

THIS INSTRUMENT PREPARED BY,
AND UPON RECORDATION, RETURN TO:

ASHLEY HUGUNINE
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC
1901 SIXTH AVENUE NORTH, SUITE 2600
BIRMINGHAM, AL 35203

STATE OF ALABAMA)
)
SHELBY COUNTY)

AMENDMENT NO. 6 TO DECLARATION OF EASEMENT AND RESTRICTIONS

This AMENDMENT NO. 6 TO DECLARATION OF EASEMENT AND RESTRICTIONS (this “Amendment”) is made effective as of the 25th day of June, 2024, by **CYGNUS BHAM, LLC**, a Georgia limited liability company (“Owner”).

RECITALS:

WHEREAS, Owner is the owner in fee simple of that certain real property located in the City of Hoover, Shelby County, Alabama, which tracts or parcels of real property are collectively referred to in this Amendment as the “Owner Property” and are legally described in Exhibit A attached hereto and made a part hereof;

WHEREAS, located within, and constituting a portion of Owner Property is a parcel of real property designated as “Lot 1D”;

WHEREAS, as of the date of this Amendment, the Owner Property and other real property are subject to: (i) that certain Declaration of Easement and Restrictions dated May 26, 2004 being filed of record in the Probate Office of Shelby County, Alabama on June 1, 2004 under Instrument No. 20040601000288850 (“Original Declaration”); (ii) that certain Amendment No. 1 to Declaration of Easement and Restrictions dated June 21, 2004 and recorded on June 24, 2004 under Instrument No. 20040624000345520; (iii) that certain Amendment to Declaration of Easement and Restrictions dated December __, 2011 and recorded on May 11, 2012 under Instrument No. 20120511000165500; (iv) that certain Amendment No. 3 to Declaration of Easements and Restrictions dated November 19, 2013 and recorded on January 27, 2014 under Instrument No. 20140127000026530 (“Amendment No. 3”); (v) that certain Amendment No. 4 to Declaration of Easement and Restrictions dated September 10, 2014 and recorded on October 14, 2014 under Instrument No. 20141014000323410; and (vi) that certain Amendment No. 5 to Declaration of Easement and Restrictions dated June 13, 2023 and recorded on June 15, 2023 under Instrument No. 20230615000179570 (the documents referred to in clauses (i), (ii), (iii), (iv), (v) and (vi) of this Recital being collectively referred to in this Amendment as the “Declaration”); and

WHEREAS, Owner desires by this Amendment to amend the Declaration with respect to use restrictions applicable to Lot 1D and the Pads, all as set forth in this Amendment.

NOW, THEREFORE, Owner does hereby declare and covenant that Owner and all present and future owners, occupants and other permittees of Owner Property, and all tracts and parcels of land within the Owner Property shall be and hereby are subject to the terms, covenants, and conditions set forth in this Amendment.

AGREEMENT:

1. Definitions. Capitalized terms in this Amendment not defined herein shall have the same meaning as in the Declaration.
2. Prohibited Uses for Lot 1D. Notwithstanding anything contained in Section A.22. of Exhibit D to the Original Declaration and Section 2 of Amendment No. 3 to the contrary, the prohibitions of use of Lot 1D as a game room or arcade, theater, gymnasium, dance hall, massage parlor or video game arcade shall be of no further force or effect.
3. Publix Use Restrictions. Publix has never operated a retail store within the Owner Property. Accordingly, the use restrictions set forth in Section C of Exhibit D to the Original Declaration were erroneously applied to the Pads. Section C of Exhibit D to the Original Declaration is deleted in its entirety and shall be of no further force or effect.
4. 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.
5. Recordation. All recording references in this Amendment are to and this Amendment shall be recorded in the Shelby County Probate Office for the purpose of providing notice to the public, including without limitation, any and all current and future owners, tenants or occupants of the Shopping Center Tract and the Pads and any and all other parties affected by the Declaration.
6. 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.
7. Agreement Runs With The Land. Both the benefits and the burdens of all covenants and restrictions established by this Amendment shall run with and bind the lands described herein and shall be binding upon and inure to the benefit of any and all owners thereof and their respective tenants, heirs, successors and assigns.
8. Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, Owner has executed this Amendment as of the day and year first written above.

OWNER:

CYGNUS BHAM, LLC,
a Georgia limited liability company

By: John Lums
Name: John Lums
Its: Authorized Signer

STATE OF Georgia
COUNTY OF Paulding

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John Lums, as Authorized Signer of CYGNUS BHAM, LLC, a Georgia limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act, and as a free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and seal this, the 25 day of June, 2024.

Kitara Anderson
Notary Public

My commission expires: 9/25/25

[NOTARIAL SEAL]

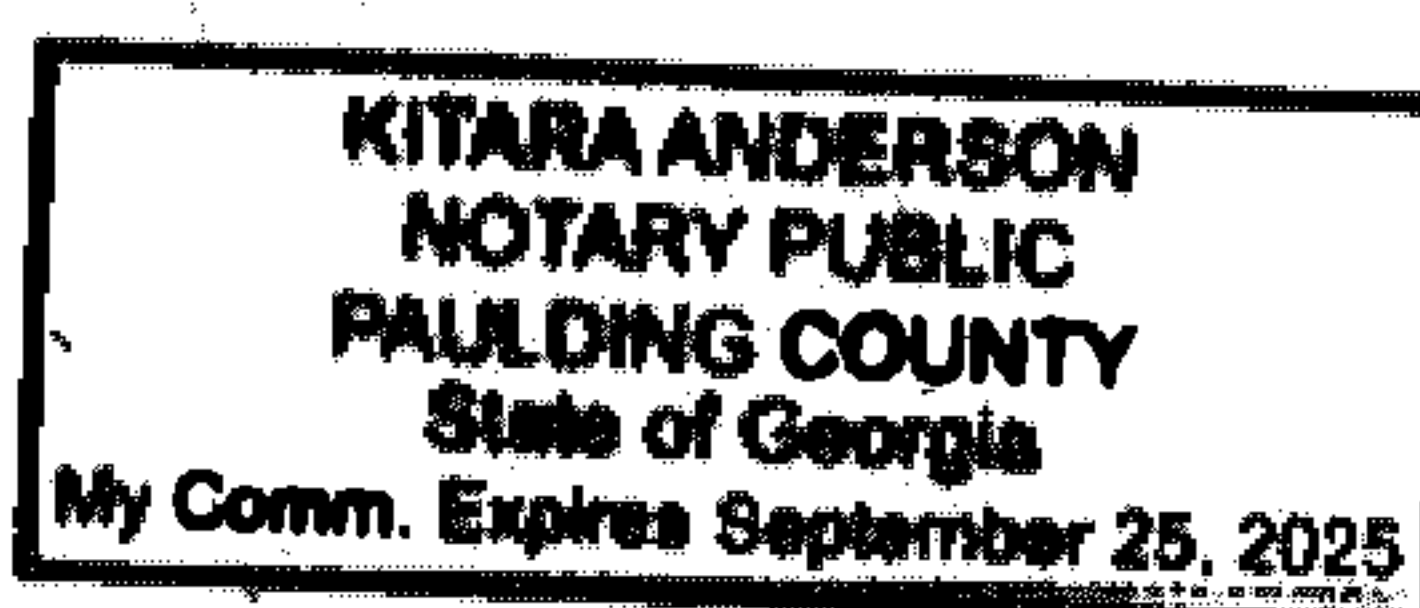


EXHIBIT A

LEGAL DESCRIPTION OF OWNER PROPERTY

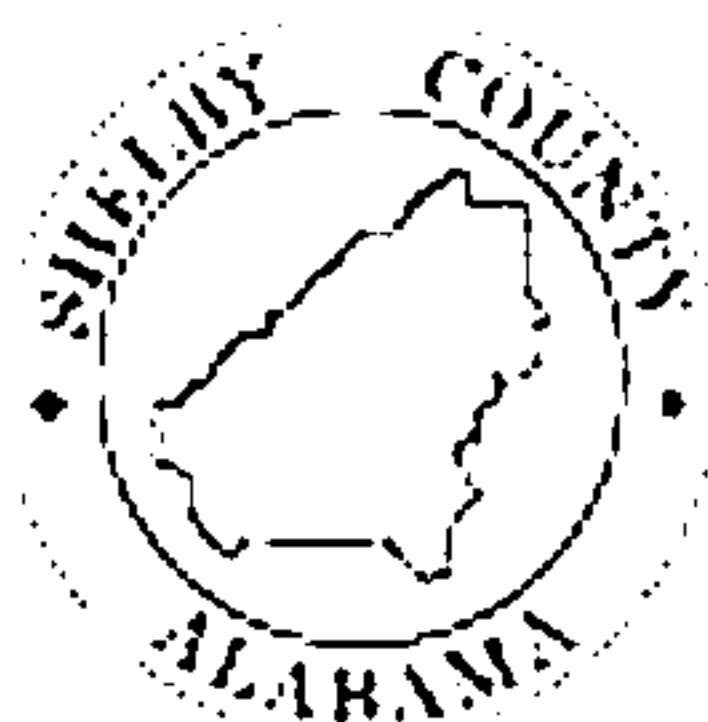
PARCEL 1:

Lot 1B, according to the survey of a re-subdivision 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 re-subdivision of The Village at Lee Branch Sector 1 – Revision 1.

PARCEL 2:

Lots 1A, 1B, 1C and 1D according to the re-survey of Lot 1 of The Village at Lee Branch, Sector 1, Phase 2, as recorded in the Probate Office 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 re-subdivision of Lot 5A of The Village at Lee Branch Sector 1 – Revision 1.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
07/16/2024 08:37:50 AM
\$36.00 JOANN
20240716000215450

Allen S. Bayl