

OUT-PARCEL RETENTION AGREEMENT

This Out-Parcel Retention Agreement (hereafter "Agreement") is entered into this the ^{12th} day of May, 2004, by and between [REDACTED] (hereafter "Seller") and **Wheaton Development Associates, LLC, the managing member of Brashear Creek, LLC** (hereafter "Purchaser") and for and good and valuable consideration, the sufficiency all of which is hereby acknowledged, the parties do agree as follows:

WHEREAS, the parties entered into that certain Contract for Purchase of Real Property on September 9, 2004, regarding land owned by the Seller consisting of approximately 26.6 acres on Highland Colony Parkway in the City of Madison, Madison County, Mississippi, said Contract being incorporated as if stated word for word herein; and

WHEREAS, the parties to the Contract have now agreed that Seller shall retain a portion of the property to be conveyed in the aforesaid Contract, said retained property being identified and described as Lot 1 as depicted on the site plan prepared by McCrory & Associates, LLC, attached hereto as Exhibit "A". As depicted on said site plan, Lot 1 consists of approximately 80,323.14 square feet; and

WHEREAS, in order to provide for the retention of said Lot 1 and the cooperation of the parties for the development of Lot 1 in concert with the other property to be developed as a part of the Fountains of Madison Project, the parties do hereby further agree as follows:

1. **Retention of Lot 1:** The parties hereby agree that upon the closing of the transaction contemplated in the aforesaid Contract for Purchase of Real Property that was executed on September 9, 2003, the Seller will execute a Warranty Deed conveying the entire 26.6 acres of property described in the Contract to the Purchaser, less and except that portion of the property designated as Lot 1, to be described by a formal legal description in the Warranty Deed transferred at closing.

2. **Architectural Consistency and Covenants:** The parties agree that it is in the best interest of both parties that the Purchaser's development of its property and the Seller's development of its property be uniform in architectural style, design, and building materials so as to present overall uniformity for the development of the properties. The Purchaser anticipates that it will develop its property into an upscale, high-end retail shopping center also including restaurants and commercial office space. The Purchaser anticipates that its development will be similar to the Saddle Creek Shopping Center in Germantown, Tennessee as to the architectural style, design, construction materials, and tenants. The Seller therefore agrees it will develop its property using a similar architectural design and building materials and otherwise develop its property so as to as

closely as commercially feasible integrate the Seller's development with the Purchaser's development.

In the event that the Purchaser develops the property in a manner inconsistent with and to a standard below the anticipated design stated above, or assigns or sells its interest in the property to another developer who develops the property in a manner inconsistent with and to a standard below the anticipated design stated above, the Seller will only be required to develop its property to the degree and standards of the adjoining development.

3. **Non-competition of Tenants:** The parties agree that they will work together to ensure that appropriate tenants for the development are secured. The parties agree that tenants that are in direct competition with one another will not be selected if either the Purchaser or Seller has previously secured a contract with a tenant for the development. For the purposes of this Agreement, direct competition will mean two tenants who offer nearly identical products for sale that are marketed to the same customer demographic, at the same price point. For example, clothing stores such as Great Scott and The Rogue would not both be allowed to both locate in the center as both stores offer high end men's apparel, to a middle to high income clientele, at a similar price point. However, The Rogue and The Gap would both be permitted to locate in the center as these stores market to a different demographic at a different price point, even though they both offer men's clothing. This standard shall only apply to retail tenants and shall not apply to tenants who rent or lease office space.

4. **Type and Character of Tenants:** As stated in paragraph 2 above, the Purchaser anticipates that it will develop its property into an upscale, high-end retail shopping center also including restaurants and commercial office space. The Purchaser anticipates that its development will be similar to the Saddle Creek Shopping Center in Germantown, Tennessee as to the architectural style, design, construction materials, and tenants. The Seller agrees that its tenants will be of like character and quality to those of the tenants secured by the Purchaser.

In the event that the Purchaser selects tenants inconsistent with and to a standard below the anticipated standard stated above, or assigns or sells its interest in the property to another developer who develops the property in a manner inconsistent with and to a standard below the anticipated standard stated above, the Seller will only be required to select tenants based on the standards of the adjoining development.

5. **Infrastructure Improvements:** The Seller agrees to pay \$2.00 per square foot times the net square footage of Lot 1 for its pro rata contribution to infrastructure improvements and other costs associated with the development of the property. For the purposes of this Agreement, net square footage is defined as the gross square footage of Lot 1 minus any easements, rights-of-way, or flood way. The Seller's payment to Purchaser for infrastructure improvements and other costs shall be made as certain infrastructure improvements are completed. The infrastructure improvements

will be similar to those depicted on Exhibit "A" and shall include, but may not necessarily be limited to, (1) subdivision of the development into marketable tracts including surveying, approvals, and recording; (2) site engineering for infrastructure improvements; (3) the construction and landscaping of all common areas, (4) extension of water and sewer service to Lot 1, and coordination of electric and gas service to Lot 1; (5) preparation of building pad for Lot 1 to base pad elevation; (6) design and construction of storm water retention/detention facilities; (7) construction and paving of all roadways (8) erection of common signage for the development; and (9) site plan approval by the City of Madison.

The parties will enter into a separate agreement regarding the ongoing maintenance, upkeep, and management of the common areas and infrastructure.

6. **Easements for Common Areas and Ingress/Egress:** The parties mutually agree that they will execute simultaneous to the closing of this transaction, perpetual easements granting the parties and their agents, successors, and assigns, access to and use of all common areas on the development. The Purchaser also agrees that simultaneous with the closing of this transaction, it will grant a perpetual ingress/egress easement to Seller to provide access to Lot 1 similar to the access depicted in Exhibit "A", recognizing that it is a preliminary site plan that it is subject to change.

7. **Mutual Indemnity and Insurance:** The parties agree that they and their agents, successors, or assigns, will each indemnify defend and hold harmless the other from any and all claims, liens, or damages of any other kind that may arise from the either party's development or use of its property. The parties further agree that they and their agents, successors, or assigns, will cause to be put in a place liability insurance policy with limits of not less than \$1,000,000.00 per occurrence to cover any claims or damages that may arise out of the parties' use and development of their property related to the Fountains of Madison. Either party may request the other party to provide proof of insurance at any time with five (5) days written notice.

8. **Option to Purchase and Right of First Refusal:** Within the first twelve (12) months following the execution of this Agreement, the Purchaser shall have a first right of refusal and option to purchase the property at \$6.00 per square foot if Seller elects to sell Lot 1. Upon Seller's determination that it has elected to sell Lot 1, Seller shall notify Purchaser in writing of Seller's intent to sell. Within fifteen (15) days of Purchaser's receipt of the notice of intent to sell from Seller, Purchaser shall notify Seller in writing of its election to exercise its option to purchase Lot 1. Purchaser shall close the purchase of Lot 1 within forty-five (45) days of its receipt of Seller's intent to sell. In the event that Purchaser does not elect to exercise its option to purchase within the time period prescribed herein, Seller shall have the right to sell Lot 1 to a third party.

9. **Commencement of Development on Lot 1:** The Seller agrees that it will commence with the development of Lot 1 no later than the commencement of development of the

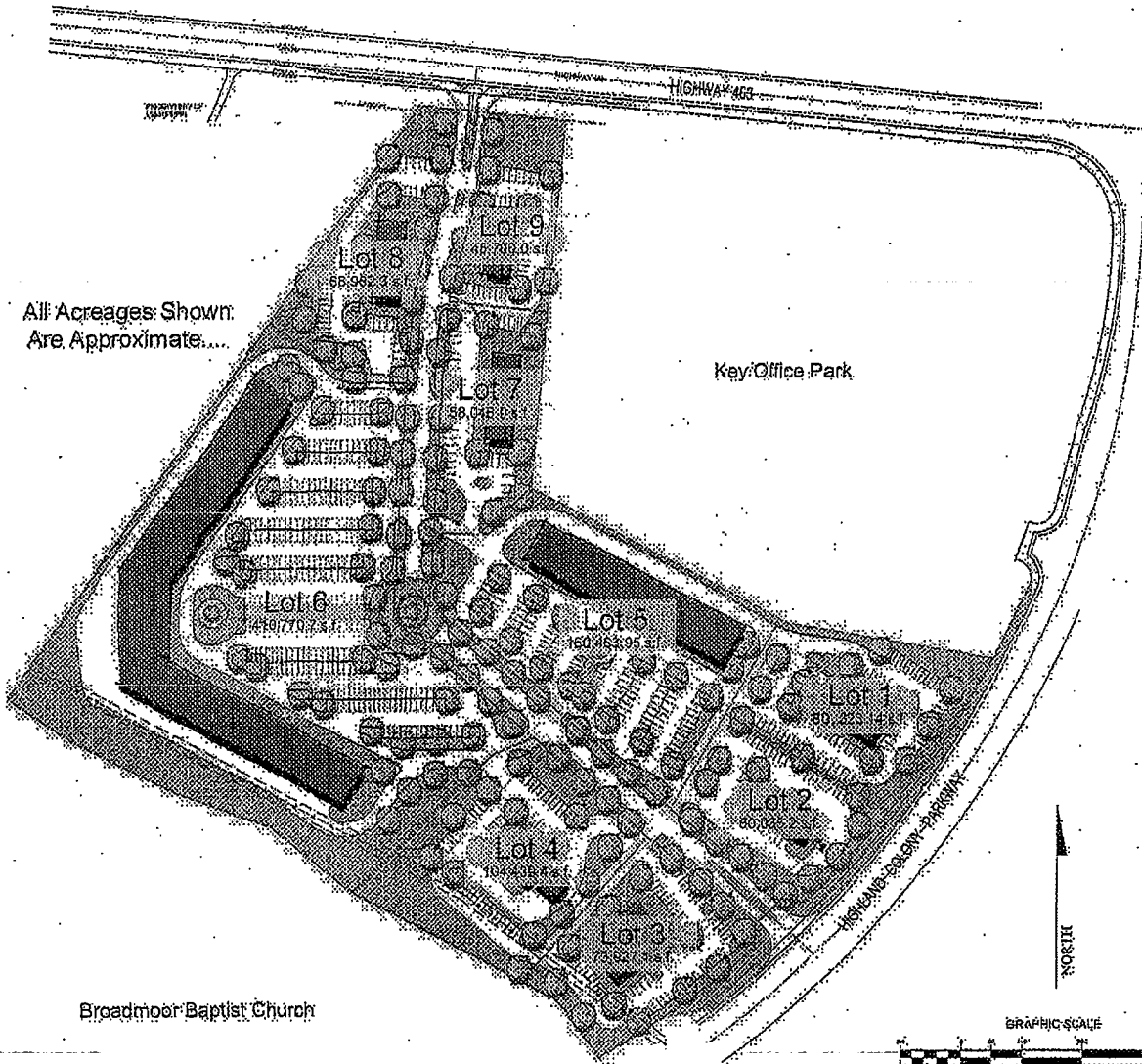
last lot to be developed among Lots 2, 3, and 4 as depicted on Exhibit "A". For the purposes of this agreement, "commencement of development" shall be defined as initiation of the installation of all infrastructure and the construction of buildings and improvements.

10. Miscellaneous:

- a. This agreement shall be construed under the laws of the State of Mississippi.
- b. Survival of Provisions. All the agreements, representations and indemnities contained herein shall, as applicable, survive the Closing and the delivery of the deed and other documents at closing.
- c. The parties mutually acknowledge that this agreement is preliminary in nature due the undeveloped status of the project. The parties agree that upon further development of the property, the creation of covenants, and the selection of tenants, they will execute a more comprehensive agreement regarding their respective and ongoing duties and obligations related to the development and use of their properties as a part of the Fountains of Madison project.

SO AGREED, this the 6th day of May, 2004:

SELLER



McGrory and Associates, LLC

The Fountains of
Madison Conceptual Study

EXHIBIT "A" #2