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Tiana P Garner, Clerk of Superior Court  
Gwinnett County, Georgia

This instrument prepared by  
(and after recording return to):

Christopher B. Manos, Jr.  
1920 Woodsdale Road NE  
Atlanta, Georgia 30324

*For Recorder's Use Only*

**DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS AND  
GRANT OF EASEMENTS**

THIS DECLARATION of Restrictions, Covenants and Conditions and Grant of Easements is made and entered into as of the 15<sup>th</sup> day of June, 2021, by **BPD DACULA, LLC**, a Georgia limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the fee simple Owner (as herein defined) of the Property (as herein defined); and

WHEREAS, Declarant desires that the Tracts (as herein defined), which include the Property, be developed as a commercial project and, in connection with such development, Declarant desires to establish certain restrictions, covenants, conditions, and easements with respect to the development, operation, management, and use of the Tracts.

NOW, THEREFORE, for and in consideration of the benefits accruing to each of the Tracts from the restrictions, covenants, conditions, and easements created hereby, Declarant hereby submits and subjects the Tracts to the restrictions, covenants, conditions, and easements hereinafter set forth.

1. Definitions and Meanings. In addition to any other terms whose definitions are fixed and defined by this Declaration, each of the following defined terms, when used in this Declaration with an initial capital letter, shall have the meaning ascribed thereto by this Section 1:

1.1. "**Access Drives**" shall mean, collectively: (i) Access Drive #1 as depicted on the "Site Plan" (as herein defined); and (ii) Access Drive #2 as depicted on the Site Plan.

1.2. "**Access Entrances**" shall mean, collectively, that portion of the Common Area (as herein defined) consisting of the entrances and exits connecting Access Drive #1 and Access Drive #2 to adjoining private property and/or adjoining private or publicly dedicated rights-of-way, as depicted on the Site Plan

1.3. "**Adjacent Land**" shall mean that certain tract of land, adjacent to the Property to the northwest, containing 1.758 acres, more or less, which is shown on the "Survey" (as herein defined), and more particularly described in **Exhibit D-1** attached hereto, which BPD Dacula, LLC or a "BPD Dacula Party" (as defined hereinbelow) may, at its sole option, acquire in the future.

1.4. **“Building Area”** shall mean the limited areas of each Tract within which Improvements (which for this purpose of this document shall include any appurtenant canopies, supports, loading docks, truck ramps, and other outward extensions, as well as attached trash compactors and utility transformers) may be constructed, placed, or located.

1.5. **“Church Land”** shall mean that certain tract of land, adjacent to the Property to the north, containing 84.131 acres, more or less, which is shown on the Survey, and which may be developed in the future as set forth in Section 6.4 herein. The Church Land and the Adjacent Land are presently owned by Hebron Baptist Church, Inc.

1.6. **“Common Area”** shall mean all areas within the exterior boundaries of the Tracts and within the area of any easements appurtenant thereto which are for the general and non-exclusive use, convenience, and benefit of any Owner or Occupant (as such terms are defined herein) of any building located on the Tracts, including, but not limited to, roadways, driveways, loading areas (exclusive of loading docks and truck ramps), islands, parking areas, entrances and exits, access drives (including paving, striping, and curb and gutter), sidewalks, and landscaping; provided, however, Common Area shall not include developed Building Area or the Retention Ponds.

1.7. **“Declarant”** shall mean initially, **BPD DACULA, LLC**, a Georgia limited liability company, or its successor and assigns and designees as provided in Section 14.7 herein.

1.8. **“Declaration”** means this Declaration of Restrictions, Covenants and Conditions and Grant of Easements.

1.9. **“Improvements”** means any permanent building or structure and any other improvements constructed or erected on all or any portion of a Tract.

1.10. **“Leasable Floor Area”** means floor area calculated in square feet located in or appurtenant to Improvements constructed or to be constructed on a Tract, which Leasable Floor Area shall include, without limitation: the ground floor area within said buildings; enclosed vestibules; exclusive passageways; basements; storage areas; mezzanines; patios, exclusive outdoor garden shops or sales areas; and exclusive loading areas.

1.11. **“Occupant”** shall mean any Owner or tenant, subtenant, assignee, concessionaire, or licensee who, from time to time, is entitled to use or occupy all or any portion of the Tracts under an ownership right or any lease, sublease, assignment, concession, license, or other similar agreement.

1.12. Intentionally deleted.

1.13 **“Owner”** or **“Owners”** shall mean, individually or collectively, as the case may be, any person or entity owning from time to time fee simple title to all or any portion of a Tract, including without limitation, Declarant. If more than one person or entity owns fee simple title to any Tract, they, collectively, shall be deemed the “Owner” of such Tract.

1.14 **“Permittee”** means individually, and **“Permittees”** means collectively: any Occupants and their officers, directors, partners, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, guests, licensees, subtenants, and concessionaires insofar of the Tract.

1.15 **“Private Drives”** shall mean those portions of any driveways and access ways located within the boundaries of each Tract, including the rear of each Tract; however, that certain: (i) Access Drive #2, as depicted on the Site Plan, which runs across the front of the Project (from the northern-most Access Entrance to the southern-most Access Entrance, shall be an Access Drive and not a Private Drive; and (ii) Access Drive #1, as shown on the Site Plan, which is located on Tract 1 and Tract 2 and shall be owned jointly by and between the Owner of Tract 1 and the Owner of Tract 2, shall be an Access Drive and not a Private Drive. There shall be continuous Private Drives throughout and across the rear of Tract 1, Tract 2 and Tract 3, providing uninterrupted pedestrian and vehicular access between, across and through Tract 1, Tract 2 and Tract 3 (and Tract 4, if added to this Declaration).

1.16 **“Project”** shall mean the commercial project to be developed on the Project Tract.

1.17 **“Project Tract”** shall mean, collectively, all of the Tracts.

1.18 **“Property”** shall mean, collectively, all of the Tracts, which are located in Gwinnett County, Georgia, containing 4.469 acres, more or less, and described in the Survey attached as **Exhibit “B”** attached hereto and incorporated herein by this reference. The Property is more particularly described in **Exhibit “C”** attached hereto and incorporated herein by this reference.

1.19 **“Pro Rata Share”** shall mean a fraction, the numerator of which is the integer one, and the denominator of which is the number of Tracts which have “Commenced Construction” (as defined in Section 6.4 hereinbelow) on their respective Tract (including the Owner of Tract 4 (after addition to the Declaration), or the owner of the Adjacent Land (prior to addition to the Declaration), as the case may be, if such owners thereof shall have “Commenced Construction”).

1.21 **“Retention Ponds”** shall mean, collectively, that certain retention/detention pond and related systems, piping and facilities located or to be located on the Tracts, as shown on the Site Plan. That certain Retention Pond #1, as shown on the Site Plan, shall exclusively service Tract 1. That certain Retention Pond #2, as shown on the Site Plan, shall exclusively service Tract 2 and Tract 3.

1.21 **“Site Plan”** shall mean that certain Site Plan attached hereto as **Exhibit “A”** and by reference thereto incorporated herein.

1.22 **“Survey”** shall mean that certain plat of survey (“Survey”), entitled “Preliminary Lot Division Plat”, Dacula Square, dated December 9, 2020, last revised February 4, 2021, by Clyde R. Eldridge, Georgia R.L.S. number 2659, of Atwell Group, a copy of which is attached hereto as **Exhibit “B”** and by reference thereto incorporated herein.

1.23 **“Tract”** or **“Tracts”** shall mean, individually or collectively, as the case may be, any and all portions of the Property, including “Tract 1” (1.63 acres); “Tract 2” (1.41 acres); and “Tract 3” (1.429 acres), as all as depicted on the Survey. Tract 1, Tract 2 and Tract 3 are also depicted on the Site Plan. Neither the Adjacent Land nor the Church Land shall be considered a part of the Property or a Tract or subject to the terms and conditions of this Declaration (except as set forth in Section 6.4.2 and Section

6.4.3), unless and until: (i) the Adjacent Land is established and declared as a part of this Declaration in accordance with Section 2.5 herein, at which time the Adjacent Land shall become "Tract 4" (1.758 acres) as shown on the Survey; or (i) the Church Land is developed (by "Commencing Construction") and becomes the "Church Developed Land" as defined in Section 6.4.2 herein, in which event the Church Developed Land shall be responsible for the costs set forth in Section 6.4.2. Notwithstanding the foregoing, the "Adjacent Land Easement" defined in Section 2.6 herein, and the "Church Land Easement, defined in Section 2.7 herein, are presently granted perpetual and unconditional access easements that by execution of this Declaration are and shall become appurtenances to the Adjacent Land and the Church Land (and Church Developed Land), respectively),

1.24 "**Utility Lines**" shall mean, collectively, the Common Utility Lines and Private Utility Lines which are defined as follows:

**A. "Common Utility Lines"** shall mean those facilities and systems for the transmission of utility services, drainage of sanitary sewage, and drainage and storage of surface water which are installed to provide the applicable service on the Tracts or to the Common Area, exclusive of the Building Area.

**B. "Private Utility Lines"** shall mean those facilities and systems for the transmission of utility services and drainage of sanitary sewage which are installed to provide the applicable service exclusively to the Building Area on each respective Tract. For purposes of this Declaration, a Utility Line extending between a Common Utility Line and a building shall be considered a Private Utility Line.

2. Scope; Term; Rights of General Public and Occupants.

2.1 Scope. The within restrictions, covenants, conditions, and easements are essentially necessary for the use and benefit of the Tracts, and all portions thereof, and are for commercial and economic benefit of the Owners of the Tracts and their Occupants and Permittees. Regardless of whether or not they are specifically mentioned in any deeds or conveyances of all or any portion of the Tracts, the benefits and burdens of each restriction, covenant, condition, and easement set forth in this Declaration shall run with the title to the particular Tracts involved and shall benefit or bind the Owners thereof, their respective heirs, successors, successors-in-title, legal representatives and assigns. Any Owner shall be bound by this Declaration only as to the Tract(s) or portion thereof owned by same. In addition, an Owner shall be bound by this Declaration only during the period it is the fee simple owner of such Tract(s) or portion thereof, except as to obligations, liabilities or responsibilities that arise or accrue during said period.

2.2 Term. The easements set forth in this Declaration shall be perpetual in duration unless otherwise specifically provided. The restrictions, covenants and conditions set forth in this Declaration shall be binding upon and enforceable against Owners and Occupants for a period of twenty (20) years from the date this Declaration is filed in the public deed records maintained by the appropriate governmental subdivision in which the Property is located, after which time, such restrictions, covenants, and conditions shall be automatically extended for successive periods of twenty (20) years each. In the event any law prohibits any such restrictions, covenants, and/or conditions from being enforceable for a period in excess of twenty (20) years, or beyond any other stated period, the Declarant is granted a power of attorney, coupled with an interest, to rerecord this Declaration at any time and from time to time for the purpose of extending the enforceability of same as contemplated by this Section 2.2.

2.3 No Rights in Public Generally. The easements, restrictions, covenants and conditions created, reserved, granted and established in this Declaration do not, are not intended to, and/or shall not be construed to create any easements, rights or privileges in and for the benefit of the general public.

2.4 Rights of Occupants. With respect to the easements created by this Declaration, each benefiting Owner shall be entitled to designate from time to time which, if any, of its Occupants shall be entitled to utilize and enjoy such easements. No independent rights shall be created by this Declaration as to any Occupants, except for those which may be terminated or withdrawn at any time by the Owner through whom such rights were derived.

2.5 Adjacent Land. Notwithstanding anything herein to the contrary, BPD Dacula, LLC (or a "BPD Dacula Party", as defined below) shall also have the right, but not the obligation, at its sole and absolute discretion (and without the necessity of consent of any other Owner or Occupant) to add to the Project, and to this Declaration, the within-defined Adjacent Land, which may be acquired, in one or more separate transactions, by BPD Dacula, LLC or by any entity owned in whole or in part by BPD Dacula, LLC, or by any entity which owns BPD Dacula, LLC, or by Travis A. Butler, a Georgia resident, who is a member of BPD Dacula, LLC, or by any other members of BPD Dacula, LLC (each individually, a "BPD Dacula Party" or collectively, the "BPD Dacula Parties"). In order to effectuate the addition of the Adjacent Land to the coverage of this Declaration, a BPD Dacula Party shall, by written recorded instrument, execute a further declaration or amendment hereto stating that a BPD Dacula Party is the fee simple Owner of the Adjacent Land, and that the Adjacent Land is added to the coverage of the Declaration. In the event that the Adjacent Land is added to the coverage of this Declaration by such recorded instrument, then the following shall apply:

- (a) The Adjacent Land shall (i) become a Tract (Tract 4), subject to all burdens of this Declaration, and the Owner of the Adjacent Land shall be obligated by all of the duties and obligations of this Declaration thereof; and (ii) benefit as a Tract from all rights, easements and entitlements of this Declaration as an appurtenance thereto, and the Owner of the Adjacent Land shall be entitled to benefit from all such rights, easements and benefits thereof. However, as set forth in Section 6.4.3 hereinbelow, the owner of the Adjacent Land shall be subject to its Pro Rata Share of maintenance, repair and replacement costs for Access Drive #2 if such owner has "Commenced Construction (as defined in Section 6.4 below), notwithstanding whether the Adjacent Land is acquired by a BPD Dacula Party.
- (b) In such case of addition to the coverage of this Declaration, the Owner of the Adjacent Land shall submit detailed plans and specifications for such development of the Adjacent Land to the Declarant for its approval, which approval shall not be unreasonably withheld, conditioned or delayed.
- (c) Notwithstanding whether the Adjacent Land is added to the coverage of this Declaration as set forth above: (i) the allocation of costs to the owner of the Adjacent Land under Section 6.4.3 shall apply at such time as the owner of the Adjacent Land Commences Construction; and (ii) the Adjacent Land Easement set forth in Section 2.6 hereinbelow (and the Church Land Easement set forth in Section 2.7 hereinbelow), shall apply as of the effective date of this Declaration and shall remain in full force and effect.

2.6. Adjacent Land Easement. Declarant hereby declares, establishes, creates, and grants for the benefit of the owner of the Adjacent Land, its successors and assigns, a perpetual, non-exclusive, right, privilege, and easement (the "Adjacent Land Easement") for vehicular access, ingress, and egress over, across and through the Access Entrances and across Access Drive #2 (as shown on the Site Plan), for the purpose of providing vehicular access, ingress, and egress to and from the Adjacent Land and Dacula Road.

2.7 Church Land Easement. Declarant hereby declares, establishes, creates, and grants for the benefit of the owner of the Church Land, its successors and assigns, a perpetual non-exclusive, right, privilege, and easement (the "Church Land Easement") for vehicular access, ingress, and egress over, across and through the Access Entrances and Access Drive #1 (as shown on the Site Plan), for the purpose of providing vehicular access, ingress, and egress to and from the Church Land and Dacula Road.

3. Common Area Improvements.

3.1 Construction of Common Area Improvements. The Common Area shall be initially constructed as generally shown on the Site Plan, and to the extent not initially constructed as shown on the Site Plan (and in the event that the Adjacent Land is added to the coverage of this Declaration under Section 2.5 herein and development, including any Building Area and Common Area layout, is proposed thereon), shall be subject to the prior written approval of the Declarant. The Common Area Improvements shall be constructed in a good and workmanlike manner and in accordance with good engineering standards.

3.2 Parking Area. The parking area on the Property shall be initially constructed as generally shown on the Site Plan, and to the extent not initially constructed as shown on the Site Plan (and in the event that the Adjacent Land is added to the coverage of this Declaration under Section 2.5 herein and development, including any Building Area and Common Area layout, is proposed thereon), shall be subject to the prior written approval of the Declarant and shall conform to applicable governmental laws, codes, rules, regulations, and ordinances (collectively, "Code"). Each Tract shall maintain the minimum number of vehicle parking spaces required under Code, without regard for any variance or special exception therefrom. In the event of a condemnation or appropriation by exercise of the power of eminent domain of a portion of a Tract, or sale or transfer thereof in lieu of such condemnation or appropriation, that reduces the number of parking spaces below that which is required herein, the Owner whose Tract is so affected shall use its commercially reasonable efforts to restore and/or substitute parking spaces in order to comply with the parking requirements set forth herein. If such compliance is not possible, such Owner shall not be deemed in default hereunder. Subject to Section 3.2.1 below, parking, ingress and egress shall be mutual and reciprocal over each of the Tracts and between the Tracts. The Owners, Occupants or Permittees of any Tract shall have the non-exclusive right to use the Common Area, including all of the parking areas within any other Tract, in common with the other Owners, Occupants or Permittees of the Project. In no event shall the Owner of any of the Tracts engage in any acts or practices, such as charging for parking or granting valet or exclusive parking to its Permittees, in such a way so as to circumvent or deny full and continuous parking rights to other Owners, Occupants and Permittees of the Tracts.

3.2.1 Notwithstanding any provision herein to the contrary, if at any time a restaurant opens for business on Tract 3 as the primary business operated thereon, then upon such opening, and for such period of time thereafter that a restaurant is operated on Tract 3 as the primary business operated thereon, no Permittee of Tract 3 shall be allowed to park anywhere within the Project except on Tract 3.

3.3 Lighting. The lighting system utilized on any Tract shall initially be designed to produce

a minimum maintained lighting intensity as determined by the Declarant at all points in the Common Area of each Tract. The Common Area lighting for each Tract shall be wired and metered separately from the other Tracts, or in such other manner as is mutually acceptable to the Declarant. Notwithstanding any other provision herein to the contrary, the utility provider shall own and control the lighting standard units and meter boxes of the lighting on each Tract, under the account of the Owner of the Tract, and all costs therefor shall be paid by the respective Owners of the Tracts as set forth below. Declarant hereby declares, establishes, creates, and grants for the benefit of the Owner of each Tract, and its designees, and as a burden upon, each Tract, a non-exclusive right, privilege, and easement in, to, over, under, along, and across those portions of the Tracts necessary for the initial installation of the lighting on Tract 1, Tract 2 and Tract 3 (and Tract 4 if added to this Declaration). The lighting costs for each Tract will be the responsibility of the respective Tract Owner. Access Entrance lighting costs shall be considered as an "Access Entrances Costs" according to Section 6.4, and allocated under said Section 6.4.

3.4 Modification or Alteration. Each Owner shall have the right, from time to time without obtaining the consent or approval of any other Owner, to make, at its own expense, any change, modification, or alteration in the portion of the Common Area located on such Owner's Tract subject to the following terms and conditions:

- (i) the accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the other Tracts) is not unreasonably restricted or hindered, and no such change, modification, or alteration shall result in a violation of the requirements and restrictions for Private Drives under Section 6.6 herein;
- (ii) the parking ratio requirements set forth in Section 3.2 hereof are met;
- (iii) no change shall be made to the Access Drives or to any access points between the Common Area and the public streets;
- (iv) no building, fence, or other barrier, or any signage, which would re-route, impair, prevent or obstruct parking, or the passage of vehicular or pedestrian travel for the reciprocal access and other purposes herein permitted, shall be erected or permitted within or across any parking area, roadway, driveway (including Private Drives and Access Drives), entranceway, or sidewalk located on any Tract; provided, however, the foregoing provision shall not prohibit the installation of landscaping, berms or planters, nor the limited curbing and other forms of traffic controls allowed by Code; this subsection (iv) shall in no way modify or limit the requirements and restrictions for Private Drives under Section 6.6 herein;
- (v) such modification or alteration shall comply with Code;
- (vi) No Owner shall alter, impair, close, re-route or fence off any parking areas or any Private Drives or Access Drives, except for temporary maintenance which such Owner shall promptly complete, and any such temporary maintenance shall be subject to Section 3.6(b) and Section 6.4.4 hereinbelow.

Notwithstanding the foregoing, however, to the extent an Owner is required by Code to make a change, modification or alteration to the portion of the Common Area on such Owner's Tract, such

change, modification or alteration may be made notwithstanding requirements (i) through (vi) above; provided that such Owner shall use commercially reasonable efforts to ensure such compliance to the extent feasible under Code requirements.

3.5 Parking Area Relocation. Notwithstanding anything to the contrary contained herein, each Owner shall have the right at any time, and at its sole cost and expense, to relocate, alter, or change any parking areas on such Owner's Tract if:

- (i) the Owner of such Tract pays all costs incurred in connection with such relocation, alteration, or change;
- (ii) such relocation, alteration, or change is completed so as to minimize interference to the Owners and Occupants of the other Tracts and has the same intersecting point at any adjacent Tract; and
- (iii) such relocation complies with the terms and provisions of Section 3.4(i)-(vi) hereof; and

3.6 Maintenance. Subject to express terms and provisions of this Declaration to the contrary, each Owner, at its expense, shall maintain, or cause to be maintained in good order and in a sightly and safe condition, the portion of the Common Area which is constructed on its Tract. The minimum standard of maintenance for the Common Area shall be comparable to the standard of maintenance followed in other first-class retail developments of comparable size in the market area in which the Property is located, and in compliance with Code, except at a minimum, each Owner shall perform and comply with the following:

(a) Each Owner shall be responsible for keeping their respective parking areas, driveways (including Private Drives) and sidewalks clean and free from refuse, rubbish, snow, ice and debris. Any landscaped areas on the respective Tract shall be mowed, trimmed, maintained, replaced and otherwise tended to by the Owner thereof.

(b) Each Owner shall repave, resurface, reseal, and restripe and replace markings, on the surface of the parking areas and Private Drives located on their respective Tract from time to time as and when necessary so as to provide for the orderly parking of automobiles and shall place and maintain adequate exit, entrance and other traffic control signs to direct traffic in and out of said parking areas; provided that Owner shall only close one half of any Private Drives at any one time during the performance of such work, so that at least one-half of a Private Drives undergoing the work set forth in this subsection shall remain open at all times and shall allow single file passage of vehicles.

All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony and integrity of the Tracts as a whole. For the allocation of costs related to the maintenance of Access Drives and Access Entrances, see Section 6.4 herein.

#### 4. Building Improvements.

4.1 Location of Buildings. The locations of Leasable Floor Area as presently shown on the Site Plan are hereby approved by Declarant. The locations of Leasable Floor Area may hereafter be located on

any portion of the Tracts so long as such location does not unreasonably interfere with the use of the easements and other rights of other Owners as set forth herein.

4.2 Intentionally Deleted.

4.3 Maintenance; Dumpsters. After completion of construction of building Improvements, including but not limited to building signage, on each Tract, each Owner shall maintain and keep the building Improvements, including but not limited to building signage, located on its Tract in first class condition, appearance, and state of repair, in compliance with Code, and in compliance with the provisions of this Declaration. Each Owner shall store all trash and garbage in adequate containers, shall locate such containers such that they are not readily visible from the parking area, and shall arrange for regular removal of such trash or garbage.

The Owners of the Tracts hereby agree to provide dumpsters on their respective Tracts for the exclusive use by the Occupants of their respective Tracts, in the spaces as shown on the Site Plan.

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

- (i) repair or restore the building Improvements, including but not limited to building signage, so damaged;
- (ii) erect other building Improvements, including but not limited to building signage, in such location; or
- (iii) demolish the damaged portion of such building Improvements and promptly restore the area to the same standards as the Common Area either as automobile parking and drive area or a landscaped condition, in which event the area shall be Common Area until a replacement building is erected.

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

4.5 Building Signage. Subject to Code, any Occupant may have one identification sign (or more than one if allowed by Code) placed on the exterior of the building it occupies. No exterior identification sign attached to a building shall:

- (a) be placed on canopy roofs extending above the building roof, placed on penthouse walls or placed so as to project above the parapet, canopy, or the top of the wall upon which it is mounted; or
- (b) be placed at any angle to the building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk; or

(c) be painted on the surface of any building; or

(d) consist of flashing, moving, or audible signs, or signs employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers. Notwithstanding the foregoing but still subject to Code, the sign plans for Tract 1 and Tract 2 are and shall be approved.

4.6 Construction. Construction activities on any Tract shall not:

(a) materially and unreasonably interfere with construction being performed on any other Tract;

(b) materially and unreasonably interfere with the use, occupancy, or enjoyment of any other Tract by the Owner or Occupants of such other Tract; or

(c) cause any building or building signage located on any other Tract to be in violation of Code, or any department or agency thereof having jurisdiction over the Property.

4.6 Owner at Fault. In the event that any Owner's or Occupant's Tract or any Improvement thereon is destroyed or damaged (a) by a casualty or accident, the cause of which is directly attributable to the negligence or willful misconduct of another Owner (the "Owner at Fault") or the employees, agents, contractors, licensees, invitees or Occupants of such Owner at Fault, or (b) by construction vehicles employed or contracted by the Owner at Fault or its employees, agents, contractors, licensees, invitees or Occupants, then, in either of the events described in (a) and (b) above, such Owner at Fault shall, at the option of the Owner or Occupant whose Tract or Improvement was damaged, either (i) at the Owner at Fault's sole cost and expense, promptly repair all damage caused and reconstruct and restore the damaged Tract and/or Improvements to substantially the same condition as they were in immediately prior to such damage or destruction, or (ii) reimburse to the affected Owner or Occupant the reasonable cost incurred in repairing all damage caused, and reconstructing and restoring the damaged Tract and/or Improvements to substantially the same condition as they were in immediately prior to such damage or destruction. All repairs and restoration required by this Section 4.6 shall be performed in a good and workmanlike manner, using quality materials of at least the same quality and the same type of materials as existed before such damage or destruction and fully in accordance with the terms and provisions of this Declaration and Code. If the affected Owner or Occupant elects option (i) above, the Owner at Fault shall complete the repair, reconstruction and/or restoration within thirty (30) days after demand from the affected Owner or Occupant, or if such repair, reconstruction and/or restoration cannot reasonably be completed within thirty (30) days, then within such time period as is reasonably necessary under the circumstances, so long as the Owner at Fault commences such repair, reconstruction and/or restoration within thirty (30) days after demand and thereafter pursues completion thereof diligently and in good faith.

5. Intentionally deleted.

6. Ingress and Egress Easements.

6.1 Grant of Easement. Declarant hereby declares, establishes, creates, and grants for the benefit of, and as a burden upon, each Tract the non-exclusive right, privilege, and easement for vehicular

and pedestrian access, ingress, and egress over and across all roadways, driveways (including the Private Drives), entranceways and sidewalks from time to time located on the Common Area of any Tract for the purpose of providing pedestrian and vehicular access, ingress, and egress between and over said Tracts and publicly dedicated rights-of-way abutting said Tracts. The foregoing easement shall not be construed to, and shall not, create any construction or other easement for the installation or construction of roadways, driveways, entranceways and sidewalks by any Owner on the property of another Owner. The Owners of Tract 2 and Tract 3 will work together in good faith to ensure that delivery vehicles do not cause an unreasonable interference on the activities at the other Tract. The Owner of Tract 2 shall have the right to erect, at its sole cost, a sign on Tract 2 along the Access Drive #2 stating the following exact words: "Customers are encouraged to exit the Dacula Square shopping center through the rear of the property"; provided, that such signage shall only be a suggestion, and neither the Owner of Tract 2 nor its Occupants shall have any right to bring any enforcement action against customers or invitees that do not comply with the recommendations in such sign.

6.2 Relocation. Notwithstanding anything to the contrary contained herein, each Owner shall have the right at any time, and at its sole cost and expense, to relocate, alter, or change any roadway, driveway or entranceway, or sidewalk located on the Common Area of such Owner's Tract other than Access Drives; provided such relocation, alteration, or change complies with the terms and conditions set forth in Sections 3.4 and 3.5 hereof.

6.3 Grant of Parking Easement. Subject to Section 3.2.1 herein, Declarant hereby declares, establishes, creates, and grants for the benefit of all of the Tracts, and as a burden upon the Tracts and the Project Tract, the non-exclusive right, privilege, and easement for vehicular parking over and across all parking areas from time to time located on the Common Area of any Tracts and between the Tracts.

6.4 Costs Incurred for Access Entrances. The Owners of the Tracts hereby agree to share the reasonable out-of-pocket costs of maintenance, repair and replacement of the Access Entrances which are incurred by the Declarant (or its successor as provided in Section 14.7 herein), which costs shall be due from the Owners of the Tracts (the "Access Entrances Costs"). Declarant shall maintain the Access Entrances as often as necessary to ensure that they remain in good condition and good working order, in compliance with Code. The Owners of the Tracts hereby agree and appoint the Declarant as the administrator for the collection of all such Access Entrances Costs due from the Owners of the Tracts. Such Access Entrances Costs shall be paid by the respective Owners of the Tracts within ten (10) days of receipt of invoice from the Declarant together with proof of payment and copies of invoices from all contractors which performed the work giving rise to the Access Entrances Costs. Such Access Entrances Costs shall be paid by the Owners of each Tract to the Declarant in accordance with its Pro Rata Share. The Owners of Tracts which have not "Commenced Construction" (defined in this Declaration as the pouring of footings, or the pouring of foundation for buildings which otherwise do not have footings), shall not be required to pay or share in the reimbursement of Access Entrances Costs. For avoidance of doubt, the terms "Commencing Construction," and "Commences Construction" as used herein shall have the same meaning as the term "Commenced Construction."

6.4.1. Installation of Access Drive #1 and Access Drive #2. Declarant shall initially construct and install those certain portions of Access Drive #1 and Access Drive #2 located on Tract 1, Tract 2 and Tract 3 under separate agreements with the Owners thereof.

6.4.2. Maintenance of Access Drive #1. The "Church Developed Land" shall be defined

as the Church Land together with any Improvements constructed thereon from and after the date that the owner of the Church Land has Commenced Construction on the Church Land. The Owners of the Church Developed Land, and any of such Owner(s) who have Commenced Construction, shall be obligated to share in the costs of Access Drive #1 on the terms and conditions set forth below. After initial installation of Access Drive #1, the Owner of Tract 1 and the Owner of Tract 2 shall each maintain, repair and replace those respective portions of Access Drive #1 that are located on each of their respective Tracts. The owner of the Church Developed Land hereby agrees to share and reimburse each respective Owner of Tract 1 or Tract 2 for one half (½) of the reasonable out-of-pocket costs of maintenance, repair and replacement (if necessary) of Access Drive #1 which are incurred by such Owner from time to time, within ten (10) days of invoice. If the work to Access Drive #1 takes place on portions thereof owned by both of the Owners of Tract #1 and Tract #2, then the Owners of Tract #1, Tract 2 and the Church Developed Land shall all share the costs thereof equally, and shall reimburse their shares thereof to the respective Owner or Owners performing such work within ten (10) days of invoice. The Owner of the Church Land joins in the execution of this Declaration for the purpose of agreeing: (i) to the cost share allocation as set forth in this paragraph; and (ii) to the Lien and Enforcement clauses of Section 13 and Section 14.2 herein, which shall be applied against the Church Developed Land and the Owner of the Church Developed Land in the event of default hereunder by the Owner of the Church Developed Land, all of which shall be burden upon the Church Land (and the Church Developed Land, upon its development).

6.4.3. Maintenance of Access Drive #2. After initial installation of Access Drive #2 by Declarant, the Owners of each portion of Access Drive #2 shall each maintain, repair and replace those respective portions of Access Drive #2 that are located on each of their respective Tracts. The respective Owners of Tract 1, Tract 2 and Tract 3 (and the Owner of Tract 4 (after addition to the Declaration), or the owner of the Adjacent Land (prior to addition to the Declaration), as the case may be, if and when any of such owners thereof shall have "Commenced Construction") hereby agree to equally share among themselves the reasonable out-of-pocket costs of maintenance, repair and replacement of any portion of Access Drive #2 (the "Access Drive #2 Costs") which are incurred by any respective Owners of Tract 1, Tract 2 and Tract 3 upon a portion of Access Drive #2 located with such Owner's Tract. The Access Drive #2 Costs incurred for such work performed by any respective Owner shall be reimbursed by the other Owners (and by the Owner of Tract 4 (or the owner of the Adjacent Land), as the case may be, in accordance with their Pro Rata Share. Notwithstanding the foregoing, the Owners of the Tracts (and the owner of the Adjacent Land, or the Owner of Tract 4, as the case may be) which have not Commenced Construction shall not be required to pay or share in the reimbursement of Access Drive #2 Costs, and in such case, the denominator of the Pro Rata Share fraction shall exclude any owner of such properties which have not Commenced Construction on their property.

6.4.4 Restrictions. No Owner shall alter, impair, close, block, re-route or fence off any of its any Access Drive located on its Tract, except for temporary maintenance, which such Owner shall promptly complete, and any such temporary maintenance shall be subject to the remainder of this Section 6.4.4. Any Owner performing, or causing to be performed, maintenance or repair work on its any portion of Access Drives located on its Tract shall promptly pay all costs and expenses associated therewith to subcontractors and suppliers and shall diligently shall complete such work as quickly as possible, and promptly shall clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to commencement of such work. The Owners shall only close one half of any Access Drive #1 and/or Access Drive #2 at any one time during the performance of any work under Sections 6.4.2 and 6.4.3, respectively, so that at least one-half of an Access Drive undergoing the work set forth in this Section 6.4 shall remain open at all times and shall allow single file

passage of vehicles.

6.5 Avoidance of Prescription. Anything to the contrary contained in this Article 6 notwithstanding, the Owner of each Tract shall be entitled to interrupt or disturb the passage of vehicular and pedestrian access, ingress, and egress over and across all roadways, driveways, entranceways, and sideways from time to time located on that portion of the Common Area located on said Owner's Tract for a period not to exceed one (1) day in each calendar year for the purpose of preventing the creation of prescriptive easement rights in and to such areas in favor of the public.

6.6 Private Drives. Each Owner shall maintain, repair and replace, at its sole cost and expense, its Private Drives located on its Tract, in a first-class condition. No Owner shall alter, impair, close, block, re-route or fence off any of its Private Drives located on its Tract, except for temporary maintenance, which such Owner shall promptly complete, and any such temporary maintenance shall be subject to 3.6(b) hereinabove. Any Owner performing, or causing to be performed, maintenance or repair work on its Private Drives shall promptly pay all costs and expenses associated therewith, diligently shall complete such work as quickly as possible, and promptly shall clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to commencement of such work.

7. Utility Easements.

7.1 Grant of Easement. Declarant hereby declares, establishes, creates, and grants for the benefit of, and as a burden upon, each Tract the non-exclusive right, privilege, and easement in, to, over, under, along, and across those portions of the Common Area necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of Utility Lines, including but not limited to sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. The Utility Line easement area shall be no larger than whatever is necessary to reasonably satisfy the requirements of the provider of such service if the Utility Line is to be owned by a public utility, or five (5) feet on each side of the Utility Line if the Utility Line is to be owned by an Owner.

7.2 Relocation. Any Owner shall have the right at any time to relocate a Utility Line located upon its Tract which does not jointly service another Tract; provided, however, that such relocation:

- (i) shall not interfere with or diminish the utility service to the other Tracts;
- (ii) shall not reduce or unreasonably impair the usefulness or function of such Utility Line;
- (iii) shall be performed without cost or expense to the other Owners (except to the extent any costs or expenses are incurred due to such Owners' own actions or inactions);
- (iv) shall be completed using materials and design standards which equal or exceed those originally used;
- (v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover; and

(vi) shall comply with the terms and conditions of Section 3.4(i-vi) hereof.

7.4 Maintenance and Repair.

7.4.1 Private Utility Lines. Each Owner shall maintain and replace, at its sole cost and expense, its Private Utility Lines, in a first class condition, regardless of where such Private Utility Lines are located, unless the provider of the service or a governmental or quasi-governmental authority has agreed to maintain such Utility Lines. Any maintenance and repair of non-dedicated utilities located on another Owner's Tract shall be performed only after five (5) days notice to the Owner of such Tract (except in an emergency, when the work may be initiated with reasonable notice), shall be done after normal business hours whenever possible, and otherwise shall be performed in such a manner as to cause as little disturbance in the use of such Tract as is practicable under the circumstances. Any Owner performing, or causing to be performed, maintenance or repair work promptly shall pay all costs and expenses associated therewith, diligently shall complete such work as quickly as possible, and promptly shall clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to commencement of such work.

7.4.2 Common Utility Lines. Common Utility Lines shall be maintained and replaced as part of the Common Area pursuant to Section 3.6 hereof.

8. Stormwater Drainage.

8.1 Grant of Easement. Declarant hereby declares, establishes, creates, and grants for the benefit of, and as a burden upon, Tract 2 and Tract 3 (and the Adjacent Land if added as Tract 4 to the Declaration under Section 2.5 herein), a perpetual, non-exclusive easement in, over, and across the Common Area for the purpose of discharging stormwater drainage and/or runoff from Tract 2 and/or Tract 3, respectively, upon and across those portions of the Common Area located on Tract 2 and/or Tract 3, respectively, into Retention Pond #2; provided, that the Owner of Tract 1 shall discharge stormwater drainage and/or runoff from Tract 1 into Retention Pond #1 which shall be located entirely within Tract 1. Without limiting the generality of the foregoing, and notwithstanding anything to the contrary contained in this Declaration, Declarant hereby declares, establishes, creates, and grants for the benefit of and burden upon Tract 2 and Tract 3 (and the Adjacent Land if added to the Declaration as Tract 4 under Section 2.5 herein), a perpetual, non-exclusive easement in, over, and across Tract 2 and Tract 3 for the purposes of constructing, maintaining, repairing, replacing, or restoring Retention Pond #2 as same may be constructed, installed, maintained, repaired, replaced, or restored as hereinafter provided. The exact location of the Retention Ponds shall be as shown on the Site Plan. The easements contained herein shall include the right to construct, install, maintain, repair, replace and restore utilities pipes, lines, conduits, and facilities to serve the Retention Ponds, as well as appropriate landscaping around the Retention Ponds. The Retention Ponds shall initially be designed by the Declarant. The Owners of the Tracts agree to cooperate with each other in obtaining permits for the Retention Ponds and, if necessary, to make joint application for such permits. The Owners of Tract 2 and Tract 3 (and the Adjacent land if added to the Declaration under Section 2.5 herein) hereby agree and appoint the Owner of Tract 2 as the administrator for the collection of all costs related to Retention Pond #2 after installation thereof (the "Retention Pond #2 Costs"). The Retention Pond #2 Costs shall be paid by such respective Owners of the Tracts utilizing Retention Pond #2 within ten (10) days of receipt of invoice from the administrator. The Retention Pond #2 Costs shall be paid by the Owners of each Tract utilizing Retention Pond #2 in accordance with its Pro Rata Share. The

Owners of Tracts which have not Commenced Construction on their respective Tract or property shall not be required to pay or share in the reimbursement of Retention Pond #2 Costs. The Owner of Tract 1 shall self-maintain Retention Pond #1 located on Tract 1 at its sole cost. No Tract other than Tract 1 shall have the benefit of the use of Retention Pond #1.

If (or when) the Adjacent Land is added as new "Tract 4" to this Declaration under Section 2.5 herein and Improvements are contemplated to be constructed thereon, then the Owner of Tract 4 shall have the right to enlarge the capacity and size of Retention Pond #2 to accommodate the additional drainage requirements of Tract 4, all at the sole cost of the Owner of Tract 4. The Owners of Tract 2, Tract 3 and Tract 4 shall reasonably cooperate in good faith to effectuate such enlargement. Upon a request for such enlargement, the Owners of Tract 2 and Tract 3 hereby grant the Owner of Tract 4 a temporary construction easement upon Tract 2 and Tract 3 for the purposes of enlarging Retention Pond #2; provided that no such work shall materially impair or interrupt the drainage needs of Tract 2 and Tract 3 into Retention Pond #2, or otherwise materially interfere with the business operations on Tract 2 and Tract 3. Such temporary construction easement shall terminate upon the completion of the enlargement of Retention Pond #2. In no event shall the owner of the Adjacent Land have any rights to enlarge or drain into Retention Pond #2 (or anywhere else within the Project Tract) until the Adjacent Land is added into this Declaration under Section 2.5 herein. The Owner of Tract 4, if added to this Declaration, may elect to construct retention facilities exclusively within the boundaries of Tract 4.

8.2 Conditions. The foregoing stormwater drainage easement rights shall be subject to the following terms and conditions:

- (i) Common Area grades and the surface water drainage/retention system for each Tract shall be constructed in conformance to Code; and
- (ii) No Owner shall alter or permit to be altered the surface elevation or grade of those portions of the Common Area located on such Owner's Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract or change the rate or concentration of flow or points of discharge from such Tract.

9. Sign Easements.

9.1. Monument Signs. Each Owner of a Tract shall have the right to construct one (1) freestanding monument sign on its Tract (subject to the approval of applicable governmental entities) for the Occupants of such Tract. Each Owner of a Tract shall repair and maintain such monument sign in a good and attractive condition (and if necessary replace such monument sign) and shall illuminate such monument sign from dusk till dawn, all at the sole cost of the Owner of such Tract.

10. Construction, Maintenance and Repair.

10.1 General Obligations. Any and all construction, installation, maintenance, repair, replacement, or restoration work or services performed by any Owner on another Owner's Tract pursuant to the terms and provisions of this Declaration:

- (i) shall be done only with the prior written consent of the Owner of the affected Tract, except that BPD Dacula, LLC shall need no consent from any Owner, Occupant or other party to

perform such installation, maintenance, repair, replacement, or restoration work or services related to the Retention Ponds and/or the Utility Lines if such Owner, Occupant or other party has not commenced construction on its Tract at the time such installation, maintenance, repair, replacement or restoration work or services is undertaken;

- (ii) shall be done in a manner so as to minimize, to the extent reasonably possible, any interruption and interference to the Owner or Occupant of the affected Tract in the normal operation of such Tract and the improvements thereon;
- (iii) shall comply with Code; and
- (iv) shall be performed in accordance with the other terms and provisions of this Declaration.

After the completion of any work, the affected easement area shall be left in a clean and orderly condition, with all debris removed therefrom, with trenches and cuts properly filled, with any paving, curbing, plants, shrubbery, or other improvements on such easement areas which may have been disturbed by such work restored to their former or better condition, and all areas within which dirt has been exposed shall be appropriately reseeded.

## 11. Restrictive Covenants.

### 11.1 Restrictions on Use.

No portion of any Tract shall be used for any of the prohibited uses or in violation of any use restrictions as set forth in Exhibit "E" attached hereto and by reference thereto incorporated herein.

## 12. Insurance.

12.1 Liability Insurance. Each Owner shall maintain or cause to be maintained in full force and effect comprehensive general liability insurance covering the Common Area located within such Owner's Tract, with a combined single limit of liability of not less than Two Million and No/Dollars (\$2,000,000.00) and naming the other Owners as additional insureds, for bodily or personal injury or death and for property damage arising out of any one occurrence. Such insurance shall be procured from responsible insurance companies authorized to engage in the business of general liability insurance in the state in which the Property is located and shall provide for payment of claims on an occurrence basis. Each Owner agrees to furnish to any other Owner requesting the same a certificate of insurance evidencing that the insurance required to be carried by such Owner is in full force and effect.

13. Liens. In the event any mechanic's lien is filed against a Tract as a result of services performed for or materials furnished to the Owner of another Tract, such Owner shall cause such lien to be released and discharged of record within thirty (30) days of receipt of notice of such lien, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Additionally, the other Owner permitting or causing such lien to be filed shall indemnify, defend, and hold harmless the Owner of the Tract upon which said lien was filed against any liability, loss, damage, costs, or expenses (including reasonable attorney's fees actually incurred and court costs) on account of such claim of lien. In the event an Owner, Occupant or Permittee is entitled to file a lien, including a Repair Lien, against another Tract pursuant to the express terms of this Declaration,

such lien shall automatically be subordinate to any pre-existing first deed to secure debt (a "DSD") encumbering the defaulting Owner's Tract and to the interest of (i) any successor or assignee of the mortgagee under such DSD, (ii) any party that has purchased the Tract and leased it from the preceding Owner, or its affiliate or subsidiary, on a net lease basis with the lessee assuming all obligations (i.e., a sale-leaseback transaction), or (iii) any purchaser at a foreclosure or deed in lieu of foreclosure under such first DSD.

14. General.

14.1 Amendment. The Owners of 50.1% or more of the acreage of the Property, excluding any areas transferred by condemnation or governmental taking, may amend this Declaration (without the consent of the other Owners, Occupants or any other party), in a written instrument duly recorded in the public records of Gwinnett County, Georgia; provided, that the Declarant may amend this Declaration, without the consent of any other Owner, to add the Adjacent Land pursuant to Section 2.5 hereinabove. Any such amendment shall be effected only in a written instrument duly recorded in the public records of Gwinnett County, Georgia. Notwithstanding the foregoing, no amendment to the Declaration that restricts, burdens, or otherwise adversely affects any Tract or Owner of such Tract (or that restricts, burdens, or otherwise adversely affects access to or the visibility of buildings or signage on any Tract) shall be permitted without the prior written consent of the Owner of such Tract.

14.2 Enforcement. This Declaration may be enforced by Declarant or any Owner (or such Owner's Occupant) by any action available at law or in equity, including, but not limited to injunctive relief and specific performance. In the event the Owner of a Tract defaults in the performance of any of its obligations pursuant to this Declaration and such default shall continue for a period of thirty (30) days after receipt of written notice of said default from the Declarant, or Owner of any other Tract (or such Owner's Occupant), the Declarant, or Owner of such other Tract (or such Owner's Occupant) shall be entitled to cure such default, provided, (i) the defaulting Owner is not then in the process of diligently attempting to cure the default, and (ii) no notice or opportunity to cure shall be required in the event the default creates an emergency or interferes with the use of such other Owner's Tract. Any and all expenses incurred by the Declarant, or non-defaulting Owner (or their Occupants) in curing such default, together with fifteen percent (15%) per annum interest thereon shall be payable by the defaulting Tract Owner within thirty (30) days of written demand therefor by the Declarant, or non-defaulting Owner (or by their Occupants) to the defaulting Tract Owner. In the event of enforcement of this Declaration by Declarant, or any Owner, (or their Occupants), said Declarant, or Owner or such Occupants shall be entitled to recover, in addition to any other relief available to same hereunder or at law or in equity, attorneys' fees, court costs, and interest on any amounts advanced by said Declarant, Owner to cure such violation, such interest to be calculated at the lesser of (i) six percent (6%), or (ii) the highest rate permitted by Georgia law.

14.3 Partial Invalidity. In the event any provision of this Declaration is determined to be illegal or legally unenforceable, such determination shall have no effect upon the remaining terms and provisions hereof, and the remaining terms and provisions hereof shall continue in full force and effect.

14.4 Notice.

14.4.1 Form. Every notice, demand, consent, approval, or other document or instrument required or permitted to be served upon or given to any Owner shall be in writing and shall be delivered: (i) in person; or (ii) mailed by registered or certified mail, return receipt requested, first-

class, postage prepaid; or (iii) delivered by Federal Express or a comparably reliable national air courier service (i.e., one which delivers service in at least forty-eight (48) states); or (iv) facsimile transmission or electronic mail with delivery receipt requested, and, if to Declarant shall be delivered to the following addresses, respectively:

If to Declarant:

BPD Dacula, LLC  
297 Prince Avenue, Suite 19  
Athens, Georgia 30601  
Attention: Travis Butler  
Email: travis@butlerprops.com

With a copy to:

Christopher B. Manos, Jr., Esq.  
1920 Woodsdale Road NE  
Atlanta, Georgia 30324  
Email: c.manos@mindspring.com

and, if to any Owner, at an address specified in the manner set forth in Section 14.4.2 hereof for change of address.

14.4.2 Change of Address. Any Owner may specify or change the place for service of notice by sending a notice to the other Owner(s), which notice shall become effective ten (10) days after delivery thereof. All such notice addresses shall be within the United States.

14.4.3. Notice to Lender. If a lender has theretofore sent a written notice to an Owner which expressly states that it is the holder of a security interest in a Tract, describes the nature of the security interest, and sets forth the name and address of such lender, then until such Owner receives a written notice to the contrary from such lender, such Owner shall send to such lender copies of all notices which it sends to any other Owner pursuant to this Section 14.4.

14.5 Indemnity. Each Owner (herein, individually, "Indemnitor") shall defend, indemnify, and hold harmless the Declarant, and other Owners from all claims, losses, actions, proceedings and costs (including reasonable attorney's fees actually incurred and court costs) resulting from any construction, including liens, or any accident, injury, loss, or damage occurring to any person or to the property of any person arising out of or resulting from the Indemnitor's exercise of the rights, privileges, and easements granted herein (provided, however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of the indemnified Owner), or resulting from the Indemnitor's violation of any of the restrictions, covenants, and conditions established hereby. Notwithstanding anything herein to the contrary, in no event shall Declarant, or any Owner or Occupant be liable for or subject to indirect, consequential, special, speculative or punitive damages.

14.6 Estoppel. The Owner of each Tract shall, at the request of the Owner of any other Tract and within twenty (20) days of such request, execute and deliver an acknowledgment in such reasonable form as may be requested stating that the easements and covenants set forth in this Declaration are in full

force and effect (if such is the case and if not, the specific areas of relinquishment of same), that said Owner knows of no violation thereof (if such is the case and if not, what violations exist), and that the requesting Owner is in compliance therewith (if such is the case and if not, the specific areas of non-compliance), and any other relevant information requested from such Owner.

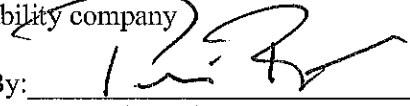
14.7 Successor Declarant. The within-defined initial Declarant shall have the right, at its option and without the consent of any other Owner, to assign and delegate all rights, privileges, and all duties and obligations, conferred to and upon "Declarant" hereunder, to the Owner of Tract 2, pursuant to an assignment and assumption agreement which shall be recorded in the Gwinnett County, Georgia records; *provided, however,* so long as the loan evidenced by the Pinnacle Security Deed (as hereinafter defined) remains outstanding, or in the event of a foreclosure of the Pinnacle Security Deed, then no such assignment shall be effective until and unless consented to in writing by Pinnacle Bank, a Tennessee bank, which consent shall not be unreasonably withheld or delayed, but may be conditioned on such written agreement(s) as are reasonably required in by Pinnacle Bank to protect its rights (both direct and indirect), in and to the collateral secured by the Pinnacle Security Deed, including, without limitation, the development of the improvements serving the collateral as contemplated under this Declaration. Notwithstanding the foregoing, at such time as the loan evidenced by the Pinnacle Security Deed has been paid in full and satisfied of record and the Declarant owns no more real property in fee simple within the Project, and if no assignment has already been made to the Owner of Tract 2 as set forth above, then the Owner of Tract 2 shall become the successor Declarant hereunder, self operatively and without any further assignment or documentation and without the necessity of consent of any other Owner; and the Owner of Tract 2 shall thereupon succeed to and become the "Declarant" for all purposes hereunder. Upon such assignment either under a separate instrument or self-operatively as provided in this Section, the original Declarant herein shall have no further duties or obligations under this Declaration. Every instance in this Declaration that references "Declarant" shall also mean the successors and assigns of Declarant as provided in this Section 14.7.

[Signatures begin on next page]

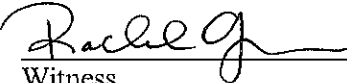
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized representatives as of the day and year first above written.

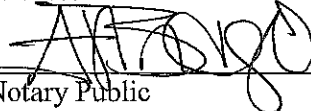
**DECLARANT**

**BPD DACULA, LLC**, a Georgia limited liability company

By:   
Travis Butler, Manager

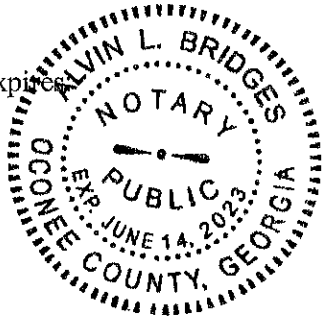
Signed, sealed, and delivered in the presence of:

  
Witness


  
Notary Public

[Notarial Seal]

My commission expires

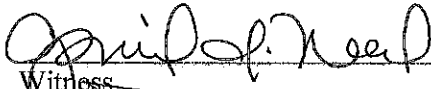



**HEBRON BAPTIST CHURCH, INC.**

By:   
Neville Smith, Trustee

By:   
Allen Cheatham, Trustee

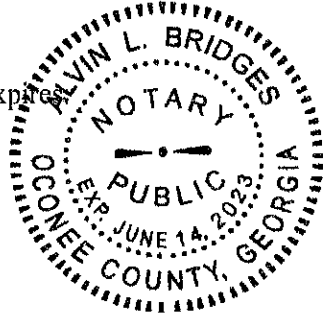
Signed, sealed, and delivered  
in the presence of:

  
Witness

  
Notary Public

[Notarial Seal]

My commission expires



CONSENT AND SUBORDINATION AGREEMENT  
[Pinnacle Bank]


Pinnacle Bank, a Tennessee Bank, is the Lender under that certain Deed to Secure Debt, Assignment of Rents and Lease, Security Agreement and Fixture Filing from BPD Dacula, LLC, a Georgia limited liability company, dated June 15, 2021 to be recorded in the real property records of Gwinnett County, Georgia. (the "Pinnacle Security Deed") and that certain Assignment of Leases, Rents, and Profits from BPD Dacula, LLC, dated June 15, 2021 to be recorded in the aforesaid records (the "Pinnacle Assignment of Leases"). By executing this instrument, the undersigned hereby consents to the execution, delivery and recordation of that certain Declaration of Restrictions, Covenants and Conditions and Grant of Easements (the "Agreement") to which this instrument is attached and confirms the subordination of the title and lien of the Pinnacle Security Deed and the Pinnacle Assignment of Rents to the rights of parties in and to the Agreement to which this Consent and Subordination Agreement is attached.

IN WITNESS WHEREOF, this instrument has been signed, sealed and delivered by the undersigned this 15<sup>th</sup> day of June, 2021.

LENDER:

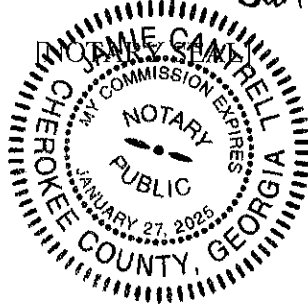
Pinnacle Bank, a Tennessee Bank

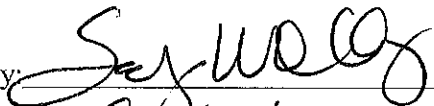
Signed, sealed and delivered  
this 15<sup>th</sup> day of June, 2021  
in the presence of:

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Notary Public

My Commission Expires: Jun 27, 2025



By:   
\_\_\_\_\_  
Name: Sandy Waltering  
Title: SVP

**EXHIBIT A**

**SITE PLAN**

**[Following this page]**



**EXHIBIT B**

**SURVEY**

**[Following this page]**





**EXHIBIT C**

**LEGAL DESCRIPTION OF PROPERTY**

See Survey at Exhibit B attached hereto

**EXHIBIT D**

**LEGAL DESCRIPTION OF ADJACENT LAND**

“Tract 4” as set forth in the Survey at Exhibit B attached hereto.

**EXHIBIT D-1**

**LEGAL DESCRIPTION OF CHURCH LAND**

That certain real property depicted on the Survey in Exhibit B attached hereto as the "Remainder of Lot 1", having 84.131 acres.

**EXHIBIT E**  
**PROHIBITED USES and**  
**USE RESTRICTIONS**

**I. Contract Use Restrictions:**

1. *Huey Magoos*:

The purchaser of Tract 2 shall have the sole and exclusive right to operate a restaurant in the Shopping Center [e.g., the “Project” in this Declaration] with the primary business of the sale of chicken for on and/or offsite consumption and no other portion of the Shopping Center may be used by a competing business (the “HM Exclusive Use”). Notwithstanding the foregoing, the HM Exclusive Use shall not apply to tenants or owners operating a *Wendy's* restaurant and/or an *Express Oil Change*.

As used herein, the term “primary business of the sale of chicken” shall mean that such the sale of chicken menu items constitute thirty percent (30%) or more of such occupant’s gross sales at its other locations. The foregoing exclusive shall only apply so long as the Owner of Tract 2 or its successors and assigns, after initially opening, are in operation for the HM Exclusive Use (except for cessation of operations and closures for reasons due to force majeure, accident, casualty, condemnation, moratoria, governmental regulation or restriction, change in law, or other reason beyond the Owner of Tract 2’s reasonable control; and except for temporary closures conducted for the purpose of redeveloping, remodeling, renovating, refurbishing or conducting repairs to the Owner of Tract 2’s building on or other improvements, equipment, fixtures or property on Tract 2).

**II. Lease Use Restrictions:**

The following exclusives and use restrictions are contained in leases for certain premises located on Tract 1 and Tract 3, respectively (the “Lease Restrictions”). Such Lease Restrictions shall only remain in effect for as long as they are valid and in effect under the respective leases for Tract 1 and Tract 3 from which they originate. At such time as the Lease Restrictions are no longer in effect under its respective lease, then the Owner of Tract 1 and/or Tract 3 ( as the case may be) shall execute a recorded instrument which references this Declaration, and which declares and removes from this Declaration the respective Lease Restriction, which is no longer valid.

A. *Wendy's*:

Exclusive: “no other tenant or Occupant of the Shopping Center [e.g., the “Project” in this Declaration] shall be engaged in the operation of a “fast food” or “quick service” restaurant (as those terms are used and understood in the restaurant industry) featuring the sale of hamburgers (the “Wendy’s Exclusive”). By way of example but not limitation, the Wendy’s Exclusive restrictions shall prohibit restaurants such as *Red Robin*, *Burger King*, *Fatburger*, *Johnny Rockets*, *Express*, *In-N-Out Burger*, *Farmer Boys*, *Krystal*, *White Castle*, *A&W*, *Whataburger*, *Checkers*,

*Rally's, Sonic, and similar "drive-in" concepts, Steak 'N Shake, Culver's Jack-in-the-Box, Bojangles, McDonalds, Taco Bell, Del Taco, and Albertos."*

The Wendy's Exclusive restrictions shall not apply to: (1) any business that (a) is considered an upscale, sit-down or "fast casual" restaurant, or that operates as a pub or sports bar, (b) with a wait staff and table service, and (c) that sells hamburgers; (2) the tenants or owners operating under the following trade names: *Captain D's, Express Oil Change, Jersey Mikes and Huey Magoo's*.

B. *Express Oil Change:*

Exclusive: "Landlord agrees not to (i) execute a lease with or allow any tenant or occupant, including any purchaser of any portion of the Exclusive Use Property to operate an Auto Center on or at the Exclusive Use Property [e.g., the "Project" in this Declaration], including, but not limited to, the operation of an Auto Center directly or indirectly via remote distribution such as a remote internet fulfillment or location, locker, drive-thru, mail order, robotic fulfillment mechanism or similar pickup facility; or (ii) permit any occupant of the Exclusive Use Property or the assignee/subtenant thereof to engage in the operation of an Auto Center ("EOC Exclusive Use")". The term "Auto Center" shall mean a business of the kind known generally as an automobile maintenance, repair, tire and/or accessory shop. Permitted activities in an Auto Center include, without limitation, any or all of the following: the sale and replacement of motor oil and other lubricants, the sale, display, installation, repair and/or servicing of tires, tubes and other automotive parts and accessories, whether functional or decorative (including, without limitation, batteries, mufflers, seat covers, brakes, shock absorbers, air conditioners, starters, generators, carburetors and ignition system items) and the performance of such services as inspection, check-up, oil change, alignment, balancing, brake and muffler service, tune-up and adjustment of automobiles or parts thereof (including, without limitation, wheel alignment) and such other activities as are incidental or related thereto, including, without limitation, the sale of beverages and food for the convenience of customers of the Auto Center, but no alcoholic beverages shall be sold or provided.

The foregoing Lease Restrictions are subject to other conditions and exceptions as contained in the respective leases from which they originate.

Prohibited Uses:

No portion of any Tract shall be used for the following uses or purposes:

- (i) Adult novelty stores;
- (ii) Massage parlors;
- (iii) Adult bookstores;
- (iv) Adult entertainment establishments;
- (v) Used car lots;
- (vi) Mini warehouse storage facilities;
- (vii) Mobile home or mobile home leasing or sales lot;
- (viii) Recovered materials processing facility;
- (ix) Liquor, package or ABC Stores;

- (x) Stand-alone bars or saloons (bars or saloons that are not part of a sit-down family restaurant);