

This instrument prepared by:
Aaron D. Vansant
DonovanFingar, LLC
1800 International Park Drive, Suite 230
Birmingham, AL 35243

STATE OF ALABAMA)

SHELBY COUNTY)



20230615000179570 1/8 \$48.00
Shelby Cnty Judge of Probate, AL
06/15/2023 10:45:44 AM FILED/CERT

AMENDMENT NO. 5 TO DECLARATION OF EASEMENT AND RESTRICTIONS

This AMENDMENT NO. 5 TO DECLARATION OF EASEMENT AND RESTRICTIONS (this “Amendment”) is made effective as of the 13th day of June, 2023 (the “Effective Date”), by **CYGNUS BHAM, LLC**, a Georgia limited liability company (“Cygnus”).


RECITALS

WHEREAS, Cygnus is the owner in fee simple of the real property located in the City of Hoover, Shelby County, Alabama and described in Exhibit A attached hereto and incorporated herein by reference (“Cygnus Property”) which is part of the retail shopping center known “The Village at Lee Branch Phase II”, which Cygnus Property includes all of Lot 1A (“Lot 1A”) being more particularly described on Exhibit B attached hereto and incorporated herein by reference; and

WHEREAS, AIG Baker East Village, L.L.C. (“AIG”) entered into that certain Declaration of Easement and Restrictions dated May 26, 2004 and recorded June 1, 2004 as Document Number 20040601000288850, as amended by Amendment No. 1 to Declaration of Easement and Restrictions dated and recorded on June 24, 2004 as Document Number 20040624000345520, as amended by Amendment to Declaration of Easement and Restrictions recorded on May 11, 2012 as Document Number 20120511000165500, as amended by Amendment No. 3 to Declaration of Easements and Restrictions dated November 19, 2013 and recorded on January 27, 2014 as Document Number 20140127000026530, as amended by Amendment No. 4 to Declaration of Easements and Restrictions dated September 10, 2014 and recorded on October 14, 2014 as Document Number 20141014000323410 (collectively, the “Declaration”); and

WHEREAS, pursuant to Section 5 of Amendment No. 3 to Declaration of Easements and Restrictions, Cygnus is a successor to AIG and Owner (as defined in the Declaration) by virtue of acquiring fee simple ownership of Lot 1A, via that certain Foreclosure Deed dated and recorded on February 13, 2023 as Instrument #20230213000038380; and

WHEREAS. Cygnus desires to amend the Declaration with respect to the Cygnus Property as set forth in this Amendment.


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AGREEMENT

NOW, THEREFORE, in consideration of the premises and covenants contained in this Amendment. Cygnus hereby amends the Declaration as follows:

1. Amendment. The Declaration shall be amended as follows:

A. Owner. Section 1.4 of the Declaration is amended to acknowledge that, from and after the Effective Date, the “Owner” under the Declaration shall mean Cygnus Bham, LLC, a Georgia limited liability company, and after compliance with the notice requirements set forth in Section 7.1, its successors and assigns who (i) become owners of all or any portion of Lot 1A, and (ii) by notice recorded with the Shelby County Judge of Probate, Alabama, agree to assume the obligations, and accept the rights, of Owner pursuant to the Declaration, as amended. Pursuant to paragraph 5 of that certain Amendment No. 3 to Declaration of Easement and Restrictions, recorded at Instrument #20140127000026530, Cygnus hereby agrees to assume the obligations, and accept the rights, of Owner pursuant to the Declaration with respect to the Cygnus Property.

B. Notices to Owner. The notice address of Owner pursuant to Section 7.1 of the Declaration shall be:

Cygnus Bham, LLC
3060 Peachtree Road NW, Suite 1080
Atlanta, GA 30305
Attn: John J. Lyons

or such other address as Owner may from time to time specify to the Parties.

C. Uses on Pad G.

(i) With respect to Pad G only, Section 5.1(a) is hereby amended as follows:

"(a) Pad G shall be used for any lawful commercial retail, medical and/or general office purposes subject only to the restrictions set forth in this Declaration."



- (ii) Notwithstanding any provision to the contrary in the Declaration, Cygnus consents to Pad G being used for medical and/or general office use.

2. Defined Terms. Capitalized terms in this Amendment not defined herein shall have the same meaning as in the Declaration.

3. No Further Amendments. Except as amended by this Amendment, the Declaration remains unchanged and in full force and effect pursuant to the terms therein. If there is any conflict between the provisions of the Declaration and the provisions of this Amendment, the provisions of this Amendment shall control.

4. Recordation. All recording references in this Amendment are to and this Amendment shall be recorded in the Shelby County Judge of Probate's Office, for the purpose of providing notice to the public, including without limitation, any and all current and future tenants, lessees or occupants of the Shopping Center Tract and the Pads and any and all other parties affected by the Declaration.

5. Severability. The invalidation of any one of the covenants, conditions, restrictions or other provisions herein contained by judgment or court order shall in no way affect the remaining covenants, restrictions or other provisions hereof, and the same shall remain in full force and effect.

6. Authority; No Consents Required. Each party executing this Amendment represents and warrants that it has the full power and authority to execute, deliver, and perform the terms of this Amendment, and that this Amendment has been duly authorized and executed by each party, is the legal, valid and binding obligation of the party, and is enforceable as to the party in accordance with its terms.

7. Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the State of Alabama.

[Remainder of page left intentionally blank.]

[Signatures on following page.]



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IN WITNESS WHEREOF, this Amendment to be executed by Cygnus effective as of the date first set forth above.

CYGNUS:

CYGNUS BHAM, LLC,
a Georgia limited liability company

By: [Signature]
Name: John Lyons
Its: Senior Asset Manager

ACKNOWLEDGMENT FOR OWNER

STATE OF Georgia
COUNTY OF Paulding

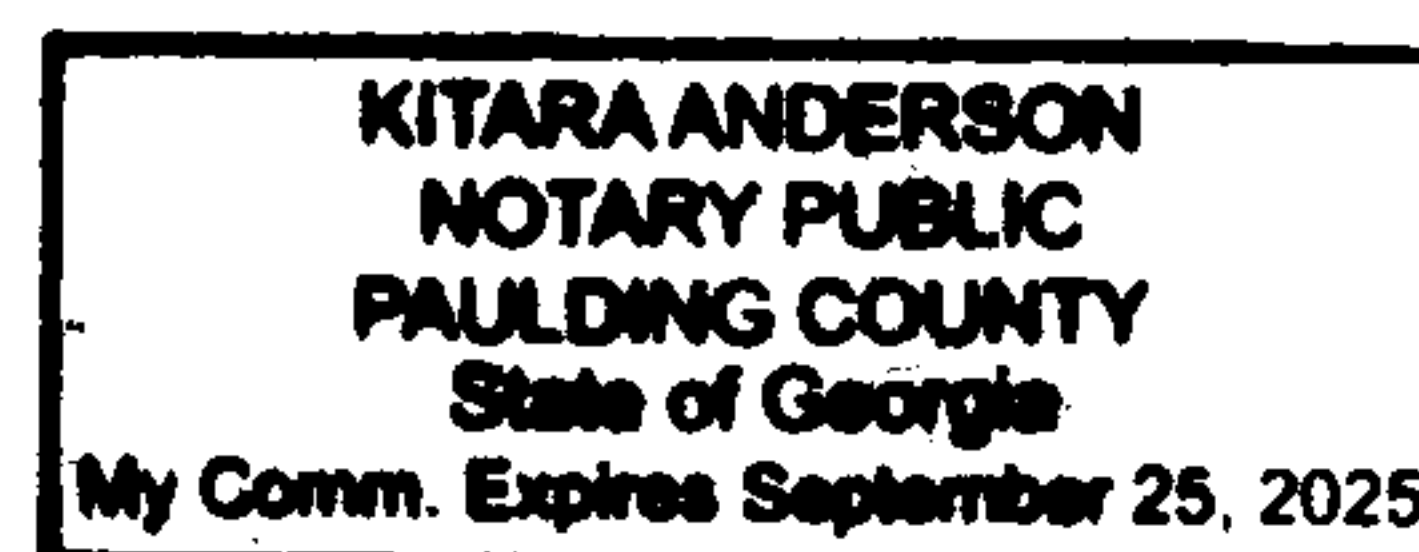
I, a Notary Public in and for said County, in said State, hereby certify that John Lyons, whose name as Senior Asset Manager of **CYGNUS BHAM, LLC**, a Georgia limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, in such capacity and with full authority, executed the same voluntarily for and as the act of said company, on the day the same bears date.

Given under my hand and seal this, the 6th day of June, 2023.

[Signature]
Notary Public

[NOTARIAL SEAL]

My commission expires: 9/25/25





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By its execution below, Bluefish Development, LLC, as owner of Pad G, hereby consents to the foregoing Amendment, and all modifications to the Declaration contained therein.

BLUEFISH DEVELOPMENT, LLC,
an Alabama limited liability company

By: [Signature]
Name: Jonathan Rehberg
Its: member

ACKNOWLEDGMENT FOR PAD G OWNER

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, a Notary Public in and for said County, in said State, hereby certify that Jonathan Rehberg whose name as member of **BLUEFISH DEVELOPMENT, LLC**, an Alabama LLC, 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 said instrument, he/she, in such capacity and with full authority, executed the same voluntarily for and as the act of said company on the day the same bears date.

Given under my hand and seal this, the 13th day of June, 2023.

[Signature]
Notary Public

My commission expires: 6-2-2027

[NOTARIAL SEAL]





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EXHIBIT A

Legal Description of the Cygnus Property

PARCEL 1:

Lot 1 B, according to the survey of a Resubdivision of The Village at Lee Branch as recorded in Map Book 31, Page 130A and 130B, in the Probate Office of Shelby County, Alabama, being a Resubdivision of The Village at Lee Branch Sector I-Revision 1.

PARCEL 2:

Lots 1A, 1B, 1C and 1D according to the Resurvey of Lot 1 of The Village at Lee Branch, Sector 1, Phase 2, as recorded in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 43, Page 66.

Lots 7 and 8, according to the survey of The Village at Lee Branch Sector 1 -Phase 2, as recorded in Map Book 33, Page 58, in the Probate Office of Shelby County, Alabama, being a Resubdivision of Lot 5A of The Village at Lee Branch Sector 1- Revision 1.

EXHIBIT B


Legal Description of Lot 1A



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Lot 1A, according to the Resurvey of Lot 1 of The Village at Lee Branch, Sector 1, Phase 2. as recorded in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 43, Page 66.

Exhibit C
Legal Description of Pad G Tract


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Parcel I

Lot 6. of the Village at Lee Branch Sector 1 – Phase 2 as recorded in Map Book 33, Page 58, being a re-subdivision of Lot 5A of The Village at Lee Branch Sector 1 – Revision 1 as recorded in Map Book 31, Page 130A and 130B. in the Probate Office of Shelby County, Alabama.

Parcel II

Together with a Non-exclusive easement for the benefit of Parcel I for the purpose of ingress, egress, parking, utilities and storm water in Sections 2.1, 2.2 and 2.3 as created by that certain Declaration of Easement and Restrictions, dated May 26, 2004 recorded in Instrument No. 20040601000288850 and Amendment No. 1 to Declaration of Easement and Restrictions, recorded in Instrument No. 20040624000345520, over, under and across the property described therein.