

**Vestavia Hills  
City Council Agenda  
July 10, 2017  
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – George Pierce
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Approval of Minutes – June 26, 2017 (Regular Meeting)

**Old Business**

9. Resolution Number 4957 – A Resolution To Replace The Current Firewall System With Heightened Security For Prevention Of Cyber Threats To The City Of Vestavia Hills Computer Systems And To Allow The City Manager To Retain An Additional IT Technician (*public hearing*)

**New Business**

10. Resolution Number 4963 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Estoppel Agreement With Vestavia MZL, LLC And An Assignment Agreement With Vestavia MZL, LLC, Excel Vestavia, LLC, and Vestavia Outparcel Holdings, LLC

**New Business (Unanimous Consent Requested)**

**First Reading (No Action Taken At This Meeting)**

11. Resolution Number 4962 – A Resolution Authorizing the City Manager To Allocate Funding Within The Gas Tax Fund Budget For Fiscal Year 2016-2017 For Street Resurfacing And Repair (*public hearing*)
12. Citizen Comments
13. Motion For Adjournment

## **CITY OF VESTAVIA HILLS**

### **CITY COUNCIL**

### **MINUTES**

**JUNE 26, 2017**

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM. The Mayor called the meeting to order and the City Clerk called the roll with the following:

**MEMBERS PRESENT:**

Mayor Ashley C. Curry  
Rusty Weaver, Mayor Pro-Tem  
Kimberly Cook, Councilor  
Paul Head, Councilor  
George Pierce, Councilor

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Patrick Boone, City Attorney  
Rebecca Leavings, City Clerk  
Dan Rary, Police Chief  
Jason Hardin, Police Captain  
Marvin Green, Interim Fire Chief  
Melvin Turner, Finance Director  
George Sawaya, Asst. Treasurer  
Brian Davis, Public Services Director  
Christopher Brady, City Engineer  
Cinnamon McCulley, Communications Specialist

Donald Harwell, Citizen of Vestavia Hills, member of Vestavia Hills United Methodist Church, and the Vestavia Hills representative on the Birmingham-Jefferson County Transit Authority Board, provided the invocation, followed by the Pledge of Allegiance.

### **ANNOUNCEMENTS, GUEST RECOGNITION**

- None.

### **CITY MANAGER'S REPORT**

- Mr. Downes gave an update on obtaining a certified list for the open Fire Chief III position from the Personnel Board of Jefferson County. He stated the examination was administered by the personnel board last week and the City should receive a certified

- listing sometime in August. He planned to put together a committee consisting of himself, Mayor Curry and Chief Rary for interviewing. Mr. Downes stated that they would also be visiting all of the city's fire stations and asking questions to determine what is needed in a new chief.
- Mr. Downes stated that the budget process has begun. Mr. Turner and the Finance Committee have submitted the revenue projections for next year. He indicated they are based upon actual results and trends from the past several years. The number one source of revenue within the City consists of collected ad valorem taxes. Next year's ad valorem projection is showing about a 4.5% growth. He reminded the Council that, even though the projections show a growth in revenues, the sanitation contract, which was bid this year, will increase about \$500,000. He stated he will soon be meeting with department heads and expects to present a draft budget to the Council on time. He requested the Council communicate specific needs and priorities ahead of time so they can be addressed before the draft is submitted to the council at the August 14 council meeting.
  - Mr. Downes stated that the Community Spaces process has commenced. Subcommittees have held organizational meetings and minutes will be posted soon. The committee will post the schedule of public meetings soon, and will create a webpage on the website for full communication to the public. He presented to the Council a master schedule of all the meetings.
  - Mr. Downes updated the Council on the following projects:
    - The Willoughby sidewalk installation has stalled because of the recent rains. They have completed 600 linear feet which represents about a third of the project. Project completion is scheduled for mid- to late-August.
    - The Sicard Hollow Pedestrian Tunnel project should begin as soon as the City gets the "notice to proceed" after which the City will begin the bidding process.
    - The Highway 31 Pedestrian Bridge had a final submission of plans to ALDOT who wanted reconsideration of handicapped accessibility. They have asked the City to "stand down" until they can do a final revision. He stated this requirement came from the highest levels of the department.
    - The Massey Road project is in final plan review through ALDOT and they plan to let bids sometime in August and September, which would put the project start during the winter months and might slow the prospective contractor's work.
    - The City has actively pursued the APPLE grant study of Crosshaven Road and there is a progress meeting that will, hopefully, be followed by public meetings.
    - Jefferson County is the lead on the APPLE grant study of Acton Road. Mr. Brady stated he doesn't know where the County is in that reviewing process.

Mrs. Cook asked about subcommittees' meetings 2 and 3 of and whether these would be the only sub-committee meetings before the committee makes recommendations. Mr. Downes explained the agenda for meetings 2 and 3. He stated that calling additional meetings will be up to the sub-committees and the committee chairman, Tommy Dazzio.

Mrs. Cook asked about the status of the Green Valley sidewalk project. Mr. Downes stated that the specifications are ready, but the funding for the design phase has been exhausted in this fiscal year. He will review the opportunities in the next fiscal year budget to address this

project. This site has storm drainage issues, which make construction costs high and the City is reviewing possible cost-saving measures to make this more affordable.

Mr. Pierce asked for a whiteway lighting project update. Mr. Downes stated they expect to sign contracts within the next day or so. Work should begin as soon as the hardware is delivered.

### **COUNCILOR REPORTS**

- Mrs. Cook stated that the Vestavia Hills Board of Education is meeting June 28, 2017, beginning at 6 PM. The new board member will be installed.
- Mr. Pierce welcomed James Robinson, representing the Chamber of Commerce Board.
- Mr. Pierce announced the I Love America Day, on Thursday, June 29, at Wald Park, with lots of activities.
- Mr. Weaver announced that the Council will soon take action on annexations and zoning issues which have been reviewed and approved by the Planning and Zoning Commission. July 13 is the next meeting of the commission.
- Mayor Curry stated he attended an International Business Summit hosted by the Birmingham Association of Realtors which covered information on a growing international business industry within the state, especially in the automotive industry, and what role cities can play in supporting this growth. While Vestavia Hills doesn't have available property for an industrial plant, the City offers "quality of life" opportunities for some of these employees that would increase demand in our real estate market.
- The Mayor asked Donald Harwell to update the Council on the Birmingham Transit Authority.
  - Mr. Harwell stated that the new transit station opened last week and this Friday they will host a ribbon cutting at 2:00 PM. He encouraged everyone to attend. He stated the Intermodal Station is set to open later.
  - Mr. Pierce stated that the Annexation Review Committee meeting, cancelled last week, will be held at 4:30 this Thursday.

### **PRESENTATION – JEFFERSON-BLOUNT-SHELBY COUNTY MENTAL HEALTH AUTHORITY**

Jim Crego, Jefferson-Blount-Shelby County Mental Health Authority, thanked the Council for past and continued support. He presented information to the Council regarding the work that the authority does for residents of the City and acknowledged the three members of the board who represent Vestavia Hills.

Mr. Crego stated some of their project include an urgent care clinic which is located near Regions Field. The facility is open ten hours each day, with a staff of four nurses and two therapists to treat people who have mental health needs. People can get immediate services at the clinic without having to wait on appointments.

## **FINANCIAL REPORTS**

Mr. Turner presented the financial reports for the month ending May 2017. He read and explained the balances.

Mrs. Cook asked about the deficit in the franchise fees collected this year. Mr. Turner and Mr. Downes explained that Alagasco reports that consumption for natural gas has fallen; Alagasco is verifying the numbers to ensure that all gross receipts have been paid. He stated that Mountain Brook has reported that their franchise revenue is down as well.

## **APPROVAL OF MINUTES**

The minutes of the June 12, 2017, regular meeting were presented for approval.

**MOTION** Motion to dispense with the reading of the minutes of June 12, 2017 (regular meeting) and approve them as presented was by Mrs. Cook and second by Mr. Pierce. Roll call vote as follows:

Mrs. Cook – yes

Mr. Head – yes

Mr. Pierce – yes

Mr. Weaver – yes

Mayor Curry – yes

Motion carried.

## **OLD BUSINESS**

### **ORDINANCE NUMBER 2711**

**Ordinance 2711 – Annexation – 90-Day – 2419 Dolly Ridge Road; Jason and Stefanie Robinson (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2711 was made by Mr. Weaver and second was by Mr. Pierce.

The Mayor stated that this is the 90-day final annexation of this property.

Mrs. Cook asked about the annexation review by city staff, which noted a drainage pipe problem.

Mr. Brady stated he understands the property owner did clear it but he hasn't had an opportunity to re-inspect.

Mr. and Mrs. Robinson were present in regard to the request. Mr. Robinson stated he has begun some renovations, but it has been slow going because of a personal injury and the weather.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

### **ORDINANCE NUMBER 2712**

**Ordinance 2712 – Rezoning – 2419 Dolly Ridge Road; Rezone From Jefferson County R-1 (Residential District) to Vestavia Hills R-2 (Residential District); Jason and Stefanie Robinson (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2712 was made by Mr. Weaver and second was by Mrs. Cook.

The Mayor explained that this is the compatible zoning of the same property.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

### **ORDINANCE NUMBER 2713**

**Ordinance 2713 – Annexation – 90-Day – 2611 April Drive; Lot 9, Altadena Acres; Charles and Stephanie Langner (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2713 was made by Mr. Pierce and second was by Mr. Weaver.

Mr. and Mrs. Langner were present in regard to this request.

Mr. Pierce explained that all of these properties were annexed previously and this is a follow-up annexation process.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
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Mr. Pierce – yes  
Mayor Curry – yes

Mr. Weaver – yes  
Motion carried.

**ORDINANCE NUMBER 2714**

**Ordinance 2714 – Rezoning – 2611 April Drive; Lot 9, Altadena Acres; Rezone From Jefferson County E-1 (Residential District) to Vestavia Hills E-2 (Residential District); Charles and Stephanie Langner (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2714 was made by Mrs. Cook and second was by Mr. Weaver

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

**ORDINANCE NUMBER 2715**

**Ordinance 2715 – Annexation – 90-Day – 3139 Renfro Road; Lot 9, Block 2, South Vestavia Estates; Pamela and Joey Snow (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2715 was made by Mr. Pierce and second was by Mr. Weaver.

Mr. and Mrs. Snow were present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

**ORDINANCE NUMBER 2716**

**Ordinance 2716 – Rezoning – 3139 Renfro Road; Lot 9, Block 2, South Vestavia Estates; Rezone From Jefferson County R-1 (Residential District) to Vestavia Hills R-2 (Residential District); Pamela and Joey Snow (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2716 was made by Mrs. Cook and second was by Mr. Head.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

### **ORDINANCE NUMBER 2717**

**Ordinance 2717 – Annexation – 90-Day – 2696 Altadena Road; Lot 1A, Resurvey of Lot 1, Altadena Park; Curtis and Lisa Martin (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2717 was made by Mr. Weaver and second was by Mr. Pierce.

Mr. Martin was present in regard to this request.

Mr. Pierce pointed out the annexation review noted a problem with a collapsed pipe. Mr. Brady reported that the property owners have corrected the problem.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

### **ORDINANCE NUMBER 2718**

**Ordinance 2718 – Rezoning – 2696 Altadena Road; Lot 1A, Resurvey of Lot 1, Altadena Park; Rezone From Jefferson County E-1 (Residential District) to Vestavia Hills E-2 (Residential District); Curtis and Lisa Martin (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2718 was made by Mrs. Cook and second was by Mr. Head.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.



**ORDINANCE NUMBER 2719**

**Ordinance 2719 – Annexation – 90-Day – 2470 Dolly Ridge Trail; Lot 5, Block 2, Dolly Ridge Estates; Matthew and Jessica Jones (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2719 was made by Mr. Pierce and second was by Mrs. Cook.

Mr. Jones was present in regard to this request.

Mrs. Cook stated that there was a note of a problem in a drainage pipe and the asphalt of the circle. Mr. Brady stated the drainage has been resolved and the pavement will be repaired when repaved.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

**ORDINANCE NUMBER 2720**

**Ordinance 2720 – Rezoning – 2470 Dolly Ridge Trail; Lot 5, Block 2, Dolly Ridge Estates; Rezone From Jefferson County E-2 (Residential District) to Vestavia Hills R-1 (Residential District); Matthew and Jessica Jones (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2720 was made by Mrs. Cook and second was by Mr. Weaver.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

**RESOLUTION NUMBER 4955**

**Resolution Number 4955 – A Resolution Authorizing The City Manager To Purchase Additional Handguns For The Police Department (*public hearing*)**

**MOTION** Motion to approve Resolution Number 4955 was made by Mr. Weaver and second was by Mr. Pierce.

Chief Rary explained that the police department has been endeavoring to purchase uniform handguns for use as both on- and off-duty weapons. This request would be for concealed carry during off-duty times, since officers are encouraged to carry 24/7. The purchase would be approximately \$43,000, still leaving a substantial balance in confiscations revenue. The purchase of these handguns is regulated by state law, meaning it is an item that does not have to be bid. Each handgun purchase includes three magazines.

Mr. Weaver stated these handguns are purchased from a vendor and not directly from a manufacturer. Chief Rary explained the state requires the department to purchase through a vendor, but that the vendor's pricing is negotiated and regulated by the state.

Mr. Pierce explained that the purchase of uniform guns will aid the police department in providing ammunition for officers' weapons. In the past, the department has provided ammunition, but not weapons, for off-duty use. Since a variety of personal guns were in off-duty use, this made it a challenge to provide the appropriate ammunition.

Mr. Downes noted that our police department has never been more productive in confiscating illicit items.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

## **NEW BUSINESS**

### **RESOLUTION NUMBER 4959**

#### **Resolution Number 4959 – A Resolution Approving An Alcohol License For Baha Burger, LLC D/B/A Baha Burger; Eric James Finney, Executive**

**MOTION** Motion to approve Resolution Number 4959 was made by Mr. Pierce and second was by Mrs. Cook.

Mr. Pierce asked about the training of employees.

Eric Finney stated they are trained through the responsible vendor program which focuses in on the repercussions of sales to minors.

Mrs. Cook asked about the police review.

Mr. Downes stated that the police department reported no problems.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

### **REOLUTION NUMBER 4960**

#### **Resolution Number 4960 – A Resolution Approving An Alcohol License For Monarcas Investments, Inc. D/B/A Los Rancheros Mexican Grill; Carlos J Blum, Executive**

**MOTION** Motion to approve Resolution Number 4960 was made by Mr. Pierce and second was by Mr. Head.

Carlos Blum was present in regard to the request.

Mr. Pierce asked about the training of employees.

Mr. Blum stated this is a family restaurant and they train all employees to carefully sell alcohol to avoid any sales to minors. He indicated they follow all ABC regulations.

Mrs. Cook noted that the PD has found no problems with this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

### **REOLUTION NUMBER 4961**

#### **Resolution Number 4961 – A Resolution Determining That Certain Personal Property Is Not Needed For Public Or Municipal Purposes And Directing The Sale/Disposal Of Said Surplus Property**

Mr. Downes explained that this is an older Dodge Durango that is no longer needed by the IT Department. He stated it was replaced this year and needs to be sold.

**MOTION** Motion to approve Resolution Number 4961 was made by Mrs. Cook and second was by Mr. Weaver.

There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

**NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)**

The Mayor opened the floor for a motion for immediate consideration and action on Resolution Number 4958. The Mayor stated that this was discussed at the last work session.

**MOTION** Motion for unanimous consent and immediate consideration and action on Resolution Number 4958 was by Mr. Weaver. Second was by Mrs. Cook.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

**RESOLUTION NUMBER 4958**

**Resolution Number 4958 – A Resolution Authorizing The City Manager To Obtain Appraisal Services For Certain Areas Of Wald Park (*public hearing*)**

**MOTION** Motion to approve Resolution Number 4958 was made by Mrs. Cook and second was by Mr. Weaver.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question.

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	Motion carried.

**FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)**

The Mayor stated that the following resolutions and/or ordinances will be presented at a public hearing at the Council's next regular meeting on July 10, 2017, at 6:00 PM.

- Resolution Number 4957 – A Resolution To Replace The Current Firewall System With Heightened Security For Prevention Of Cyber Threats To The City Of Vestavia Hills Computer Systems And To Allow The City Manager To Retain An Additional IT Technician (*public hearing*)

**CITIZEN COMMENTS**

None.

At 7:07 PM, Mrs. Cook made a motion to adjourn, seconded by Mr. Pierce. The meeting adjourned at 7:08 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## **RESOLUTION NUMBER 4957**

### **A RESOLUTION TO REPLACE THE CURRENT FIREWALL SYSTEM WITH HEIGHTENED SECURITY FOR PREVENTION OF CYBER THREATS TO THE CITY OF VESTAVIA HILLS COMPUTER SYSTEMS**

**WHEREAS**, the City exists in a time of increased dependency on computer systems in day-to-day transactions, maintenance and protection of secured information and data which requires increased protections; and

**WHEREAS**, the City has annually budgeted for said protections in order to protect the City's data and recently enhanced protections to the extent of:

1. Purchasing Cyber Liability Insurance;
2. Implementing third-party software called "Umbrella";
3. Increased employee training, implementing a program through "Threat Advice" in order to allow increased awareness of employees when utilizing the computer systems throughout the City; and

**WHEREAS**, in an effort to minimize further the risk of a cyber breach of the City's computer system, the City's IT Director has recommended to the City in an Interoffice Memorandum dated June 19, 2017, that a replacement to the City's firewall system was needed at an estimated cost of \$70,963.85, a copy of which is marked as "Exhibit A" attached to and incorporated into this Resolution Number 4957 as if it was written fully therein; and

**WHEREAS**, an additional interoffice memorandum dated June 19, 2017 from the IT Director to the City Manager indicated that an IT technician should be retained in order to assist the IT Department with the increasing IT demands of the City at an estimated \$5,000 through the remainder of the current fiscal year, a copy of said memorandum is marked as "Exhibit B" and is attached to and incorporated into this Resolution Number 4957 as though written fully therein; and

**WHEREAS**, in reviewing of the FY 2017 budget for the IT Department, the City Manager has recognized approximately \$60,000 surplus leaving the net costs of said requests at approximately \$16,000 additional dollars.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Manager is authorized to expend the surplus recognized from the FY 2017 IT budget along with an additional \$16,000 for the following:
  - a. Replacement of the City's firewall as described in Exhibit A; and
  - b. Retaining an IT Technician as described in Exhibit B.
2. This Resolution Number 4957 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 10<sup>th</sup> day of July, 2017.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**VESTAVIA HILLS INFORMATION TECHNOLOGY DEPARTMENT**

**MEMORANDUM**

TO: Jeff Downes, City Manager  
FROM: Darrin Estes, Director of Information Technology  
DATE: June 19, 2017  
RE: New Firewall for internet(email)

Due to the multi-faceted online cybersecurity risk, we need to replace our current firewall. (Hardly a week goes by without ransomware making the news.)

I would like to replace our current firewall with an adaptive, threat-focused next-generation firewall (NGFW) designed for a new era of threat and advanced malware protection.

Some of the featured comprehensive capabilities are:

- Site-to-site and remote access VPN and advanced clustering provide highly secure, high-performance access and high availability to help ensure business continuity.
- Granular Application Visibility and Control (AVC) supports more than 4,000 application-layer and risk-based controls that can launch tailored intrusion prevention system (IPS) threat detection policies to optimize security effectiveness.
- Next-generation Intrusion Prevention (NGIPS) provides highly effective threat prevention and full contextual awareness of users, infrastructure, applications, and content to detect multivector threats and automate defense response.
- Reputation- and category-based URL filtering offer comprehensive alerting and control over suspicious web traffic and enforce policies on hundreds of millions of URLs in more than 80 categories.
- Advanced Malware Protection (AMP) provides industry-leading breach detection effectiveness, and superior protection that helps discover, understand, and stop malware and emerging threats missed by other security layers.

The cost to replace the firewall is \$70,963.85. This includes the appliance, 3 year extended service agreement, 3 year license (state bid list).



**VESTAVIA HILLS INFORMATION TECHNOLOGY DEPARTMENT**

**MEMORANDUM**

TO: Jeff Downes, City Manager  
FROM: Darrin Estes, Director of Information Technology  
DATE: June 19, 2017  
RE: New Information Technology personnel

With all the projects we currently have on our schedule and the need to replace our current firewall, I would like to request the addition of a PC network technician at this time.

With the addition of:

- The new systems and added network requirements in the new municipal complex
- The growth in the numbers of our mobile units and required equipment in the Police and Fire departments
- The added workstations\laptops throughout the city

Even without the projects and firewall replacement we are currently reactive not proactive to the day-to-day I.T. issues.

For the additional fulltime PC network technician Grade 23/Step 1. The estimated annual wages with taxes and fringes would be \$61,468.

**RESOLUTION NUMBER 4963**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER  
TO EXECUTE AND DELIVER AN ESTOPPEL AGREEMENT AND AN  
ASSIGNMENT AGREEMENT**

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF  
VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The Mayor and City Manager are hereby authorized to execute and deliver an estoppel agreement with Vestavia MZL, LLC, a copy is hereby marked as” Exhibit A,” and is attached to and incorporated into this Resolution Number 4963 as though written fully therein; and
2. The Mayor and City Manager are hereby authorized to execute and deliver an assignment agreement with Vestavia MZL, LLC, Excel Vestavia, LLC, and Vestavia Outparcel Holdings, LLC, a copy is hereby marked as” Exhibit B,” and is attached to and incorporated into this Resolution Number 4963 as though written fully therein; and
3. This Resolution Number 4963 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 10<sup>th</sup> day of July, 2017.

Ashley Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**ESTOPPEL**

Date: July \_\_\_\_, 2017

**TO:** Vestavia MZL LLC, its successors and assigns and its lender and their successors and assigns  
254 West 31st Street, 4<sup>th</sup> Floor  
New York, NY 10001

**RE:** Agreement dated October 22, 2001 by and between the City of Vestavia Hills and AIG Baker Vestavia L.L.C and AIG Baker Vestavia Shopping Center, L.L.C. (the "Agreement")

Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Agreement.

The undersigned, as the City of Vestavia Hills (the "Certifying Party") hereby certifies, as of the date hereof, to Vestavia MZL LLC and its successors and assigns ("Purchaser") and to its lender and its successors and assigns ("Lender"), with respect to a loan to Purchaser secured by the property commonly known as Vestavia Hills City Center, 700 Montgomery Highway, Vestavia Hills, Alabama (the "Property"), as follows:

1. That the Agreement is unmodified or amended except as set forth above and in full force and effect;
2. That there is no currently-existing default under the Agreement by Baker (as defined in the Agreement) in the payment of any sum of money owing to the Certifying Party or in the performance of any obligation required under the Agreement, including, without limitation, the restrictions contained in Exhibit D of the Agreement, and, to the Certifying Party's actual knowledge, there is no currently-existing default by Baker under the Agreement, and, to the Certifying Party's actual knowledge, no other event has occurred which with the giving of notice by the Certifying Party or the passage of time, or both, would become a default under the Agreement;
3. That Baker has satisfactorily performed all Infrastructure work to be completed pursuant to the Agreement.
4. That there are no sums which the Certifying Party is entitled to receive or demand from Baker under the Agreement;
5. That the Certifying Party has not performed or caused to be performed, and is not currently performing or causing to be performed, any maintenance or other work or service not in the normal course of operation, the cost of which the Certifying Party is or will be entitled to charge in whole or in part to the Property owner which has not yet been charged to Baker; and

6. That there are no set-offs, defenses or counterclaims currently being asserted or otherwise known by the Certifying Party against enforcement of any obligations under the Agreement which are to be performed by the Certifying Party.
7. The Certifying Party acknowledges that Baker has a pylon signs located all or in part on the Property in those areas known as Phase I and Phase III and further acknowledges that Baker, its successors and assigns may maintain such pylon signs in their current locations.

The Certifying Party acknowledges and agrees that the statements set forth herein shall be binding, and may be relied upon by and shall inure to the benefit of Purchaser, its successor and assigns and to Lender and its successor and assigns.

*[Signature page follows]*

**CERTIFYING PARTY:**

**CITY OF VESTAVIA HILLS**

a municipal corporation

By: \_\_\_\_\_

Name:

Title:

## ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (the "Assignment") is entered into as of the \_\_\_\_ day of July, 2017, by and between VESTAVIA MZL LLC, a Delaware limited liability company ("Assignee"), and EXCEL VESTAVIA, LLC, a Delaware limited liability company and VESTAVIA OUTPARCEL HOLDINGS, LLC, an Alabama limited liability company ("Assignor").

### RECITALS

A. Assignor was the owner of property known as Vestavia Hills City Center, 700 Montgomery Highway, Vestavia Hills, Alabama (the "Property").

B. Assignor conveyed the Property to Assignee by that certain Special Warranty Deed dated \_\_\_\_\_ and recorded in the Jefferson County Land Records at Book \_\_\_\_, page \_\_\_\_\_.

C. Assignor the successor in interest to that certain Agreement dated October 22, 2001 by and between the City of Vestavia Hills and AIG Baker Vestavia L.L.C and AIG Baker Vestavia Shopping Center, L.L.C. (as the same may have been amended the "Agreement").

D. Pursuant to Section 6.13 of the Agreement, in order to transfer Assignor's rights, an assignment of those rights must be made and consented to by the City of Vestavia Hills.

NOW, THEREFORE, the parties hereto agree as follows:

1. Assignor hereby Assigns to Assignee, and Assignee hereby assumes from Assignor, all of Assignor's rights and obligations under the Agreement, and Assignee shall be bound by and subject to all of the covenants, conditions and restrictions imposed under the Agreement arising after the date hereof.

2. This Assignment shall be governed and construed in accordance with the laws of the State of Alabama.

3. This Assignment contains the entire agreement between the parties hereto and they shall not be bound by any terms, warranties or representations, oral or written, not herein contained with respect to the subject matter hereof.

4. This Assignment shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

5. This Assignment may be executed in multiple counterparts, all of which taken together, shall be deemed one original.

**[Remainder of page left intentionally blank; signatures on following page]**

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date set forth above.

**ASSIGNOR:**  
**EXCEL VESTAVIA, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VESTAVIA OUTPARCEL HOLDINGS, LLC,**  
an Alabama limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

**VESTAVIA MZL LLC,**  
a Delaware limited liability company

By: Vestavia Manager LLC  
Its Manager

By: Daniel Partners, LLC  
Its Manager

By: \_\_\_\_\_  
Daniel Kaufthal  
Its Manager

This Assignment Agreement is hereby affirmed and consented to by:

**CITY OF VESTAVIA HILLS**  
a municipal corporation

By: \_\_\_\_\_



Name:  
Title:

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the County and State referenced above, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of **EXCEL VESTAVIA, LLC**, who, having been first duly sworn, acknowledged the execution of the foregoing Assignment and stated that the representations contained herein are true.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Printed Name

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

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the County and State referenced above, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of **VESTAVIA OUTPARCEL HOLDINGS, LLC**, who, having been first duly sworn, acknowledged the execution of the foregoing Assignment and stated that the representations contained herein are true.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Printed Name

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

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the County and State referenced above, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of **VESTAVIA MZL LLC**, who,



AGREEMENT

THIS AGREEMENT, dated October 22<sup>nd</sup>, 2001, is by and between the CITY OF VESTAVIA HILLS, a municipal corporation organized and existing under the laws of the State of Alabama (the "City"), AIG BAKER VESTAVIA, L.L.C., a Delaware limited liability company ("Baker/Vestavia"), and AIG BAKER VESTAVIA SHOPPING CENTER, L.L.C., a Delaware limited liability company ("Baker/Shopping Center," and, collectively with Baker/Vestavia, "Baker"). The City and Baker may be collectively referred to as the "Parties."

WITNESSETH

WHEREAS, on or about May 10, 2000, Baker/Vestavia purchased from John Lauriello and SouthPace Properties, Inc., as Plan Trustees under the confirmed "Third Amended and Restated Creditor's Plan of Reorganization for The Byrd Companies, Inc., Realtor Proposed by New Owners, Vestavia, L.L.C.," Bankruptcy Case No., 98-01643-TBB-11, approximately 19.36 acres of partially improved property commonly known as the "Vestavia Mall" located west of Highway 31, between Old Creek Trail and Kentucky Avenue, located within the City limits of Vestavia Hills, Alabama; and

WHEREAS, on or about May 10, 2000, Baker/Shopping Center purchased from John Lauriello and SouthPace Properties, Inc., as Plan Trustees under the confirmed "Third Amended and Restated Creditor's Plan of Reorganization for The Byrd Companies, Inc., Realtor Proposed by New Owners, Vestavia, L.L.C.," Bankruptcy Case No., 98-01643-TBB-11, approximately 7.825 acres of improved property commonly known as the "Vestavia Shopping Center" located northwest of the intersection of Highway 31 and Kentucky Avenue, located within the City limits of Vestavia Hills (the Vestavia Mall property and the Vestavia Shopping Center Property are collectively referred to herein as the "Redevelopment Property"); and

WHEREAS, Baker has an interest in redeveloping the Redevelopment Property into a mixed use retail shopping center development with proposed tenants to include a grocery store and other national anchor tenants as well as restaurants and other retail establishments which shall consist of approximately 335,000 square feet of retail space in the aggregate, and approximately 15,000 square feet of office space, the cost of which is estimated to be Forty-Five Million Dollars (\$45,000,000) (hereinafter referred to as the "Project"); and

WHEREAS, the Project will be redeveloped in three "phases" consisting of the "Publix Tract," the "Mall Tract," and the "Shopping Center Tract," as is more particularly shown on the Development Plan; and

WHEREAS, the Project will collectively be known as the "Vestavia Hills City Center," although title to the respective parts of the Project will remain in the separate entities as stated above; and

WHEREAS, the City desires to purchase certain land appurtenant to the Project to use for public purposes (such land being hereinafter more particularly described, and referred to herein as the "City Property") and to fund certain additional infrastructure improvements costs to the Project (the "City Funds"); and

WHEREAS, in order to induce Baker to proceed with the redevelopment of the Project and to further the public purposes for which the City exists, the Parties desire to set forth their respective agreements and undertakings with respect to the Project on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the Parties do hereby agree as follows:

## ARTICLE I THE PROJECT

### Section 1.1 Development of the Project.

(a) Subject to the requirements set forth herein, Baker commits to develop the Project substantially in accordance with the Development Plan (as hereafter defined).

(b) Baker contemplates that the Project shall include approximately 335,000 square feet of retail businesses and 15,000 square feet of commercial businesses, consistent with current zoning and other legal requirements, all to be situated upon the Redevelopment Property, and intends to develop the Project substantially in accordance with the development plan attached hereto as Exhibit A (the "Development Plan"). The Development Plan attached hereto is hereby approved by the City; however, City acknowledges that Baker's leasing of the Project is not final, and that changes to the Development Plan may be necessary in order to finalize leases for the Project or for other reasons incident to the development of the Project. Accordingly, subject to the provisions of subsection 1.1(c), the City agrees that Baker may make changes to the Development Plan, including, without limitation, changes to the parking layout and re-configuration of the buildings (other than any approvals required as part of planning and zoning approvals), provided that such changes will not (i) result in a material decrease in the gross leasable building area of the Project from that as shown on the Development Plan, (ii) result in a material increase in the gross leasable building area of the Project from that as shown on the Development Plan, so as to cause noncompliance with parking ratios or other applicable zoning requirements, (iii) result in a material change in the acreage of the City Property (as hereafter defined) or otherwise cause a material decrease in the value of the City Property. Baker will provide to City any revisions to the Development Plan which are made by Baker. City agrees to cooperate in good faith with Baker in any replatting or subdivision approvals which may be required in connection with the conveyance of the City Property to the City.

(c) Design work for the Project shall be subject to the reasonable approval of the City and shall include all work through preparation of plans and specifications and construction documents. The design work for the Project shall be performed by Baker at its sole expense. Baker agrees to obtain all necessary approvals and permits for the Project from the City or other governmental entity in the normal course.

Section 1.2 Subject to the provisions of Section 5.1(e) hereof relating to *force majeure*, Baker commits to complete the three (3) phases of the Project by the following dates:

- (a) The Shopping Center Tract will be completed by March 31, 2002;
- (b) The Publix Tract will be completed by December 31, 2002; and
- (c) The Mall Tract will be completed by July 1, 2003.

Section 1.3 Baker agrees to invest all funds, which are necessary for the actual design, construction and development of the Project, at an estimated investment by Baker of Forty Million Dollars (\$40,000,000) (provided, however, that the foregoing shall not be deemed to require Baker to expend more than the actual cost of construction of the Project).

## ARTICLE II PURCHASE OF CITY PROPERTY

### Section 2.1 Purchase of City Property.

(a) The City hereby agrees to purchase from Baker, and Baker hereby agrees to sell to the City, those certain parcels of land which are shown on Exhibit B attached hereto and made a part hereof, which such parcels of land shall collectively comprise the "City Property" described herein (prior to the Closing Date, exact legal descriptions for the City Property will be determined by the surveys described in Section 2.2 below). The City Property will be developed by Baker, as agent for the City, in accordance with the provisions of Article III.

(b) City agrees to cooperate with Baker and to use its best effort to cause the granting of such variances as may be reasonably necessary to allow Baker to proceed with the construction of the Project in the event any re-subdivision of the Redevelopment Property results in a violation of setback or other applicable zoning requirements.

(c) The City shall pay to Baker on the Closing Date (as hereafter defined) the sum of Three Million Six Hundred Ninety-Three Thousand Three Hundred Forty-Six Dollars (\$3,693,346), in immediately available funds, representing the purchase price allocated to the City Property.

**Section 2.2 Title and Survey.** Baker, at its sole expense, shall order and deliver to the City a title insurance commitment issued by Lawyers Title Insurance Corporation, for the issuance of an Owner's Form Title Insurance Policy. Attached hereto as Exhibit C are copies of Baker's Owner's Form Title Insurance Policies, issued by of Lawyers Title Insurance Corporation for the Project (the "Existing Title Policies"). Baker, at its sole expense, shall order and deliver to the City a boundary survey of the City Property. Said title insurance commitments and survey shall be delivered no later than thirty (30) days prior to the scheduled Closing Date. The City shall notify Baker in writing within fourteen (14) days from receipt of the title insurance commitment and the survey of the City Property of any defect or condition that materially and substantially affects the condition of the title or the intended use of the City Property to be acquired by it. Baker shall have thirty (30) days from the date of said notice to cure said defect or condition at its own cost and expense and the Closing Date shall be adjusted accordingly, if necessary. Failure by the City to give notice of any defect or condition shall constitute an acceptance of title. If Baker is unwilling or after reasonable effort is unable to cure any such defect or condition, it shall so notify the City and the City, at its election, shall terminate this Agreement or take title subject to such defect or condition. At closing, Baker shall deliver to the City a title insurance policy for the City Property, at Baker's expense, which shall be based upon the Existing Title Policies and any other title exceptions which shall be reasonably acceptable to the City.

**Section 2.3 Closing.** Unless extended by mutual agreement of the Parties, the closing of the City Property shall take place no later than February 28, 2002 (the "Closing Date"). The closing shall take place at a time and place mutually agreed upon by the Parties hereto. The City Property shall be conveyed by Statutory Warranty Deed with Declaration of Covenants and Reservation of Easements (in the form attached hereto as Exhibit D) (the "Deed") which shall convey marketable title to the City Property free and clear of all liens and encumbrances except those set forth in the Deed or those acceptable to the City. Possession of the City Property shall be delivered at closing, provided, however, that City shall grant to Baker its employees, agents, and subcontractors, free and uninterrupted access over and across the City Property for purposes of constructing the Project.

**Section 2.4 Property Taxes.** Baker shall make, so long as the restrictions and easements set forth in the Deed shall remain in effect, payments in lieu of ad valorem taxes in an amount which is equal to the lesser of (a) ad valorem taxes that would have been payable on the City Property as if Baker were the owner of the City Property, or (b) \$45,000 per year. All amounts payable under this subsection 2.4 shall be paid directly to the City.

**Section 2.5. Restrictions.**

(a) Conveyance of the City Property will be pursuant to the Deed in the form attached hereto as Exhibit D. The City Property will be used solely and exclusively for public parking, for natural areas which may contain a walking trail, for ingress and egress, and for the transmission of utilities, and for such other public uses as may be agreed to by Baker and the City.

(b) The City shall keep, and shall cause its employees, agents, or designees to keep, the City Property including all sidewalks, aisles, and drive areas as shown on the Development Plan, open for the free use thereof, and shall at no time allow such areas to be fenced or otherwise obstructed. City further agrees that it shall not assess any fee or charge for any person to utilize the parking spaces on the City Property so long as Baker maintains and operates the Project in accordance with this Agreement. The Parties further agree that they shall have no ability to make changes or improvements of any kind to the City Property unless the same are first approved by the Parties in writing. City agrees that Baker may deliver a copy of this Agreement to prospective tenants as evidence of the City's acknowledgment that the City Property will be restricted to the uses and subject to the easements and rights in favor of Baker as set forth herein and in the Deed attached hereto as Exhibit D and as set forth herein.

(c) The restrictions described in subparagraph (a) will remain in full force and effect until the earlier of (i) December 31, 2099, or (ii) such time as the Project ceases to be used for the retail and commercial project described in herein (of which, not less than 188,000 square feet shall be used for retail space) (other than temporary cessations in use incident to casualty or condemnation), or (iii) the City and Baker agree that said restrictions should be terminated and file for recordation a written termination agreement in form and content acceptable to both Baker and the City which shall be duly executed by both Baker and the City.

(d) The Parties agree to cooperate with each other to effectuate the Project. Baker shall have a non-exclusive right to use the City Property for parking in support of the Project and the Project leases. Baker agrees that it will not enter into tenant lease agreements in violation of the terms of this Agreement.

**Section 2.6. Leasing Contingency.** Notwithstanding any provision herein to the contrary, City shall not be obligated to close its purchase of the City Property unless Baker has delivered to City evidence of executed leases with SteinMart Stores, Inc., Publix of Alabama, LLC, and with tenants for an additional 90,000 square feet in the Project.

**Section 2.7. Completion Guaranty.** At closing, Baker will deliver to City a guarantee of completion of the Project substantially in accordance with the Development Plan and the terms of this Agreement, which such completion guarantee shall be in form and content acceptable to the Parties. The obligations of Baker pursuant to this Section 2.7 shall be guaranteed by AIG/Baker Partnership, a Delaware general partnership, pursuant to a guarantee in form and content acceptable to the Parties.



ARTICLE III  
INFRASTRUCTURE

Section 3.1 Construction of Infrastructure.

(a) As used herein, the term "Infrastructure" shall be defined to include but not limited to the following: earthwork, storm drainage, sanitary sewers, public road improvements and sidewalks incident to raising Canyon Road, plantings, retaining walls, lightings, landscaping, signalization, powerbank for roadways, paving and curbing and gutters for roadways, and necessary utilities and parking all to be constructed on public property, right-of-way or easements, all as are more particularly set forth in the Infrastructure Plan attached hereto as Exhibit E (the "Infrastructure Plans").

(b) The City hereby selects and appoints Baker as its agent to manage the construction of the Infrastructure and Baker hereby accepts said appointment and the responsibility for causing to be carried out said work as set forth herein. Baker specifically recognizes and agrees that all the Infrastructure Plans must be approved by the City before any implementation thereof, and City agrees that its approval will not be unreasonably withheld, conditioned, or delayed. Such approval shall not amount to an approval of the Infrastructure's conformity of applicable building codes and other usual inspection approvals by the City normal to any new construction in the City, which such approval process shall proceed in the normal course. While it is understood and agreed that certain roadways may be public roads, Baker and the City acknowledge that the secondary roads and other access corridors serving the Project and other facilities within the Project may be provided through private roads, or private access easements. Whether any future roads are to be dedicated as public roads will be determined by mutual agreement of the Parties.

(c) Baker shall also grant to the City an easement for storm sewers located within the Project area for which an easement has not previously been granted, which such storm sewer easements shall be at the locations shown on the Infrastructure Plan or as otherwise determined by Baker.

(d) Following the approval of the Infrastructure Plan by the City, Baker shall immediately proceed to effect the construction of the Infrastructure substantially in accordance with Infrastructure Plan. Baker further covenants that it will use its best efforts to complete the Infrastructure in an orderly and expeditious manner, subject to delays incident to *force majeure*. In constructing the Infrastructure, Baker shall comply with competitive bid laws and requirements applicable to municipal public works projects. It is understood and agreed by the Parties that the Infrastructure shall remain the property of the City.

(e) The City shall have the right to approve all construction contracts to be executed by Baker with general contractors pertaining to the Infrastructure and shall have the further right to approval all contractors, but not subcontractors, to be utilized thereon. Such approval shall be at the

discretion of the City, but shall not be unreasonably withheld, conditioned, or delayed. The City shall provide Baker with written instructions regarding the City's policies and procedures concerning bid law. Prior to the beginning of construction of the Infrastructure, Baker agrees that it shall require the Infrastructure general contractor to post a performance bond and a labor and materialmen's payment bond with good and sufficient surety issued by a company qualified to issue such bonds in the State of Alabama in an amount sufficient to insure completion of the construction of the Infrastructure according to the construction contract therefor, with Baker as obligee of the bonds and the City as additional obligee thereunder. The bonds shall be obtained from such companies in such amounts as shall be approved in advance by the City, such approval not to be unreasonably withheld, conditioned, or delayed. A copy of said bonds shall be furnished to the City prior to the beginning of the construction of the Infrastructure. In the event the Infrastructure general contractor defaults in the performance of its construction contract, Baker agrees to take appropriate action to enforce the said bonds or otherwise cause the work to be timely completed.

(f) Commencement of construction of the Project on the Publix Tract shall begin not later than November 30, 2001. Commencement of construction of the Project on the Mall Tract shall begin not later than March 31, 2002. The Parties agree that the Shopping Center Tract is substantially complete.

(g) In consideration of the agreements set forth herein, City agrees to pay for the cost of construction of the Infrastructure in the following manner: Baker shall submit a copy of each statement, proof of its payment and any additional information with respect to the work done which may be reasonably required by City for each contractor and other Parties involved in the construction of the Infrastructure. Unless the City has a question about a statement, or requires additional information with respect to such statement which shall be promptly communicated to Baker, the City shall pay jointly the contractor and Baker (as agent for the City, as herein provided), or shall pay Baker (as agent for the City, as herein provided) severally if Baker has already paid such contractor in accordance with the statements so submitted in the aggregate not to exceed One Million Three Hundred Six Thousand Six Hundred Fifty-Four Dollars (\$1,306,654).

(h) It is understood that it is the responsibility of Baker to complete the Project substantially in accordance with the Development Plan, and that the City's will not pay more than One Million Three Hundred Six Thousand Six Hundred Fifty-Four Dollars (\$1,306,654) for construction of the Infrastructure; therefore, Baker will be responsible for all costs in excess of such amount.

(i) Notwithstanding any provision herein to the contrary, Baker may choose to postpone installation of a final seal coat for any roadways or completion of other comparable work pending construction of retail, office, residential or other improvements within the Project, and such shall not constitute a default or breach of Baker's obligations hereunder.

(j) Baker covenants and agrees that it will pay promptly all persons or entities supplying work or materials for the construction of the Infrastructure. In the event that any materialmen's or

mechanics' liens are filed against the City Property in connection with Baker's construction of the Infrastructure or the Project, Baker covenants and agrees that it will discharge or make other arrangements reasonably acceptable to City with respect to (including, without limitation, bonding off or insuring over any such lien) any mechanic's or other lien filed against the City Property.

(k) Baker will maintain general liability insurance with respect to the City Property insuring against claims on account of loss of life, bodily injury, or property damage that may arise from, or be occasioned by the condition, use, or occupancy of the City Property by the public. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State of Alabama, and shall contain limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, with a \$5,000,000 umbrella policy, which such insurance shall be written on an occurrence basis and shall name the City as an additional insured, and shall provide that City shall receive not less than thirty (30) days written notice prior to cancellation. The City reserves the right to require reasonable increases in the amounts of such coverages from time to time so that such coverages remain consistent with then current generally accepted commercial standards for similar properties.

(l) Following the completion of construction thereof, Baker will be solely responsible for maintaining the City Property (other than the sanitary sewer and storm sewer which are publically dedicated and accepted for maintenance by the City, Jefferson County or any other applicable governmental entity) in good repair so as to keep the Infrastructure at all times in a safe, sightly, good and functional condition. Furthermore, Baker will be solely responsible for insuring that the City Property and the Infrastructure are at all times maintained in compliance with the terms and conditions of any other restrictions applicable to the City Property. Without limitation upon the foregoing, Baker shall: keep the City Property clean and free from refuse and rubbish; mow and otherwise maintain all landscaped areas within the City Property; repair holes or breaks in the parking lot and parking deck, and re-pave and re-stripe and replace markings on the surface of the parking areas and driveways from time to time as and when necessary so as to provide for the orderly parking of automobiles; maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of the Project; maintain all lighting for the Project, service, maintain, repair and replace, and pay the costs of any fees or charges in connection with all utility lines located within the City Property other than the sanitary sewer and storm sewers which are owned by the City); and otherwise cause the Infrastructure to comply with all applicable requirements of law and governmental regulation. City agrees that Baker may enter into one or more management agreements appointing a third party to perform all or portions of the maintenance and repair of the City Property; however, Baker shall remain the responsible party for maintenance of the City Property.

(m) Other than direct acts of the City, Baker shall defend, protect, indemnify, and hold harmless the City from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any of the following,

- (i) any construction activity performed under this Agreement by the Baker, or anyone claiming by, through, or under Baker; and
- (ii) any loss of life, personal injury, or damage to property arising from or out of the use of the City Property by any party, including, without limitation, tenants of the Project, customers and invitees of the Project; and
- (iii) any claims that Baker has breached any Project lease as a result of the transactions described.

The indemnifications set forth in this subparagraph (m) shall survive closing of the purchase and sale described herein and shall not be merged into the documents executed on the Closing Date.

#### **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES**

**Section 4.1 Representations and Warranties of the City and Conditions to the City's Obligation.** The City makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Subject to the due adoption of a Resolution by its City Council approving this Agreement and an Ordinance appropriating the funds necessary therefor, the City has the power and authority to enter into the transactions contemplated by this Agreement and to fulfill and carry out its obligations hereunder.

**Section 4.2 Representation and Warranties of Baker.** Baker makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Baker/Vestavia and Baker/Shopping Centers are each limited liability companies duly organized and existing under the law of the State of Delaware, and are duly qualified to do business in and are in good standing under the laws of the State of Alabama. Baker/Vestavia and Baker/Shopping Centers each has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(b) The execution and delivery of this Agreement on the part of Baker's proper agent or governing board has been duly authorized by a resolution duly adopted by the Board and by all other necessary actions.

**ARTICLE V**  
**EVENTS OF DEFAULT AND REMEDIES**

Section 5.1 **Baker Events of Default Defined.** Each of the following shall be a "**Baker Event of Default**" under the Agreement and the term "**Baker Event of Default**" shall mean, whenever it is used in the Agreement, any one or more of the following events:

(a). Failure by Baker to develop, complete, and maintain the Project as contemplated hereby;

(b). Failure by Baker to perform or observe any agreement, covenant or condition required by the Agreement to be performed or observed by it, which failure shall have continued for a period of thirty (30) days after written notice specifying, in reasonable detail, the nature of such failure and requiring Baker to perform or observe the agreement, covenant or condition with respect to which it is delinquent, shall have been given to Baker by the City unless (i) the City shall agree in writing to an extension of such period prior to its expiration, or (ii) during such thirty (30) day period or any extension thereof, Baker has commenced appropriate curative action and thereafter diligently pursues such corrective action to completion, or (iii) Baker is by reason of *force majeure* at the time prevented from performing or observing the agreement, covenant or condition with respect to which it is delinquent;

(c). Any material warranty, representation by or on behalf of Baker contained in the Agreement, or in any other document furnished by Baker in connection with the Agreement or the development of the Project proves to be false or misleading in any material respect at the time made;

(d). Institution by Baker of proceedings to be adjudicated a bankrupt or insolvent, or consent by Baker to the filing of a bankruptcy or insolvency proceeding against it, or the filing by Baker of a petition or answer or consent seeking relief under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, or consent by Baker to the institution of proceeding thereunder or to the filing of any such petition, or consent by Baker to the appointment of, or the taking of possession of any of its property by, a receiver, trustee, custodian or assignee in bankruptcy or insolvency of Baker of an interest in all or a major part of its property, or an assignment by Baker for the benefit of its creditors, or a written admission by Baker of its inability to pay its debts generally as they become due, or the taking of any corporate action by Baker in furtherance of any of the foregoing events or actions;

(e). The entry of a decree or order by a court of competent jurisdiction for relief in respect of Baker or adjudging Baker to be a bankrupt or insolvent or approving as properly filed a petition seeking the arrangement, adjustment or composition of its obligations under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, which decree or order shall have continued undischarged or unstayed for a period of sixty (60) days; or the entry of a decree or order of a court of competent jurisdiction for the appointment of a receiver, trustee, custodian or assignee in bankruptcy or insolvency for Baker

or for all or a major part of its property, which decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days; provided, however, that in each instance, Baker shall not be deemed in default where its performance is prevented or materially hindered by reason of force majeure or where it is proceeding with diligence to cure the default. The term "force majeure" as used herein means act of God or the public enemy, strikes, lockouts, work slowdowns or stoppages or other labor disputes, insurrections, riots or other civil disturbances, orders of the government of the United States of America or of any state of the United States of America or of any of the departments, agencies, political subdivision or officials of the United States of America or of any state thereof, or orders of any other civil or military authority, or partial or entire failure of public utilities, or any other condition or event beyond the reasonable control of Baker. Baker will, to the extent that it may lawfully do so, use its best efforts to remedy, alleviate or circumvent any cause or causes preventing it from performing its agreements and covenants hereunder; provided, however, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of Baker, and Baker shall not be required to settle strikes, lockouts and other labor disputes by acceding to the demands of the opposing party or parties when such course is in its judgment against its best interests.

**Section 5.2. City Remedies on Event of Default.** Subject to the provisions of Section 5.5 hereof, whenever an Event of Default shall have happened and be continuing and not waived by the City, the City may take any one or more of the following remedial actions:

(a). Terminate any obligations of the City hereunder, whereupon the City Property will be reconveyed by the City to Baker, Baker will reimburse the City in full for the City Funds, this Agreement will terminate and the Parties will be restored to their positions prior to the Closing Date; or

(b). Have access to, and inspect, examine and make copies of, the books, records and accounts of Baker related solely and strictly to the Infrastructure and the City Property (but in no event will Baker be required to provide to City any information which Bakers deems to be proprietary information relating to the Project, such as tenant leases); or

(c). Take legal action to require the specific performance of any obligation, covenant or agreement of Baker under the Agreement.

City acknowledges that the tenants at the Project are third-party beneficiaries of this Agreement and agrees that no action will be taken to terminate this Agreement without first giving each of said tenants at least sixty (60) days notice of the default and an opportunity cure the same.

City agrees that it will accept any performance by any of said Tenants of the obligations of the Baker under this Agreement the same as if said performance were rendered by Baker itself and that the same shall act to cure any default relating to said performance.

Section 5.3 [Intentionally Deleted].

Section 5.4 Baker Remedies. Subject to the provisions of Section 5.5 hereof and to the extent permitted by applicable law, whenever an Event of Default shall have happened and be continuing and not waived by Baker, Baker may take legal action to require the specific performance of any obligation, covenant or agreement of City under the Agreement or Deed.

Section 5.5 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or Baker is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Baker Event of Default or City Event of Default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or Baker to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as is herein expressly required.

Section 5.6 Agreement to Pay Attorneys' Fees. In the event of litigation pursuant to this Agreement, the non-prevailing party shall pay to the reasonable attorneys' fees and other reasonable expenses actually incurred by the prevailing party.

## ARTICLE VI GENERAL PROVISIONS

Section 6.1 Survival of Covenants. The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms. All covenants, representations and warranties shall survive the Closing Date and the delivery of the Deed attached hereto as Exhibit D.

Section 6.2 Fees and Expenses. Baker will pay the reasonable fees and expenses of Spain & Gillon, L.L.C., the attorney representing the City in connection with negotiation, execution and closing of this Agreement or any agreement or instrument contemplated herein, and will pay all fees of its own counsel. In no event will Baker be responsible for any attorneys fees or other fees incurred by the City in connection with the appropriation of funds described in Section 4.1(a) above. Except as expressly provided herein, the Deed any other instruments related to public roads and rights-of-way shall be prepared by Baker. The recording fees and taxes, if any, shall be borne by Baker.

Section 6.3 Severability. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not effect the validity of the remainder of this Agreement.

Section 6.4 Real Estate Commissions. Baker and City warrant and represent to the other that there are and shall be no brokerage fees, commissions, or other remuneration of any kind arising

from the execution of this Agreement or the Closing of the purchase and sale contemplated hereby. Baker and City shall forever indemnify and hold the other harmless against and in respect of any and all claims, losses, liabilities and expenses, including, without limitation, reasonable attorney's fees and court costs, which City or Baker may incur on account of any claim by any broker or agent or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Baker or City, as the case may be, in respect to the transactions herein contemplated. The provisions of this Section shall survive the Closing Date.

**Section 6.5 Notices.** Any notice required or permitted to be delivered hereunder shall, except as otherwise expressly provided herein, be deemed to have been given upon the earlier to occur of (i) actual receipt by the addressee thereof including without limitation via facsimile transmission or personal delivery; (ii) the third (3rd) day after the deposit of such notice in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Baker or City, as the case may be, as set forth below; or (iii) the first (1st) day after such notice has been deposited with a nationally recognized overnight courier (i.e. Federal Express); in either case, such notices to be addressed as follows:

To City:	The Mayor of the City of Vestavia Hills 513 Montgomery Highway Vestavia Hills, Alabama 35216 (205) 978-0130 (phone) (205)970-0132 (fax)
With a Copy to:	Spain & Gillon, L.L.C. The Zinszer Building 2117 2 <sup>nd</sup> Avenue North Birmingham, Alabama 35203 Attn: Alton B. Parker, Jr., Esq. (205) 328-4100 (phone) (205) 324-8866 (fax)
To Baker:	AIG Baker Vestavia, L.L.C. AIG Baker Vestavia Shopping Center, L.L.C. 1701 Lee Branch Lane Birmingham, AL 35242 Attention: Legal Department Telephone (205) 969-1000 Facsimile (205) 969-9467



With Copies to:

Burr & Forman LLP  
420 North 20<sup>th</sup> Street  
Suite 3100  
Birmingham, AL 35243  
Attn: Gail Livingston Mills, Esq.  
(205) 458-5300 (phone)  
(205) 458-5100 (fax)

**Section 6.6 Governing Law.** This Agreement shall be governed by the laws of the State of Alabama.

**Section 6.7 Entire Agreement.** This agreement and the exhibits which are attached hereto or incorporated herein by reference, constitute the entire agreement among the Parties hereto pertaining to the subject matter hereof, supersede any and all prior or contemporaneous agreements or understandings of the Parties relating to the subject matter hereof, and may not be modified or amended except by a writing executed by the duly authorized offices for all Parties.

**Section 6.8 No Waiver.** No consent or waiver, express or implied, by either party hereto or to any breach or default by the other party in the performance by the other party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any party hereto shall be construed to waive or limit the need for such consent in any other or subsequent instance.

**Section 6.9 Remedies.** Whenever either party hereto shall default in the performance of any of its obligations under this Agreement, the other party hereto may take whatever legal proceeding (including actions for damages or for specific performance to the extent provided by law) as shall be necessary or desirable to enforce any agreement or condition contained herein or any other obligation of the defaulting party imposed by law. The Parties hereto recognize, and will not object to, an action for specific performance.

**Section 6.10 No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture between the City and Baker and their respective successors and assigns.

**Section 6.11 Headings.** The headings in the Sections in this Agreement are for convenience of reference only and shall not form a part hereof.

Section 6.12 Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

Section 6.13 Assignment. This Agreement, and all of the provisions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns and is freely assignable by either party, without consent of the other; provided, however, that the original Parties shall remain principally liable hereunder unless expressly released in writing. The City acknowledges and agrees that Baker may assign its rights under this Agreement to an affiliate of Baker or to any purchaser of the Project or any interest therein, and the City's consent to such assignment shall not be unreasonably withheld, conditioned, or delayed.

Section 6.14 Collateral Assignments. The consent of the City shall be required for any collateral assignments of Baker's rights under this Agreement which Baker shall request to be made to any lender who may provide financing for the Project to Baker ("Development Lender"). The consent of the City shall not be unreasonably withheld. Upon consent by the City of any such assignment, a copy of any and all notices given to Baker under this Agreement will, upon request, be simultaneously provided to Development Lender, provided that Baker provides the City with the name and address of the Development Lender.

Section 6.15 Estoppel Certificates. From time to time, upon request by any party, the party asked shall provide to the party making the petition, an acknowledgment or certificate with respect to matters concerning this Agreement or the status of performance of the obligations of the Parties hereunder, as may be reasonably requested.


Section 6.16 No Third-Party Beneficiaries. Except as set forth herein, this Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest or obligations hereunder, is intended for the benefit of any other person or third-party.

Section 6.17 Non-Discrimination. Baker shall not enter into, execute, or be a party to any covenant, agreement, lease, deed, assignment, conveyance or any other written instrument which restricts the sale, lease or use of the Infrastructure, or any part thereof, or any improvements placed thereon, upon the basis of national origin, race, religion, sex or color. Baker shall comply with all federal, state and local laws in affect from time to time, prohibiting discrimination or segregation and will not discriminate by reason of national origin, race, religion, sex or color in the construction of the Infrastructure.

Section 6.18 Computation of City Funds. The computation of the City Funds shall not include any transactional costs, attorneys fees and closing costs incurred by the City in connection herewith.

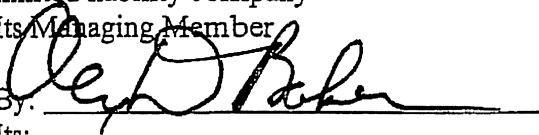
IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the first above written.

THE CITY OF VESTAVIA HILLS,  
a municipality organized and existing under the laws  
of the State of Alabama

By:   
Dr. Charles A. McCallum  
Its Mayor

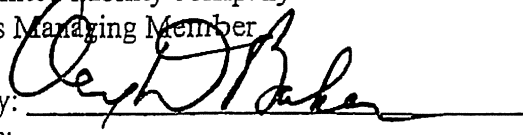
AIG BAKER VESTAVIA L.L.C.  
a Delaware limited liability company

BY: AIG BAKER SHOPPING CENTER  
PROPERTIES, L.L.C., a Delaware  
limited liability company  
Its Managing Member

By:   
Its: \_\_\_\_\_

AIG BAKER VESTAVIA SHOPPING CENTER,  
L.L.C.  
a Delaware limited liability company

BY: AIG BAKER SHOPPING CENTER  
PROPERTIES, L.L.C., a Delaware  
limited liability company  
Its Managing Member

By:   
Its: \_\_\_\_\_

## AMENDED AND RESTATED AGREEMENT

**THIS AMENDED AND RESTATED AGREEMENT**, dated January 5, 2001, is by and between the **CITY OF VESTAVIA HILLS**, a municipal corporation organized and existing under the laws of the State of Alabama (the "City"), **AIG BAKER VESTAVIA, L.L.C.**, a Delaware limited liability company ("Baker/Vestavia"), and **AIG BAKER VESTAVIA SHOPPING CENTER, L.L.C.**, a Delaware limited liability company ("Baker/Shopping Center," and, collectively with Baker/Vestavia, "Baker"). The City and Baker may be collectively referred to as the "Parties." *This Agreement amends and restates in its entirety that certain Agreement dated October 22, 2001 among the City and Baker.*

### WITNESSETH

**WHEREAS**, on or about May 10, 2000, Baker/Vestavia purchased from John Lauriello and SouthPace Properties, Inc., as Plan Trustees under the confirmed "Third Amended and Restated Creditor's Plan of Reorganization for The Byrd Companies, Inc., Realtor Proposed by New Owners, Vestavia, L.L.C.," Bankruptcy Case No., 98-01643-TBB-11, approximately 19.36 acres of partially improved property commonly known as the "Vestavia Mall" located west of Highway 31, between Old Creek Trail and Kentucky Avenue, located within the City limits of Vestavia Hills, Alabama; and

**WHEREAS**, on or about May 10, 2000, Baker/Shopping Center purchased from John Lauriello and SouthPace Properties, Inc., as Plan Trustees under the confirmed "Third Amended and Restated Creditor's Plan of Reorganization for The Byrd Companies, Inc., Realtor Proposed by New Owners, Vestavia, L.L.C.," Bankruptcy Case No., 98-01643-TBB-11, approximately 7.825 acres of improved property commonly known as the "Vestavia Shopping Center" located northwest of the intersection of Highway 31 and Kentucky Avenue, located within the City limits of Vestavia Hills (the Vestavia Mall property and the Vestavia Shopping Center Property are collectively referred to herein as the "Redevelopment Property"); and

**WHEREAS**, Baker has an interest in redeveloping the Redevelopment Property into a mixed use retail shopping center development with proposed tenants to include a grocery store and other national anchor tenants as well as restaurants and other retail establishments which shall consist of approximately 335,000 square feet of retail space in the aggregate, and approximately 15,000 square feet of office space, the cost of which is estimated to be Forty-Five Million Dollars (\$45,000,000) (hereinafter referred to as the "Project"); and

**WHEREAS**, the Project will be redeveloped in three "phases" consisting of the "Publix Tract," the "Mall Tract," and the "Shopping Center Tract," as is more particularly shown on the Development Plan; and

**WHEREAS**, the Project will collectively be known as the "Vestavia Hills City Center," although title to the respective parts of the Project will remain in the separate entities as stated above; and

**WHEREAS**, the City desires to purchase certain land appurtenant to the Project to use for public purposes (such land being hereinafter more particularly described, and referred to herein as the "City Property") and to fund certain additional infrastructure improvements costs to the Project (such infrastructure costs, together the funds paid for the City Property as hereinafter described are collectively referred to herein as the "City Funds"); and

**WHEREAS**, in order to induce Baker to proceed with the redevelopment of the Project and to further the public purposes for which the City exists, the Parties desire to set forth their respective agreements and undertakings with respect to the Project on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained the Parties do hereby agree as follows:

## **ARTICLE I** **THE PROJECT**

### **Section 1.1    Development of the Project.**

(a) Subject to the requirements set forth herein, Baker commits to develop the Project substantially in accordance with the Development Plan (as hereafter defined).

(b) Baker contemplates that the Project shall include approximately 335,000 square feet of retail businesses and 15,000 square feet of commercial businesses, consistent with current zoning and other legal requirements, all to be situated upon the Redevelopment Property, and intends to develop the Project substantially in accordance with the development plan attached hereto as Exhibit A (the "Development Plan"). The Development Plan attached hereto is hereby approved by the City; however, City acknowledges that Baker's leasing of the Project is not final, and that changes to the Development Plan may be necessary in order to finalize leases for the Project or for other reasons incident to the development of the Project. Accordingly, subject to the provisions of subsection 1.1(c), the City agrees that Baker may make changes to the Development Plan, including, without limitation, changes to the parking layout and re-configuration of the buildings (other than any approvals required as part of planning and zoning approvals), provided that such changes will not (i) result in a material decrease in the gross leasable building area of the Project from that as shown on the Development Plan, (ii) result in a material increase in the gross leasable building area of the Project from that as shown on the Development Plan, so as to cause noncompliance with parking ratios or other applicable zoning requirements, (iii) result in a material change in the acreage of the City Property (as hereafter defined) or otherwise cause a material decrease in the value of the City Property. Baker will provide to City any revisions to the Development Plan which are made by Baker. City agrees to cooperate in good faith with Baker in any replatting or subdivision approvals which may be required in connection with the conveyance of the City Property to the City.

(c) Design work for the Project shall be subject to the reasonable approval of the City and shall include all work through preparation of plans and specifications and construction documents. The design work for the Project shall be performed by Baker at its sole expense. Baker agrees to obtain all necessary approvals and permits for the Project from the City or other governmental entity in the normal course.

**Section 1.2** Subject to the provisions of Section 5.1(e) hereof relating to *force majeure*, Baker commits to complete the three (3) phases of the Project by the following dates:

- (a) The Shopping Center Tract will be completed by March 31, 2002;
- (b) The Publix Tract will be completed by December 31, 2002; and
- (c) The Mall Tract will be completed by July 1, 2003.

**Section 1.3** Baker agrees to invest all funds, which are necessary for the actual design, construction and development of the Project, at an estimated investment by Baker of Forty Million Dollars (\$40,000,000) (provided, however, that the foregoing shall not be deemed to require Baker to expend more than the actual cost of construction of the Project).

## **ARTICLE II**

### **PURCHASE OF CITY PROPERTY**

#### **Section 2.1 Purchase of City Property.**

(a) The City hereby agrees to purchase from Baker, and Baker hereby agrees to sell to the City, those certain parcels of land which are shown on Exhibit B attached hereto and made a part hereof, which such parcels of land shall collectively comprise the "City Property" described herein (prior to the Closing Date, exact legal descriptions for the City Property will be determined by the surveys described in Section 2.2 below). The City Property will be developed by Baker, as agent for the City, in accordance with the provisions of Article III.

(b) City agrees to cooperate with Baker and to use its best effort to cause the granting of such variances as may be reasonably necessary to allow Baker to proceed with the construction of the Project in the event any re-subdivision of the Redevelopment Property results in a violation of setback or other applicable zoning requirements.

(c) The City shall pay to Baker on the Closing Date (as hereafter defined) the sum of Three Million Six Hundred Ninety-Three Thousand Three Hundred Forty-Six and 00/100 Dollars (\$3,693,346.00) in immediately available funds, representing the purchase price allocated to the City Property.

**Section 2.2 Title and Survey.** Baker, at its sole expense, shall order and deliver to the City a title insurance commitment issued by Lawyers Title Insurance Corporation, for the issuance of an Owner's Form Title Insurance Policy. Attached hereto as Exhibit C are copies of Baker's Owner's Form Title Insurance Policies, issued by of Lawyers Title Insurance Corporation for the Project (the "Existing Title Policies"). Baker, at its sole expense, shall order and deliver to the City a boundary survey of the City Property. Said title insurance commitments and survey shall be delivered no later than thirty (30) days prior to the scheduled Closing Date. The City shall notify Baker in writing within fourteen (14) days from receipt of the title insurance commitment and the survey of the City Property of any defect or condition that materially and substantially affects the condition of the title or the intended use of the City Property to be acquired by it. Baker shall have thirty (30) days from the date of said notice to cure said defect or condition at its own cost and expense and the Closing Date shall be adjusted accordingly, if necessary. Failure by the City to give notice of any defect or condition shall constitute an acceptance of title. If Baker is unwilling or after reasonable effort is unable to cure any such defect or condition, it shall so notify the City and the City, at its election, shall terminate this Agreement or take title subject to such defect or condition. At closing, Baker shall deliver to the City a title insurance policy for the City Property, at Baker's expense, which shall be based upon the Existing Title Policies and any other title exceptions which shall be reasonably acceptable to the City.

**Section 2.3 Closing.** Unless extended by mutual agreement of the Parties, the closing of the City Property shall take place no later than February 28, 2002 (the "Closing Date"). The closing shall take place at a time and place mutually agreed upon by the Parties hereto. The City Property shall be conveyed by Statutory Warranty Deed with Declaration of Covenants and Reservation of Easements (in the form attached hereto as Exhibit D) (the "Deed") which shall convey marketable title to the City Property free and clear of all liens and encumbrances except those set forth in the Deed or those acceptable to the City. Possession of the City Property shall be delivered at closing, provided, however, that City shall grant to Baker its employees, agents, and subcontractors, free and uninterrupted access over and across the City Property for purposes of constructing the Project.

**Section 2.4 Property Taxes.** Baker shall make, so long as the restrictions and easements set forth in the Deed shall remain in effect, payments in lieu of ad valorem taxes in an amount which is equal to the lesser of (a) ad valorem taxes that would have been payable on the City Property as if Baker were the owner of the City Property, or (b) \$45,000 per year. All amounts payable under this subsection 2.4 shall be paid directly to the City.

## **Section 2.5. Restrictions.**

(a) Conveyance of the City Property will be pursuant to the Deed in the form attached hereto as Exhibit D. The City Property will be used solely and exclusively for public parking, for natural areas which may contain a walking trail, for ingress and egress, and for the transmission of utilities, and for such other public uses as may be agreed to by Baker and the City.

(b) The City shall keep, and shall cause its employees, agents, or designees to keep, the City Property including all sidewalks, aisles, and drive areas as shown on the Development Plan, open for the free use thereof, and shall at no time allow such areas to be fenced or otherwise obstructed. City further agrees that it shall not assess any fee or charge for any person to utilize the parking spaces on the City Property so long as Baker maintains and operates the Project in accordance with this Agreement. The Parties further agree that they shall have no ability to make changes or improvements of any kind to the City Property unless the same are first approved by the Parties in writing. City agrees that Baker may deliver a copy of this Agreement to prospective tenants as evidence of the City's acknowledgment that the City Property will be restricted to the uses and subject to the easements and rights in favor of Baker as set forth herein and in the Deed attached hereto as Exhibit D and as set forth herein.

(c) The restrictions described in subparagraphs (a), (b), (d) and (e) will remain in full force and effect until the earlier of (i) December 31, 2099, or (ii) such time as the Project ceases to be used for the retail and commercial project described in herein (of which, not less than 188,000 square feet shall be used for retail space) (other than temporary cessations in use incident to casualty or condemnation), or (iii) the City and the then owner or owners of all of the Vestavia Hills City Center (and any mortgagees of such property) agree that said restrictions should be terminated and file for recordation a written termination agreement in form and content acceptable to both Baker and the City which shall be duly executed by both Baker and the City.

(d) The Parties agree to cooperate with each other to effectuate the Project. Baker shall have a non-exclusive right to use the City Property for parking in support of the Project and the Project leases. Baker agrees that it will not enter into tenant lease agreements in violation of the terms of this Agreement. It is agreed that Baker and its successors and assigns in ownership to all or part of the Vestavia Hills City Center may include all of the parking spaces developed or to be developed from time to time on the City Property in the calculation of off-street parking spaces applicable to the Vestavia Hills City Center for the purpose of meeting the off-street parking requirements under the Zoning Ordinance of the City, as the same may be amended from time to time. This provision shall be contained in the Deed and shall run with the land.

(e) The City further agrees that Baker and its successors and assigns in ownership to all or part of the Vestavia Hills City Center shall have the right to use the City Property for determining compliance with setback requirements applicable to the Project, and the City agrees that for purposes of determining the setback requirements under the zoning ordinance of the City (but for no other reason), the City Property and the property retained by Baker shall be deemed to constitute a single



lot and no variances shall be required for setback encroachments which may be caused by the division of the Redevelopment Property into separate lots. This provision shall be contained in the Deed and shall run with the land.

**Section 2.6. Leasing Contingency.** Notwithstanding any provision herein to the contrary, City shall not be obligated to close its purchase of the City Property unless Baker has delivered to City evidence of executed leases with SteinMart Stores, Inc., Publix of Alabama, LLC, and with tenants for an additional 90,000 square feet in the Project.

**Section 2.7. Completion Guaranty.** At closing, Baker will deliver to City a guarantee of completion of the Project substantially in accordance with the Development Plan and the terms of this Agreement, which such completion guarantee shall be in form and content acceptable to the Parties. The obligations of Baker pursuant to this Section 2.7 shall be guaranteed by AIG/Baker Partnership, a Delaware general partnership, pursuant to a guarantee in form and content acceptable to the Parties.

### **ARTICLE III INFRASTRUCTURE**

#### **Section 3.1 Construction of Infrastructure.**

(a) As used herein, the term "Infrastructure" shall be defined to include but not limited to the following: earthwork, storm drainage, sanitary sewers, public road improvements and sidewalks incident to raising Canyon Road, plantings, retaining walls, lightings, landscaping, signalization, powerbank for roadways, paving and curbing and gutters for roadways, an escalator and/or an elevator, and necessary utilities and parking all to be constructed on public property, right-of-way or easements, all as are more particularly described on Exhibit E attached hereto (the "Infrastructure Plans").

(b) The City hereby selects and appoints Baker as its agent to manage the construction of the Infrastructure and Baker hereby accepts said appointment and the responsibility for causing to be carried out said work as set forth herein. Baker specifically recognizes and agrees that all the Infrastructure Plans must be approved by the City before any implementation thereof, and City agrees that its approval will not be unreasonably withheld, conditioned, or delayed. Such approval shall not amount to an approval of the Infrastructure's conformity of applicable building codes and other usual inspection approvals by the City normal to any new construction in the City, which such approval process shall proceed in the normal course. While it is understood and agreed that certain roadways may be public roads. Baker and the City acknowledge that the secondary roads and other access corridors serving the Project and other facilities within the Project may be provided through private roads, or private access easements. Whether any future roads are to be dedicated as public roads will be determined by mutual agreement of the Parties.

(c) Baker shall also grant to the City an easement for storm sewers located within the Project area for which an easement has not previously been granted, which such storm sewer easements shall be at the locations shown on the Infrastructure Plan or as otherwise determined by Baker.

(d) Following the approval of the Infrastructure Plan by the City, Baker shall immediately proceed to effect the construction of the Infrastructure substantially in accordance with Infrastructure Plan. Baker further covenants that it will use its best efforts to complete the Infrastructure in an orderly and expeditious manner, subject to delays incident to *force majeure*. In constructing the Infrastructure, Baker shall comply with competitive bid laws and requirements applicable to municipal public works projects. It is understood and agreed by the Parties that the Infrastructure shall remain the property of the City.

(e) The City shall have the right to approve all construction contracts to be executed by Baker with general contractors pertaining to the Infrastructure and shall have the further right to approval all contractors, but not subcontractors, to be utilized thereon. Such approval shall be at the discretion of the City, but shall not be unreasonably withheld, conditioned, or delayed. The City shall provide Baker with written instructions regarding the City's policies and procedures concerning bid law Prior to the beginning of construction of the Infrastructure. Baker agrees that it shall require the Infrastructure general contractor to post a performance bond and a labor and materialmen's payment bond with good and sufficient surety issued by a company qualified to issue such bonds in the State of Alabama in an amount sufficient to insure completion of the construction of the Infrastructure according to the construction contract therefor, with Baker as obligee of the bonds and the City as additional obligee thereunder. The bonds shall be obtained from such companies in such amounts as shall be approved in advance by the City, such approval not to be unreasonably withheld, conditioned, or delayed. A copy of said bonds shall be furnished to the City prior to the beginning of the construction of the Infrastructure. In the event the Infrastructure general contractor defaults in the performance of its construction contract, Baker agrees to take appropriate action to enforce the said bonds or otherwise cause the work to be timely completed.

(f) Commencement of construction of the Project on the Publix Tract shall begin not later than November 30, 2001. Commencement of construction of the Project on the Mall Tract shall begin not later than March 31, 2002. The Parties agree that the Shopping Center Tract is substantially complete.

(g) In consideration of the agreements set forth herein, City agrees to pay for the cost of construction of the Infrastructure in the following manner: Baker shall submit a copy of each statement, proof of its payment and any additional information with respect to the work done which may be reasonably required by City for each contractor and other Parties involved in the construction of the Infrastructure. Unless the City has a question about a statement, or requires additional information with respect to such statement which shall be promptly communicated to Baker, the City shall pay jointly the contractor and Baker (as agent for the City, as herein provided), or shall pay Baker (as agent for the City, as herein provided) severally if Baker has already paid such contractor)

in accordance with the statements so submitted in the aggregate not to exceed One Million Three Hundred Six Thousand Six Hundred Fifty-Four and 00/100 Dollars (\$1,306,654.00).

(h) It is understood that it is the responsibility of Baker to complete the Project substantially in accordance with the Development Plan, and that the City's will not pay more than One Million Three Hundred Six Thousand Six Hundred Fifty-Four and 00/100 Dollars (\$1,306,654.00) for construction of the Infrastructure; therefore, Baker will be responsible for all costs in excess of such amount.

(i) Notwithstanding any provision herein to the contrary, Baker may choose to postpone installation of a final seal coat for any roadways or completion of other comparable work pending construction of retail, office, residential or other improvements within the Project, and such shall not constitute a default or breach of Baker's obligations hereunder.

(j) Baker covenants and agrees that it will pay promptly all persons or entities supplying work or materials for the construction of the Infrastructure. In the event that any materialmen's or mechanics' liens are filed against the City Property in connection with Baker's construction of the Infrastructure or the Project, Baker covenants and agrees that it will discharge or make other arrangements reasonably acceptable to City with respect to (including, without limitation, bonding off or insuring over any such lien) any mechanic's or other lien filed against the City Property.

(k) Baker will maintain general liability insurance with respect to the City Property insuring against claims on account of loss of life, bodily injury, or property damage that may arise from, or be occasioned by the condition, use, or occupancy of the City Property by the public. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State of Alabama, and shall contain limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, with a \$5,000,000 umbrella policy, which such insurance shall be written on an occurrence basis and shall name the City as an additional insured, and shall provide that City shall receive not less than thirty (30) days written notice prior to cancellation. The City reserves the right to require reasonable increases in the amounts of such coverages from time to time so that such coverages remain consistent with then current generally accepted commercial standards for similar properties.

(l) Following the completion of construction thereof, Baker will be solely responsible for maintaining the City Property (other than the sanitary sewer and storm sewer which are publically dedicated and accepted for maintenance by the City, Jefferson County or any other applicable governmental entity) in good repair so as to keep the Infrastructure at all times in a safe, sightly, good and functional condition. Furthermore, Baker will be solely responsible for insuring that the City Property and the Infrastructure are at all times maintained in compliance with the terms and conditions of any other restrictions applicable to the City Property. Without limitation upon the foregoing, Baker shall: keep the City Property clean and free from refuse and rubbish; mow and otherwise maintain all landscaped areas within the City Property; repair holes or breaks in the parking lot and parking deck, and re-pave and re-stripe and replace markings on the surface of the

parking areas and driveways from time to time as and when necessary so as to provide for the orderly parking of automobiles; maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of the Project; maintain all lighting for the Project, service, maintain, repair and replace, and pay the costs of any fees or charges in connection with all utility lines located within the City Property other than the sanitary sewer and storm sewers which are owned by the City); and otherwise cause the Infrastructure to comply with all applicable requirements of law and governmental regulation. City agrees that Baker may enter into one or more management agreements appointing a third party to perform all or portions of the maintenance and repair of the City Property; however, Baker shall remain the responsible party for maintenance of the City Property.

(m) Other than direct acts of the City, Baker shall defend, protect, indemnify, and hold harmless the City from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any of the following,

- (i) any construction activity performed under this Agreement by the Baker, or anyone claiming by, through, or under Baker; and
- (ii) any loss of life, personal injury, or damage to property arising from or out of the use of the City Property by any party, including, without limitation, tenants of the Project, customers and invitees of the Project; and
- (iii) any claims that Baker has breached any Project lease as a result of the transactions described.

The indemnifications set forth in this subparagraph (m) shall survive closing of the purchase and sale described herein and shall not be merged into the documents executed on the Closing Date.

#### **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES**

**Section 4.1 Representations and Warranties of the City and Conditions to the City's Obligation.** The City makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Subject to the due adoption of a Resolution by its City Council approving this Agreement and an Ordinance appropriating the funds necessary therefor, the City has the power and authority to enter into the transactions contemplated by this Agreement and to fulfill and carry out its obligations hereunder.

**Section 4.2 Representation and Warranties of Baker.** Baker makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Baker/Vestavia and Baker/Shopping Centers are each limited liability companies duly organized and existing under the law of the State of Delaware. and are duly qualified to do business in and are in good standing under the laws of the State of Alabama. Baker/Vestavia and Baker/Shopping Centers each has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(b) The execution and delivery of this Agreement on the part of Baker's proper agent or governing board has been duly authorized by a resolution duly adopted by the Board and by all other necessary actions.

## **ARTICLE V**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 5.1 Baker Events of Default Defined.** Each of the following shall be a "Baker Event of Default" under the Agreement and the term "Baker Event of Default" shall mean, whenever it is used in the Agreement, any one or more of the following events:

(a) Failure by Baker to develop, complete, and maintain the Project as contemplated hereby;

(b) Failure by Baker to perform or observe any agreement, covenant or condition required by the Agreement to be performed or observed by it, which failure shall have continued for a period of thirty (30) days after written notice specifying, in reasonable detail, the nature of such failure and requiring Baker to perform or observe the agreement, covenant or condition with respect to which it is delinquent, shall have been given to Baker by the City unless (i) the City shall agree in writing to an extension of such period prior to its expiration, or (ii) during such thirty (30) day period or any extension thereof, Baker has commenced appropriate curative action and thereafter diligently pursues such corrective action to completion, or (iii) Baker is by reason of *force majeure* at the time prevented from performing or observing the agreement, covenant or condition with respect to which it is delinquent;

(c) Any material warranty, representation by or on behalf of Baker contained in the Agreement, or in any other document furnished by Baker in connection with the Agreement or the development of the Project proves to be false or misleading in any material respect at the time made;

(d) Institution by Baker of proceedings to be adjudicated a bankrupt or insolvent, or consent by Baker to the filing of a bankruptcy or insolvency proceeding against it, or the filing by Baker of a petition or answer or consent seeking relief under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar

law, or consent by Baker to the institution of proceeding thereunder or to the filing of any such petition, or consent by Baker to the appointment of, or the taking of possession of any of its property by, a receiver, trustee, custodian or assignee in bankruptcy or insolvency of Baker of an interest in all or a major part of its property, or an assignment by Baker for the benefit of its creditors, or a written admission by Baker of its inability to pay its debts generally as they become due, or the taking of any corporate action by Baker in furtherance of any of the foregoing events or actions;

(e) The entry of a decree or order by a court of competent jurisdiction for relief in respect of Baker or adjudging Baker to be a bankrupt or insolvent or approving as properly filed a petition seeking the arrangement, adjustment or composition of its obligations under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, which decree or order shall have continued undischarged or unstayed for a period of sixty (60) days; or the entry of a decree or order of a court of competent jurisdiction for the appointment of a receiver, trustee, custodian or assignee in bankruptcy or insolvency for Baker or for all or a major part of its property, which decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days; provided, however, that in each instance, Baker shall not be deemed in default where its performance is prevented or materially hindered by reason of force majeure or where it is proceeding with diligence to cure the default. The term "*force majeure*" as used herein means act of God or the public enemy, strikes, lockouts, work slowdowns or stoppages or other labor disputes, insurrections, riots or other civil disturbances, orders of the government of the United States of America or of any state of the United States of America or of any of the departments, agencies, political subdivision or officials of the United States of America or of any state thereof, or orders of any other civil or military authority, or partial or entire failure of public utilities, or any other condition or event beyond the reasonable control of Baker. Baker will, to the extent that it may lawfully do so, use its best efforts to remedy, alleviate or circumvent any cause or causes preventing it from performing its agreements and covenants hereunder; provided, however, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of Baker, and Baker shall not be required to settle strikes, lockouts and other labor disputes by acceding to the demands of the opposing party or parties when such course is in its judgment against its best interests.

**Section 5.2 City Remedies on Event of Default.** Subject to the provisions of Section 5.5 hereof, whenever an Event of Default shall have occurred and be continuing and not waived by the City, the City may take the following remedial actions:

(a) Upon the occurrence of an Event of Default due solely to the failure of Baker to complete the Mall Tract as required in Section 1.2(c), which such Event of Default is not cured within applicable curative periods specified above, then, in such event: (i) this Agreement shall be deemed bifurcated between the Mall Tract, on the one hand, and the Publix Tract and the Shopping Center Tract on the other hand, (ii) the City may terminate any remaining obligations of the City hereunder which are applicable to the Mall Tract, (iii) the City Property which is part of the Mall Tract will be reconveyed by the City to the then owner or owners of the Mall Tract, (iv) Baker will reimburse the City for the land value allocated to the Mall Tract in amount of One Million Five

Hundred Sixty-Seven Thousand Eight Hundred Six Dollars (\$1,567,806), together with any City Funds allocated to Infrastructure on the Mall Tract (as described on Exhibit E attached hereto), (v) this Agreement will terminate as to the Mall Tract only, (vi) the Parties will be restored to their positions prior to the Closing Date with respect to the Mall Tract only, and (vii) this Agreement shall remain in force and effect as to the Publix Tract and the Shopping Center Tract.

(b) Upon the occurrence of any Event of Default other than as provided in subparagraph (a) above, which such Event of Default is not cured within applicable curative periods specified above, then City may terminate any obligations of the City hereunder, whereupon the City Property will be reconveyed by the City to the then owner or owners of the Vestavia Hills City Center (or, if applicable, the respective owner(s) of the Mall Tract, the Publix Tract, and the Shopping Center Tract), Baker will reimburse the City in full for all funds paid by the City to Baker pursuant to this Agreement, this Agreement will terminate, and the Parties will be restored to their positions prior to the Closing Date.

(c) Upon the occurrence of any Event of Default under either subparagraph (a) or (b), the City shall have access to, and inspect, examine and make copies of, the books, records and accounts of Baker related solely and strictly to the Infrastructure and the City Property for which such Event of Default as occurred (but in no event will Baker be required to provide to City any information which Baker deems to be proprietary information relating to the Project, such as tenant leases).

(d) Upon the occurrence of any Event of Default under either subparagraph (a) or (b), the City may take legal action to require the specific performance of any obligation, covenant or agreement of Baker under this Agreement.

City acknowledges that the tenants at and any mortgagees of the Project are third-party beneficiaries of this Agreement and agrees that no action will be taken to terminate this Agreement without first giving each of said tenants and mortgagees at least sixty (60) days notice of the default and an opportunity to cure the same. City agrees that it will accept any performance by any of said tenants and mortgagees of the obligations of the Baker under this Agreement the same as if said performance were rendered by Baker itself and that the same shall act to cure any default relating to said performance.

**Section 5.3** [Intentionally Deleted].

**Section 5.4 Baker Remedies.** Subject to the provisions of Section 5.5 hereof and to the extent permitted by applicable law, whenever an Event of Default shall have happened and be continuing and not waived by Baker, Baker may take legal action to require the specific performance of any obligation, covenant or agreement of City under the Agreement or Deed.

**Section 5.5 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the City or Baker is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under

the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Baker Event of Default or City Event of Default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or Baker to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as is herein expressly required.

**Section 5.6 Agreement to Pay Attorneys' Fees.** In the event of litigation pursuant to this Agreement, the non-prevailing party shall pay to the reasonable attorneys' fees and other reasonable expenses actually incurred by the prevailing party.

## ARTICLE VI GENERAL PROVISIONS

**Section 6.1 Survival of Covenants.** The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms. All covenants, representations and warranties shall survive the Closing Date and the delivery of the Deed attached hereto as Exhibit D.

**Section 6.2 Fees and Expenses.** Baker will pay the reasonable fees and expenses of Spain & Gillon, L.L.C., the attorney representing the City in connection with negotiation, execution and closing of this Agreement or any agreement or instrument contemplated herein, and will pay all fees of its own counsel. In no event will Baker be responsible for any attorneys fees or other fees incurred by the City in connection with the appropriation of funds described in Section 4.1(a) above. Except as expressly provided herein, the Deed any other instruments related to public roads and rights-of-way shall be prepared by Baker. The recording fees and taxes, if any, shall be borne by Baker.

**Section 6.3 Severability.** If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not effect the validity of the remainder of this Agreement.

**Section 6.4 Real Estate Commissions.** Baker and City warrant and represent to the other that there are and shall be no brokerage fees, commissions, or other remuneration of any kind arising from the execution of this Agreement or the Closing of the purchase and sale contemplated hereby. Baker and City shall forever indemnify and hold the other harmless against and in respect of any and all claims, losses, liabilities and expenses, including, without limitation, reasonable attorney's fees and court costs, which City or Baker may incur on account of any claim by any broker or agent or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Baker or City, as the case may be, in respect to the transactions herein contemplated. The provisions of this Section shall survive the Closing Date.



**Section 6.5 Notices.** Any notice required or permitted to be delivered hereunder shall, except as otherwise expressly provided herein, be deemed to have been given upon the earlier to occur of (i) actual receipt by the addressee thereof including without limitation via facsimile transmission or personal delivery; (ii) the third (3rd) day after the deposit of such notice in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Baker or City, as the case may be, as set forth below; or (iii) the first (1st) day after such notice has been deposited with a nationally recognized overnight courier (i.e. Federal Express); in either case, such notices to be addressed as follows:

To City: The Mayor of the City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216  
(205) 978-0130 (phone)  
(205)970-0132 (fax)

With a Copy to: Spain & Gillon, L.L.C.  
The Zinszer Building  
2117 2<sup>nd</sup> Avenue North  
Birmingham, Alabama 35203  
Attn: Alton B. Parker, Jr., Esq.  
(205) 328-4100 (phone)  
(205) 324-8866 (fax)

To Baker: AIG Baker Vestavia, L.L.C.  
AIG Baker Vestavia Shopping Center, L.L.C.  
1701 Lee Branch Lane  
Birmingham, AL 35242  
Attention: Legal Department  
Telephone (205) 969-1000  
Facsimile (205) 969-9467

With Copies to: Burr & Forman LLP  
420 North 20<sup>th</sup> Street  
Suite 3100  
Birmingham, AL 35243  
Attn: Gail Livingston Mills, Esq.  
(205) 458-5300 (phone)  
(205) 458-5100 (fax)

**Section 6.6 Governing Law.** This Agreement shall be governed by the laws of the State of Alabama.

**Section 6.7 Entire Agreement.** This agreement and the exhibits which are attached hereto or incorporated herein by reference, constitute the entire agreement among the Parties hereto pertaining to the subject matter hereof, supersede any and all prior or contemporaneous agreements or understandings of the Parties relating to the subject matter hereof, and may not be modified or amended except by a writing executed by the duly authorized offices for all Parties.

**Section 6.8 No Waiver.** No consent or waiver, express or implied, by either party hereto or to any breach or default by the other party in the performance by the other party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any party hereto shall be construed to waive or limit the need for such consent in any other or subsequent instance.

**Section 6.9 Remedies.** Whenever either party hereto shall default in the performance of any of its obligations under this Agreement, the other party hereto may take whatever legal proceeding (including actions for damages or for specific performance to the extent provided by law) as shall be necessary or desirable to enforce any agreement or condition contained herein or any other obligation of the defaulting party imposed by law. The Parties hereto recognize, and will not object to, an action for specific performance.

**Section 6.10 No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture between the City and Baker and their respective successors and assigns.

**Section 6.11 Headings.** The headings in the Sections in this Agreement are for convenience of reference only and shall not form a part hereof.

**Section 6.12 Counterparts.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

**Section 6.13 Assignment.** This Agreement, and all of the provisions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns and is freely assignable by either party, without consent of the other; provided, however, that the original Parties shall remain principally liable hereunder unless expressly released in writing. The City acknowledges and agrees that Baker may assign its rights under this Agreement to an affiliate of Baker or to any purchaser of the Project or any interest therein, and the City's consent to such assignment shall not be unreasonably withheld, conditioned, or delayed.

**Section 6.14 Collateral Assignments.** The consent of the City shall be required for any collateral assignments of Baker's rights under this Agreement which Baker shall request to be made to any lender who may provide financing for the Project to Baker ("Development Lender"). The consent of the City shall not be unreasonably withheld. Upon consent by the City of any such assignment, a copy of any and all notices given to Baker under this Agreement will, upon request, be simultaneously provided to Development Lender, provided that Baker provides the City with the name and address of the Development Lender.

**Section 6.15 Estoppel Certificates.** From time to time, upon request by any party, the party asked shall provide to the party making the petition, an acknowledgment or certificate with respect to matters concerning this Agreement or the status of performance of the obligations of the Parties hereunder, as may be reasonably requested.

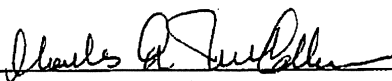
**Section 6.16 No Third-Party Beneficiaries.** Except as set forth herein, this Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest or obligations hereunder, is intended for the benefit of any other person or third-party.

**Section 6.17 Non-Discrimination.** Baker shall not enter into, execute, or be a party to any covenant, agreement, lease, deed, assignment, conveyance or any other written instrument which restricts the sale, lease or use of the Infrastructure, or any part thereof, or any improvements placed thereon, upon the basis of national origin, race, religion, sex or color. Baker shall comply with all federal, state and local laws in affect from time to time, prohibiting discrimination or segregation and will not discriminate by reason of national origin, race, religion, sex or color in the construction of the Infrastructure.

**Section 6.18 Computation of City Funds.** The computation of the City Funds shall not include any transactional costs, attorneys fees and closing costs incurred by the City in connection herewith.

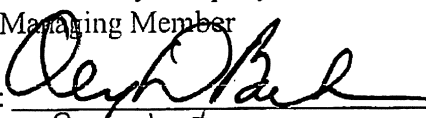
IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the first above written.

**THE CITY OF VESTAVIA HILLS,**  
a municipality organized and existing under the laws  
of the State of Alabama

By:   
Dr. Charles A. McCallum  
Its Mayor


**AIG BAKER VESTAVIA L.L.C.**  
a Delaware limited liability company

BY: AIG BAKER SHOPPING CENTER  
PROPERTIES, L.L.C., a Delaware  
limited liability company  
Its Managing Member

By:   
Its: President

*WEM*  
**AIG BAKER VESTAVIA SHOPPING CENTER,  
L.L.C.**  
a Delaware limited liability company

BY: AIG BAKER SHOPPING CENTER  
PROPERTIES, L.L.C., a Delaware  
limited liability company  
Its Managing Member

By:   
Its: President

44 i

EXHIBIT A  
DEVELOPMENT PLAN

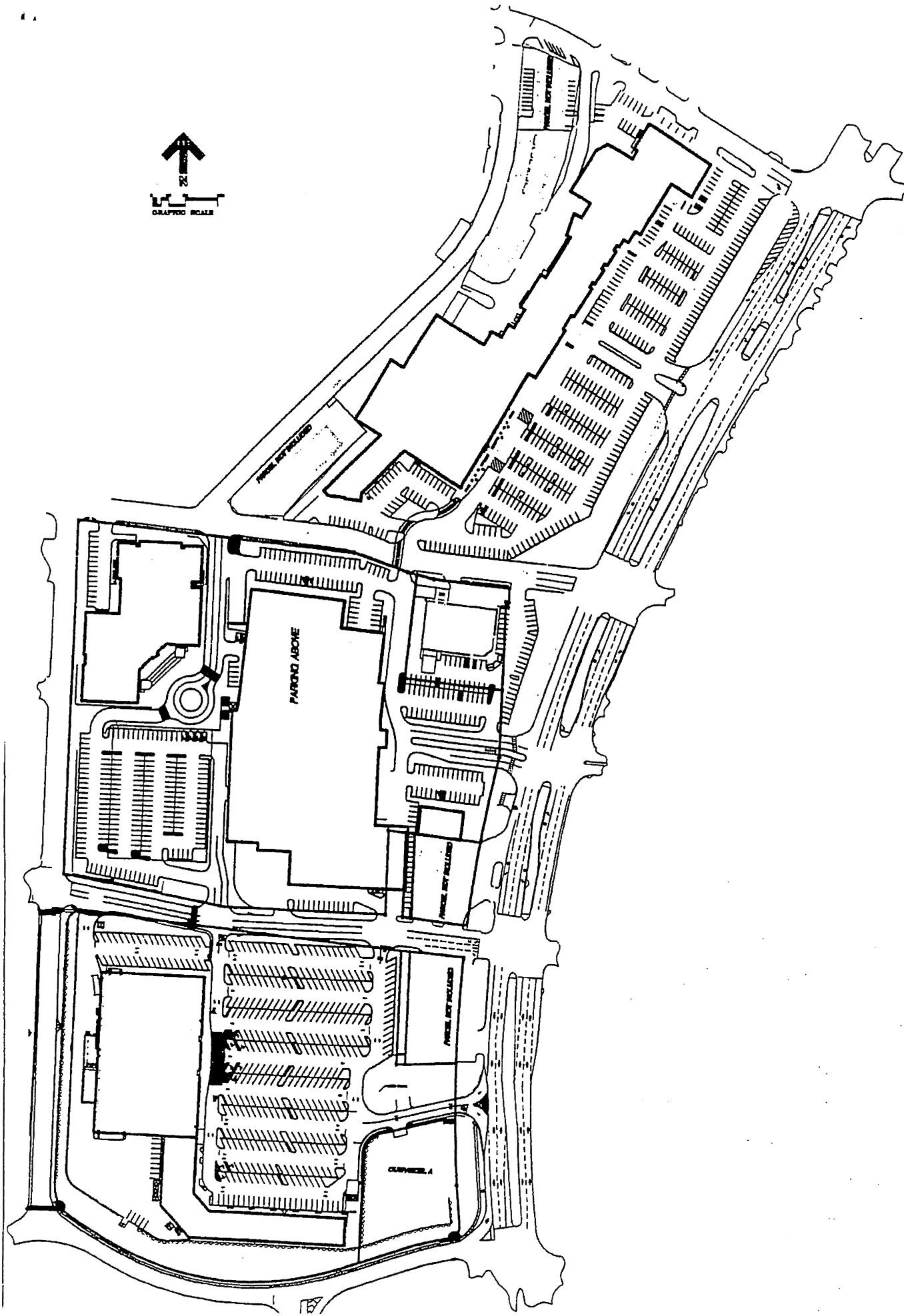


EXHIBIT A - DEVELOPMENT PLAN

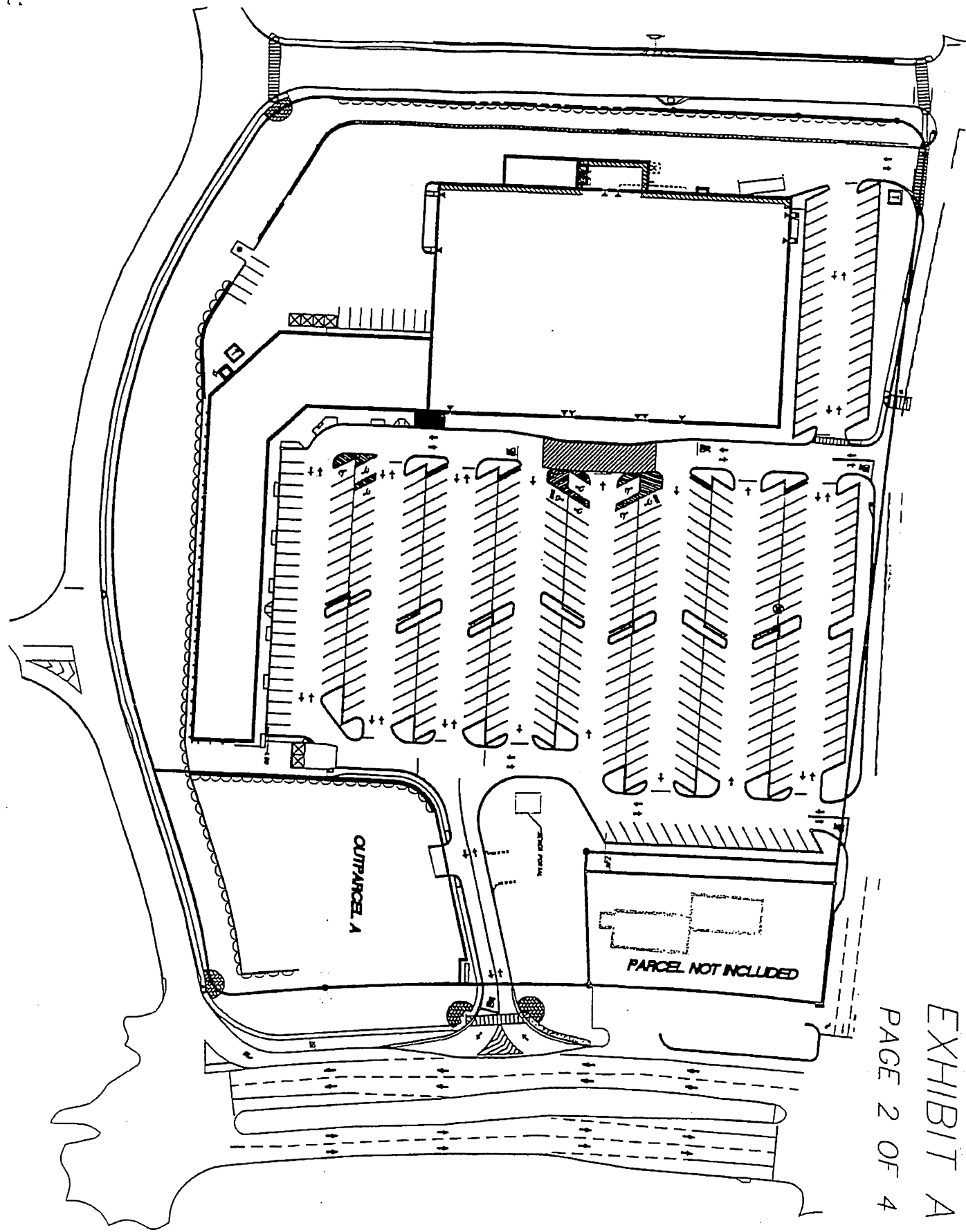


EXHIBIT A  
PAGE 2 OF 4

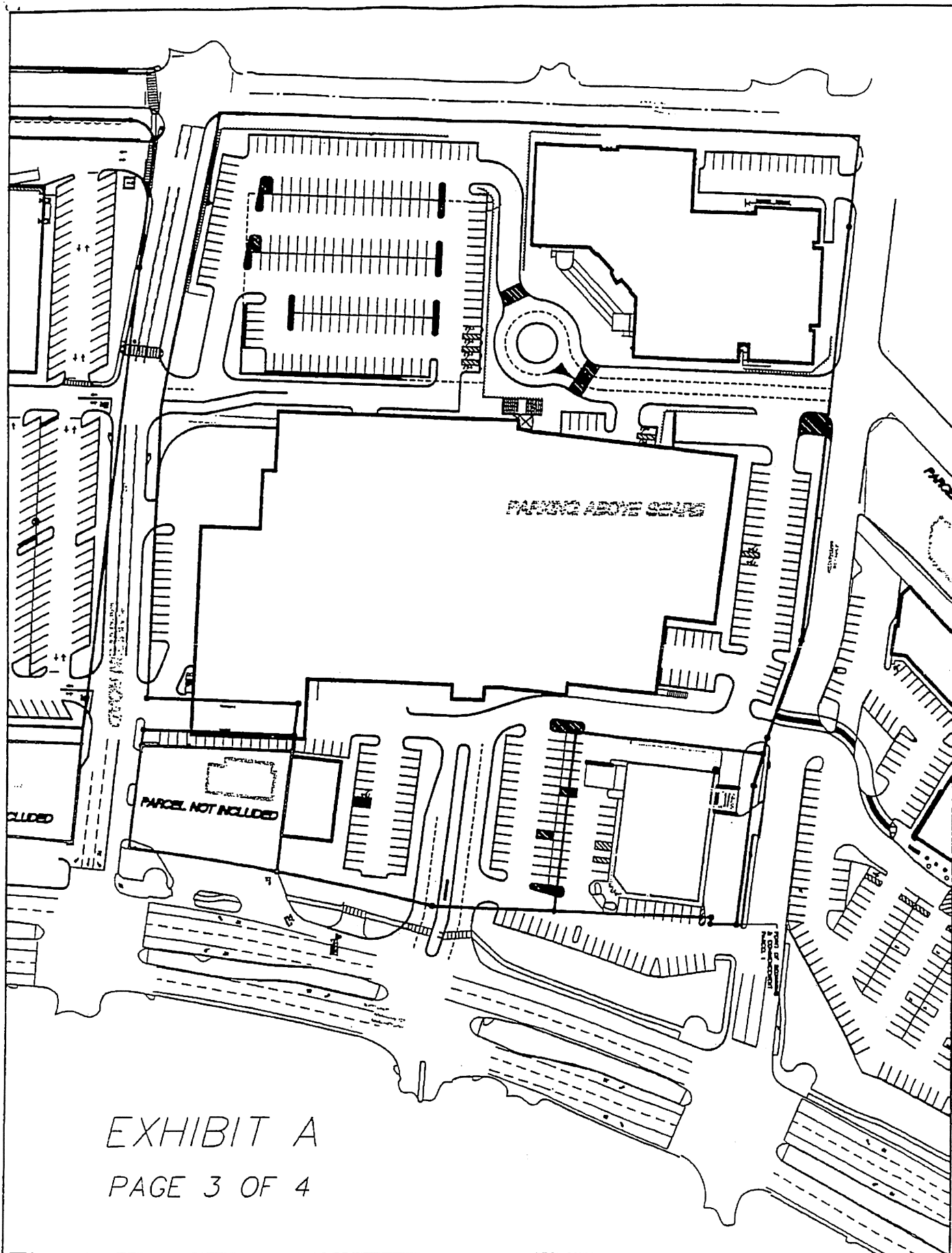


EXHIBIT A  
PAGE 3 OF 4



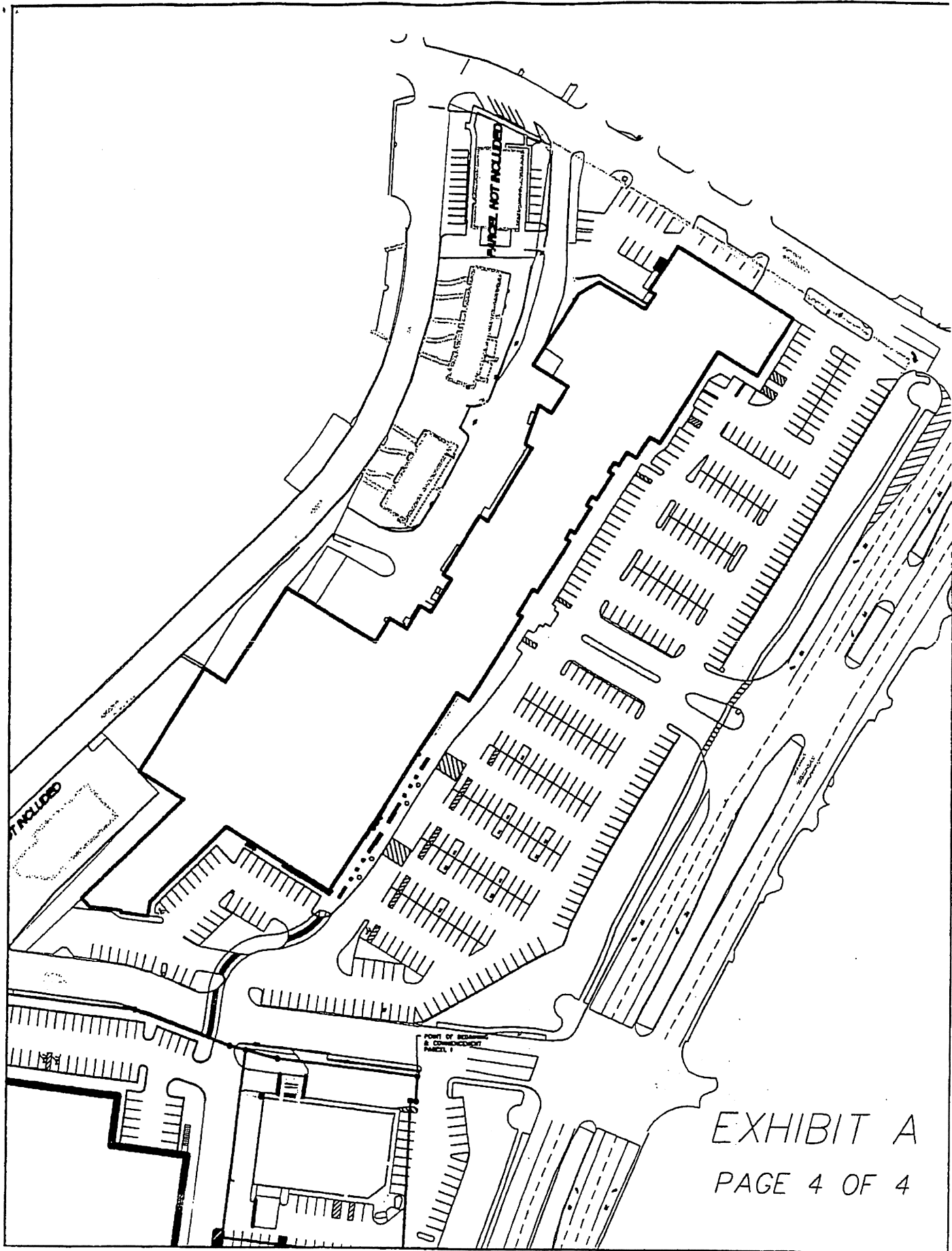


EXHIBIT A  
PAGE 4 OF 4

EXHIBIT B

**SCHEMATIC OF CITY PROPERTY**

{Final Legal Description to be Determined by Survey Prior to Closing Date}

PROPOSED CITY PROPERTY

AVIA HILLS CITY CENTER

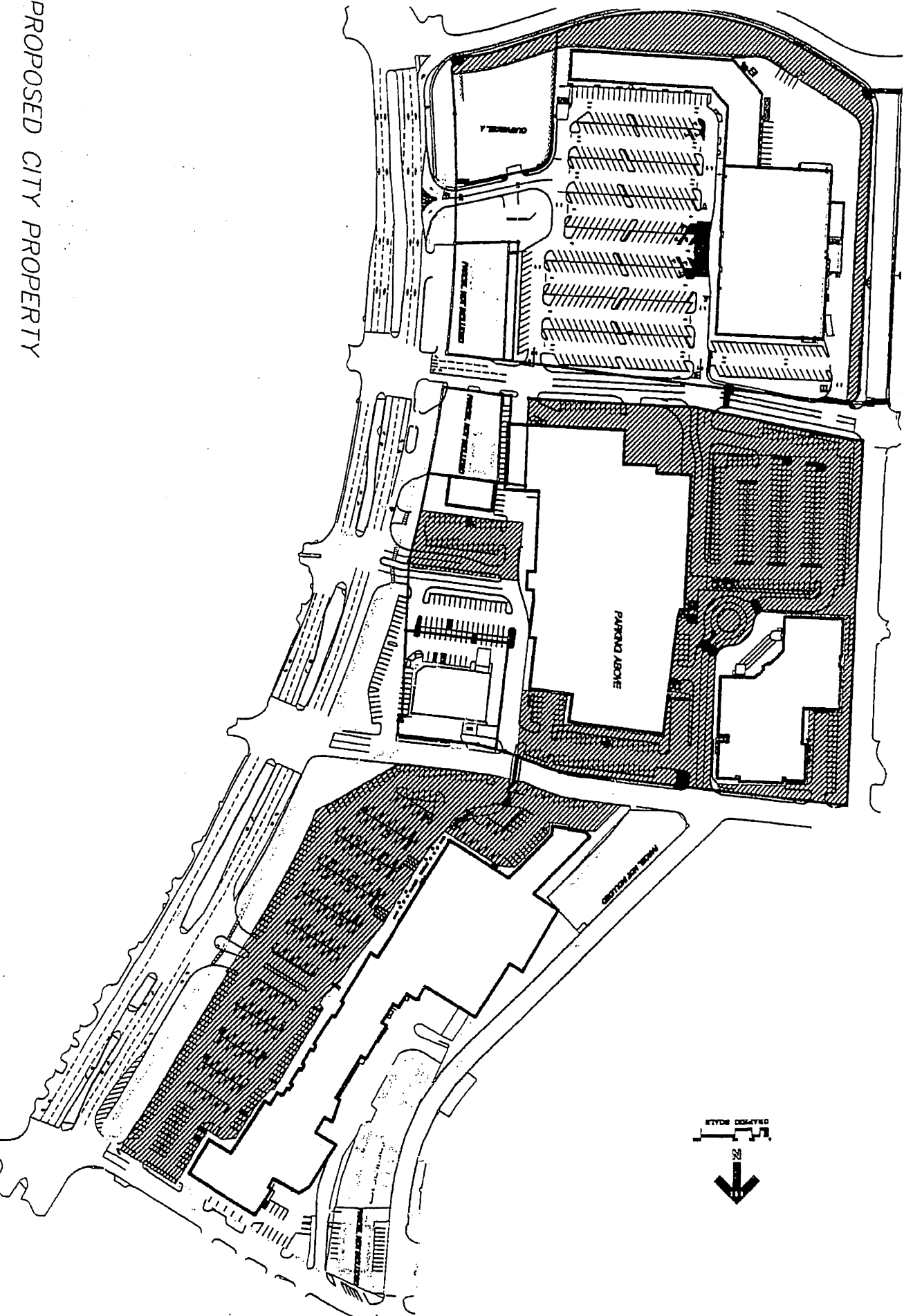
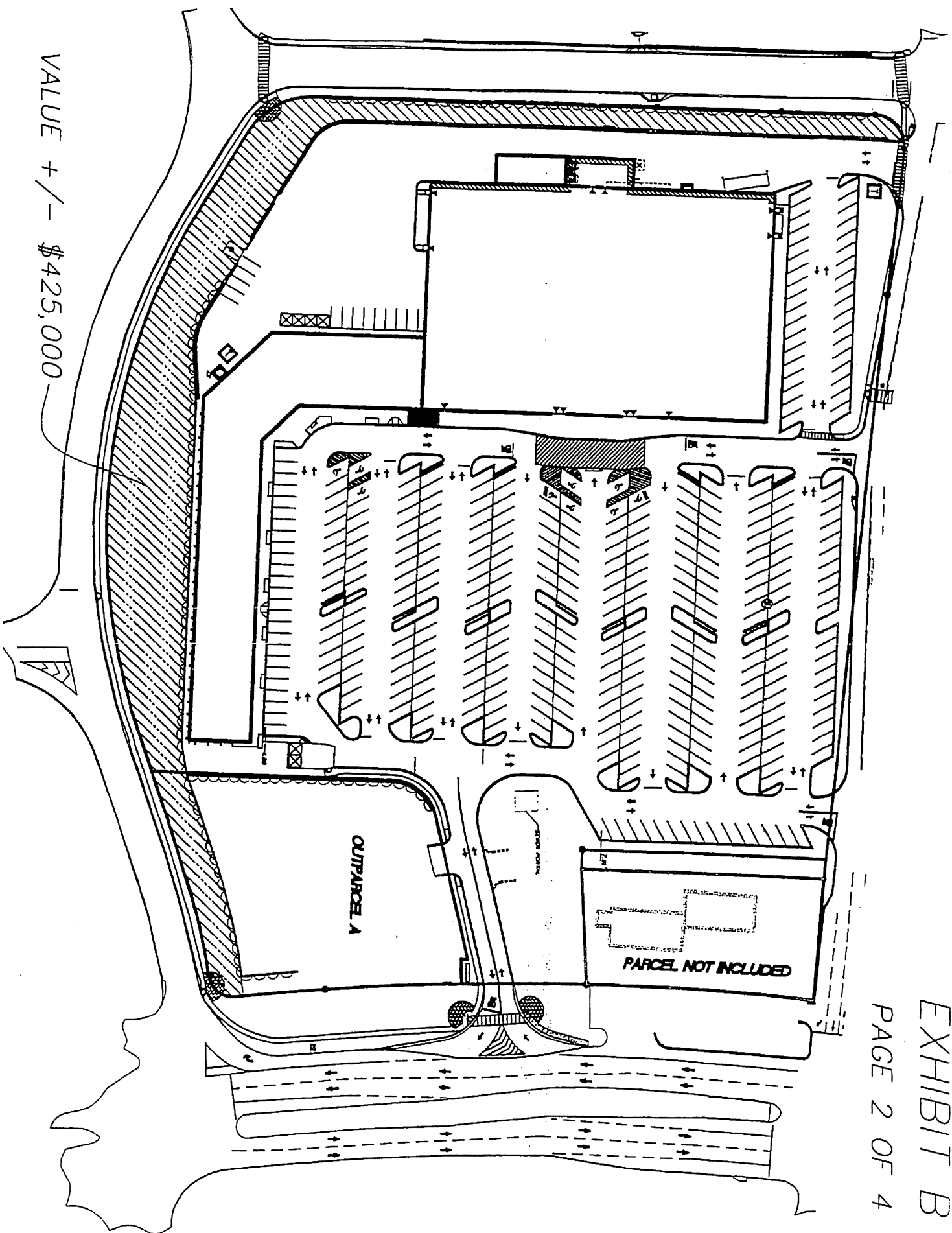


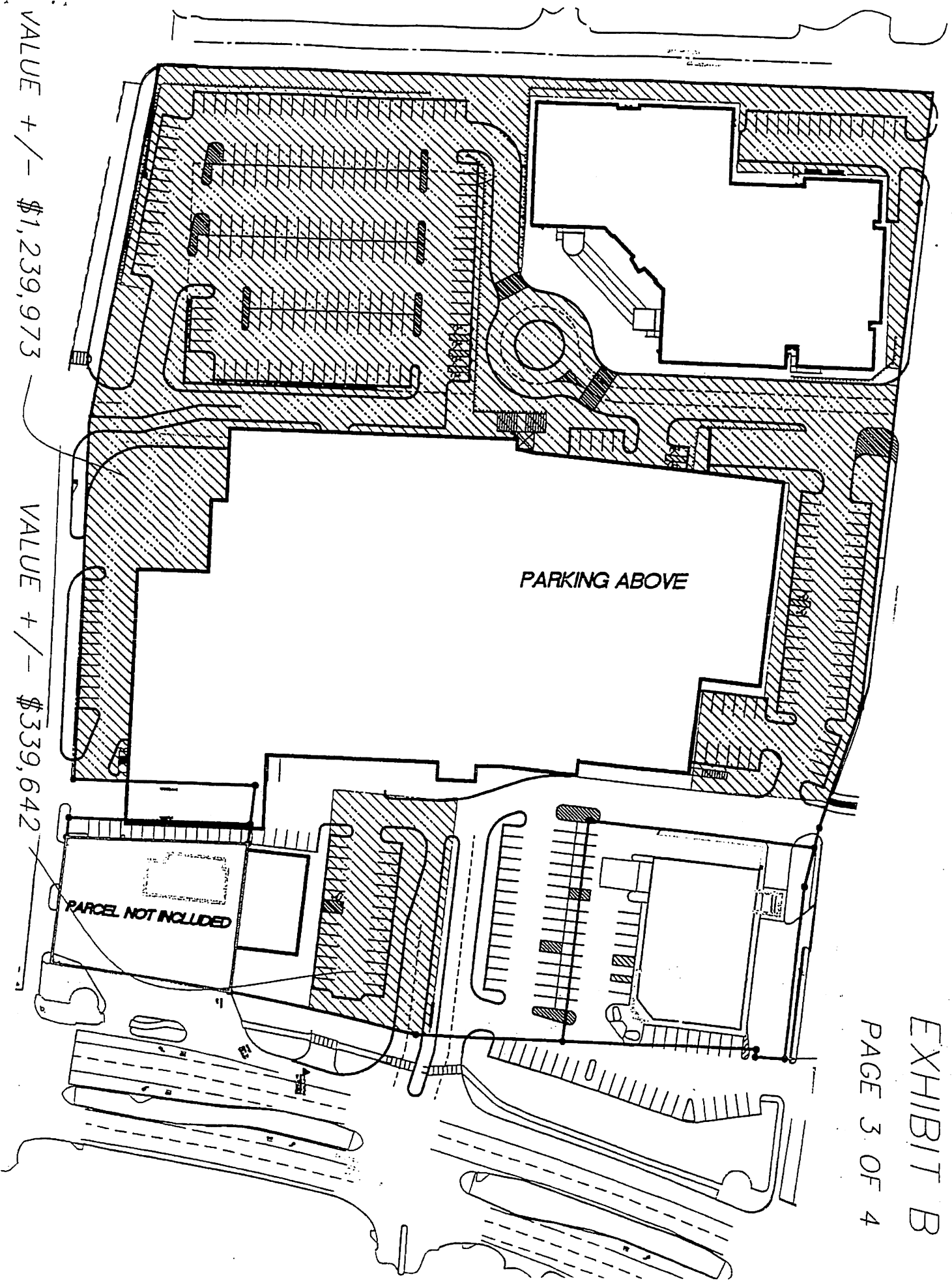
EXHIBIT B - SCHEMATIC OF CITY PROPERTY



VALUE +/- \$425,000

VALUE +/- \$1,239,973

VALUE +/- \$339,642



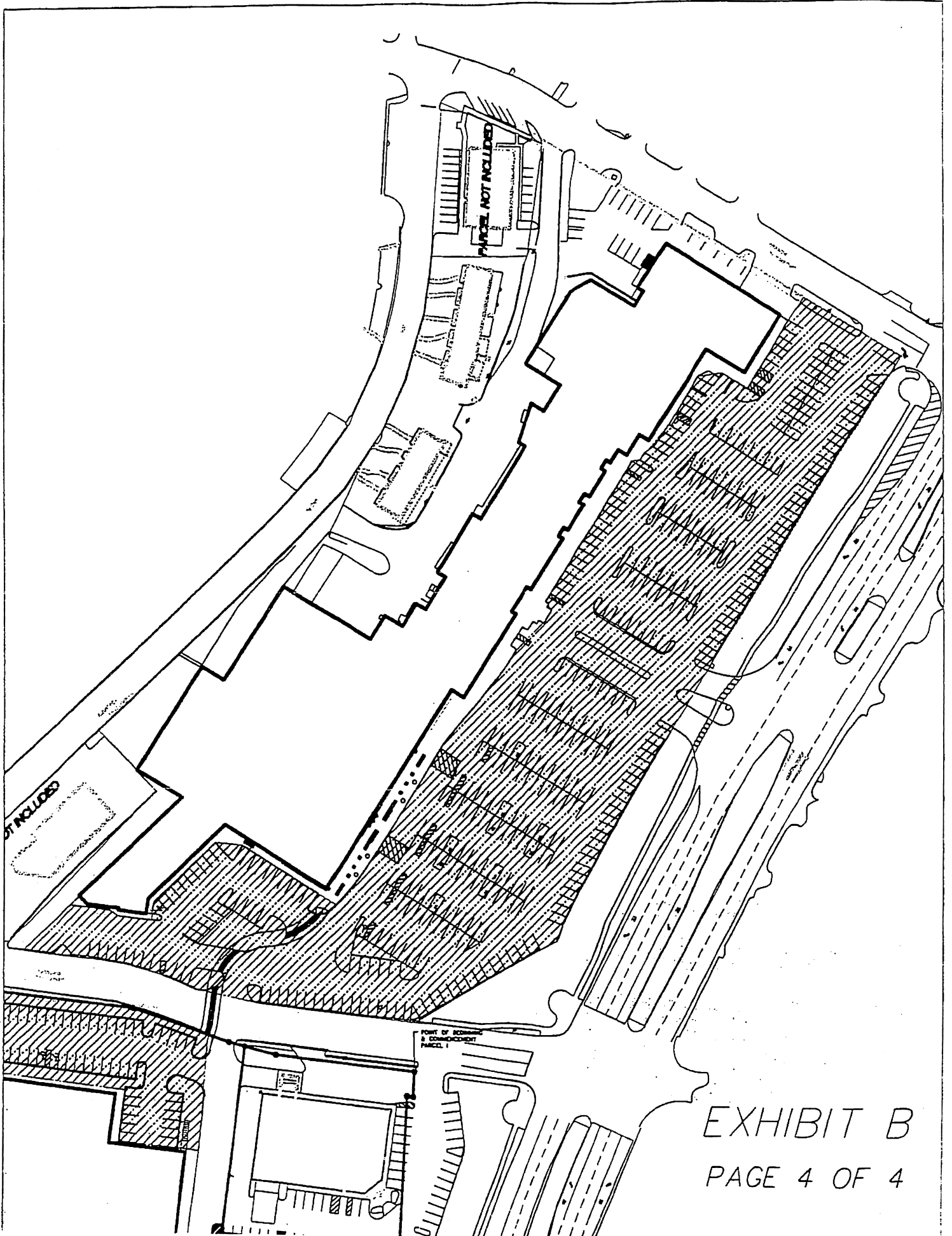


EXHIBIT B  
PAGE 4 OF 4

EXHIBIT C

COPY OF LAWYERS TITLE INSURANCE CORPORATION  
OWNER'S TITLE POLICIES

ISSUED BY

OWNER'S POLICY OF TITLE INSURANCE



ation  
AMERICA COMPANY

POLICY NUMBER  
A 75-0124704

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, LAWYERS TITLE INSURANCE CORPORATION, a Virginia corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, LAWYERS TITLE INSURANCE CORPORATION has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

LAWYERS TITLE INSURANCE CORPORATION

Attest:

Handwritten signature of J. D. Webb.

Secretary



By:

Handwritten signature of Janet A. Alpert.

President

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:  
(a) created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy; or  
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:  
(a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or  
(b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:  
(i) to timely record the instrument of transfer; or  
(ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.



## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule (A) and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes by action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent

jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

### 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Unless prohibited by law or governmental regulation, failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

### 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

## CONDITIONS AND STIPULATIONS

(Continued)

### 7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the land insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

### 8. APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

### 9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

### 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro rata.

### 11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

### 12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

### 13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

### 14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

### 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

### 16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

### 17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to: Consumer Affairs Department, P.O. Box 27567, Richmond, Virginia 23261-7567.

Lawyers Title  
Insurance Corporation

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

SCHEDULE A

OWNER'S POLICY

CASE NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE	ENDORSEMENTS	POLICY NUMBER
45787	May 11, 2000 at 4:20 a.m.	\$5,455,000.00	See Attached	A75-0124704

1. NAME OF INSURED:  
AIG Baker Vestavia L.L.C., a Delaware Limited Liability Company
2. THE ESTATE OR INTEREST IN THE LAND DESCRIBED HEREIN AND WHICH IS COVERED BY THIS POLICY IS:  
Fee Simple
3. THE ESTATE OR INTEREST REFERRED TO HEREIN IS AT DATE OF POLICY VESTED IN:  
AIG Baker Vestavia L.L.C., a Delaware Limited Liability Company
4. THE LAND REFERRED TO IN THIS POLICY IS DESCRIBED AS FOLLOWS:

See Attached Schedule A – Paragraph 4 – Continued

  
Countersignature Authorized Officer or Agent

MAGIC CITY TITLE, INC.  
2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, AL. 35233

Issued at (Location)

LTIC LTIC

# Lawyers Title Insurance Corporation

## OWNER'S POLICY SCHEDULE A - CONTINUED

45787

Said property was conveyed to the Insured by Deed from John Lauriello and SouthPace Properties, Inc., as Plan Trustees to AIG Baker Vestavia L.L.C., a Delaware Limited Liability Company, dated May 10, 2000, filed for record May 11, 2000, in Inst. No. 200005/8681.

45787-A

Said property was conveyed to the Insured by deed from John Lauriello and SouthPace Properties, Inc., as Plan Trustees to AIG Baker Vestavia, L.L.C., a Delaware Limited Liability Company, dated May 10, 2000, filed for record May 11, 2000, in Inst. No. 200005-8688.

45787-F

Said property was conveyed to the Insured by deed from John Lauriello and SouthPace Properties, Inc., as Plan Trustees to AIG Baker Vestavia, L.L.C., a Delaware Limited Liability Company, dated May 10, 2000, filed for record May 11, 2000, in Inst. No. 200005-8686.

45787-D

Said property was conveyed to the Insured by deed from John Lauriello and SouthPace Properties, Inc., as Plan Trustees to AIG Baker Vestavia, L.L.C., a Delaware Limited Liability Company dated May 10, 2000, filed for record May 11, 2000, in Inst. No. 200005-8687.

45787-C

Said property was conveyed to the Insured by deed from John Lauriello and SouthPace Properties, Inc., as Plan Trustees to AIG Baker Vestavia, L.L.C., a Delaware Limited Liability Company dated May 10, 2000, filed for record May 11, 2000, in Inst. No. 200005-8689.

Lawyers Title Insurance Corporation

OWNER'S POLICY

CASE NUMBER 45787

DATE OF POLICY May 11, 2000 at 4:20 p.m.

THE POLICY NUMBER SHOW ON THIS SCHEDULE MUST AGREE WITH THE PREPRINTED NUMBER ON THE COVER SHEET

POLICY NUMBER A75-0124704

SCHEDULE A - PARAGRAPH 4 CONTINUED

PARCEL I: 45787

Part of the Lot "A" of the survey known as Vestavia Hills Shopping Center, Third Addition, map of which is recorded in Map Book 69, Page 57, in the Office of the Judge of Probate, Jefferson County, Alabama, which is more particularly described as follows:

Beginning at the northeast corner of said Lot "A" of said survey of Vestavia Hills Shopping Center, Third Addition, which point is the intersection of the west line of the Montgomery Highway and the south line of Kentucky Avenue; thence along the south line of Kentucky Avenue in a westerly direction a distance of 140 feet; thence 7 degrees 55 minutes to the right a distance of 49.66 feet; thence 4 degrees 53 minutes to the right a distance of 104.38 feet; thence 12 degrees 48 minutes to the left along the south line of Kentucky Avenue a distance of 419.09 feet to a point, said point being the northeast corner of Lot "B" of said survey of Vestavia Hills Shopping Center, Third Addition; thence 94 degrees 18 minutes to the left in a southerly direction along the east line of said Lot "B" of said survey of Vestavia Hills Shopping Center, Third Addition, a distance of 640.36 feet to a point on the north line of Wheeler Avenue (Canyon Road); thence 85 degrees 46 minutes to the left in an easterly direction along the north line of Wheeler Avenue a distance of 220.11 feet to a point; thence 94 degrees 20 minutes to the left in a northerly direction a distance of 94.34 feet; thence 90 degrees to the left in a westerly direction a distance of 10.50 feet; thence 90 degrees to the right in a northerly direction 162.67 feet; thence 90 degrees to the right in an easterly direction 10.50 feet; thence 90 degrees to the left in a northerly direction 88.41 feet; thence 94 degrees 24 minutes to the right in an easterly direction a distance of 482.60 feet to a point on the westerly right of way line of the Montgomery Highway; thence 94 degrees 24 minutes to the left in a northerly direction along the westerly line of the Montgomery Highway a distance of 239.96 feet; thence 94 degrees 24 minutes to the left in an easterly direction a distance of 6.05 feet; thence 94 degrees 24 minutes to the right in a northerly direction a distance of 25 feet to the point of beginning, which point is the northeast corner of said Lot "A" of said survey of Vestavia Hills Shopping Center, Third Addition. Together with and subject to a mutual easement for parking and rights of ingress and egress as created by a certain instrument dated the 31st day of August, 1964, executed by Vestavia Hills Development Corporation, Associated Investment Company, Inc. and Birmingham Trust National Bank, which said instrument is recorded in Real Volume 37, page 897, in the Office of the Judge of Probate of Jefferson County, Alabama.

LESS AND EXCEPT that part included in the Resurvey of Lot "A", Vestavia Hills Shopping Center, Third Addition as recorded in Map Book 194, Page 4.

Being also described as follows:

Lot A of Vestavia Hills Shopping Center, Third Addition, as recorded in the Office of the Judge of Probate of Jefferson County, Alabama, in Map Book 69, Page 69, less and except that part included in the Resurvey of Lot A, Vestavia Hills Shopping Center, Third Addition as recorded in Map Book 194, Page 4 and being more particularly described as follows:

Commence at the northeast corner of said Lot "A" of said survey of Vestavia Hills Shopping Center, Third Addition, which point is the intersection of the west line of the Montgomery Highway and the south line of Kentucky Avenue;

# Lawyers Title Insurance Corporation

## OWNER'S POLICY SCHEDULE A - PARAGRAPH 4 CONTINUED

thence along the south line of Kentucky Avenue in a westerly direction a distance of 140 feet; thence 7 degrees, 16 minutes, to the right a distance of 32.82 feet to the point of beginning; thence continue along the same course 16.84 feet; thence 4 degrees, 53 minutes to the right a distance of 104.38 feet; thence 12 degrees, 48 minutes to the left along the south line of Kentucky Avenue a distance of 419.09 feet to a point said being the northeast corner of Lot "B" of said survey of Vestavia Hills Shopping Center, Third Addition; thence 94 degrees, 18 minutes to the left in a southerly direction along the east line of said Lot "B" of said survey of Vestavia Hills Shopping Center, Third Addition; thence 94 degrees, 18 minutes, to the left in a southerly direction along the east line of said Lot "B" of said survey of Vestavia Hills Shopping Center, Third Addition, a distance of 640.36 feet to a point on the north line of Wheeler Avenue (Canyon Road); thence 85 degrees, 46 minutes, to the left in an easterly direction along the north line of Wheeler Avenue a distance of 220.11 feet to a point; thence 94 degrees, 20 minutes, to the left in a northerly direction a distance of 94.34 feet; thence 90 degrees, to the left in a westerly direction a distance of 10.50 feet; thence 90 degrees, to the right in a northerly direction 162.67 feet; thence 90 degrees, to the right in an easterly direction 10.50 feet; thence 90 degrees, to the left in a northerly direction 88.41 feet; thence 94 degrees, 24 minutes, to the right in an easterly direction a distance of 482.60 feet to a point on the westerly right of way line of the Montgomery Highway; thence 94 degrees, 24 minutes to the left in a northerly direction along the westerly line of the Montgomery Highway a distance of 81.96 feet; thence 85 degrees, 36 minutes to the left in a westerly direction a distance of 180.50 feet; thence 90 degrees, 00 minutes to the right in a northerly direction a distance of 186.98 feet to the point of beginning.

### PARCEL II:

That part of Lot "A", according to the Map and Survey of Vestavia Hills Shopping Center, Third Addition, as recorded in Map Book 69, Page 57, in the Office of the Judge of Probate of Jefferson County, Alabama, which is more particularly described as follows:

Commence at the Southwest corner of Lot "A" and run in an Easterly direction along the South line of Lot "A" a distance of 220.11 feet to the point of beginning; thence continue Easterly along the South line of said Lot "A" a distance of 284.45 feet to a point; thence 94 degrees, 20 minutes to the left in a northerly direction a distance of 150.00 feet to a point; thence 94 degrees, 24 minutes to the right in an Easterly direction a distance of 169.66 feet to a point on the Westerly right of way line of the Montgomery Highway; thence 85 degrees, 45 minutes to the left (angle measured to tangent) in a northerly direction in a curve to the right said curve having a radius of 2392.00 feet and a central angle of 3 degrees, 44 minutes, 05 seconds for a distance of 155.92 feet to a point; thence 12 degrees, 24 minutes to the left (angle measured to tangent of said curve) in a northerly direction a distance of 39.45 feet to a point; thence 85 degrees, 36 minutes to the left in a westerly direction a distance of 482.60 feet to a point; thence 94 degrees, 24 minutes to the left in a southerly direction a distance of 88.41 feet to a point; thence 90 degrees, to the right in a westerly direction a distance of 10.50 feet to a point; thence 90 degrees, to the left in a southerly direction a distance of 162.67 feet to a point; thence 90 degrees, to the left in an easterly direction a distance of 10.50 feet to a point; thence 90 degrees, to the right in a southerly direction a distance of 94.34 feet to the point of beginning; together with and subject to a mutual easement for parking and rights of ingress and egress as created by a certain instrument dated the 31st day of August, 1964, executed by Vestavia Hills Development Corporation, Associated Investment Company, and Birmingham Trust National Bank, which said instrument is recorded in Real Volume 37, Page 897, in the Office of the Judge of Probate of Jefferson County, Alabama.

Minerals and mining rights excepted.

45787-A

Lot C, according to the Survey of Vestavia Hills Shopping Center, as recorded in Map Book 160, Page 20, in the Probate Office of JEFFERSON County, ALABAMA.



# Lawyers Title Insurance Corporation

## OWNER'S POLICY SCHEDULE A – PARAGRAPH 4 CONTINUED

### 45787-F

Lots 10 & 11, according to the Survey of the Eleventh Addition to Southridge Addition to Southridge Addition to Vestavia Hills, as recorded in Map Book 62, Page 50, in the Probate Office of JEFFERSON County, ALABAMA

### 45787-D

Lots 2 and 3, according to the Survey of the Second Addition to Vestavia Hills Shopping Center, as recorded in Map Book 62, Page 49, in the Probate Office of JEFFERSON County, ALABAMA.

### 45787-C

Lots 1 and 2, according to the Eleventh Addition to Southridge Addition to Vestavia Hills, as recorded in Map Book 62, Page 50, in the Probate Office of JEFFERSON County, ALABAMA.



# Lawyers Title Insurance Corporation

## OWNER'S POLICY

CASE NUMBER
45787

DATE OF POLICY
May 11, 2000 at 4:20 p.m.

THE POLICY NUMBER SHOW  
ON THIS SCHEDULE MUS  
AGREE WITH THE PREPRINTE  
NUMBER ON THE COVER SHEET

POLICY NUMBER
A75-0124704

### SCHEDULE B

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE BY REASON OF THE FOLLOWING:

1. Rights or claims of tenants in possession under unrecorded leases.
2. Taxes for the year 2000 and subsequent years.
3. Mortgage executed by AIG Baker Vestavia L.L.C., a Delaware, Limited Liability Company in favor of Compass Bank, dated March 13, 2000, filed for record at May 11, 2000 at 4:20 p.m. recorded in Inst. No. 200005-9161 and amended in Inst. No. 200005-9162.
4. Uniform Commercial Code Financing Statement by and between AIG Baker Development, L.L.C., as debtor(s), and Compass Bank, as secured party, filed for record on May 11, 2000, under UCC No. 200005-9164.
5. Uniform Commercial Code Financing Statement by and between AIG Baker Development, L.L.C., as debtor(s), and Compass Bank, as secured party, filed for record on May 11, 2000, under UCC No. 200005-9163.

5.

45787

6. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto as recorded in Volume 631, Page 62.
7. Easements and Right-of-way granted to Alabama Power Company recorded in Real Volume 95, Page 580; Real Volume 3813, Page 218, and Real Volume 38, Page 106.
8. Right-of-way for anchor and guy wire in favor of Southern Bell Telephone & Telegraph Company as recorded in Real Volume 92, Page 953.
9. Rights outstanding under the certain Party Wall Agreement entered into by the Associated Investment Company; Sears Roebuck & Company; Connecticut General Life Insurance Company and State Mutual Life Assurance Company of America, recorded in Real Volume 152, Page 504, dated the 28th day of July.
10. Mutual easement for parking and rights of ingress and egress as created in Real Volume 37, Page 897.
11. Any portion of subject property conveyed to Jefferson County, Alabama for Public road by instrument recorded in Volume 4825, Page 179.
12. Right-of-way as recorded in Real Volume 3962, Page 734.
13. Easement shown on sight plan of Rite-Aid Pharmacy as recorded in Map Book 194, Page 4.
14. Title to that portion of the property within any road right-of-ways.



# Lawyers Title Insurance Corporation

## OWNER'S POLICY SCHEDULE B - CONTINUED

15. Terms, Conditions and Restrictions contained in that certain Memorandum of Lease by and between The Byrd Companies, inc. Realtors and Harco, Inc. dated 6-16-99 as recorded in Inst. No. 9915/5575.
16. Matters of survey as shown on Survey of Carr & Associates, dated, March 1, 2000 including the following:
  - a. 50' and 30' setback lines.
  - b. Building encroaching onto sanitary sewer along easterly side of subject property
  - c. Sanitary sewers and pipes of various dimensions
  - d. The Rite-Aid encroaches 34. Feet over the front setback line
  - e. The parking encroaches up to 62 feet into the right of way of U.S. Highway No. 31
  - f. The building encroaches 17.7 feet over the front setback line
  - g. The thru driveway exists with no known easement

### 45787-A

17. Right-of-way granted to the State of Alabama recorded in Real Volume 3962, Page 734.
18. Easements as shown on recorded map.
19. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto as recorded in Volume 355, Page 191 and Volume 4714, Page 89.
20. Right-of-way granted to Alabama Power Company recorded in Volume 5060, Page 569, Volume 5589, Page 405, Volume 5689, Page 370, Volume 6213, Page 320 & Volume 6740, Page 227.
21. Matters of Survey as shown on Survey of Carr & Associates dated, 3-16-00 including the following:
  - (1) Sanitary sewer crossing southerly portion of subject property.
  - (2) Water lines, power lines and fire lines outside the easement area.
  - (3) Survey references a note corresponding to B-2 items. Note 7 incorrectly references Volume 5689, Page 362 whereas it should refer to Volume 5689, Page 370.

### 45787-F

22. Restrictions appearing of record in Volume 6604, Page 564.
23. Right-of-way granted to Alabama Power Company recorded in Real Volume 82, Page 288.
24. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Volume 631, Page 62.
25. 50- foot building line as shown on recorded map.
26. Easement for storm sewer and Jefferson County Trunk Line across Lot 10.
27. Setback lines per zoning as shown on survey of Carr & Associates dated 2-8-00



**Lawyers Title  
Insurance Corporation**

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

CODE NAME  
AIG Baker Vestavia L.L.C., a  
Delaware

ENDORSEMENT

Case No.

45787

Attached to and made a part of Lawyers Title Insurance Corporation Policy No. A75-0124704.

The Company assures the insured that said land is the same as that delineated on the plat of survey made by Barton F. Carr, dated February 8, 2000.

The Company hereby insures said Assured against loss which said Assured shall sustain in the event that the assurances herein prove to be incorrect.

The total liability of the Company under said policy and any prior endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed and sealed as of the day of , , to be valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws.

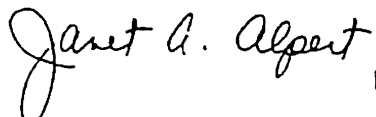
Issued at:  
Magic City Title, Inc.  
2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, AL. 35233

COUNTERSIGNED:

  
Authorized Officer or Agent



**Lawyers Title Insurance Corporation**

By:   
President

Attest:   
Secretary

**Lawyers Title  
Insurance Corporation**

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

CODE NAME  
AIG Baker Vestavia L.L.C., a  
Delaware Limited Liability  
Company

ACCESS ENDORSEMENT

Case No.

45787

Attached to and made a part of Lawyers Title Insurance Corporation Policy No. A75-0124704.

The Company insures the Insured that the lands described in Schedule A of said policy abut upon physically open street(s) known as:

Kentucky Avenue, Canyon Road, U.S. Highway 31, Old  
Creek Trail and Canyon Creek Lane along their common  
boundaries

and the Company hereby insures said Assured against loss which said Assured shall sustain in the event said assurances herein shall prove to be incorrect.

The total liability of the Company under said policy, binder or commitment and under this and any prior endorsements thereto shall not exceed, in the aggregate, the amount of liability stated on the face of said policy, binder or commitment, as the same may be specifically amended in dollar amount by this or any prior endorsements, and the costs which the Company is obligated to pay under the Conditions and Stipulations of the policy.

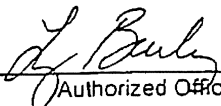
This endorsement is made a part of said policy, binder or commitment and is subject to all the terms and provisions thereof, except as modified by the provisions hereof.

Nothing herein contained shall be construed as extending or changing the effective date of the aforesaid policy, binder or commitment unless otherwise expressly stated.

IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed and sealed as of the day of , , to be valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws.

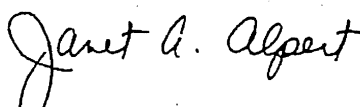
Issued at:  
Magic City Title, Inc.  
2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, AL. 35233

COUNTERSIGNED:

  
Authorized Officer or Agent



Lawyers Title Insurance Corporation

By:  President

Attest:  Secretary

**Lawyers Title  
Insurance Corporation**

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

CODE NAME  
AIG Baker Vestavia L.L.C., a  
Delaware

ENDORSEMENT

Case No.

45787

Attached to and made a part of Lawyers Title Insurance Corporation Policy No. A75-0124704, which is hereby amended as follows:

1. Delete Item 4 from the exclusions from coverage.

The total liability of the Company under said policy, and under this and any prior endorsements thereto, shall not exceed, in the aggregate, the amount of liability assumed thereunder, as the same may have been specifically amended in dollar amount by this or any prior endorsements, and the costs which the Company is obligated to pay under the Provisions of the policy.

This endorsement is made a part of said policy and is subject to the schedules, conditions, stipulations and terms thereof except as modified by the provisions hereof.

Unless expressly stated, nothing herein contained shall be construed as assuming liability for taxes or assessments becoming a lien or accruing subsequent to the Date of Policy as originally shown in Schedule A nor for any state of facts occurring subsequent to such original Date of Policy as would be disclosed by a current accurate survey and inspection of the premises.

IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed and sealed as of the 7th day of June, 2000, to be valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws.

Issued at:  
Magic City Title, Inc.  
2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, AL. 35233

COUNTERSIGNED:

*L. B. B...*  
Authorized Officer or Agent



**Lawyers Title Insurance Corporation**

By: *Janet A. Alpert* President

Attest: *[Signature]* Secretary

Lawyers Title  
Insurance Corporation

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

CODE NAME  
AIG Baker Vestavia L.L.C., a  
Delaware

Case No.  
45787

OWNER'S RESTRICTIONS AND EASEMENTS ENDORSEMENT - COMMERCIAL

Attached to and made a part of Lawyers Title Insurance Corporation Policy No. A75-0124704.

The Company hereby insures the Insured against loss or damage which the Insured shall sustain by reason of any inaccuracies in the following assurances:

1. That, unless otherwise expressly set forth or indicated to the contrary in Schedule B:
  - (a) There are no present violations on said land of any enforceable covenants, conditions or restrictions or plat building lines;
  - (b) Any instrument referred to in Schedule B as specifically containing "covenants and restrictions" affecting said land does not, in addition, establish an easement thereon or provide for either a lien for liquidated damages, a levy of a private charge or assessment, an option to purchase, or the prior approval of a future purchaser or occupant;
  - (c) There are no encroachments of existing improvements located on said land, nor any encroachments onto said land of existing improvements located on adjoining land;
  - (d) There are no encroachments of existing improvements located on said land onto that portion of said land subject to any easement shown in Schedule B.
2. A present or future violation on the land of said covenants, conditions or restrictions or plat building lines, if any, will not give rise to a right of re-entry or result in a forfeiture or reversion of title.

The words "covenants", "conditions", or "restrictions" in this endorsement do not refer to covenants, conditions, or restrictions contained in any lease or declaration of condominium or planned unit development referred to in Schedule

A. In addition, such words shall not include or refer to any covenants, conditions or restrictions relating to environmental protection, except to the extent that a notice of violation has been recorded or filed in the public records and not excepted in Schedule B.

This endorsement is made a part of this policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed and sealed as of the day of , , to be valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws.

Issued at:  
Magic City Title, Inc.  
2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, AL. 35233

COUNTERSIGNED:

*[Signature]*  
Authorized Officer or Agent



Lawyers Title Insurance Corporation

By: *[Signature]* Janet A. Albert  
President

Attest: *[Signature]*  
Secretary

ISSUED BY

OWNER'S POLICY OF TITLE INSURANCE

**MAGIC CITY TITLE, INC.**

**ation**  
AMERICA COMPANY

POLICY NUMBER

A 75-0123706

2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, ALABAMA 35233

FAX: (205) 326-0251 PHONE: (205) 326-0250

AGENT FOR LAWYERS TITLE  
INSURANCE CORPORATION

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, LAWYERS TITLE INSURANCE CORPORATION, a Virginia corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, LAWYERS TITLE INSURANCE CORPORATION has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

LAWYERS TITLE INSURANCE CORPORATION

Attest:

*J. D. Webb*

Secretary



By:

*Janet A. Albert*

President

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:  
(a) created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy; or  
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:  
(a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or  
(b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:  
(i) to timely record the instrument of transfer; or  
(ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or partnership successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule (A) and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes by action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it is liable hereunder, and shall not thereby concede liability or waive any part of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent

jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

### 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Unless prohibited by law or governmental regulation, failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

### 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.



# Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

## SCHEDULE A

## OWNER'S POLICY

CASE NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE	ENDORSEMENTS	POLICY NUMBER
45787L	May 10, 2000 at 2:31 p.m.	\$8,600,000.00		A75-0123706

1. NAME OF INSURED:

AIG Baker Vestavia Shopping Center, L.L.C, a Delaware limited liability company

2. THE ESTATE OR INTEREST IN THE LAND DESCRIBED HEREIN AND WHICH IS COVERED BY THIS POLICY IS:

Fee Simple

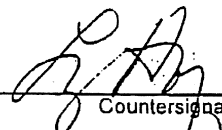
3. THE ESTATE OR INTEREST REFERRED TO HEREIN IS AT DATE OF POLICY VESTED IN:

AIG Baker Vestavia Shopping Center, L.L.C, a Delaware limited liability company

4. THE LAND REFERRED TO IN THIS POLICY IS DESCRIBED AS FOLLOWS:

See Attached Schedule A – Paragraph 4 – Continued

Said property was conveyed to the Insured by Deed from VHSC, Inc. to AIG Baker Vestavia Shopping Center, L.L.C, a Delaware limited liability company, dated May 10, 2000, filed for record May 10, 2000, in Instrument No. 200005-8669.



Countersignature Authorized Officer or Agent

MAGIC CITY TITLE, INC.  
2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, AL. 35233

Issued at (Location)

This Policy is invalid unless the cover sheet and Schedule B are attached.

**Lawyers Title Insurance Corporation**

**OWNER'S POLICY**

CASE NUMBER
45787L

DATE OF POLICY
May 10, 2000 at 2:31 p.m.

THE POLICY NUMBER SHOW  
ON THIS SCHEDULE MUST  
AGREE WITH THE PREPRINTED  
NUMBER ON THE COVER SHEET

POLICY NUMBER
A75-0123706

**SCHEDULE A – PARAGRAPH 4  
CONTINUED**

Lots A & B, according to the Survey of Vestavia Hills Shopping Center, as recorded in Map Book 160, Page 20, in the Probate Office of JEFFERSON County, ALABAMA.

# Lawyers Title Insurance Corporation

## OWNER'S POLICY

CASE NUMBER
45787L

DATE OF POLICY
May 10, 2000 at 2:31 p.m.

THE POLICY NUMBER SHOW  
ON THIS SCHEDULE MUST  
AGREE WITH THE PREPRINTED  
NUMBER ON THE COVER SHEET

POLICY NUMBER
A75-0123706

### SCHEDULE B

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE BY REASON OF THE FOLLOWING:

1. Standard Exceptions:
  - (a) Rights of tenants in possession under unrecorded leases.
2. Taxes for the year 2000 and subsequent years.
3. Easement(s); building line; and, restrictions as shown on recorded map.
4. Right-of-way granted to the State of Alabama recorded in Real Volume 3962, Page 734.
5. Right-of-way granted to Universal Atlas Company recorded in Volume 2847, Page 562 and as modified by instruments recorded in Volume 6273, Page 260 and Real Volume 134, Page 102.
4. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including release of damages, as recorded in Volume 355, Page 191 and Volume 4714, Page 89.  
Right-of-way granted to Alabama Power Company recorded in Volume 5284, Page 438, Volume 5060, Page 569, Volume 5589, Page 405, Volume 5689, Page 362 and Volume 5689, Page 370.
6. Mutual easement for parking and rights of ingress and egress as created in Real Volume 37, Page 897.
7. Mortgage, Assignment of Rents and Security Agreement from VHSC, Inc. to Fleet Real Estate Capital, Inc., in the original principal amount of \$8,800,000, dated June 21, 1996, and recorded on June 21, 1996 as Instrument No. 9607-6736 in the Office of the Judge of Probate of Jefferson County, Alabama, as assigned to Citicorp Real Estate, Inc. by Instrument No. 9607-6738 recorded in said Probate Office, and subsequently assigned to LaSalle National Bank, as Trustee for the Registered Holders of Mortgage Capital Funding, Inc. Multifamily Commercial Mortgage Pass-Through Certificates Series 1996-MC2, by Instrument No. 9614-9333 recorded in said Probate Office, the obligations of VHSC, Inc. under said Mortgage, Assignment of Rents and Security Agreement having been assumed by AIG Baker Vestavia Shopping Center, L.L.C. pursuant that certain Loan Assumption and Ratification Agreement dated as of April 24, 2000 between and among GMAC Commercial Mortgage Corporation as Special Servicer and Agent for LaSalle National Bank, as Trustee for the Registered Holders of Mortgage Capital Funding, Inc. Multifamily Commercial Mortgage Pass-Through Certificates Series 1996-MC2, AIG Baker Vestavia Shopping Center, L.L.C., and AIG Baker Shopping Center Properties, recorded on may 10, 2000 as Instrument No. 200005-8670 in said Probate Office.
8. Assignment of Rents and Leases from VHSC, Inc. to Fleet Real Estate Capital, Inc. recorded as Instrument No. 9607-6737 in the Office of the Judge of Probate of Jefferson County, Alabama, as assigned to Citicorp Real Estate, Inc. by Inst. No. 9607-6738 recorded in said Probate Office, and subsequently assigned to LaSalle National Bank, as Trustee for the Registered Holders of Mortgage Capital Funding, Inc. Multifamily Commercial Mortgage Pass-Through Certificates Series 1996-MC2, by Instrument No. 9614-9333 recorded in said Probate Office, the obligations

# Lawyers Title Insurance Corporation

## OWNER'S POLICY SCHEDULE B - CONTINUED

of VHSC, Inc. under said Assignment of Leases and Rents having been assumed by AIG Baker Vestavia Shopping Center, L.L.C. pursuant that certain Loan Assumption and Ratification Agreement dated as of April 24, 2000 between and among GMAC Commercial Mortgage Corporation as Special Servicer and Agent for LaSalle National Bank, as Trustee for the Registered Holders of Mortgage Capital Funding, Inc. Multifamily Commercial Mortgage Pass-Through Certificates Series 1996-MC2, AIG Baker Vestavia Shopping Center, L.L.C., and AIG Baker Shopping Center Properties, recorded on May 10, 2000 as Instrument No. 200005-8670 in said Probate Office.

9. UCC-1 Financing Statement from VHSC, Inc., as Debtor, to Fleet Real Estate Capital, Inc., as Secured Party, and Citicorp Real Estate, Inc. as Assignee, as recorded in Instrument No. 9609-6739 on June 21, 1996, in the Office of Judge of Probate of Jefferson County, Alabama, and subsequently assigned to LaSalle National Bank, as Trustee for the Registered Holders of Mortgage Capital Funding, Inc. Multifamily Commercial Mortgage Pass-Through Certificates Series 1996-MC2, by UCC-3 Assignment recorded as Instrument No. 9614-8333 in said Probate Office.
10. UCC-1 Financing Statement from AIG Baker Vestavia Shopping Center, L.L.C., as Debtor, and GMAC Commercial Mortgage Corporation as Special Servicer for LaSalle National Bank, as Trustee for the Registered Holders of Mortgage Capital Funding, Inc. Multifamily Commercial Mortgage Pass-Through Certificates Series 1996-MC2, as Secured Party, as recorded on May 10, 2000 as Instrument No. 200005-8673 in the Office of Judge of Probate of Jefferson County, Alabama.
11. Matters of Survey as shown on survey of Curr & Associates including the following:
  - 1) The note referred on note "6" of said survey referred to in Volume 6237, Page 260. The Correct document is Volume 6273, Page 260.
  - 2) Encroachment of building onto setback lines as shown by numbers (A), (B) & (C).
  - 3) Encroachment of Building onto Alabama Power Company Easement along Southerly portion of subject property.
  - 4) Building situated on easement for storm and sanitary sewer as shown on recorded map.
  - 5) Various storm sewers, sanitary sewers, water vaults, water lines, fire lines and gas lines.
  - 6) Encroachment of buildings onto storm pipes and sanitary sewers.

**Lawyers Title  
Insurance Corporation**

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

CODE NAME  
**AIG Baker Vestavia Shopping  
Center, L.L.C**

ENDORSEMENT

Case No.

**45787L**

Attached to and made a part of Lawyers Title Insurance Corporation Policy No. A75-0123706, which is hereby amended as follows:

Item No. 4 on Exclusions from Coverage is hereby deleted.

The total liability of the Company under said policy, and under this and any prior endorsements thereto, shall not exceed, in the aggregate, the amount of liability assumed thereunder, as the same may have been specifically amended in dollar amount by this or any prior endorsements, and the costs which the Company is obligated to pay under the Provisions of the policy.

This endorsement is made a part of said policy and is subject to the schedules, conditions, stipulations and terms thereof except as modified by the provisions hereof.

Unless expressly stated, nothing herein contained shall be construed as assuming liability for taxes or assessments becoming a lien or accruing subsequent to the Date of Policy as originally shown in Schedule A nor for any state of facts occurring subsequent to such original Date of Policy as would be disclosed by a current accurate survey and inspection of the premises.

IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed and sealed as of the 17th day of May, 2000, to be valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws.

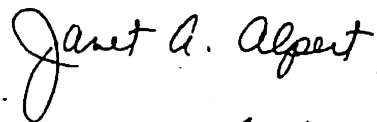
Issued at:  
Magic City Title, Inc.  
2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, AL. 35233

COUNTERSIGNED:

  
\_\_\_\_\_  
Authorized Officer or Agent



**Lawyers Title Insurance Corporation**

By:  President

Attest:  Secretary

**Lawyers Title  
Insurance Corporation**

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

CODE NAME  
AIG Baker Vestavia Shopping  
Center, L.L.C

ACCESS ENDORSEMENT

Case No.  
45787L

Attached to and made a part of Lawyers Title Insurance Corporation Policy No. A75-0123706.

The Company insures the Insured that said land described in Schedule A of said policy abuts upon a physically open street(s) known as:

U.S. Highway 31

and the Company hereby insures said Assured against loss which said Assured shall sustain in the event said assurances herein shall prove to be incorrect.

The total liability of the Company under said policy, binder or commitment and under this and any prior endorsements thereto shall not exceed, in the aggregate, the amount of liability stated on the face of said policy, binder or commitment, as the same may be specifically amended in dollar amount by this or any prior endorsements, and the costs which the Company is obligated to pay under the Conditions and Stipulations of the policy.


This endorsement is made a part of said policy, binder or commitment and is subject to all the terms and provisions thereof, except as modified by the provisions hereof.

Nothing herein contained shall be construed as extending or changing the effective date of the aforesaid policy, binder or commitment unless otherwise expressly stated.

IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed and sealed as of the day of , , to be valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws.

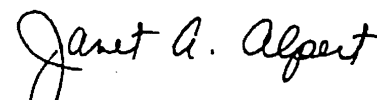
Issued at:  
Magic City Title, Inc.  
2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, AL. 35233

COUNTERSIGNED:

  
Authorized Officer or Agent



**Lawyers Title Insurance Corporation**

By:  President

Attest:  Secretary

**Lawyers Title  
Insurance Corporation**

NATIONAL HEADQUARTERS  
RICHMOND, VIRGINIA

CODE NAME  
AIG Baker Vestavia Shopping  
Center, L.L.C

ENDORSEMENT

Case No.  
45787L

Attached to and made a part of Lawyers Title Insurance Corporation Policy No. A75-0123706.

The Company assures the insured that said land is the same as that delineated on the plat of survey made by Carr & Associates Engineers, Inc., dated February 8, 2000.

The Company hereby insures said Assured against loss which said Assured shall sustain in the event that the assurances herein prove to be incorrect.

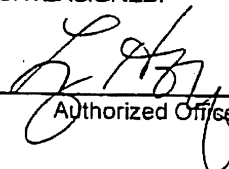
The total liability of the Company under said policy and any prior endorsements thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed and sealed as of the day of , , to be valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws.

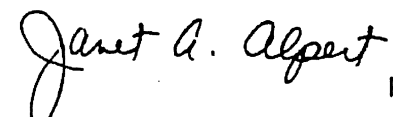
Issued at:  
Magic City Title, Inc.  
2112 SEVENTH AVENUE SOUTH  
BIRMINGHAM, AL. 35233

COUNTERSIGNED:

  
\_\_\_\_\_  
Authorized Officer or Agent



**Lawyers Title Insurance Corporation**

By:  President

Attest:  Secretary

OWNER'S RESTRICTIONS AND EASEMENTS ENDORSEMENT – COMMERCIAL

Attached to and made a part of Lawyers Title Insurance Corporation  
Policy No. A75123706

The Company insures the Insured against loss or damage which the insured shall sustain by reason of any inaccuracies in the following assurances:

1. That, unless otherwise expressly set forth or indicated to the contrary in Schedule B:
  - (a) There are no present violations on said land of any enforceable covenants, conditions or restrictions or plat building lines;
  - (b) Any instrument referred to in Schedule B as specifically containing "Covenants and Restrictions" affecting said land does not, in addition, established an easement thereon or provide for either a lien for liquidated damages, a levy of a private charge or assessment, an option to purchase, or the prior approval of a future purchaser of occupant;
  - (c) There are no encroachments of existing improvements located on said land, nor any encroachments onto said land of existing improvements located on adjoining land;
  - (d) There are no encroachments of existing improvements located on said land onto that portion of said land subject to any easement shown on Schedule B.
2. A present or future violation on the land of said covenants, conditions or restrictions or plat building lines, if any, will not give rise to a right of re-entry or result in a forfeiture or reversion of title.

The words "covenants", "conditions", or "restrictions" in this endorsement do not refer to covenants, conditions, or restrictions contained in any lease or declaration of condominium or planned unit development referred to in Schedule A. In addition, such words shall not include or refer to any covenants, conditions, or restrictions relating to environmental protection, except to the extent that a notice of violation has been recorded or filed in the public records and not excepted in Schedule B.

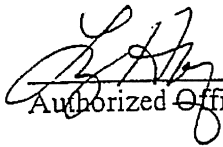
This endorsement is made a part of this policy and is subject to all of the terms and provisions thereof and any prior endorsement thereto. Except to the extent expressly stated, is neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of this policy and any prior endorsements, nor does it increase the face amount thereof.

(continued)



IN WITNESS WHEREOF, the company has caused this Endorsement to be signed and sealed as of the 10th day of May, 2000, to be valid when countersigned by an authorized officer or agent of the Company all in accordance with its By-Laws.

Issued at:

  
\_\_\_\_\_  
Authorized Officer of Agent

## CONDITIONS AND STIPULATIONS

(Continued)

### DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the amount of:

(i) the Amount of Insurance stated in Schedule A; or,  
(ii) the difference between the value of the insured estate or interest insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the time of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy shall be subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall not apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

### APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels which are not treated as a single site, and a loss is established affecting one or more parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or apportionment has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an endorsement statement or by an endorsement attached to this policy.

### LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

### REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance provided.

### LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter assumed by an insured and which is a charge or lien on the estate or interest insured or referred to in Schedule A, and the amount so paid shall be credited against any payment under this policy to the insured owner.

### PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

### 13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

### 14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

### 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or a validating officer or authorized signatory of the Company.

### 16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

### 17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to: Consumer Affairs Department, P.O. Box 27567, Richmond, Virginia 23261-7567.

# Lawyers Title Insurance Corporation

A LANDAMERICA COMPANY

## OWNER'S POLICY OF TITLE INSURANCE

AMERICAN LAND TITLE ASSOCIATION  
(10-17-92)

ISSUED BY  
**Lawyers Title Insurance Corporation**

HOME OFFICE:  
101 Gateway Center  
Richmond, Virginia 23261-7567  
Telephone: 804-756-5153

### A WORD OF THANKS .....

As we make your policy a part of our permanent records, we want to express our appreciation of this evidence of your faith in Lawyers Title Insurance Corporation.

There is no recurring premium.

This policy provides valuable title protection and we suggest you keep it in a safe place where it will be readily available for future reference.

If you have any questions about the protection provided by this policy, contact the office that issued your policy or you may write to:

Consumer Affairs Department

**Lawyers Title  
Insurance Corporation**  
A LANDAMERICA COMPANY

P.O. Box 27567

Richmond, Virginia 23261-7567

TOLL FREE NUMBER: 1-800-446-7086

**EXHIBIT D**

STATE OF ALABAMA                    )  
COUNTY OF JEFFERSON            )

**STATUTORY WARRANTY DEED**  
**WITH DECLARATION OF COVENANTS AND RESERVATION OF EASEMENTS**

**THIS STATUTORY WARRANTY DEED WITH DECLARATION OF COVENANTS AND RESERVATION OF EASEMENTS** (this "Indenture") is made this \_\_\_\_ day of \_\_\_\_\_, 2002, between **AIG BAKER VESTAVIA, L.L.C.**, a Delaware limited liability company ("Baker/Vestavia") and **AIG BAKER VESTAVIA SHOPPING CENTER, L.L.C.**, a Delaware limited liability company ("Baker/Shopping Center," and collectively with Baker/Vestavia, the "Grantors"), as grantors, and **THE CITY OF VESTAVIA HILLS, ALABAMA**, a municipality organized and existing under the laws of the State of Alabama, as grantee ("City"). Grantors and the City are collectively referred to herein as the "Parties."

**WITNESSETH:**

For and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration to Grantors in hand paid by City, the receipt and sufficiency of which is hereby acknowledged, Grantors do hereby grant, bargain, sell, and convey to the City and City's successors and assigns forever, all of their respective right, title, and interest in and to those certain tract(s) or parcel(s) of real property, situate, lying and being in the County of Jefferson State of Alabama, that are described in Exhibit A hereto and incorporated herein by this reference (collectively, the "City Property"), subject, however, to the following:

1. The City Property is hereby conveyed certain to subject to certain covenants declared hereunder by the Grantors, which such covenants are more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "Covenants"), and the City Property shall be held, transferred, sold, conveyed and occupied subject to the Covenants, all of which shall be construed as and deemed to be covenants running with the land and which shall be binding upon the City Property; and

2. The City Property is hereby conveyed subject to certain perpetual, nonexclusive easements declared by the Grantors under the Covenants, which such easements are described on Exhibit B attached hereto (the "Easements"); and

3. This conveyance and the title conveyed hereto is subject to those certain items set forth in Exhibit C attached hereto and incorporated herein by this reference ("Permitted Exceptions").

**TO HAVE AND TO HOLD** the City Property unto the City and the City's successors and assigns, forever.

**AND THE** Grantors will warrant and forever defend the right and title to the above described property unto the City against the claims of Grantors and all others claiming by, through, or under Grantors (but not otherwise), subject, however, to the Covenants and Easements described in Exhibit B attached hereto, and the Permitted Exceptions described in Exhibit C attached hereto.

**IN WITNESS WHEREOF**, the parties have caused this Indenture to be properly executed on this \_\_\_ day of \_\_\_\_\_, 2002.

**GRANTORS:**

**AIG BAKER VESTAVIA, L.L.C.**  
a Delaware limited liability company

BY: AIG BAKER SHOPPING CENTER  
PROPERTIES, L.L.C., a Delaware  
limited liability company  
Its Managing Member

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**AIG BAKER VESTAVIA SHOPPING CENTER,  
L.L.C.**, a Delaware limited liability company

BY: AIG BAKER SHOPPING CENTER  
PROPERTIES, L.L.C., a Delaware  
limited liability company  
Its Managing Member

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY:**

**THE CITY OF VESTAVIA HILLS, ALABAMA**  
a municipality organized and existing under the laws  
of the State of Alabama

By: \_\_\_\_\_  
Dr. Charles A. McCallum  
Its Mayor

**STATE OF ALABAMA                    )**  
**COUNTY OF JEFFERSON            )**

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, as \_\_\_\_\_ of AIG Baker Shopping Center Properties, L.L.C., a Delaware limited liability company, as Managing Member of AIG Baker Vestavia, L.L.C., a Delaware limited liability company, whose name is signed to the foregoing Indenture, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Indenture, he, as such officer, executed the same voluntarily and with full authority for and as the act of said limited liability company, acting in its capacity as aforesaid.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, as \_\_\_\_\_ of AIG Baker Shopping Center Properties, L.L.C., a Delaware limited liability company, as Managing Member of AIG Baker Vestavia Shopping Center, L.L.C., a Delaware limited liability company, whose name is signed to the foregoing Indenture, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Indenture, he, as such officer, executed the same voluntarily and with full authority for and as the act of said limited liability company, acting in its capacity as aforesaid.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Dr. Charles A. McCallum, as Mayor of The City Vestavia Hills, Alabama, whose name is signed to the foregoing Indenture, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Indenture, he, as such officer, executed the same voluntarily and with full authority for and as the act of said municipality.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

This instrument was prepared by:

Gail Livingston Mills, Esq.  
Burr & Forman LLP  
3100 SouthTrust Tower  
Birmingham, AL 35203

Send Tax Notice to:

The City of Vestavia Hills  
513 Montgomery Highway  
Vestavia Hills, Alabama 35216

EXHIBIT A

DESCRIPTION OF CITY PROPERTY

[TO BE DETERMINED BY SURVEY PRIOR TO CLOSING DATE]



## EXHIBIT B

### DECLARATION OF COVENANTS AND RESERVATION OF EASEMENTS

1. **Covenants.** The City Property will be used solely and exclusively for public parking, for natural areas which may contain a walking trail, for ingress and egress to and from the City Property and the Benefitted Lands (as hereinafter defined), and for the transmission of utilities, all in accordance with that certain Development Plan for Vestavia Hills City Center (the "Project"), dated \_\_\_\_\_, 2001, a copy of which is attached hereto as Schedule I (the "Development Plan"). City agrees and acknowledges that the development of the City Property, and the use thereof by the City and the public, shall be in strict accordance with the Development Plan, as such Development Plan may be revised by agreement of the Parties from time to time. Without limitation upon the foregoing, City shall keep, and shall cause its employees, agents, or designees to keep, the City Property including all sidewalks, aisles, and drive areas as shown on the Development Plan, open for the free use thereof, and shall at no time allow such areas to be fenced or otherwise obstructed. City further agrees that it shall not assess any fee or charge for any person to utilize the parking spaces on the City Property so long as Grantors maintain and operate the Project as defined in the City Agreement (as hereinafter defined). The Parties further agree that they shall have no ability to make changes or improvements of any kind to the City Property unless the same are first approved by the Parties in writing. The Parties agree to cooperate with each other to effectuate the Project which is to be located on lands adjacent to the City Property (as shown on the Development Plan) and owned by the respective Grantors (the "Grantors' Land"). It is agreed that the owner or owners from time to time of the Grantor's Land may include all of the parking spaces developed or to be developed from time to time on the City Property in the calculation of off-street parking spaces applicable to the Project for the purpose of meeting the off-street parking requirements under the Zoning Ordinance of the City, as the same may be amended from time to time. It is further agreed that for purposes of determining setback requirements under the Zoning Ordinance of the City (but for no other reason), the City Property and the Grantor's Land shall be deemed to constitute a single lot and no variances shall be required for setback encroachments which may be caused by the division of the City Property and the Grantor's Land into separate lots. The restrictive covenants set forth in this Paragraph 1 are collectively referred to herein as the "Covenants."

2. **Amendment to Covenants.** The Parties reserve the right to amend the Covenants by their written consent (along with the written consent of any mortgagees of the Grantor's Land). Any such amendment must be in writing, executed by a duly authorized officer of the Grantors and the City, respectively, and recorded in the public records of Jefferson County, Alabama in order to be binding on the Parties and their respective successors and/or assigns.

3. **Term of Covenants.** The Covenants and the easements contained herein shall run with and bind all of the City Property, shall inure to the benefit of the Grantor's Land, and shall benefit and be binding upon and be enforceable by the Grantors and the City, respectively, and their

respective successors and assigns, and shall be and remain in effect until the earlier of (i) December 31, 2099, or (ii) such time as the Grantors' Land ceases to be used for the retail and commercial project described in the City Agreement (of which, not less than 188,000 square feet shall be used for retail space) (other than temporary cessations in use incident to casualty or condemnation), or (iii) the Parties (including any mortgagees of the Grantor's Land) agree that the Covenants shall be terminated and shall execute a written termination agreement in form and content acceptable to the Parties. Such termination agreement must be in writing, executed by a duly authorized officer of each of Grantors and the City, respectively, and recorded in the real estate records of Jefferson County, Alabama in order to be binding on the Parties and their respective successors and/or assigns.

4. **Easements for Parking and for Ingress and Egress.** Grantors hereby reserve, for the benefit of (i) the Grantors' Land, and (ii) that certain land known as A Resurvey of Part of Lot "A" of the Survey of Vestavia Hills Shopping Center, Third Addition, as recorded in Map Book 194, Page 4, in the Office of the Judge of Probate of Jefferson County, Alabama (the "Rite-Aid Tract," and, collectively with the Grantors' Land, the "Benefitted Land"), a non-exclusive, perpetual easement for parking (consistent with Paragraph 1 hereof) on the City Property (the "Parking Easement"), together with a non-exclusive perpetual easement for ingress and egress over, across and under any and all drive aisles, or roadways ("Roadways Easement Premises") that are constructed on the City Property consistent with the Development Plan. The Roadways Easement Premises shall be used as a nonexclusive easement for ingress and egress of motor vehicles and pedestrians. Said City Property and the Roadways Easement Premises contained therein shall be held, transferred, sold, conveyed, and occupied subject to the Covenants, all of which shall be construed as, and deemed to be, shall be covenants running with the land for the benefit of the City Property and the Benefitted Land. Grantors hereby grant to City a non-exclusive, perpetual easement for ingress and egress over, across and under any and all drive aisles, or roadways that are constructed on the Grantors' Land consistent with the Development Plan.

5. **Easement for Utilities.** Grantors hereby further reserve, for the benefit of the Grantors' Land, a non-exclusive, perpetual easement over, across and under any and all City Property for the installation, maintenance, repair, and replacement of the utilities that benefit all or a portion of the City Property or the Benefitted Land, including without limitation, water, sanitary and storm sewer, electric, gas, cable television, and telephone; provided, that all transmission, distribution, and other lines and pipes shall be placed underground. Grantors hereby grant to City an easement for storm sewers located on the Grantors' Land for which an easement has not been previously granted, which such storm sewer easements shall be at the locations set forth on the Infrastructure Plan (as hereinafter defined).

6. **Construction of Infrastructure.**

(a) In connection with the Grantors' redevelopment of the Project on the Grantors' Land, Grantors will construct certain site improvements on the City Property, which site improvements will

include, without limitation, earthwork, storm drainage, sanitary sewers, public road and improvements and sidewalks incident to raising Canyon Road, plantings, retaining walls, lightings, landscaping, signalization, powerbank for roadways, paving and curbing and gutters for roadways, and necessary utilities and parking all to be constructed on public property, right-of-way or easements, all as are more particularly set forth in the Infrastructure Plan attached hereto as Schedule II (the "Infrastructure Plans").

(b) The City hereby selects and appoints Grantors as its agents to manage the construction of the Infrastructure and Grantors hereby accept said appointment and the responsibility for causing to be carried out said work as set forth herein. Grantors specifically recognize and agree that all the Infrastructure Plans must be approved by the City before any implementation thereof, and City agrees that its approval will not be unreasonably withheld, conditioned, or delayed. Such approval shall not amount to an approval of the Infrastructure's conformity of applicable building codes and other usual inspection approvals by the City normal to any new construction in the City, which such approval process shall proceed in the normal course. While it is understood and agreed that certain roadways may be public roads, Grantors and the City acknowledge that the secondary roads and other access corridors serving the Project and other facilities within the Project may be provided through private roads, or private access easements. Whether any future roads are to be dedicated as public roads will be determined by mutual agreement of the Parties.

(c) Following the approval of the Infrastructure Plan by the City, Grantors shall immediately proceed to effect the construction of the Infrastructure substantially in accordance with the Infrastructure Plan. Grantors further covenant that they will use its best efforts to complete the Infrastructure in an orderly and expeditious manner, subject to delays incident to force majeure. In constructing the Infrastructure, Grantors shall comply with competitive bid laws and requirements applicable to municipal public works projects. It is understood and agreed by the Parties that the Infrastructure shall remain the property of the City.

(d) The City shall have the right to approve all construction contracts to be executed by Grantors with general contractors pertaining to the Infrastructure and shall have the further right to approval all contractors, but not subcontractors, to be utilized thereon. Such approval shall be at the discretion of the City, but shall not be unreasonably withheld, conditioned, or delayed. The City shall provide Grantors with written instructions regarding the City's policies and procedures concerning bid law. Prior to the beginning of construction of the Infrastructure, Grantors agree that they shall require the Infrastructure general contractor to post a performance bond and a labor and materialmen's payment bond with good and sufficient surety issued by a company qualified to issue such bonds in the State of Alabama in an amount sufficient to insure completion of the construction of the Infrastructure according to the construction contract therefor, with Grantors as obligees of the bonds and the City as additional obligee thereunder. The bonds shall be obtained from such companies in such amounts as shall be approved in advance by the City, such approval not to be unreasonably withheld, conditioned, or delayed. A copy of said bonds shall be furnished to the City

prior to the beginning of the construction of the Infrastructure. In the event the Infrastructure general contractor defaults in the performance of its construction contract, Grantors agree to take appropriate action to enforce the said bonds or otherwise cause the work to be timely completed.

(e) City hereby grants to Grantors, their employees, agents, and subcontractors, free and uninterrupted access over and across the City Property for purposes of constructing the Infrastructure.

(f) In the event that any materialmen's or mechanics' liens are filed against the City Property in connection with Grantors construction of the Infrastructure or the Project, Grantors covenant and agree that they will discharge or make other arrangements reasonably acceptable to the City with respect to (including, without limitation, bonding off or insuring over any such lien) any mechanic's or other lien filed against the City Property.

(g) Grantors will maintain general liability insurance with respect to the City Property insuring against claims on account of loss of life, bodily injury, or property damage that may arise from, or be occasioned by the condition, use, or occupancy of the City Property by the public. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State of Alabama, and shall contain limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, with a \$5,000,000 umbrella policy, which such insurance shall be written on an occurrence basis and shall name the City as an additional insured, and shall provide that City shall receive not less than thirty (30) days written notice prior to cancellation. The City reserves the right to require reasonable increases in the amounts of such coverages from time to time so that such coverages remain consistent with then current generally accepted commercial standards for similar properties.

(h) Following the completion of construction thereof, Grantors will be solely responsible for maintaining the City Property (other than the sanitary sewer and storm sewer which are publicly dedicated and accepted for maintenance by the City, Jefferson County or any other applicable governmental entity) in good repair so as to keep the Infrastructure at all times in a safe, sightly, good and functional condition. Furthermore, Grantors will be solely responsible for insuring that the City Property and the Infrastructure are at all times maintained in compliance with the terms and conditions of any other restrictions applicable to the City Property. Without limitation upon the foregoing, Grantors shall: keep the City Property clean and free from refuse and rubbish; mow and otherwise maintain all landscaped areas within the City Property; repair holes or breaks in the parking lot and parking deck, and re-pave and re-stripe and replace markings on the surface of the parking areas and driveways from time to time as and when necessary so as to provide for the orderly parking of automobiles; maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of the Project; maintain all lighting for the Project, service, maintain, repair and replace, and pay the costs of any fees or charges in connection with all utility lines located within the City Property other than the sanitary sewer and storm sewers which are owned by the City); and

otherwise cause the Infrastructure to comply with all applicable requirements of law and governmental regulation. City agrees that Grantors may enter into one or more management agreements appointing a third party to perform all or portions of the maintenance and repair of the City Property; however, Grantors shall remain the responsible party for maintenance of the City Property.

7. **Indemnifications.**

(a) Other than direct acts of the City, Grantors shall defend, protect, indemnify, and hold harmless the City from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from any of the following:

- (i) any construction activity performed under the City Agreement (as hereafter defined) by the Grantors, or anyone claiming by, through, or under Grantors; and
- (ii) any loss of life, personal injury, or damage to property arising from or out of the use of the City Property by any party, including, without limitation, tenants of the Project, customers and invitees of the Project; and
- (iii) any claims that Grantors have breached any Project lease as a result of the transactions described.

8. **Property Taxes.** Grantors shall make, so long as the Covenants and easements set forth in this Indenture shall remain in effect, payments in lieu of ad valorem taxes in an amount which is equal to the lesser of (a) ad valorem taxes that would have been payable on the City Property as if the respective Grantor were the owner of the City Property adjacent to such Grantors' Land, or (b) \$45,000 per year. All amounts payable under this Paragraph 8 shall be paid directly to the City.

9. **No Right of Reverter.** No restriction or provision of these Covenants is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of the Grantors nor shall any such provision vest any reversionary interest in Grantors.

10. **City Agreement.** The City and the Grantors have entered into an Agreement dated October 22, 2001 (the "City Agreement"), and the parties agree that the agreements, indemnities, terms and conditions set forth in the City Agreement shall not be merged into this Indenture and shall survive the closing of the conveyance of the City Property to the City.

EXHIBIT C

PERMITTED ENCUMBRANCES

[TO BE ADDED ONCE TITLE COMMITMENT IS APPROVED]

**SCHEDULE I**

**DEVELOPMENT PLAN**

{Intentionally Deleted from Schedule I of Exhibit D}

SCHEDULE II

INFRASTRUCTURE PLAN

{Intentionally Deleted from Schedule II of Exhibit D}



EXHIBIT E



**INFRASTRUCTURE PLAN**

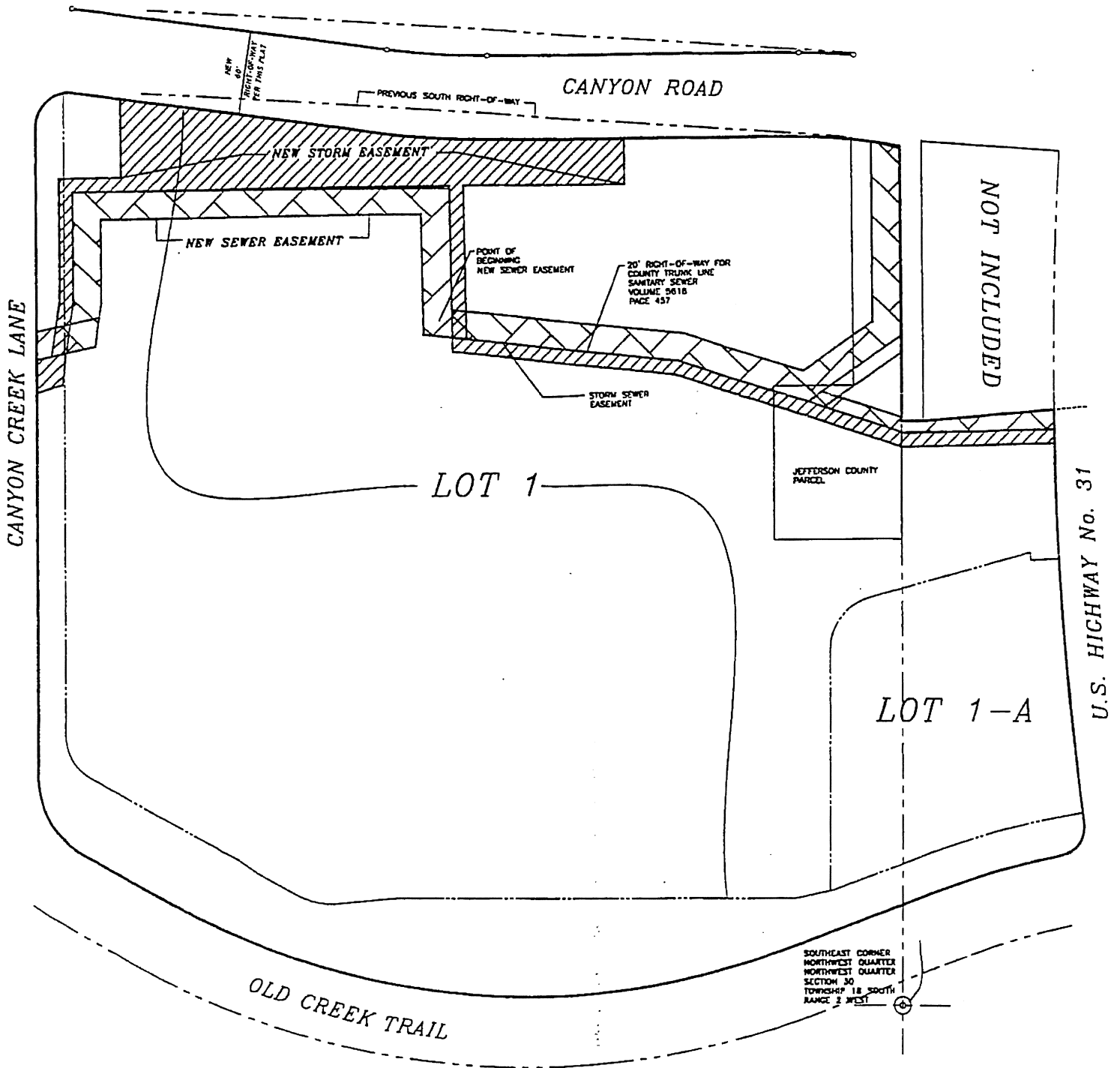
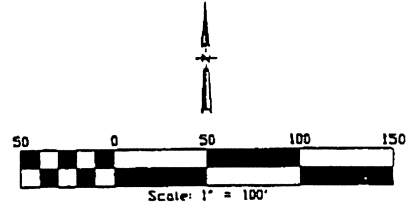
The Infrastructure Plans consists, generally, of three (3) or more separate components, as follows:

1. The Infrastructure Plans applicable to the Publix Tract were prepared by Lowe & Associates, dated September 6, 2001, and last revised October 22, 2001, Sheet 1-21. The work applicable to City improvements is specifically noted on said Infrastructure Plans, and was publicly bid. The lowest bidder for such work was Richards & Sons Contractors at a total cost of \$1,114,701.50. City Funds of \$1,114,701.50 are allocated for this work and such funds shall be advanced by the City to Baker as provided in Article III hereof.
  
2. The Infrastructure Plans applicable to the Mall Tract have not yet been prepared and will be supplied post-closing by Baker to the City for the City's review and approval, which shall not be unreasonably withheld, conditioned, or delayed. City Funds of not more than \$191,952.49 will be allocated for Infrastructure costs applicable to the Mall Tract, provided that Baker has complied with competitive bid laws and requirements applicable to municipal public works projects, and such funds shall be advanced by the City to Baker as provided in Article III hereof.

# VESTAVIA HILLS CITY CENTER

## EXHIBIT E - EASEMENTS

-  JEFFERSON COUNTY SEWER EASEMENT
-  CITY STORM EASEMENT



## AGREEMENT

THIS AGREEMENT, dated October 20<sup>th</sup>, 2001, is by and between the CITY OF VESTAVIA HILLS, a municipal corporation organized and existing under the laws of the State of Alabama (the "City"), AIG BAKER VESTAVIA, L.L.C., a Delaware limited liability company ("Baker/Vestavia"), and AIG BAKER VESTAVIA SHOPPING CENTER, L.L.C., a Delaware limited liability company ("Baker/Shopping Center," and, collectively with Baker/Vestavia, "Baker"). The City and Baker may be collectively referred to as the "Parties."

## WITNESSETH

WHEREAS, on or about May 10, 2000, Baker/Vestavia purchased from John Lauriello and SouthPace Properties, Inc., as Plan Trustees under the confirmed "Third Amended and Restated Creditor's Plan of Reorganization for The Byrd Companies, Inc., Realtor Proposed by New Owners, Vestavia, L.L.C.," Bankruptcy Case No., 98-01643-TBB-11, approximately 19.36 acres of partially improved property commonly known as the "Vestavia Mall" located west of Highway 31, between Old Creek Trail and Kentucky Avenue, located within the City limits of Vestavia Hills, Alabama; and

WHEREAS, on or about May 10, 2000, Baker/Shopping Center purchased from John Lauriello and SouthPace Properties, Inc., as Plan Trustees under the confirmed "Third Amended and Restated Creditor's Plan of Reorganization for The Byrd Companies, Inc., Realtor Proposed by New Owners, Vestavia, L.L.C.," Bankruptcy Case No., 98-01643-TBB-11, approximately 7.825 acres of improved property commonly known as the "Vestavia Shopping Center" located northwest of the intersection of Highway 31 and Kentucky Avenue, located within the City limits of Vestavia Hills (the Vestavia Mall property and the Vestavia Shopping Center Property are collectively referred to herein as the "Redevelopment Property"); and

WHEREAS, Baker has an interest in redeveloping the Redevelopment Property into a mixed use retail shopping center development with proposed tenants to include a grocery store and other national anchor tenants as well as restaurants and other retail establishments which shall consist of approximately 335,000 square feet of retail space in the aggregate, and approximately 15,000 square feet of office space, the cost of which is estimated to be Forty-Five Million Dollars (\$45,000,000) (hereinafter referred to as the "Project"); and

WHEREAS, the Project will be redeveloped in three "phases" consisting of the "Publix Tract," the "Mall Tract," and the "Shopping Center Tract," as is more particularly shown on the Development Plan; and

WHEREAS, the Project will collectively be known as the "Vestavia Hills City Center," although title to the respective parts of the Project will remain in the separate entities as stated above; and

WHEREAS, the City desires to purchase certain land appurtenant to the Project to use for public purposes (such land being hereinafter more particularly described, and referred to herein as the "City Property") and to fund certain additional infrastructure improvements costs to the Project (the "City Funds"); and

WHEREAS, in order to induce Baker to proceed with the redevelopment of the Project and to further the public purposes for which the City exists, the Parties desire to set forth their respective agreements and undertakings with respect to the Project on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the Parties do hereby agree as follows:

## ARTICLE I THE PROJECT

### Section 1.1 Development of the Project.

(a) Subject to the requirements set forth herein, Baker commits to develop the Project substantially in accordance with the Development Plan (as hereafter defined).

(b) Baker contemplates that the Project shall include approximately 335,000 square feet of retail businesses and 15,000 square feet of commercial businesses, consistent with current zoning and other legal requirements, all to be situated upon the Redevelopment Property, and intends to develop the Project substantially in accordance with the development plan attached hereto as Exhibit A (the "Development Plan"). The Development Plan attached hereto is hereby approved by the City; however, City acknowledges that Baker's leasing of the Project is not final, and that changes to the Development Plan may be necessary in order to finalize leases for the Project or for other reasons incident to the development of the Project. Accordingly, subject to the provisions of subsection 1.1(c), the City agrees that Baker may make changes to the Development Plan, including, without limitation, changes to the parking layout and re-configuration of the buildings (other than any approvals required as part of planning and zoning approvals), provided that such changes will not (i) result in a material decrease in the gross leasable building area of the Project from that as shown on the Development Plan, (ii) result in a material increase in the gross leasable building area of the Project from that as shown on the Development Plan, so as to cause noncompliance with parking ratios or other applicable zoning requirements, (iii) result in a material change in the acreage of the City Property (as hereafter defined) or otherwise cause a material decrease in the value of the City Property. Baker will provide to City any revisions to the Development Plan which are made by Baker. City agrees to cooperate in good faith with Baker in any replatting or subdivision approvals which may be required in connection with the conveyance of the City Property to the City.

(c) Design work for the Project shall be subject to the reasonable approval of the City and shall include all work through preparation of plans and specifications and construction documents. The design work for the Project shall be performed by Baker at its sole expense. Baker agrees to obtain all necessary approvals and permits for the Project from the City or other governmental entity in the normal course.

**Section 1.2** Subject to the provisions of Section 5.1(e) hereof relating to *force majeure*, Baker commits to complete the three (3) phases of the Project by the following dates:

- (a) The Shopping Center Tract will be completed by March 31, 2002;
- (b) The Publix Tract will be completed by December 31, 2002; and
- (c) The Mall Tract will be completed by July 1, 2003.

**Section 1.3** Baker agrees to invest all funds, which are necessary for the actual design, construction and development of the Project, at an estimated investment by Baker of Forty Million Dollars (\$40,000,000) (provided, however, that the foregoing shall not be deemed to require Baker to expend more than the actual cost of construction of the Project).

## **ARTICLE II** **PURCHASE OF CITY PROPERTY**

### **Section 2.1 Purchase of City Property.**

(a) The City hereby agrees to purchase from Baker, and Baker hereby agrees to sell to the City, those certain parcels of land which are shown on Exhibit B attached hereto and made a part hereof, which such parcels of land shall collectively comprise the "City Property" described herein (prior to the Closing Date, exact legal descriptions for the City Property will be determined by the surveys described in Section 2.2 below). The City Property will be developed by Baker, as agent for the City, in accordance with the provisions of Article III.

(b) City agrees to cooperate with Baker and to use its best effort to cause the granting of such variances as may be reasonably necessary to allow Baker to proceed with the construction of the Project in the event any re-subdivision of the Redevelopment Property results in a violation of setback or other applicable zoning requirements.

(c) The City shall pay to Baker on the Closing Date (as hereafter defined) the sum of Three Million Six Hundred Ninety-Three Thousand Three Hundred Forty-Six Dollars (\$3,693,346), in immediately available funds, representing the purchase price allocated to the City Property.

**Section 2.2 Title and Survey.** Baker, at its sole expense, shall order and deliver to the City a title insurance commitment issued by Lawyers Title Insurance Corporation, for the issuance of an Owner's Form Title Insurance Policy. Attached hereto as Exhibit C are copies of Baker's Owner's Form Title Insurance Policies, issued by of Lawyers Title Insurance Corporation for the Project (the "Existing Title Policies"). Baker, at its sole expense, shall order and deliver to the City a boundary survey of the City Property. Said title insurance commitments and survey shall be delivered no later than thirty (30) days prior to the scheduled Closing Date. The City shall notify Baker in writing within fourteen (14) days from receipt of the title insurance commitment and the survey of the City Property of any defect or condition that materially and substantially affects the condition of the title or the intended use of the City Property to be acquired by it. Baker shall have thirty (30) days from the date of said notice to cure said defect or condition at its own cost and expense and the Closing Date shall be adjusted accordingly, if necessary. Failure by the City to give notice of any defect or condition shall constitute an acceptance of title. If Baker is unwilling or after reasonable effort is unable to cure any such defect or condition, it shall so notify the City and the City, at its election, shall terminate this Agreement or take title subject to such defect or condition. At closing, Baker shall deliver to the City a title insurance policy for the City Property, at Baker's expense, which shall be based upon the Existing Title Policies and any other title exceptions which shall be reasonably acceptable to the City.

**Section 2.3 Closing.** Unless extended by mutual agreement of the Parties, the closing of the City Property shall take place no later than February 28, 2002 (the "Closing Date"). The closing shall take place at a time and place mutually agreed upon by the Parties hereto. The City Property shall be conveyed by Statutory Warranty Deed with Declaration of Covenants and Reservation of Easements (in the form attached hereto as Exhibit D) (the "Deed") which shall convey marketable title to the City Property free and clear of all liens and encumbrances except those set forth in the Deed or those acceptable to the City. Possession of the City Property shall be delivered at closing, provided, however, that City shall grant to Baker its employees, agents, and subcontractors, free and uninterrupted access over and across the City Property for purposes of constructing the Project.

**Section 2.4 Property Taxes.** Baker shall make, so long as the restrictions and easements set forth in the Deed shall remain in effect, payments in lieu of ad valorem taxes in an amount which is equal to the lesser of (a) ad valorem taxes that would have been payable on the City Property as if Baker were the owner of the City Property, or (b) \$45,000 per year. All amounts payable under this subsection 2.4 shall be paid directly to the City.

**Section 2.5. Restrictions.**

(a) Conveyance of the City Property will be pursuant to the Deed in the form attached hereto as Exhibit D. The City Property will be used solely and exclusively for public parking, for natural areas which may contain a walking trail, for ingress and egress, and for the transmission of utilities, and for such other public uses as may be agreed to by Baker and the City.

(b) The City shall keep, and shall cause its employees, agents, or designees to keep, the City Property including all sidewalks, aisles, and drive areas as shown on the Development Plan, open for the free use thereof, and shall at no time allow such areas to be fenced or otherwise obstructed. City further agrees that it shall not assess any fee or charge for any person to utilize the parking spaces on the City Property so long as Baker maintains and operates the Project in accordance with this Agreement. The Parties further agree that they shall have no ability to make changes or improvements of any kind to the City Property unless the same are first approved by the Parties in writing. City agrees that Baker may deliver a copy of this Agreement to prospective tenants as evidence of the City's acknowledgment that the City Property will be restricted to the uses and subject to the easements and rights in favor of Baker as set forth herein and in the Deed attached hereto as Exhibit D and as set forth herein.

(c) The restrictions described in subparagraph (a) will remain in full force and effect until the earlier of (i) December 31, 2099, or (ii) such time as the Project ceases to be used for the retail and commercial project described in herein (of which, not less than 188,000 square feet shall be used for retail space) (other than temporary cessations in use incident to casualty or condemnation), or (iii) the City and Baker agree that said restrictions should be terminated and file for recordation a written termination agreement in form and content acceptable to both Baker and the City which shall be duly executed by both Baker and the City.

(d) The Parties agree to cooperate with each other to effectuate the Project. Baker shall have a non-exclusive right to use the City Property for parking in support of the Project and the Project leases. Baker agrees that it will not enter into tenant lease agreements in violation of the terms of this Agreement.

**Section 2.6. Leasing Contingency.** Notwithstanding any provision herein to the contrary, City shall not be obligated to close its purchase of the City Property unless Baker has delivered to City evidence of executed leases with SteinMart Stores, Inc., Publix of Alabama, LLC, and with tenants for an additional 90,000 square feet in the Project.

**Section 2.7. Completion Guaranty.** At closing, Baker will deliver to City a guarantee of completion of the Project substantially in accordance with the Development Plan and the terms of this Agreement, which such completion guarantee shall be in form and content acceptable to the Parties. The obligations of Baker pursuant to this Section 2.7 shall be guaranteed by AIG/Baker Partnership, a Delaware general partnership, pursuant to a guarantee in form and content acceptable to the Parties.

ARTICLE III  
INFRASTRUCTURE

Section 3.1 Construction of Infrastructure.

(a) As used herein, the term "Infrastructure" shall be defined to include but not limited to the following: earthwork, storm drainage, sanitary sewers, public road improvements and sidewalks incident to raising Canyon Road, plantings, retaining walls, lightings, landscaping, signalization, powerbank for roadways, paving and curbing and gutters for roadways, and necessary utilities and parking all to be constructed on public property, right-of-way or easements, all as are more particularly set forth in the Infrastructure Plan attached hereto as Exhibit E (the "Infrastructure Plans").

(b) The City hereby selects and appoints Baker as its agent to manage the construction of the Infrastructure and Baker hereby accepts said appointment and the responsibility for causing to be carried out said work as set forth herein. Baker specifically recognizes and agrees that all the Infrastructure Plans must be approved by the City before any implementation thereof, and City agrees that its approval will not be unreasonably withheld, conditioned, or delayed. Such approval shall not amount to an approval of the Infrastructure's conformity of applicable building codes and other usual inspection approvals by the City normal to any new construction in the City, which such approval process shall proceed in the normal course. While it is understood and agreed that certain roadways may be public roads, Baker and the City acknowledge that the secondary roads and other access corridors serving the Project and other facilities within the Project may be provided through private roads, or private access easements. Whether any future roads are to be dedicated as public roads will be determined by mutual agreement of the Parties.

(c) Baker shall also grant to the City an easement for storm sewers located within the Project area for which an easement has not previously been granted, which such storm sewer easements shall be at the locations shown on the Infrastructure Plan or as otherwise determined by Baker.

(d) Following the approval of the Infrastructure Plan by the City, Baker shall immediately proceed to effect the construction of the Infrastructure substantially in accordance with Infrastructure Plan. Baker further covenants that it will use its best efforts to complete the Infrastructure in an orderly and expeditious manner, subject to delays incident to *force majeure*. In constructing the Infrastructure, Baker shall comply with competitive bid laws and requirements applicable to municipal public works projects. It is understood and agreed by the Parties that the Infrastructure shall remain the property of the City.

(e) The City shall have the right to approve all construction contracts to be executed by Baker with general contractors pertaining to the Infrastructure and shall have the further right to approval all contractors, but not subcontractors, to be utilized thereon. Such approval shall be at the



discretion of the City, but shall not be unreasonably withheld, conditioned, or delayed. The City shall provide Baker with written instructions regarding the City's policies and procedures concerning bid law. Prior to the beginning of construction of the Infrastructure, Baker agrees that it shall require the Infrastructure general contractor to post a performance bond and a labor and materialmen's payment bond with good and sufficient surety issued by a company qualified to issue such bonds in the State of Alabama in an amount sufficient to insure completion of the construction of the Infrastructure according to the construction contract therefor, with Baker as obligee of the bonds and the City as additional obligee thereunder. The bonds shall be obtained from such companies in such amounts as shall be approved in advance by the City, such approval not to be unreasonably withheld, conditioned, or delayed. A copy of said bonds shall be furnished to the City prior to the beginning of the construction of the Infrastructure. In the event the Infrastructure general contractor defaults in the performance of its construction contract, Baker agrees to take appropriate action to enforce the said bonds or otherwise cause the work to be timely completed.

(f) Commencement of construction of the Project on the Publix Tract shall begin not later than November 30, 2001. Commencement of construction of the Project on the Mall Tract shall begin not later than March 31, 2002. The Parties agree that the Shopping Center Tract is substantially complete.

(g) In consideration of the agreements set forth herein, City agrees to pay for the cost of construction of the Infrastructure in the following manner: Baker shall submit a copy of each statement, proof of its payment and any additional information with respect to the work done which may be reasonably required by City for each contractor and other Parties involved in the construction of the Infrastructure. Unless the City has a question about a statement, or requires additional information with respect to such statement which shall be promptly communicated to Baker, the City shall pay jointly the contractor and Baker (as agent for the City, as herein provided), or shall pay Baker (as agent for the City, as herein provided) severally if Baker has already paid such contractor) in accordance with the statements so submitted in the aggregate not to exceed **One Million Three Hundred Six Thousand Six Hundred Fifty-Four Dollars (\$1,306,654)**.

(h) It is understood that it is the responsibility of Baker to complete the Project substantially in accordance with the Development Plan, and that the City's will not pay more than **One Million Three Hundred Six Thousand Six Hundred Fifty-Four Dollars (\$1,306,654)** for construction of the Infrastructure; therefore, Baker will be responsible for all costs in excess of such amount.

(i) Notwithstanding any provision herein to the contrary, Baker may choose to postpone installation of a final seal coat for any roadways or completion of other comparable work pending construction of retail, office, residential or other improvements within the Project, and such shall not constitute a default or breach of Baker's obligations hereunder.

(j) Baker covenants and agrees that it will pay promptly all persons or entities supplying work or materials for the construction of the Infrastructure. In the event that any materialmen's or

mechanics' liens are filed against the City Property in connection with Baker's construction of the Infrastructure or the Project, Baker covenants and agrees that it will discharge or make other arrangements reasonably acceptable to City with respect to (including, without limitation, bonding off or insuring over any such lien) any mechanic's or other lien filed against the City Property.

(k) Baker will maintain general liability insurance with respect to the City Property insuring against claims on account of loss of life, bodily injury, or property damage that may arise from, or be occasioned by the condition, use, or occupancy of the City Property by the public. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State of Alabama, and shall contain limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, with a \$5,000,000 umbrella policy, which such insurance shall be written on an occurrence basis and shall name the City as an additional insured, and shall provide that City shall receive not less than thirty (30) days written notice prior to cancellation. The City reserves the right to require reasonable increases in the amounts of such coverages from time to time so that such coverages remain consistent with then current generally accepted commercial standards for similar properties.

(l) Following the completion of construction thereof, Baker will be solely responsible for maintaining the City Property (other than the sanitary sewer and storm sewer which are publically dedicated and accepted for maintenance by the City, Jefferson County or any other applicable governmental entity) in good repair so as to keep the Infrastructure at all times in a safe, sightly, good and functional condition. Furthermore, Baker will be solely responsible for insuring that the City Property and the Infrastructure are at all times maintained in compliance with the terms and conditions of any other restrictions applicable to the City Property. Without limitation upon the foregoing, Baker shall: keep the City Property clean and free from refuse and rubbish; mow and otherwise maintain all landscaped areas within the City Property; repair holes or breaks in the parking lot and parking deck, and re-pave and re-stripe and replace markings on the surface of the parking areas and driveways from time to time as and when necessary so as to provide for the orderly parking of automobiles; maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of the Project; maintain all lighting for the Project, service, maintain, repair and replace, and pay the costs of any fees or charges in connection with all utility lines located within the City Property other than the sanitary sewer and storm sewers which are owned by the City); and otherwise cause the Infrastructure to comply with all applicable requirements of law and governmental regulation. City agrees that Baker may enter into one or more management agreements appointing a third party to perform all or portions of the maintenance and repair of the City Property; however, Baker shall remain the responsible party for maintenance of the City Property.

(m) Other than direct acts of the City, Baker shall defend, protect, indemnify, and hold harmless the City from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any of the following,

- (i) any construction activity performed under this Agreement by the Baker, or anyone claiming by, through, or under Baker; and
- (ii) any loss of life, personal injury, or damage to property arising from or out of the use of the City Property by any party, including, without limitation, tenants of the Project, customers and invitees of the Project; and
- (iii) any claims that Baker has breached any Project lease as a result of the transactions described.

The indemnifications set forth in this subparagraph (m) shall survive closing of the purchase and sale described herein and shall not be merged into the documents executed on the Closing Date.

#### **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES**

**Section 4.1 Representations and Warranties of the City and Conditions to the City's Obligation.** The City makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Subject to the due adoption of a Resolution by its City Council approving this Agreement and an Ordinance appropriating the funds necessary therefor, the City has the power and authority to enter into the transactions contemplated by this Agreement and to fulfill and carry out its obligations hereunder.

**Section 4.2 Representation and Warranties of Baker.** Baker makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Baker/Vestavia and Baker/Shopping Centers are each limited liability companies duly organized and existing under the law of the State of Delaware, and are duly qualified to do business in and are in good standing under the laws of the State of Alabama. Baker/Vestavia and Baker/Shopping Centers each has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(b) The execution and delivery of this Agreement on the part of Baker's proper agent or governing board has been duly authorized by a resolution duly adopted by the Board and by all other necessary actions.

**ARTICLE V**  
**EVENTS OF DEFAULT AND REMEDIES**

Section 5.1 **Baker Events of Default Defined.** Each of the following shall be a "**Baker Event of Default**" under the Agreement and the term "**Baker Event of Default**" shall mean, whenever it is used in the Agreement, any one or more of the following events:

- (a). Failure by Baker to develop, complete, and maintain the Project as contemplated hereby;
- (b). Failure by Baker to perform or observe any agreement, covenant or condition required by the Agreement to be performed or observed by it, which failure shall have continued for a period of thirty (30) days after written notice specifying, in reasonable detail, the nature of such failure and requiring Baker to perform or observe the agreement, covenant or condition with respect to which it is delinquent, shall have been given to Baker by the City unless (i) the City shall agree in writing to an extension of such period prior to its expiration, or (ii) during such thirty (30) day period or any extension thereof, Baker has commenced appropriate curative action and thereafter diligently pursues such corrective action to completion, or (iii) Baker is by reason of *force majeure* at the time prevented from performing or observing the agreement, covenant or condition with respect to which it is delinquent;
- (c). Any material warranty, representation by or on behalf of Baker contained in the Agreement, or in any other document furnished by Baker in connection with the Agreement or the development of the Project proves to be false or misleading in any material respect at the time made;
- (d). Institution by Baker of proceedings to be adjudicated a bankrupt or insolvent, or consent by Baker to the filing of a bankruptcy or insolvency proceeding against it, or the filing by Baker of a petition or answer or consent seeking relief under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, or consent by Baker to the institution of proceeding thereunder or to the filing of any such petition, or consent by Baker to the appointment of, or the taking of possession of any of its property by, a receiver, trustee, custodian or assignee in bankruptcy or insolvency of Baker of an interest in all or a major part of its property, or an assignment by Baker for the benefit of its creditors, or a written admission by Baker of its inability to pay its debts generally as they become due, or the taking of any corporate action by Baker in furtherance of any of the foregoing events or actions;
- (e). The entry of a decree or order by a court of competent jurisdiction for relief in respect of Baker or adjudging Baker to be a bankrupt or insolvent or approving as properly filed a petition seeking the arrangement, adjustment or composition of its obligations under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, which decree or order shall have continued undischarged or unstayed for a period of sixty (60) days; or the entry of a decree or order of a court of competent jurisdiction for the appointment of a receiver, trustee, custodian or assignee in bankruptcy or insolvency for Baker

or for all or a major part of its property, which decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days; provided, however, that in each instance, Baker shall not be deemed in default where its performance is prevented or materially hindered by reason of force majeure or where it is proceeding with diligence to cure the default. The term "force majeure" as used herein means act of God or the public enemy, strikes, lockouts, work slowdowns or stoppages or other labor disputes, insurrections, riots or other civil disturbances, orders of the government of the United States of America or of any state of the United States of America or of any of the departments, agencies, political subdivision or officials of the United States of America or of any state thereof, or orders of any other civil or military authority, or partial or entire failure of public utilities, or any other condition or event beyond the reasonable control of Baker. Baker will, to the extent that it may lawfully do so, use its best efforts to remedy, alleviate or circumvent any cause or causes preventing it from performing its agreements and covenants hereunder; provided, however, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of Baker, and Baker shall not be required to settle strikes, lockouts and other labor disputes by acceding to the demands of the opposing party or parties when such course is in its judgment against its best interests.

**Section 5.2 City Remedies on Event of Default.** Subject to the provisions of Section 5.5 hereof, whenever an Event of Default shall have happened and be continuing and not waived by the City, the City may take any one or more of the following remedial actions:

(a). Terminate any obligations of the City hereunder, whereupon the City Property will be reconveyed by the City to Baker, Baker will reimburse the City in full for the City Funds, this Agreement will terminate and the Parties will be restored to their positions prior to the Closing Date; or

(b). Have access to, and inspect, examine and make copies of, the books, records and accounts of Baker related solely and strictly to the Infrastructure and the City Property (but in no event will Baker be required to provide to City any information which Baker deems to be proprietary information relating to the Project, such as tenant leases); or

(c). Take legal action to require the specific performance of any obligation, covenant or agreement of Baker under the Agreement.

City acknowledges that the tenants at the Project are third-party beneficiaries of this Agreement and agrees that no action will be taken to terminate this Agreement without first giving each of said tenants at least sixty (60) days notice of the default and an opportunity cure the same.

City agrees that it will accept any performance by any of said Tenants of the obligations of the Baker under this Agreement the same as if said performance were rendered by Baker itself and that the same shall act to cure any default relating to said performance.

**Section 5.3 [Intentionally Deleted].**

**Section 5.4 Baker Remedies.** Subject to the provisions of Section 5.5 hereof and to the extent permitted by applicable law, whenever an Event of Default shall have happened and be continuing and not waived by Baker, Baker may take legal action to require the specific performance of any obligation, covenant or agreement of City under the Agreement or Deed.

**Section 5.5 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the City or Baker is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Baker Event of Default or City Event of Default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or Baker to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as is herein expressly required.

**Section 5.6 Agreement to Pay Attorneys' Fees.** In the event of litigation pursuant to this Agreement, the non-prevailing party shall pay to the reasonable attorneys' fees and other reasonable expenses actually incurred by the prevailing party.

## ARTICLE VI GENERAL PROVISIONS

**Section 6.1 Survival of Covenants.** The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms. All covenants, representations and warranties shall survive the Closing Date and the delivery of the Deed attached hereto as Exhibit D.

**Section 6.2 Fees and Expenses.** Baker will pay the reasonable fees and expenses of Spain & Gillon, L.L.C., the attorney representing the City in connection with negotiation, execution and closing of this Agreement or any agreement or instrument contemplated herein, and will pay all fees of its own counsel. In no event will Baker be responsible for any attorneys fees or other fees incurred by the City in connection with the appropriation of funds described in Section 4.1(a) above. Except as expressly provided herein, the Deed any other instruments related to public roads and rights-of-way shall be prepared by Baker. The recording fees and taxes, if any, shall be borne by Baker.

**Section 6.3 Severability.** If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not effect the validity of the remainder of this Agreement.

**Section 6.4 Real Estate Commissions.** Baker and City warrant and represent to the other that there are and shall be no brokerage fees, commissions, or other remuneration of any kind arising

from the execution of this Agreement or the Closing of the purchase and sale contemplated hereby. Baker and City shall forever indemnify and hold the other harmless against and in respect of any and all claims, losses, liabilities and expenses, including, without limitation, reasonable attorney's fees and court costs, which City or Baker may incur on account of any claim by any broker or agent or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Baker or City, as the case may be, in respect to the transactions herein contemplated. The provisions of this Section shall survive the Closing Date.

**Section 6.5 Notices.** Any notice required or permitted to be delivered hereunder shall, except as otherwise expressly provided herein, be deemed to have been given upon the earlier to occur of (i) actual receipt by the addressee thereof including without limitation via facsimile transmission or personal delivery; (ii) the third (3rd) day after the deposit of such notice in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Baker or City, as the case may be, as set forth below; or (iii) the first (1st) day after such notice has been deposited with a nationally recognized overnight courier (i.e. Federal Express); in either case, such notices to be addressed as follows:

To City:	The Mayor of the City of Vestavia Hills 513 Montgomery Highway Vestavia Hills, Alabama 35216 (205) 978-0130 (phone) (205)970-0132 (fax)
With a Copy to:	Spain & Gillon, L.L.C. The Zinszer Building 2117 2 <sup>nd</sup> Avenue North Birmingham, Alabama 35203 Attn: Alton B. Parker, Jr., Esq. (205) 328-4100 (phone) (205) 324-8866 (fax)
To Baker:	AIG Baker Vestavia, L.L.C. AIG Baker Vestavia Shopping Center, L.L.C. 1701 Lee Branch Lane Birmingham, AL 35242 Attention: Legal Department Telephone (205) 969-1000 Facsimile (205) 969-9467

With Copies to:

Burr & Forman LLP  
420 North 20<sup>th</sup> Street  
Suite 3100  
Birmingham, AL 35243  
Attn: Gail Livingston Mills, Esq.  
(205) 458-5300 (phone)  
(205) 458-5100 (fax)

Section 6.6 Governing Law. This Agreement shall be governed by the laws of the State of Alabama.

Section 6.7 Entire Agreement. This agreement and the exhibits which are attached hereto or incorporated herein by reference, constitute the entire agreement among the Parties hereto pertaining to the subject matter hereof, supersede any and all prior or contemporaneous agreements or understandings of the Parties relating to the subject matter hereof, and may not be modified or amended except by a writing executed by the duly authorized offices for all Parties.

Section 6.8 No Waiver. No consent or waiver, express or implied, by either party hereto or to any breach or default by the other party in the performance by the other party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any party hereto shall be construed to waive or limit the need for such consent in any other or subsequent instance.

Section 6.9 Remedies. Whenever either party hereto shall default in the performance of any of its obligations under this Agreement, the other party hereto may take whatever legal proceeding (including actions for damages or for specific performance to the extent provided by law) as shall be necessary or desirable to enforce any agreement or condition contained herein or any other obligation of the defaulting party imposed by law. The Parties hereto recognize, and will not object to, an action for specific performance.

Section 6.10 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture between the City and Baker and their respective successors and assigns.

Section 6.11 Headings. The headings in the Sections in this Agreement are for convenience of reference only and shall not form a part hereof.



Section 6.12 Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

Section 6.13 Assignment. This Agreement, and all of the provisions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns and is freely assignable by either party, without consent of the other; provided, however, that the original Parties shall remain principally liable hereunder unless expressly released in writing. The City acknowledges and agrees that Baker may assign its rights under this Agreement to an affiliate of Baker or to any purchaser of the Project or any interest therein, and the City's consent to such assignment shall not be unreasonably withheld, conditioned, or delayed.

Section 6.14 Collateral Assignments. The consent of the City shall be required for any collateral assignments of Baker's rights under this Agreement which Baker shall request to be made to any lender who may provide financing for the Project to Baker ("Development Lender"). The consent of the City shall not be unreasonably withheld. Upon consent by the City of any such assignment, a copy of any and all notices given to Baker under this Agreement will, upon request, be simultaneously provided to Development Lender, provided that Baker provides the City with the name and address of the Development Lender.

Section 6.15 Estoppel Certificates. From time to time, upon request by any party, the party asked shall provide to the party making the petition, an acknowledgment or certificate with respect to matters concerning this Agreement or the status of performance of the obligations of the Parties hereunder, as may be reasonably requested.


Section 6.16 No Third-Party Beneficiaries. Except as set forth herein, this Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest or obligations hereunder, is intended for the benefit of any other person or third-party.

Section 6.17 Non-Discrimination. Baker shall not enter into, execute, or be a party to any covenant, agreement, lease, deed, assignment, conveyance or any other written instrument which restricts the sale, lease or use of the Infrastructure, or any part thereof, or any improvements placed thereon, upon the basis of national origin, race, religion, sex or color. Baker shall comply with all federal, state and local laws in affect from time to time, prohibiting discrimination or segregation and will not discriminate by reason of national origin, race, religion, sex or color in the construction of the Infrastructure.

Section 6.18 Computation of City Funds. The computation of the City Funds shall not include any transactional costs, attorneys fees and closing costs incurred by the City in connection herewith.

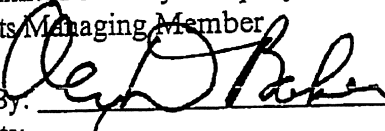
IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the first above written.

THE CITY OF VESTAVIA HILLS,  
a municipality organized and existing under the laws  
of the State of Alabama

By:   
Dr. Charles A. McCallum  
Its Mayor

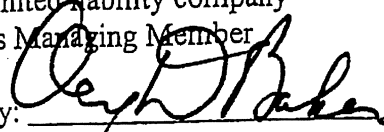
AIG BAKER VESTAVIA L.L.C.  
a Delaware limited liability company

BY: AIG BAKER SHOPPING CENTER  
PROPERTIES, L.L.C., a Delaware  
limited liability company  
Its Managing Member

By:   
Its: \_\_\_\_\_

AIG BAKER VESTAVIA SHOPPING CENTER,  
L.L.C.  
a Delaware limited liability company

BY: AIG BAKER SHOPPING CENTER  
PROPERTIES, L.L.C., a Delaware  
limited liability company  
Its Managing Member

By:   
Its: \_\_\_\_\_

## GUARANTY OF COMPLETION

THIS GUARANTY OF COMPLETION (this "Guaranty"), dated this 20 day of March, 2002, is from AIG BAKER VESTAVIA, L.L.C., a Delaware limited liability company ("Baker/Vestavia"), AIG BAKER VESTAVIA SHOPPING CENTER, L.L.C., a Delaware limited liability company ("Baker/Shopping Center," and, collectively with Baker/Vestavia, "Baker"), and AIG/BAKER PARTNERSHIP, a Delaware general partnership ("AB Partnership") (Baker and AB Partnership are collectively referred to herein as the "Completion Guarantors"), in favor of THE CITY OF VESTAVIA HILLS, a municipal corporation organized and existing under the laws of the State of Alabama (the "City").

### RECITALS

Baker and City have entered into that certain Amended and Restated Agreement dated as of December 3, 2001, as amended by Amendment thereto dated as of March \_\_\_\_, 2002 (as amended, the "City Agreement"; *all defined terms used in this Guaranty without definition shall have the meanings set forth in the City Agreement*). Pursuant to the City Agreement, the City has agreed to purchase the City Property for public uses for the purchase price of \$3,482,773, and has further agreed to pay for up to \$1,517,227 in Infrastructure costs to be incurred in the redevelopment of the Project, all as is more particularly described in the City Agreement.

As a condition to the closing of the transactions described in the City Agreement, City has required that Completion Guarantors execute this Guaranty in order to guarantee completion of construction of the Project substantially in accordance with the Development Plan.

### AGREEMENT

NOW, THEREFORE, for and in consideration of the premises, the consummation by Baker and City of the transactions contemplated by the City Agreement, and as security for the completion of the Project, Completion Guarantors hereby agree, covenant, represent, and warrant to City as follows:

#### 1. Completion Guaranty.

(a) Completion Guarantors do hereby jointly and severally guarantee to City the performance of all of Baker's obligations under the City Agreement to complete construction of the Project substantially in accordance with the Development Plan (as such Development Plan may be modified from time to time as set forth in Section 1.1 of the City Agreement), including completion of all grading, utilities and all site improvements and buildings, and to obtain a certificate of occupancy for such buildings promptly upon completion thereof (the foregoing obligations are referred to collectively hereinafter as the "Construction Obligations"). All of the Construction Obligations shall be completed:

(i) in substantial accordance with the Development Plan (as such Development Plan may be modified from time to time as set forth in Section 1.1 of the City Agreement), and the construction contract documents between Baker and any general contractor or other party providing construction services to the Project;

(ii) lien free, with all costs thereof fully paid or bonded over by Baker;

(iii) with all certificates of occupancy and other evidences of such completion furnished to City by the completion dates for each phase of the Project as set forth in Section 1.2 of the City Agreement; and

(iv) otherwise materially in accordance with the City Agreement.

(b) The Completion Guarantors hereby further unconditionally jointly and severally guarantee the investment of all funds which are necessary for the actual design, construction, and development of the Project, at an estimated investment by Baker of Forty Million Dollars (\$40,000,000)(provided, however, that the foregoing shall not be deemed to require the Completion Guarantors to expend more than the actual cost of construction of the Project).

(c) The Completion Guarantors will be released hereunder upon written request for such release delivered to the City, and upon City's receipt and approval of satisfactory evidence that the Project has been completed, as evidenced by the delivery of certificates of occupancy approving the Project for full and unrestricted occupancy or the Project architect's certificate of substantial completion and full lien waivers from all contractors and material suppliers performing work or supplying materials regarding construction of the Project.

2. **Guaranty Absolute.** This Guaranty is an absolute, unconditional, present, and continuing guaranty of performance and not of collectibility and is in no way conditioned upon or limited by the exercise of any other remedies City might have against any Baker under the City Agreement, or any other action, occurrence, or circumstance whatsoever. This Guaranty will not be affected, modified, or impaired by the voluntary or involuntary liquidation, dissolution, sale, or other disposition of all, or substantially all, of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangements, composition with creditors or readjustment of, or other similar proceedings affecting Completion Guarantors or any of the assets belonging to any of them, nor will this Completion Guaranty be affected, modified, or impaired by the invalidity of the City Agreement or any other document executed by Baker or the City in connection with the City Agreement.

3. **Extensions.** Notwithstanding any provision herein, City may grant extensions of time for performance of agreements pursuant to the City Agreement or other indulgences, and any such extensions shall extend the obligations of the Completion Guarantors hereunder commensurately.

4. **Representations and Warranties.** Completion Guarantors represent and warrant to City and covenant that Completion Guarantors (and each of them) has full power and unrestricted right to enter into this Guaranty, to incur the obligations provided for herein, and to execute and deliver the same to City, and that when executed and delivered, this Guaranty will constitute a valid and legally binding obligation of such Completion Guarantor.

5. **Subordination.** AB Partnership hereby subordinates, to the fullest extent possible, any right of subrogation or other right of reimbursement from Baker and any other right to payment from Baker arising out of or on account of any sums paid or agreed to be paid by AB Partnership under this Guaranty, whether any such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. AB Partnership covenants and agrees with City not to exercise such rights of subrogation or reimbursement until the completion obligations have been performed in full.

6. **Successors and Assigns.** This Guaranty shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

7. **Governing Law.** The validity, interpretation, enforcement, and effect of this Agreement shall be governed by and construed according to the laws of the State of Alabama.

8. **Severability.** In the event that any provision hereof is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court, this Guaranty shall be construed as not containing such provisions and the invalidity of such provisions shall not affect other provisions hereof which are otherwise lawful and valid and shall remain in full force and effect.

9. **Notices.** Any notice or payment required or permitted to be given by this Guaranty or by applicable law shall be sufficient for every purpose hereunder if delivered in the manner specified in the City Agreement.

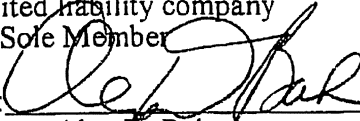
10. **No Waivers.** The failure by City at any time or times hereafter to require strict performance by Completion Guarantors of any of the provisions, warranties, terms, and conditions contained herein or in any other agreement, document, or instrument now or hereafter executed by Completion Guarantors and delivered to City shall not waive, affect, or diminish any right of City hereafter to demand strict compliance or performance therewith and with respect to any other provisions, warranties, terms, and conditions contained in such agreements, documents, and instruments, and any waiver of any default shall not waive or affect any other default, whether prior or subsequent thereto and whether of the same or a different type. None of the warranties, conditions, provisions, and terms contained in this Guaranty or in any agreement, document, or instrument now or hereafter executed by Completion Guarantors and delivered to City shall be deemed to have been waived by any act or knowledge of City, its agents, officers, or employees, but only by an instrument in writing, signed by an officer of City, and directed to Completion Guarantors specifying such waiver.

11. **Expenses.** If, at any time or times hereafter, City employs counsel to advise or provide other representation with respect to this Guaranty, or to commence, defend, or intervene, file a petition, complaint, answer, motion, or any other pleading or to take any other action in or with respect to any suit or proceeding relating to this Guaranty or to enforce any rights of City or obligations of Completion Guarantors to City by virtue of this Guaranty, then in any such events, all of the reasonable attorneys' fees arising from such services and any reasonable expenses, costs, and charges relating thereto shall constitute additional obligations of Completion Guarantors payable on demand.

IN WITNESS WHEREOF, Completion Guarantors have caused this Guaranty to be executed by their duly authorized officers, as of the day and year first above written.

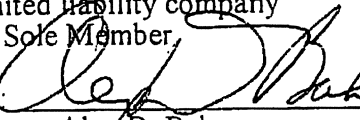
**AIG BAKER VESTAVIA, L.L.C.,**  
a Delaware limited liability company

BY: **AIG BAKER SHOPPING CENTER  
PROPERTIES, L.L.C.,** a Delaware  
limited liability company  
Its Sole Member

By:   
Alex D. Baker  
Its President

**AIG BAKER VESTAVIA SHOPPING  
CENTER, L.L.C.,** a Delaware limited liability  
company

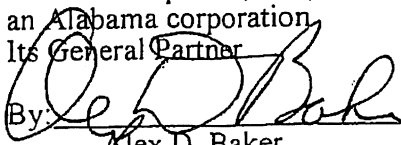
BY: **AIG BAKER SHOPPING CENTER  
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limited liability company  
Its Sole Member

By:   
Alex D. Baker  
Its President

**AIG/BAKER PARTNERSHIP,**  
a Delaware general partnership

BY: **Alex Baker Limited Partnership,**  
a Georgia limited partnership  
Its General Partner

BY: **A.B. Development, Inc.,**  
an Alabama corporation  
Its General Partner

By:   
Alex D. Baker  
Its President

**RESOLUTION NUMBER 4962**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ALLOCATE FUNDING WITHIN THE GAS TAX FUND BUDGET FOR FISCAL YEAR 2016-2017 FOR STREET RESURFACING AND REPAIR IN THE CITY OF VESTAVIA HILLS, ALABAMA**

**WHEREAS**, on August 22, 2016 the City Council adopted and approved Resolution Number 4867 adopting a General Fund Budget, a Special Revenue Fund Budget, a Capital Project Fund Budget and a Sidewalk Project Fund Budget for the City of Vestavia Hills for fiscal year 2016-2017; and

**WHEREAS**, said Special Revenue Fund Budget includes the 07-7 Cent Gasoline Fund; and

**WHEREAS**, said 07-7 Cent Gasoline Fund annually includes appropriation of funds to allow for street paving, repairs and maintenance; and

**WHEREAS**, on September 12, 2016 the City Council adopted and approved Resolution Number 4878 accepting a bid for street resurfacing and repairs with the intent to utilize the FY 17 budgeted paving funds coupled with the FY 16 end of the year fund balance in Fund 7 to cover the projected expense; and

**WHEREAS**, the City's residential paving program for the fiscal year 2017 is now complete; and

**WHEREAS**, said completion left a purchase order balance of \$89,350.00; and

**WHEREAS**, the City Public Services Director and City Engineer have examined said balance and projected fund balance and would like to utilize \$45,000.00 of said remaining balance for continued road repair and maintenance as needed for the remainder of the fiscal year 2017; and

**WHEREAS**, the City Manager has examined said fund and recommended the allocation of funding from the 07-7 Cent Gasoline Fund to cover the expense for continued road repair and maintenance as needed for the remainder of the fiscal year 2017; and

**WHEREAS**, the Mayor and City Council have reviewed the recommendation and find it is in the best public interest to approve that the City Manager allocate funding within the budget in order for continued road repair and maintenance.

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Manager is hereby authorized to allocate money from the 07-7 Cent Gasoline Fund for the continued road repair and maintenance in the amount of not to exceed \$45,000; and
2. This Resolution Number 4962 shall become effective immediately upon adoption and approval.

**ADOPTED and APPROVED** this the 24<sup>th</sup> day of July, 2017.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



Memorandum

To: Rebecca Leavings  
City Clerk

From: Jeff Downes  
City Manager



Date: July 5, 2017

Re: Gas Tax Fund (Fund 7) Expenditure Authorization

On November 1, 2016, after receiving approval from the newly elected Mayor and Council and passage of Resolution 4878, a purchase order was issued to Dunn Construction Company to implement the City's residential paving program for fiscal year 2017. The purchase order totaled \$572,580. The FY 2017 paving project is now complete, and the amount expended is \$483,229.58 leaving a balance of \$89,350.42 as the P.O. is closed.

The funding for said paving expense anticipated the utilization of the appropriated FY 17 paving budgets, summarized below, as well as the Fund 7 fund balance at the beginning of FY 17 that totaled \$286,974. Given the execution of the paving project as previously authorized by the City Council and the need for clarity on the utilization of the remaining Fund 7 monies to allow continued road repair and maintenance as needed through the completion of FY 17, please prepare a resolution authorizing the expenditure of remaining Fund 7 monies including the Fund 7 fund balance for use in street maintenance efforts not to exceed an additional \$45,000 for the remainder of the fiscal year as per the request of Brian Davis.

Paving Budget

Fund 4	\$ 199,000
Fund 5	\$ 95,000
Fund 7	\$ 8,024
Fund 7 Balance (9/30/16)	\$ 286,974
Total	\$ 588,998

Cc: Melvin Tuner, Finance Director  
George Sawaya, Deputy Finance Director

**Vestavia Hills Public Services  
1032 Montgomery Highway  
Vestavia Hills, AL 35216**

**INTEROFFICE MEMO**

Date: June 21, 2017

TO: Jeff Downes  
City Manager

From: Brian Davis  
Public Service Director

RE: Street Maintenance Funding

Due to unforeseen excess expenses during the current fiscal year in street repair and maintenance, I need to request \$45,000 (estimated \$15,000 per month) for the remainder of the fiscal year. While we do not anticipate using this on anything specific, should we have any hazards in the right of way, we need access to funding in a timely manner.

Christopher and I would be happy to answer any questions you may have.

**RESOLUTION NUMBER 4878**

**A RESOLUTION ACCEPTING A BID FOR STREET RESURFACING  
AND REPAIR IN THE CITY OF VESTAVIA HILLS**

**WHEREAS**, on August 11, 2016 at 10:00 a.m. the City of Vestavia Hills publicly read aloud bids submitted for street repair and resurfacing in the City of Vestavia Hills; and

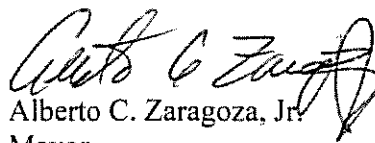
**WHEREAS**, the City Engineer has reviewed the bids, detailed them in an Interoffice Memorandum to the City Manager dated September 6, 2016 and recommended acceptance of the bid submitted by Dunn Construction Company. A copy of said Interoffice Memorandum is marked as Exhibit A attached to and incorporated into this Resolution Number 4878 as if written fully therein; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept the recommendation of the City Engineer and accept said bid as detailed in Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The bid submitted by Dunn Construction Company as detailed in attached Exhibit A and recommended by the City Engineer, is hereby accepted; and
2. The Mayor and City Manager are hereby authorized to execute and deliver any and all documents necessary to secure said agreement and/or for said purchase upon written approval of the City Attorney, a copy of which is marked as "Exhibit B" attached to and incorporated into this Resolution Number 4878 as though written fully therein; and
3. This Resolution Number 4878 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 12<sup>th</sup> day of September, 2016.

  
Alberto C. Zaragoza, Jr.  
Mayor

## CITY OF VESTAVIA HILLS

### CITY COUNCIL

### MINUTES

### WORK SESSION

**OCTOBER 26, 2016**

The City Council of Vestavia Hills met in special work session on this date at 6:00 PM following posting/publication as required by Alabama law. The Mayor-elect called the meeting to order and the City Clerk checked the roll with the following:

**MEMBERS PRESENT:**

Mayor-elect Ashley C. Curry  
Kimberly Cook, Council-elect  
Paul J. Head, Council-elect  
George Pierce, Councilor  
Rusty Weaver, Council-elect

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Rebecca Leavings, City Clerk  
Melvin Turner, Finance Director  
Darrin Estes, IT Director  
Terry Ray, Asst. Fire Chief  
Marvin Green, Asst. Fire Chief  
Dan Rary, Police Chief  
Jason Hardin, Police Captain  
Kevin York, Police Captain  
Brian Davis, Public Services Director  
Christopher Brady, City Engineer

The Mayor-elect called the Work Session to order.

Mr. Downes gave updates and explained to the Council the following issues that are either current or forthcoming:

- Residential paving; how the system works, how individual streets are evaluated for paving, the current bid award for paving and the amount of available funds. Mr. Downes explained that the City has a 3-week window to complete some immediate paving needs that are budgeted and are ready to proceed. He distributed a listing of the streets proposed for resurfacing and asked the Council to please contact him if there were any issues.



- Update on CMAQ with both paving and sidewalk construction for Massey Road. Mr. Brady stated that the final plan has gone to ALDOT for review and hopes to have the project bid by ALDOT in spring.
- Mr. Downes announced a possible retreat/work session planned for December 8-9, 2016 and suggested a location. He asked everyone to “save the date” and the details would be worked out and sent later.
- Current number of annexation requests pending and some recent research done and ready to be presented. Mr. Downes suggested holding off on any annexation requests until after this information has been evaluated at the December retreat.
- Mr. Downes explained two upcoming projects that are making their way toward construction in Cahaba Heights.
  - Martin’s BBQ is a development that was recently rezoned and will be coming forward to request incentives because of the challenges in development preparations because of the large drainage basin/creek running through the property.
  - Leaf and Petal is a development that was recently delayed in zoning to allow the new Council to be seated and make the zoning decision. This development will also come forward for some incentives because of the challenges with developing this property.
  - Mr. Downes stated that he will evaluate each of these requests and come forward with full details for the Council to deliberate upon that show, in numbers, the impact, revenues and incentive requests when the projects have submitted their requests.
- Mr. Downes updated the Council on a planned project by the Board of Education for expansion of the elementary school at Wald Park. He explained that they may be encroaching in to the City’s property and some land divisions might be making their way to the Council soon, if needed.

### EXECUTIVE SESSION

Mayor-elect Curry explained that the Council needed to go into executive session to discuss the good name, character and job competency of a public official. He indicated that Mr. Boone has opined that this is a reason that this body can enter into executive session. He opened the floor for a motion:

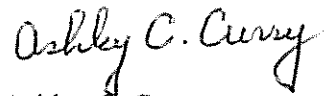
**MOTION** Motion to move into executive session for a period of approximately 20 minutes to discuss the good name, character and job competency of a public official was by Mr. Weaver and second was by Mr. Head. Roll call vote as follows:

Mrs. Cook – yes  
Mr. Pierce – yes  
Mayor Curry – yes

Mr. Head – yes  
Mr. Weaver – yes  
Motion carried.

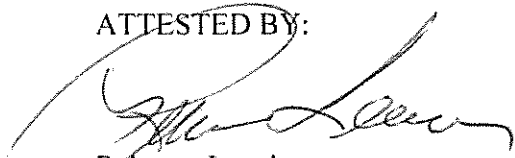
The Council entered into Executive Session at 7:30 PM. At 8:00 PM, the Council exited from executive session and Mayor-elect Curry called the worksession back to order.

There being no further business, Mr. Weaver made a motion to adjourn and the work session adjourned at 8:02 PM.



Ashley C. Curry  
Mayor-elect

ATTESTED BY:



Rebecca Leavings  
City Clerk

**VESTAVIA HILLS**  
**BUDGET VARIANCE REPORT**  
**May 31, 2017**

**07 -7 Cent Gasoline Fund**

May 31, 2017

ACCOUNT	ACTUAL	BUDGET	Annual Budget	Remaining Budget	Actual plus remaining budget
<b>REVENUE SUMMARY</b>					
STATE REVENUE	243,252	210,405	300,000	89,595	332,846
COUNTY REVENUE	627,986	604,040	625,000	20,960	648,946
CITY REVENUE	12,330	879	2,000	1,121	6,431
PARKS & RECREATION	0	0	0	0	0
<b>TOTAL REVENUE</b>	<b>883,568</b>	<b>815,324</b>	<b>927,000</b>	<b>111,676</b>	<b>988,223</b>
<b>EXPENDITURE SUMMARY</b>					
NON DEPARTMENTAL				-	-
CITY COUNCIL				0	0
MAYOR & ADMINISTRATION				0	0
CITY CLERK				0	0
MUNICIPAL COMPLEX				0	0
INFORMATION SERVICES				0	0
POLICE				0	0
FIRE				0	0
INSPECTION				0	0
ENGINEERING				0	0
PUBLIC WORKS	917,711	603,470	927,000	323,530	1,241,241
CITY GARAGE				0	0
PUBLIC LIBRARY				0	0
PARKS & RECREATION				0	0
<b>TOTAL EXPENDITURES</b>	<b>917,711</b>	<b>603,470</b>	<b>927,000</b>	<b>323,530</b>	<b>1,241,241</b>
<b>REVENUE OVER/(UNDER) EXPENDITURES</b>	<b>\$ (34,144)</b>	<b>\$ 211,854</b>	<b>\$ -</b>	<b>\$ (211,854)</b>	<b>\$ (253,018)</b>
				<b>Adjustments</b>	
				TRANSFER FROM FUND 4 & 5	\$ 81,978
				Street Maint 07-60-5410-000-300 over budget	(32,555)
				<b>Total Adjustments</b>	<b>\$ 49,422</b>
				<b>Adjusted Revenue Over/(Under) Expenditures</b>	
				<b>\$ (203,596)</b>	
				<b>Committed Contracts on future fiscal years</b>	
				<b>2018</b>	<b>2019</b>
				Resolution #4875 Naturescape contract	\$ 46,434
				Resolution #4878 Dunn Construction contract	\$ 46,434