCIATES, LP, a Delaware limited partnership (hereinafter referred to as "Branch").

W I T N E S S E T H:

WHEREAS, Branch owns that certain shopping center located in Shelby County, Alabama, commonly known as Inverness Corners (the "Shopping Center"), which is more particularly described on **Exhibit A** attached hereto and by this reference made a part hereof. For the avoidance of doubt, the Shopping Center includes Lots 1-A and 1-B1 according to the Resurvey of Lot 1B, Inverness Corners Subdivision as recorded in Map Book 51, Page 76, in the Probate Office of Shelby County, Alabama.

WHEREAS, simultaneously herewith, Branch will be conveying the Shopping Center to third party, but will continue to own that certain tract containing 0.8 acres being more particularly described on **Exhibit B** attached hereto and by this reference made a part hereof (the "Outparcel") (the Shopping Center and the Outparcel are sometimes together referred to as the "Project");

WHEREAS, a site plan depicting the Project is attached as **Exhibit C** and incorporated herein by reference ("Site Plan"); and

WHEREAS, Branch desires to establish and create certain easements, covenants, conditions, and restrictions on the Project;

NOW, THEREFORE, Branch hereby declares that the Project is now and shall be hereafter owned, held, transferred, sold, conveyed, leased, subleased, used, maintained, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, and easements hereinafter set forth in this Declaration, and every grantee of any interest in the Project, by acceptance of a deed or other conveyance, whether or not such deed or other conveyance shall be signed by such grantee and whether or not such grantee shall otherwise consent in writing, shall take subject to this Declaration and shall be deemed to have assented to and agreed to the same.

ARTICLE I RECITALS AND DEFINED TERMS

1.1 The foregoing recital of facts and defined terms is incorporated herein to the same extent as if hereinafter fully set forth.

1.2 "Owner," as used herein, shall mean the record owner, whether one or more persons or entities, of a fee simple or equitable title to the Outparcel.

1.3 "Occupant," as used herein, shall mean any individual, partnership, firm, association, corporation, trust, or any other form of entity, including any Owner, from time to time, entitled to the use and occupancy of any portion of a building on the Outparcel by virtue of ownership thereof or under any lease, sublease, license, concession agreement, or other similar agreement.

ARTICLE II EXISTING AGREEMENTS AND EASEMENTS

2.1 Existing Agreements. The Project is subject to the covenants, conditions and restrictions contained in that certain Reciprocal Easement Agreement by and between Metropolitan Life Insurance Company and Investment Associates, LLC, dated November 25, 2003, and recorded in Instrument No. 20031205000788530, in the Judge of Probate Office of Shelby County, Alabama (the "Existing REA"), and all Owners and Occupants shall abide by such covenants, conditions and restrictions.

2.2 Reciprocal Access. Pursuant to the Existing REA, perpetual non-exclusive access easements for vehicular and pedestrian ingress, egress and access exist over all of the roadways, drives, traffic aisles, lanes, and curb cuts in the Project, as such access ways may exist from time to time; and Branch expressly reserves a perpetual non-exclusive access easement for vehicular and pedestrian ingress, egress and access over and through all of the roadways, drives, traffic aisles, lanes, and curb cuts on the Outparcel. Additionally, Branch hereby expressly grants to Owner and the Occupants, for the benefit of and as an appurtenance to the Outparcel, a perpetual, non-exclusive easement for vehicular and pedestrian ingress, egress, parking and access at all times over the roadways, drives, traffic aisles, lanes, curb cuts and parking areas in the Shopping Center outside of the Outparcel (collectively, the "Common Areas").

2.3 Utility Easement. Branch does hereby create, grant, convey and establish, for the benefit of Owner and the Occupants and as an appurtenance to, the Outparcel, a perpetual, non-exclusive utility easement, being twenty (20)-feet wide, for installation, maintenance, repair, and removal of underground utilities or other underground services (including, but not limited to, gas, water and electrical utilities) over, across, through and under those portions of the Shopping Center shown on **Exhibit D** which is attached hereto and incorporated herein by this reference and labeled "20' Wide Electric Telephone Data Easement", "20' Wide Gas Easement", "20' Wide Water Main Extension Easement", and "Storm Pipe" (collectively, the "Utility Easement Area"). Branch does hereby also grant to Owner and the Occupants, for the benefit of the Outparcel, a temporary construction easement over, across, and through an area that is five (5) feet on either side of the Utility Easement Area for the construction of such utility lines, which temporary construction easement shall expire automatically upon the earlier of (a) the completion of the installation of the utilities or (b) twelve (12) months after the commencement of construction on the Outparcel. Branch hereby also grants to Owner and the Occupants, for the benefit of the Outparcel, reasonable ingress and egress over, across and through the Shopping Center at all times in connection with the operation, maintenance, repair, or removal of any such utility or service.

2.4 Garbage Collection Easement. Branch does hereby create, grant, convey and establish, for the benefit of Owner and the Occupants and as an appurtenance to, the Outparcel, a perpetual, exclusive easement for construction, maintenance and operation of a service area for the collection of garbage over, across, through and under that portion of the Shopping Center shown on **Exhibit D** and labeled "Dumpster Pad Easement". Branch hereby also grants to Owner and the Occupants, for the benefit of the Outparcel, reasonable ingress and egress over, across and through the Shopping Center at all times in connection with the use of the garbage collection easement.

2.5 Storm Water Drainage Line Easement. Branch hereby reserves, creates and and establishes, for the benefit of Branch, and as an appurtenance to the Shopping Center, a perpetual, non-exclusive easement for use of the storm water drainage lines depicted on **Exhibit D**, which the parties hereto acknowledge are being relocated as set forth thereon.

ARTICLE III DEVELOPMENT AND USE RESTRICTIONS

3.1 Development Restrictions.

(a) The Outparcel shall be restricted to development of a one-story retail building and limited to not more than three (3) tenants. No building, sign or structure on the Outparcel shall exceed twenty-five (25) feet above finished-floor elevation in height and no building shall exceed six thousand five hundred (6,500) square feet in accordance with approved construction plans.

(b) The site plan for the Outparcel and all building elevations for improvements on the Outparcel shall be subject to the prior written consent of Branch and Kohl's Department Stores, Inc. ("Kohl's"), such consent not to be unreasonably withheld, conditioned or delayed, provided that such improvements, signage, parking and other landscaping and design features

compliment the contiguous uses and design aesthetic within the Shopping Center. Kohl's shall have a period of fifteen (15) business days from Owner's submittal of its construction plans for review and comment. Branch shall make all commercially reasonable efforts to assist Owner in obtaining Kohl's approval of the construction plans. Once Owner has obtained such approval, Owner may commence construction at any time after the date hereof provided that such construction is performed in substantial accordance with the approved plans and the terms and conditions set forth herein.

3.2 Use Restrictions. The Outparcel is subject to the restrictions and exclusive uses of owners and tenants in the Shopping Center, which are set forth in **Exhibit E** and **Exhibit F** attached hereto and incorporated herein by reference, and Branch hereby represents, warrants and covenants to Owner that such Exhibits E and F are true and accurate in all material respects as of the date hereof. Upon termination of the lease with the existing tenant(s) described in **Exhibit E**, the restrictions and/or exclusive uses described in **Exhibit E** shall no longer burden or affect the Outparcel. Owner shall be prohibited from leasing to any current or future tenants of the Shopping Center, including such tenant's assignees or subtenants, for a period of three (3) years after such tenant vacates its leased premises in the Shopping Center. Branch hereby acknowledges and agrees that it will not impose on the Outparcel any new restrictions or exclusive uses affecting the Shopping Center after the date hereof except to the extent otherwise agreed by Owner in writing. Without the prior written consent of Branch, the Outparcel shall not be used for any of the following purposes and none of the following conditions shall be permitted on the Outparcel, which conditions shall not be deemed to limit the restrictions set forth in Section 3.1 (a) above:

(a) Any use which is illegal or dangerous, which constitutes a public or private nuisance, or which creates vibrations or offensive odors, fumes, dust or vapors, other than normal cooking odors;

(b) Any exterior flashing lights, strobe lights, search lights, or video screens (provided that interior video screens shall not be restricted provided they are not intentionally mounted so as to be primarily visible from the exterior);

(c) Any use for a warehouse operation (which shall not include storage incidental to a retail operation constructed on the same premises), any drilling for and/or removal of subsurface conditions, any manufacturing or industrial operation, any processing or rendering plant, or any lumber yard;

(d) The storage of explosives or other unusually hazardous materials (other than materials sold or used in the normal course of business, provided that the same are handled in accordance with all governmental rules, regulations, and requirements applicable thereto);

(e) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction or pre-sale trailers during periods of construction, reconstruction, or maintenance);

(f) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage dumpsters or compactors which are screened from public view);

(g) Any use for any mobile, truck, boat, trailer, RV or other motorized vehicle sales, rental, or leasing;

(h) Any funeral parlor or mortuary;

(i) Any adult bookstore or establishment selling or exhibiting pornographic materials;

(j) Any massage parlor (provided that nothing herein shall restrict massage services in connection with the operation of a fitness center, physical therapy clinic or health care facility or upscale spa services) or any establishment selling or exhibiting paraphernalia for use with illicit drugs, or any so-called "head shop";

(k) Any off-track betting parlor or other gambling establishment; provided lottery sales departments incidental to the operation of a permitted use shall be permitted to the extent operated, or authorized by the appropriate governmental authority;

(l) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of any Occupant to determine its own selling prices, nor shall it preclude the conduct of periodic seasonal, promotional or clearance sales or legitimate going out of business sales not to exceed thirty (30) days); or

(m) Any pawn shop, flea market, "second hand," "surplus," used clothing, or "thrift" store or liquidation outlet, any auction hall, tent sale, carnival, circus, amusement park, bingo parlor, or shooting gallery.

3.3 Representations and Warranties. Branch hereby represents and warrants to Owner that it has no actual knowledge of any private, unrecorded restrictions, covenants or agreements that will prevent Owner from accommodating up to three (3) business operations in the building to be constructed on the Outparcel.

ARTICLE IV MAINTENANCE AND REPAIR

4.1 Common Areas. Branch shall be responsible for the maintenance, repair and replacement of any Common Areas outside of the Outparcel and any associated landscaping, sidewalks and streetlights associated with the Common Areas; provided, however, that Owner shall reimburse Branch for such maintenance Four Hundred and No/100 Dollars (\$400.00) per month (the "CAM Contribution"). Owner's obligation to pay the CAM Contribution shall begin on the date upon which Owner commences construction on the Outparcel. Any escalations of the CAM Contribution shall not exceed two (2%) percent in the aggregate over any one (1) year period.

4.2 General Maintenance.

(a) Owner shall be responsible for the maintenance, repair and replacement of the building and common areas located on the Outparcel and shall maintain all such improvements in a safe, clean, sightly, good, and functional first-class condition and state of repair. Without limiting the generality of the foregoing, Owner shall perform or cause to be performed the following specific items of maintenance and upkeep with respect to the areas located within the Outparcel:

(1) keeping and maintaining all paved surfaces in good order and repair and in a safe condition, patching, restriping, repairing and resurfacing such areas when appropriate;

(2) removing papers, debris, filth, refuse, ice and snow, and sweeping to the extent necessary to keep such areas in a first-class, clean, neat and orderly condition;

(3) mowing and otherwise maintaining all landscaped and planted areas, and promptly removing and replacing diseased or dead shrubs and other landscaping as necessary;

(4) operating, maintaining and repairing any lighting standards, including replacement of light bulbs; and

(5) keeping the drainage improvements and all storm water drainage lines and facilities on its property in good operating condition and state of repair and free of debris and other obstructions.

(b) If Owner fails to maintain or repair the Outparcel in a first-class condition, Branch will have self-help rights to maintain and repair the Outparcel as hereinafter provided in Section 6.7 hereof.

4.3 Construction Obligations.

(a) Owner shall diligently pursue completion of exterior construction of the improvements on the Outparcel within eight (8) months from commencement thereof. Owner shall be required to keep all construction materials and equipment on the Outparcel and shall have no right to store or place construction materials on other areas in the Shopping Center without Branch's prior written consent. In no event shall any construction work on the Outparcel occur between November 1 and December 31 of any calendar year (excluding any interior build-out work by Occupants). During construction, Owner shall use commercially reasonable efforts to minimize disruptions to other tenants' business within the Shopping Center.

(b) Branch hereby grants to Owner and the Occupants, for the benefit of the Outparcel, reasonable ingress and egress over, across and through the Shopping Center at all times for the construction of improvements on the Outparcel. Owner shall clean, as reasonably needed, any portion of the Common Areas used by its construction vehicles of mud, dirt and construction

debris resulting from the construction of improvements on the Outparcel, and upon completion of such construction activity, shall promptly restore any damage to the Common Areas as a result of the constructions of improvements on the Outparcel to a condition which is equal to or better than the condition which existed prior to such damage.

(c) Notwithstanding any provision herein to the contrary, if in the course of any construction activity on the Outparcel, including, but not limited to, activity to establish a utility hook-up to improvements constructed upon the Outparcel, any existing utility lines, drainage lines or facilities, streets, curbs or other improvements are damaged or, in the case of utility or drainage lines, blocked in any way, Owner shall, at its sole cost and expense, restore or repair such lines, facilities, streets, curbs or other improvements to a condition at least as good as existed prior to the damage or blockage, and shall pay any reasonable cost or expenses incurred by any person other than such Owner arising from or as a result of such damage or blockage.

(d) Prior to the commencement of any utility work within the Shopping Center, Owner shall provide to Branch the final construction plans (in substantial accordance with the previously approved plans) and a construction schedule for such work. The construction plans for the utility work shall have been approved prior to the date hereof, and Owner shall perform such work in substantial accordance with the approved plans. Owner acknowledges that it is imperative that access and traffic flow within the Shopping Center not be disrupted; therefore, except as set forth in the immediately following sentence, no work outside the boundaries of the Outparcel shall continue for more than 24 hours. Notwithstanding the foregoing or anything to the contrary herein, Branch acknowledges that certain work outside the boundaries of the Outparcel may continue for more than 24 hours (e.g., bringing utilities to the Outparcel, parking lot tie-in work), but in no event will utility work exceed more than seven (7) business days, and agrees that Owner may perform such work for periods in excess of 24 hours; provided, however, that (i) such work shall be completed as expeditiously as possible, (ii) Owner shall use commercially reasonable efforts to maintain at all times (A) traffic flow through all access drives in the Shopping Center, (B) availability of all parking spaces in the Shopping Center and (C) the areas outside the boundaries of the Outparcel in a neat and clean condition and, (iii) in the exercise of such work, Owner shall use commercially reasonable efforts to avoid and minimize any disruption or interference that materially and adversely affects access and traffic flow within the Shopping Center, (iv) Owner shall cover any ditching when not directly marked off and supervised and (v) no work shall be performed in the Utility Easement Area after 5:30 P.M. or on Saturdays, Sundays or Federal or State holidays. Any connections made to the existing utilities within the Shopping Center that may disrupt the utilities of other tenants in the Shopping Center must be performed prior to 8:00 a.m. or after 8:00 p.m., and in no event shall any roadways providing access to or within the Shopping Center be closed.

(e) Branch does hereby grant to Owner and the Occupants, for the benefit of the Outparcel, a temporary construction easement for modifying and tying into the existing parking lot and islands, in substantial accordance with construction plans approved by Branch prior to the date hereof, over, across, through and under the area labeled "Variable Width Temporary Grading and Construction Easement" as shown on **Exhibit D**, which temporary construction easement shall expire automatically upon the earlier of (a) completion of such parking lot work or (b) twelve (12) months after the commencement of construction on the Outparcel.

ARTICLE V
INSURANCE AND INDEMNIFICATION

5.1 Casualty Insurance. Owner shall obtain and keep in full force and effect at all times, to the extent obtainable, "special form," "all-risk" or equivalent property insurance on the improvements located on the Outparcel in an amount equal to one hundred percent (100%) of the insurable replacement cost of such improvements, with the proceeds of such insurance to be used for repair and replacement as required herein. Such insurance shall include a waiver of subrogation rights against the other Owners.

5.2 Indemnification. Owner shall indemnify and hold Branch harmless (except for loss or damage resulting from the tortious acts of such other parties, or from the negligence or willful misconduct of Branch) from and against any claims, actions, demands, liabilities, injuries, losses, and expenses (including reasonable attorneys' fees) in connection with the loss of life, personal injury and/or damage to property arising from or out of Owner's use of the easement rights granted hereunder.

5.3 Liability Insurance. (a) Owner shall maintain or cause to be maintained public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition of the Outparcel or the improvements located thereon, or by the acts of such Owner or the tenants, agents, contractors, employees, licensees, customers and invitees of Owner or the Occupants of the Outparcel, except as otherwise herein provided. Such insurance shall be on an occurrence basis with a single per occurrence liability limit of not less than \$2,000,000.00, which limit may be met through a combination of primary, umbrella, or excess coverage. Any insurance required to be carried hereunder may be carried (i) under a "blanket" policy or policies covering other properties of the Owner and its subsidiaries, controlling or affiliated entities, or (ii) through self-insurance so long as the Owner maintains a net worth of not less than \$100,000,000.00, such net worth to be evidenced by current financial statements certified by an independent certified public accountant. Owner shall, upon written request from Branch, furnish to Branch certificates of insurance or, in the case of self-insurance, the accountant's statement referred to above, evidencing the existence of the insurance required to be carried pursuant to this Section.

ARTICLE VI
MISCELLANEOUS

6.1 Notices. Every notice, demand, consent, approval, or other communication required or permitted to be given to Branch shall be in writing and shall be given, delivered, or served, either by hand delivery, by recognized overnight courier service with receipt, or by certified U.S. mail, return receipt requested, addressed to the intended recipient at the address most recently furnished by Branch for the giving of notices hereunder. At the time of Branch's sale of any tract, either the owner selling such tract or the new owner of such tract shall give written notice to the owners of each other tract of the name and address of such new owner. If the address for an owner of a tract is unknown, Branch shall be deemed to be the agent for such new owner for

purposes of notices hereunder. For purposes hereof, until changes are provided as hereinabove described, all notices shall be given to the following addresses:

If to Branch:

Branch Inverness Associates, LP
3340 Peachtree Road NE
Suite 2775
Atlanta, Georgia 30326
Attn: Brett Horowitz
Email: bhorowitz@branchprop.com

With a copy to:

Holt Ney Zatcoff & Wasserman, LLP
100 Galleria Parkway
Suite 1800
Atlanta, Georgia 30339
Attn: Brian P. Cain, Esq.
Email: bcain@hnzw.com

6.2 Covenants Run with the Land. The covenants and agreements made hereunder shall constitute covenants running with, and shall be appurtenant to, the Outparcel and the Shopping Center and be binding upon and inure to the benefit of the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title.

6.3 Term. The restrictions, covenants and conditions set forth in this Declaration shall be binding upon and enforceable against Owner and Occupants for a period of twenty (20) years from the date this Declaration is filed in the public deed records maintained by the appropriate governmental subdivision in which the Outparcel is located, after which time, such restrictions, covenants, and conditions shall be automatically extended for successive periods of twenty (20) years each. In the event any law prohibits any such restrictions, covenants, and/or conditions from being enforceable for a period in excess of twenty (20) years, or beyond any other stated period, Branch is granted a power of attorney, coupled with an interest, to rerecord this Declaration at any time and from time to time for the purpose of extending the enforceability of same as contemplated by this Section.

6.4 Certificates of Compliance. Within twenty (20) days following written request by Owner or Occupant of the Outparcel, Branch shall issue to Owner or Occupant or to a prospective or existing lender of such requesting Owner or to a prospective successor in title to such requesting Owner, a certificate in recordable form stating whether the Branch has given any notice to the Owner of any default or violation of the terms and conditions of this Declaration, and if there are such defaults or violations of which such notice has been given and which remain uncured, specifying the nature thereof.

6.5 Damage or Destruction of Building Improvements. In the event any of the building improvements, including, but not limited to, building signage, are damaged by fire or other casualty, Owner shall immediately remove the debris resulting from such event and, within a reasonable time thereafter, Owner shall either:

- (a) repair or restore the building improvements, including, but not limited to, building signage, so damaged;
- (b) erect other building improvements, including, but not limited to, building signage, in such location; or
- (c) demolish the damaged portion of such building improvements and promptly restore the area either as automobile parking and drive area or a landscaped condition reasonably approved by Branch until such time as a replacement building is erected.

Owner shall elect one of the foregoing options within sixty (60) days from the date of such casualty and, thereafter, promptly commence and diligently pursue completion of such option.

6.6 No Rights in Public Generally. The restrictions, covenants and conditions created and established in this Declaration do not, are not intended to, and/or shall not be construed to create any rights or privileges in and for the benefit of the general public. Notwithstanding anything to the contrary contained herein, Owner shall have the right to prohibit or limit any solicitation, petition signing, distribution of literature, collection of money, giving of speeches, leafletting, picketing, carrying of signs, canvassing, demonstrations, or similar activities within the Outparcel.

6.7 Enforcement. This Declaration may be enforced by Branch or Owner by any action available at law or in equity, including, but not limited to, injunctive relief and specific performance. In the event either party defaults in the performance of any of its obligations pursuant to this Declaration and such default shall continue for a period of thirty (30) days after receipt of written notice of said default from the other party, then the non-breaching party shall be entitled to cure such default; provided that, (i) the breaching party is not then in the process of diligently attempting to cure the default, and (ii) no notice or opportunity to cure shall be required in the event the default creates an emergency or interferes with the use of the Outparcel. Any and all expenses incurred by the non-breaching party in curing such default, together with an administrative fee of five percent (5%) thereon shall be payable by the breaching party within thirty (30) days of written demand therefor by the non-breaching party to the breaching party. In the event of enforcement of this Declaration by either party, said party shall be entitled to recover, in addition to any other relief available to same hereunder or at law or in equity, attorneys' fees, court costs, and interest on any amounts advanced by said party to cure such violation, such interest to be calculated at the lesser of (i) a rate of interest equal to five percent (5%) above the prime rate as set forth in the Wall Street Journal, or (ii) the highest rate permitted by Alabama law.

6.8 Merger of Title. The covenants, agreements, rights and privileges established herein shall survive any merger of title to the Outparcel.

6.9 Amendments. The provisions of this Declaration may be modified, rescinded or amended in whole or in part only with the consent of all of the parties hereto in a written instrument duly recorded in the public records of Shelby County, Alabama.

6.10 Severability. All rights provided herein may be exercised only to the extent that the exercise thereof does not violate then applicable law and shall be limited to the extent necessary to render the remaining covenants herein valid and enforceable. If any term, provision, covenant, or agreement contained herein or the application thereof to any person or circumstance shall be held illegal or unenforceable, the validity of the remaining terms, provisions, covenant, or agreements or the application of such term, provision, covenant, or agreement to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

6.11 Assignment of Branch's Rights. Any and all of the rights, powers and reservations of Branch herein contained may be assigned by Branch to any person, corporation, limited liability company, trust, association, or other entity which succeeds to ownership of the Project and which agrees to assume any or all of the duties of Branch hereunder. Upon acceptance of such assignment, said assignee shall, assume Branch's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Branch herein. Upon such assignment, and to the extent thereof, Branch shall be relieved from all liabilities, obligations, and duties hereunder arising from and after the date of such assignment. The term "Branch," as used herein, includes all such assignees and their heirs, successors and assigns. Anything contained elsewhere in this Declaration to the contrary notwithstanding, the mere conveyance or transfer of ownership of any tract of the Project by Branch to any person or party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation of Branch hereunder.

6.12 Third Party Beneficiary. This Declaration shall be construed to create third party beneficiary rights and benefits in and to Branch or any of its successors or assigns and its respective lenders and such rights and benefits shall constitute covenants running with, and shall be appurtenant to, the Project, and be binding upon and inure to the benefit of the parties which have an interest in the Project and their respective successors and assigns in title.

6.13 Governing Law. This instrument shall be construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, this Declaration is executed under seal this ____ day of _____, 2022.

BRANCH:

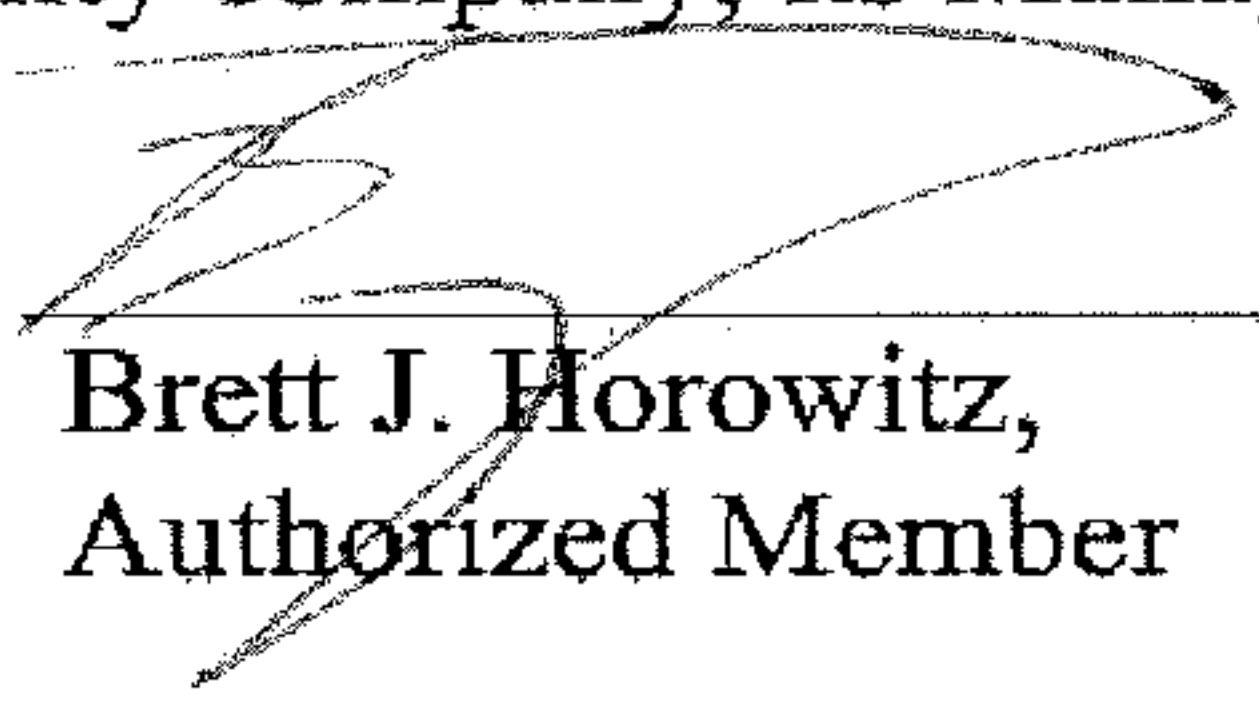
BRANCH INVERNESS ASSOCIATES, LP, a Delaware limited partnership

By: BRANCH RETAIL GP, LLC, a Georgia limited liability company, its General Partner

By: BRANCH RETAIL PARTNERS, LP, a Delaware limited partnership, its Sole Member

By: BRANCH RETAIL MANAGEMENT, LLC, a Georgia limited liability company, its General Partner

By: BRANCH ADMINISTRATIVE MANAGER, LLC, a Georgia limited liability company, its Manager

By:  (SEAL)
Brett J. Horowitz,
Authorized Member

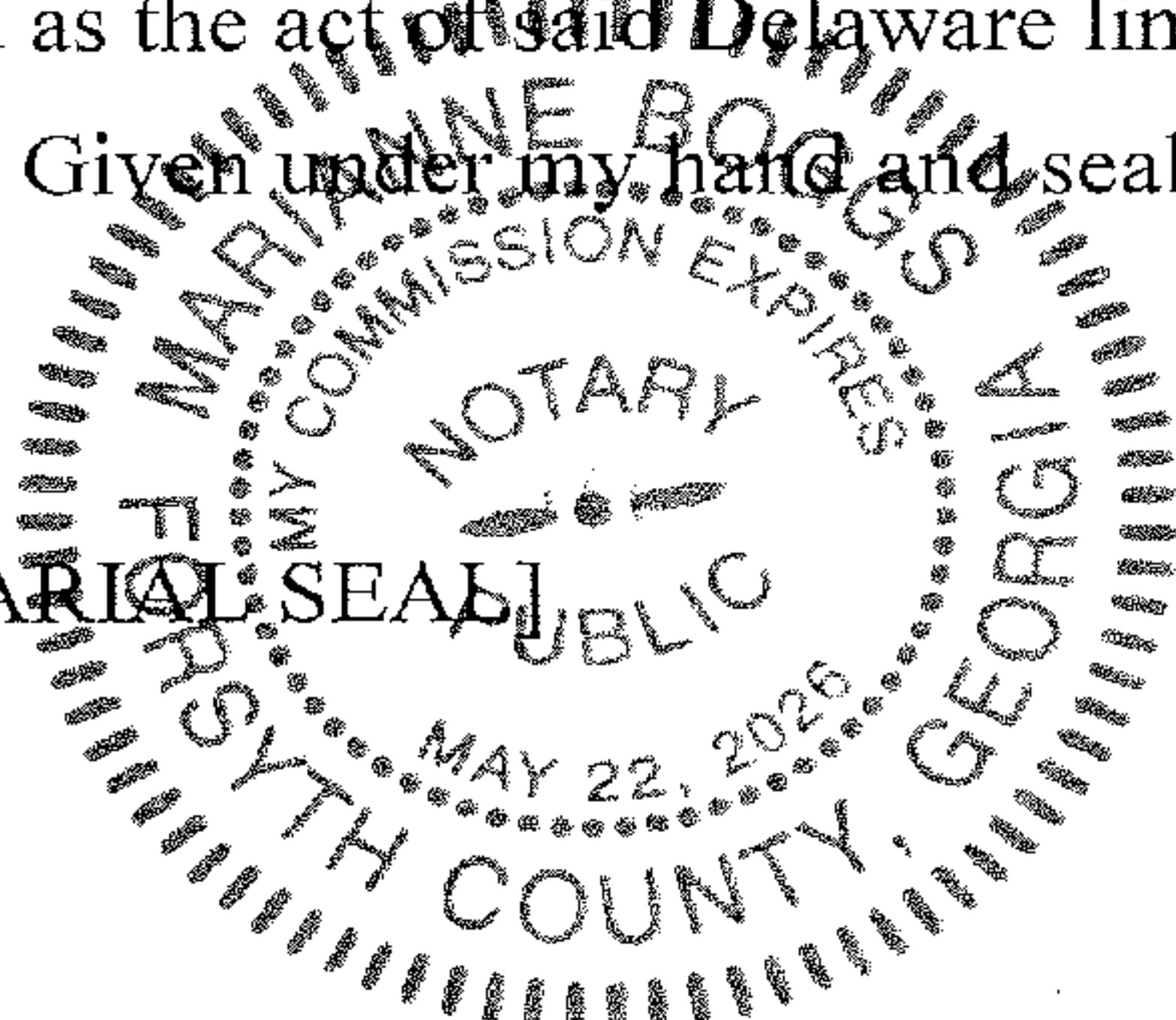
STATE OF GEORGIA)

FULTON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Brett J. Hronitz whose name as Authorized Member of Branch Administrative Manager, LLC, a Georgia limited liability company, as Manager of Branch Retail Management, LLC, a Georgia limited liability company, as General Partner of Branch Retail Partners, LP, a Delaware limited partnership, as Sole Member of Branch Retail GP, LLC, a Georgia limited liability company, as General Partner of Branch Inverness Associates, LP, a Delaware limited partnership is signed to the foregoing Declaration and who is known to me, acknowledged before me on this day that, being informed of the contents of said Declaration, he, in his capacity as such Authorized Member and with full authority, executed the same voluntarily for and as the act of said Delaware limited partnership, on the day the same bears date.

Given under my hand and seal this the 7th day of JULY, 2022.

[NOTARIAL SEAL]



Marianne Boggs
Notary Public

My Commission Expires: 5-22-2026

STATE OF ALABAMA)

COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that _____, the sole member of IIES Investments, LLC is signed to the foregoing Declaration and who is known to me, acknowledged before me on this day that, being informed of the contents of said Declaration, he, in his capacity as such sole member and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2022.

[NOTARIAL SEAL]

Notary Public

My Commission Expires: _____

EXHIBIT A

Description of the Shopping Center

Lots 1, 2, 3 and 4 according to Survey of Inverness Corners Subdivision, as recorded in Map Book 44, Page 113, in the Probate Office of Shelby County Alabama.

For the avoidance of doubt, the above description of the Shopping Center includes:

Lots 1-A and 1-B1 according to the Resurvey of Lot 1B, Inverness Corners Subdivision as recorded in Map Book 51, Page 76, in the Probate Office of Shelby County, Alabama.

EXHIBIT B

Description of The Outparcel

Lot 1B-2, as shown on that certain Resurvey of Lot 1B, Inverness Corners Subdivision, as recorded in Map Book 51, Page 76, in the Probate Office of Shelby County Alabama.

EXHIBIT D

Depiction of Utility Easement Area

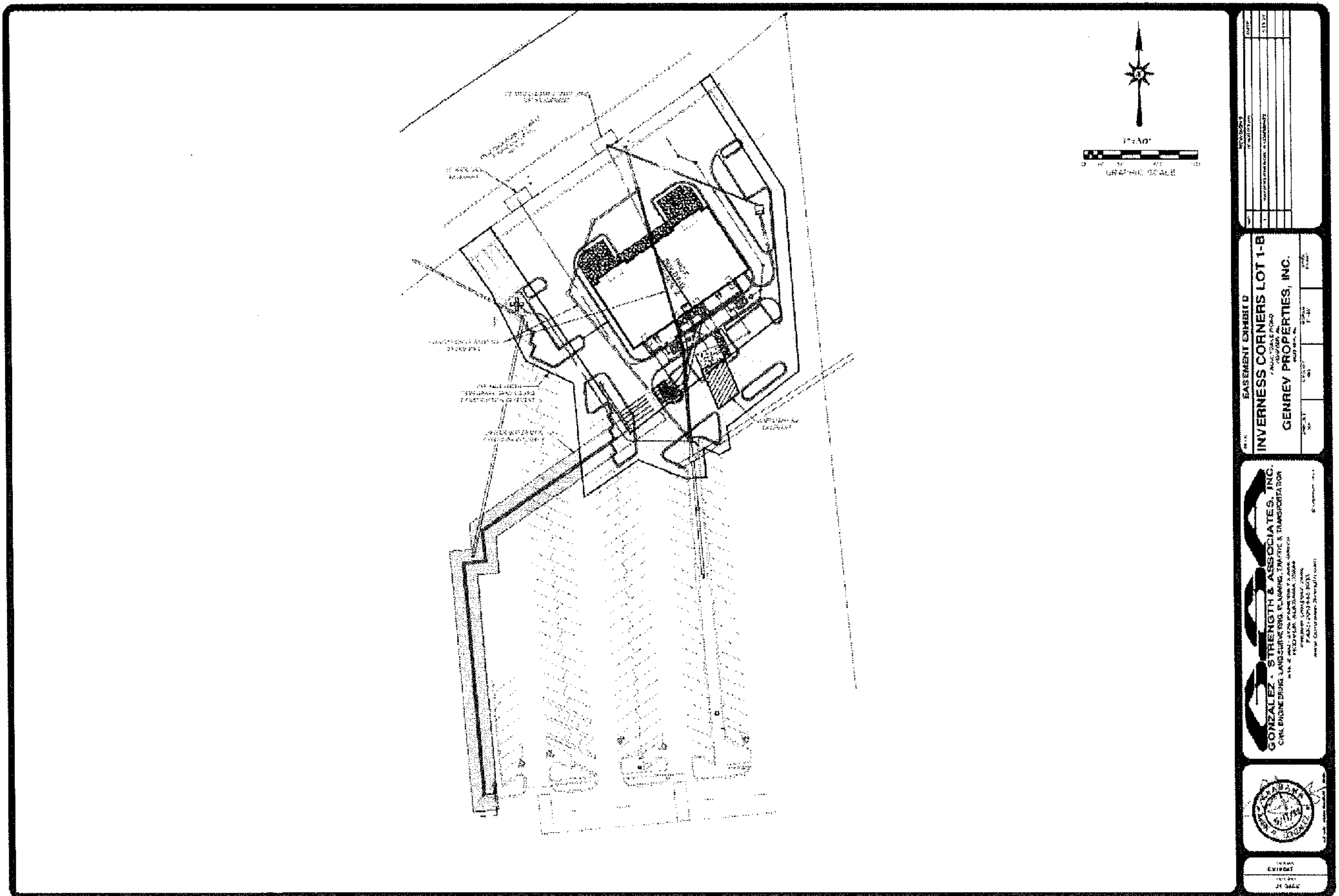


EXHIBIT E

**Restrictions, Permitted and Prohibited Uses, and Exclusive Uses
that Terminate upon Lease Termination**

H & R Block

Exclusive Use: (Second Amendment-9) Landlord shall not enter any lease for operation of a business which uses its premises in the Bldg. primarily for the Permitted Use (the "Exclusive Use"), excluding existing leases. A business shall not be deemed to use its premises in the Bldg. primarily for the Tenant's Exclusive Use if (i) less than 25% of its area is devoted to the Exclusive Use or (ii) on an annual basis, less than 25% of the gross revenues from such premises are generated by the Exclusive Use.

Kobe Japanese Steakhouse

Exclusive Use: (Lease 1.02) Landlord will not lease or consent to the use of any space to any tenant, other than those already w/in the Shopping Center as of 10/16/2016, for the primary use of a Teppanyaki grill style Japanese steakhouse and sushi bar.

Kohl's

Prohibited Use: (Lease 12) Landlord will not erect any buildings or other structures on the land described in Ex. A of the Lease (except as shown on said Ex. B of the Lease), however, Landlord may vary the depth of the buildings depicted on Ex. B, so long as the total number of parking space for customer parking (excluding spaces in the rear of the Shopping Center) shall not be reduced below the ratio of 5.25/1,000, and no structure may be moved forward of the area presently shown without Tenant's written approval.

MD Wellness and Aesthetics

Exclusive Use: (Lease 6.05) Landlord shall not enter into a lease in the Shopping Center for operation of a Competing Business which shall use its premises primarily for a weight loss and anti-aging business ("Tenant's Exclusive").

Mellow Mushroom

Prohibited Use: (Lease, Exhibit A, Rider 8) Landlord shall not construct any vertical bldg. improvements in the No Build Zone between the Premises and Valleydale Rd., as cross-hatched on Ex. A of the Lease.

Orangetheory

Exclusive Use: (Letter #1, Lease 6.05, 23) Landlord agrees not to enter into any lease for the operation of a Competing Business in the Shopping Center. Exclusive Use shall mean a fitness facility containing less than 6,000 rentable sq. ft. Competing Business shall mean a business which uses its premises in the Shopping Center primarily for the Exclusive Use, excluding any business occupying premises under a Permitted Lease. Permitted Lease means (i) a lease that was executed and in effect prior to the date of the Lease, or (ii) a new lease that is executed by a business which leased premises in the Shopping Center directly under a Prior Lease (and not a sublease), and

any sublease executed under such lease. A business shall not be deemed to use its premises in the Shopping Center primarily for the Exclusive Use if on an annual basis, less than 50% of the gross revenues from such premises are generated by the Exclusive Use.

Pure Barre 280

Exclusive Use: (Lease 1.02 pg 3) Tenant's Exclusive: Provided Tenant is operating in the whole Premises, Landlord shall not directly lease space in the Shopping Center to any other business whose primary business is the operation of a fitness concept focusing on utilization of a ballet barre ("Competing Business"). Tenant's Exclusive shall not apply (i) to Major Tenants, (ii) to existing tenants as of the Lease date, or (iii) to any tenant operating a fitness concept using a barre on an incidental basis (not as a primary business).

Sola Salon Studio

Exclusive Use: (Lease 6.05) Landlord shall not enter into any lease (or consent to a change in use for any Permitted Lease) for a personal services salon or studio salon concept in which individual salon professionals license, lease or sublease partitioned units w/in the Premises by a Competing Business* in the Shopping Center ("Exclusive"). *Competing Business shall mean a business which devotes 10% or more of its premises area for the Exclusive Use or (b) generates 10% or more of its annual gross revenues from the Exclusive Use, but excludes (i) any business occupying premises directly or indirectly under a Permitted Lease; (ii) hair salon concepts; (iii) beauty products concepts with related salons and (iv) nail salons.

Susan's Hallmark Shop

Exclusive Use: (Addendum to Lease, 3) Landlord will not lease, consent to, or permit the use of space by any tenant or occupant (including Temporary Tenants or occupants operating under lease, license or agreement having a term or one year or less) in the Shopping Center for the purpose of conducting within the Shopping Center the sale of Christmas ornaments, greeting cards and/or gift wrap (the "Restricted Items") ("Use Restrictions").

Tropical Smoothie Cafe

Exclusive Use: (Lease, 26) Landlord shall not enter into a lease for the operation of a business which uses its premises primarily for the sale of smoothies ("Tenant's Exclusive"). This limitation shall not apply to any tenant or sublease under leases existing prior to the date of execution of the Lease; or a new lease executed under an existing lease and any sublease under such lease (except for new leases executed after the date of the Lease which are under a sublease), and any business which devotes less than 25% of its premises for Tenant's Exclusive, or if on an annual basis, less than 25% of the gross revenues from such premises are generated by Tenant's Exclusive.

Wingstop

Exclusive Use: (Lease Addendum -3) Landlord will not lease or consent to the use of space by any tenant in the Shopping Center for the purpose of conducting within the Shopping Center as its principal business to (i) a food restaurant tenant having the word "Wing" in their name or (ii) a tenant serving chicken wings as a main menu item exceeding 15% of that tenant's total annual sales. Under no circumstances, will Landlord lease to Raising Cane's KFC, Bojangles, and Popeyes. Tenant agrees and understands that Tenant's Exclusive Uses shall not pertain to existing

tenants within the Shopping Center, as of the date of Lease execution, and said Tenants shall not be restricted.

EXHIBIT F

Restrictions, Permitted and Prohibited Uses, and Exclusive Uses (Perpetual)

Dreamland BBQ

Exclusive Use: (Lease 6.06) Landlord will not, after 06/10/2016, directly lease space in the Shopping Center to a "Competing Business", defined as any other business whose primary business will be the operation of a sit down full service barbecue restaurant. This Exclusive Use shall not apply to (i) any Major Tenant (with GLA in excess of 20,000 sq. ft.) or (ii) to any tenants under existing leases or (iii) any tenant present or future, who may serve barbecue on an incidental basis and not as its primary business, or (iv) traditional Asian restaurants, including Korean barbecue restaurants. If, during the Term, Tenant engages in any business similar to, or in competition with Tenant's Permitted Use within the radius of 4 miles of the Shopping Center, the Exclusive Use provision shall be immediately rendered null and of no force and effect.

Mellow Mushroom

Exclusive Use: (First Amendment-9) During the Extension Term (11/01/2010-10/31/2016), Landlord shall not enter into any lease for the operation of a Competing Business. A business shall not be deemed to use its premises primarily for the Exclusive Use if either (i) it devotes less than 25% of its area to the Exclusive Use or (ii) on an annual basis, less than 25% of the gross revenues from such premises are generated by the Exclusive Use. Exclusive Use: a restaurant primarily focused on serving pizza, pasta or Italian fare. Competing Business: a business using its premises in the Shopping Center primarily for the Exclusive Use, excluding any business occupying premises under a Permitted Lease. Permitted Lease: a lease executed prior to the date of the Lease but in effect at the date of the 1st Amend. ("Prior Lease"), or a renewal or extension or sublease of a Prior Lease or a new lease (and sublease under such lease) executed by a business which leased premises in the Shopping Center directly under a Prior Lease.

Nail Star

Exclusive Use: (Third Amendment – 5) Tenant has the exclusive use to use the Premises for the operation of a nail salon ("Exclusive Use") so long as the Premises are used Primarily for the Exclusive Use. Landlord will not lease to a business which uses its premises in the Bldg. primarily for the Exclusive Use, excluding any business occupying premises under a Permitted Lease. A "Permitted Lease" means (i) a lease executed prior to the execution of the 3rd Amend. (01/10/2014) but that is in effect as of 01/10/2014, including the lease between Sola Birmingham, LLC and Landlord ("Prior Lease"), or a renewal or extension of a Prior Lease, and any sublease executed thereunder, (ii) a new lease that is executed by a business which leased premises in the Bldg. directly (and not as a subtenant) under a Prior Lease (provided such New Lease does not provide greater rights to use the leased premises for the Exclusive use than did the Prior Lease), and any sublease executed thereunder. A business shall not be deemed to use its premises in the Bldg. primarily for the Exclusive Use if (i) it devotes less than 25% of the area of such premises to the Exclusive Use; (ii) or on an annual basis, less than 25% of the gross revenues from such premises generated by the Exclusive Use.

Verizon Wireless

Exclusive Use (Lease 6.05, Ex A-2) Landlord shall not allow any tenant or occupant of the Designated Area of the Exclusivity, as depicted on Ex. A-2, whose primary business includes any of the Permitted Use ("Tenant's Exclusive") which is furnishing wireless and/or wireline communications services and the sale and servicing of wireless and/or wireline communications equipment and related accessories, internet devices, wireless computing services, equipment and/or accessories. Tenant's Exclusive is subject to the existing rights of tenants in the Shopping Center, as of the date of the Lease.

Prohibited Use: (Lease, 1.02, Pgs 5-6, Ex A-1, 7.01, 25.30b) The bldg. containing the Premises, the 35 parking spaces adjacent thereto and Tenant's Critical Area, as shown on Ex. A-1, shall not be changed. Landlord shall not modify the Common Areas in a manner that materially impairs or materially adversely affects Tenant's rights or the business it conducts in the Premises. Landlord shall not permit any person or kiosk to block the entrance of the Premises or place an obstruction in front of Tenant's storefront.

Winn-Dixie

Exclusive Use (Lease 13) Tenant shall have the exclusive right within the Shopping Center to, either directly or indirectly via remote distribution: (i) engage in retail sales of items of food for "off-premises" consumption; (ii) engage in the retail sale of groceries and related products typically offered for sale as of 02/14/2013, in a grocery supermarket; (iii) operate a grocery supermarket, bakery, florist, dine-in deli or café area, delicatessen and fish market; (iv) operate a pharmacy and/or prescription drug concession for the sale of drugs or other products which legally must be dispensed by a registered pharmacist and (v) engage in retail sales of beer, wine and other alcoholic beverages for "off-premises" consumption ("Tenant's Exclusive Use Rights"). Landlord agrees that neither the owner of the Plaza Shopping Center nor any tenant thereof may operate a grocery supermarket within the Plaza Center. Tenant's Exclusive Use Rights shall not apply to the Permitted Leases as set forth in Sec. 13.3, including any lease fully-executed prior to 02/14/2013 as listed in Ex. M of the Lease. Exceptions to Exclusive Uses are listed in Sec. 13.4 and include (i) the operation of a carry-out or delivery restaurant, which may also include dine-in sales and (ii) a delicatessen or sandwich shop type restaurant, provided that either (a) 70% of the RSF of such restaurant (exclusive of kitchen or food preparation area) is used for seated dining purposes or (b) such shop is or is reasonably equivalent to Schlotzky's, Panera, Atlanta Bread Company or Subway.

Prohibited Uses: (4th Amend, 3, 4; 3rd Amend 2; 1st Amend 2; Lease, 2.2, 2.4, 14.3, 15) Landlord shall not make changes to the Shopping Center that would adversely impact Tenant's use of the Shopping Center or the character of the Shopping Center. Landlord shall not place or install improvements on the sidewalk in front of the Store without Tenant's written approval. Landlord shall not erect or permit a bldg., kiosk, any sign or other object in any part of the Common Area, except as shown on the Plot Plan. Unless approved in writing by Tenant, Landlord shall not permit the conduct of any business, or the operation of any carnival or other entertainment within the Common Area. Landlord agrees that (i) no more than one bldg. shall be constructed on any Outparcel, and (ii) the Outparcels or any bldgs. constructed thereupon shall not be used in violation of Tenant's Exclusive Rights. Except for the Permitted Leases, the Permitted Tenants and the exceptions to Prohibited Uses, as set forth in the 1st, 3rd and 4th Amendments and Sec. 14.4 of

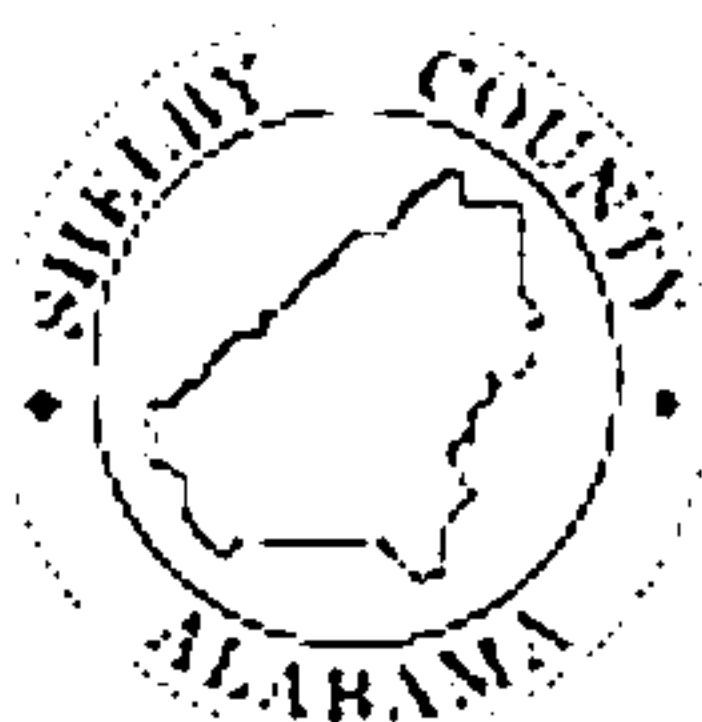
the Lease, Landlord represents that no other tenant and/or owner w/in the Shopping Center (including Outparcels) shall operate in violation of Sec. 14.3 of the Lease and/or the Prohibited Uses.

(Lease 9) Except for the Permitted Leases, Landlord hereby represents that as of the Lease Date, no other tenant and/or owner within the Shopping Center (including but not limited to any Outparcels) shall operate in violation of Section 14.3 of this Lease, and/or the Prohibited Uses (as hereinafter defined). Landlord covenants that it will operate and maintain the Shopping Center in a first-class condition and will not allow any use within the Shopping Center 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 following "**Prohibited Uses**":

- (a) spa, health club, sports club, or gymnasium;
- (b) dance studio, or dance hall;
- (c) tavern, bar, discotheque, night club lounge, or after hours club;
- (d) teen lounge, or social encounter club;
- (e) bowling alley;
- (f) skating or roller rink;
- (g) arcade; internet sweepstakes cafe, bingo or electronic or other game parlor;
- (h) movie theater (legitimate or other);
- (i) any establishment renting, selling or exhibiting pornographic materials, or the sale, lease, rental or display of pornographic or "adult" material;
- (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, or daycare centers;
- (o) massage parlor;
- (p) manufacturing or storage business;
- (q) tattoo parlor;
- (r) public auditorium or other public entertainment facility;
- (s) government service office;
- (t) tobacco or a so called "head shop";
- (u) exterior "pay" telephones;
- (v) "Dollar" type discount stores;
- (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) 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 (exclusive of dumpsters located in the rear of any building);
- (ii) any veterinary hospital, animal raising facilities;
- (jj) any mortuary;
- (kk) or cell phone tower.

Exceptions to **Prohibited** Uses. The terms and provisions of Section 14.3 of this Lease, to the contrary notwithstanding, occupants of the Shopping Center, shall not be prohibited from engaging in the operation of: (i) a sit down restaurant and/or cocktail lounge of a parking intensive nature, being similar in nature to Bennigan's, T.J. Applebee's, Outback Steakhouse, Schlotzsky's, Chili's, Hooters, On-Tap Sports Bar, and T.G.I. Friday's; provided that such operation is located no closer than one hundred fifty (150) feet of the Store (which distance shall be measured from the Store demising wall nearest said other premises to the demising wall of said other premises nearest the Store); (ii) a dry cleaning (drop-off only) operation; (iii) a governmental tag office; (iv) a national (or regional) therapeutic massage facility similar in nature to Massage Envy, or Massage Green; (v) a cigar lounge or specialty tobacco store (such as, without limitation, the "Humidor"), but not a store whose principal business is the discount sale of tobacco products or any such store with a drive-thru facility, provided that any specialty tobacco store permitted hereunder shall not exceed three thousand (3,000) square feet; (vi) a Professional Office Use, provided that such Professional Office Use complies with the following: (a) the total square footage of the Shopping Center occupied by a Professional Office Use does not exceed twenty-six thousand (26,000) square feet, in the aggregate, of the Shopping Center; (b) except for a Prior Lease, Landlord shall not permit the operation of a Professional Office Use within the Shopping Center other than within the building (located in the southwest corner of the Shopping Center) and/or suites (Suites 110 & 120) as designated on the Plot Plan; and (c) in the event a Prior Lease (occupied for the purpose of a Professional Office Use) expires or is terminated and Landlord elects to replace the Professional Office Use with a replacement tenant (as provided in Section 13.3(d) of the Lease), then no such replacement shall be located within one-hundred fifty (150) feet of the Store (which distance shall be measured from the Store demising wall nearest said other premises to the demising wall of said other premises nearest the Store).



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