

**RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION**

**THIS RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION**, ("Agreement") is made as of this 7 day of September, 2005, by and between **BRC RICHLAND, LLC**, a Georgia limited liability company ("BRC"), and **WINDSOR RICHLAND MALL, L.P.**, a Texas limited partnership ("Windsor").

**WITNESSETH:**

**WHEREAS**, Windsor is the owner of that certain tract or parcel of land (the "Shopping Mall Parcel") situated in the City of Forest Acres, County of Richland and State of South Carolina, which Shopping Mall Parcel is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

**WHEREAS**, contemporaneous herewith BRC has acquired from Windsor and is the owner of that certain tract or parcel of land adjacent to the Shopping Mall Parcel, which parcel is currently used and operated as a Verizon Wireless call center (the "Verizon Parcel"), which Verizon Parcel is more particularly described on Exhibit "B" attached hereto and made a part hereof; and

**WHEREAS**, Windsor is the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a TGI Friday's Restaurant (the "TGIF Parcel"), which TGIF Parcel is more particularly described on Exhibit "C" attached hereto and made a part hereof; and

**WHEREAS**, Windsor is also the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a Bank of America (the "Bank Parcel"), which Bank Parcel is more particularly described on Exhibit "D" attached hereto and made a part hereof; and

**WHEREAS**, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, and the Bank Parcel are depicted graphically on the Site Plan attached hereto as Exhibit "E" and made a part hereof (the "Site Plan"); and

**WHEREAS**, the Shopping Mall Parcel, less and except the TGIF Parcel and the Bank Parcel, is hereinafter referred to as the Midtown Parcel; and

**WHEREAS**, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, the Bank Parcel and the Midtown Parcel are sometimes collectively referred to herein as the "Parcels" and individually as a "Parcel", and are collectively referred to herein as the "Mall"; and

**WHEREAS**, the Verizon Parcel is leased to Cellco Partnership ("Cellco") pursuant to a Lease Agreement dated May 5, 1999, as amended by First, Second and Third amendments dated respectively May 25, 1999, September 6, 2000 and March 4, 2005 (the "Verizon Lease"); and

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Book 1097-2024

2005072825 09/12/2005 15:37:41:717

Easement

Fee: \$39.00 County Tax: \$0.00

State Tax: \$0.00



Record on Appeal 00061

2005072825 John G. Norris

Richland County ROD

**WHEREAS**, it is contemplated that after recordation of this Agreement, Windsor may convey the Midtown Parcel to Midtown at Forest Acres North, LLC which may continue to operate the Midtown Parcel as an enclosed mall or may redevelop the Midtown Parcel as a lifestyle shopping center with residential and other planned uses; and

**WHEREAS**, it is the desire of the parties that, notwithstanding the division of ownership of the Mall, the parties and each of the Parcels be protected in their continuing rights of access, parking, utilities and other features necessary to operate viable businesses on the Parcels and that as a paramount matter all of the rights of Cellco under the Verizon Lease be protected and preserved;

**NOW THEREFORE**, in consideration of the sum of TEN AND NO/100 DOLLARS and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and declare as follows:

**ARTICLE I**

**EASEMENTS BURDENING THE MIDTOWN PARCEL IN FAVOR OF THE VERIZON PARCEL, TGIF PARCEL AND BANK PARCEL**

(A) **Access**. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Verizon Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "VTP Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, parking upon, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Midtown Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, those parking areas located on the roof of the Midtown Parcel; and (b) passage and use for the purpose of walking upon the interior corridors of the enclosed mall on the Midtown Parcel.

The owner of the Midtown Parcel may relocate, modify or alter any of the existing driveways, sidewalks, curb cuts or mall interior doorways or hallways in a manner which would not materially adversely affect access to the Verizon Parcel; provided that the owner of the Midtown Parcel gives at least twenty (20) days notice of the proposed relocation, modification, or alteration to the owner of the Verizon Parcel.

(B) **Drainage**. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: drainage of surface water over, across and under the Midtown Parcel using pipes, ditches, and/or similar features presently in place to handle surface water drainage.

(C) **Utilities.**

Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) installation, maintenance, repair and use of utilities, including specifically fiber optic cable, serving any portion of the VTP Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Midtown Parcel; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Midtown Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Midtown Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner performing such work shall indemnify and hold the owner of the Midtown Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Midtown Parcel may relocate, at its sole expense, such utility lines, so long as utility service to any other Parcel is not interrupted; and (b) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Midtown Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Midtown Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Midtown Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the VTP parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Midtown Parcel; (iv) any and all damage to the Midtown Parcel shall be promptly repaired by the owner performing such work, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Midtown Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Midtown Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the other Parcels is not interrupted.

(D) **Signage.** Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of erecting, using, and maintaining such signage on the Midtown Parcel as (i) presently exists, including without limitation signage on any pylon signs or monument signs on the Midtown Parcel, inclusion on any directories located within the Mall, suite entry

signage, and directional signage or (ii) is otherwise required by the Verizon Lease. Each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining, repairing, and replacing such signage, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV below. The owner of the Midtown Parcel agrees not to make any signage changes on the Midtown Parcel which would change Cellco's present signage rights under the Verizon Lease without the prior written approval of Cellco.

(E) **Parking.** Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the VTP Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Midtown Parcel. The Midtown Parcel owner shall not relocate or reduce the parking on the Midtown Parcel without the prior written consent of Cellco and the owner of the Verizon Parcel, which owner's consent will not be unreasonably withheld, conditioned or delayed if Cellco has approved the parking change.

## **ARTICLE II**

### **EASEMENTS BURDENING THE BANK PARCEL**

(A) **Access, Drainage and Utilities.** Windsor, as owner of the Bank Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the Verizon Parcel and the TGIF Parcel (collectively the "MVT Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to the MVT Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Bank Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, (b) drainage of surface water over, across and under the Bank Parcel; (c) installation, maintenance, repair and use of utilities serving any portion of the MVT Parcels across and under such portions of the Bank Parcel that are not presently improved with buildings; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Bank Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Bank Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the Parcel owner performing such work shall indemnify and hold the owner of the Bank Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MVT Parcels is not interrupted; and (d) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone,

power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Bank Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Bank Parcel; (ii) all such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Bank Parcel; (iii) any and all damage to the Bank Parcel shall be promptly repaired by the Parcel owner performing such work, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Bank Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MVT Parcels is not interrupted.

### ARTICLE III

#### EASEMENTS BURDENING THE VERIZON PARCEL

(A) **Access.** BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "MTB Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the MTB Parcels, for the purpose of: passage and use for the purpose of walking and driving over and across and maintenance and repair of, all those sidewalks, entrances, drives, lanes and service drives on the Verizon Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, passage through those parking areas located on the roof of the Verizon Parcel.

(B) **Parking.** BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the MTB Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Verizon Parcel; provided, however, (i) such parking shall not apply to those parking spaces which are expressly reserved for Cellco pursuant to Section 8.5 of the Verizon Lease and (ii) in the event of any complaint from Cellco or any subsequent tenant of the Verizon Parcel for problems with shortage of parking for Cellco or the business conducted on the Verizon Parcel, the owner of the Verizon Parcel shall be entitled to terminate the parking rights granted by this sub-article (B) and take such steps as the Verizon Parcel owner deems appropriate to secure exclusive parking of all parking spaces located on the Verizon Parcel, which steps may include designating parking spaces as Verizon Parcel only, with threat and right to tow or otherwise to enforce exclusive parking; provided that no such action shall impair access to and across driveways on the Verizon Parcel so that pedestrian and vehicular traffic and circulation for the Mall would be impaired. The owner of the Verizon Parcel shall not take any action to reduce the total number of parking spaces on the

Verizon Parcel (but such spaces may be exclusive to the Verizon Parcel) if such reduction would cause the Mall to fail to comply with the overall ratio required for code compliance.

(C) **Utilities and Drainage.** BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners, perpetual, nonexclusive easements appurtenant to the MTB Parcels for the purpose of: (a) drainage of surface water over, across and under the Verizon Parcel in the manner that presently exists; (b) installation, maintenance, repair and use of utilities serving any portion of the MTB Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Verizon Parcel provided, however: (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Verizon Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Verizon Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Parcel performing such work shall indemnify and hold the owner of the Verizon Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Verizon Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MTB Parcel is not interrupted; and (c) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Verizon Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Verizon Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Verizon Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the MTB Parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will minimize any disruption to the operation of any business on the Verizon Parcel; (iv) any and all damage to the Verizon Parcel shall be promptly repaired by the owner of the Parcel performing such work, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Verizon Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Verizon Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MTB Parcel is not interrupted.

(D) **Green Space Amenity Easement.** BRC as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, grant and convey to, the owner from time to time of the Midtown Parcel for the benefit of such owner and such owner's tenants, employees and invitees, a perpetual nonexclusive easement appurtenant to the Midtown Parcel for the purpose of constructing, using and maintaining an elevated green space amenity on a to-be-constructed level above the current rooftop parking on the building on the Verizon Parcel. The foregoing grant is subject to the following:

(a) The Verizon Parcel Owner shall have the right to approve all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(b) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(c) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (D).

(d) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(e) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may (i) terminate this easement and (ii) complete construction or demolish any improvements and the owner of the Midtown Parcel shall be obligated to reimburse the owner of the Verizon Parcel for all costs incurred by the owner of the Verizon Parcel.

(f) The Midtown Parcel Owner shall maintain the green space facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(g) The Verizon Parcel Owner shall have the right, if the green space facility has been constructed, to demolish and rebuild the green space facility at the cost of the Verizon Parcel Owner if the Verizon Parcel Owner does a vertical expansion of the building on the Verizon Parcel.

(h) The Verizon Parcel Owner may terminate this easement if the existing building on the Verizon Parcel is destroyed or substantially modified in connection with a redevelopment (i.e. material structural change in the building on the Verizon Parcel which involves construction of more than two (2) additional stories on the existing building or which involves demolition of all or a material part of the building and construction of a new facility) of the Verizon Parcel.

(i) In the event that the owner of the Midtown Parcel fails to perform its obligations under this Article III (D), the owner of the Verizon Parcel may perform such work and shall have the rights as are contemplated in Article IV (D) and (E).

#### **ARTICLE IV**

## COMMON AREA MAINTENANCE

(A) **Definitions.** For purposes hereof, Common Areas shall mean (i) as to exterior areas curb cuts, driveways, parking decks, rooftop parking, parking areas, commonly used utility lines, storm drainage lines and detention facilities, exterior lighting, pylon and monument and directional signs, and similarly used common facilities and (ii) as to interior areas, common doorways, used by multiple owners or tenants, interior corridors, used by multiple owners or tenants, commonly used corridor lighting and commonly used corridor heating and air conditioning and commonly used elevators, escalators and stairways.

(B) **Responsibility.** The Common Areas, including parking lots, curb cuts, driveways and detention facilities and pylon and monument signs and parking lot lighting fixtures on the Midtown Parcel, the Bank Parcel, the TGIF Parcel and the Verizon Parcel shall be maintained in good condition and repair in accordance with standards of well maintained shopping centers in Richland and Lexington Counties, South Carolina, by the owner of the Midtown Parcel, at the expense of the owner of the Midtown Parcel, subject to reimbursement as described below, at all times during the term of this Agreement, which maintenance shall include, without limitation: repaving and re-striping of all parking areas, maintenance of directional signs and other markers and bumpers, all canopy lighting, parking area lighting, utility charges incurred in connection with lighting the Common Area, providing water to the Common Area landscaping, maintenance and replacement of landscaping, sweeping, cleaning and snow removal charges, and other maintenance charges pertaining to driveways and other access areas. Common Area maintenance shall also include maintenance, lighting and cleaning of interior common lobbies, elevators, hallways and walkways.

The costs incurred in the course of such maintenance are the "Common Area Maintenance Charges." In addition, Common Area Maintenance Charges will include the following: coverage and premiums for liability, property damage, flood, rental loss, fire and extended coverage or other casualty; and property taxes attributable to the Midtown Parcel, the Verizon Parcel (including all insurance required to be paid by the owner of the Verizon Parcel under the Verizon Lease), the Bank Parcel and the TGIF Parcel; and any market rate management fees paid to a third-party hired by the owner of the Midtown Parcel to manage the Common Areas. Common Area Maintenance charges shall include the amount of any deductible, not to exceed \$10,000.00 paid in connection with a casualty claim. Common Area Maintenance Charges shall not include any penalties or interest incurred by the Midtown Parcel owner as a result of its failure to pay for any expenses in a timely manner, or any sums expended by the Shopping Mall Parcel owner directly and solely related to tenants of the Shopping Mall Parcel.

(C) **Contribution.** The owners of the Bank Parcel and the TGIF Parcel shall pay their Pro-Rata Share of the Common Area Maintenance Charges as follows:

The TGIF Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the TGIF Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the

Verizon Parcel, the Bank Parcel and the TGIF Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The TGIF Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the TGIF Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such TGIF Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the TGIF Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31<sup>st</sup> of such Calendar Year.

The Bank Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Bank Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the TGIF Parcel and the Bank Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The Bank Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the Bank Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such Bank Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Bank Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31<sup>st</sup> of such Calendar Year.

The owner of the Verizon Parcel shall not be responsible for any Common Area Maintenance Charges of any kind until November 30, 2010. In consideration of the Midtown Parcel owner's maintenance of the Common Area, the Verizon Parcel owner shall pay to the Midtown Parcel owner all sums received by the Verizon Parcel owner from Cellco pursuant to Section 10.3 of the Verizon Lease. For purposes of billing Cellco, it is agreed that the pro-rata share of the Verizon Parcel shall in no event be less than the "proportionate share" as set forth in the Verizon lease.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Verizon Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the Bank Parcel and the Verizon Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" of the Common Area Maintenance Charges shall be paid by the owner of the Verizon Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar

year in an amount equal to one-twelfth (1/12) of such Verizon Parcel owner's "Pro-Rata Share" of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Verizon Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31<sup>st</sup> of such Calendar Year.

Within sixty (60) days after the end of each Calendar Year, the Midtown Parcel owner shall furnish the TGIF Parcel owner and the Bank Parcel owner (and the Verizon Parcel owner, if applicable) with a written statement in reasonable detail of the actual Common Area Maintenance Charges and the amount of each Parcel owner's proportionate share thereof for the preceding Calendar Year. Within thirty (30) days after receipt of said statement by such Parcel owner, each such owner shall pay to the Midtown Parcel owner any deficiency due the Midtown Parcel owner for its Parcel. Any surplus paid by a Parcel owner shall be credited against the next ensuing installment of such Parcel owner's proportionate share of the Common Area Maintenance Charges.

The Midtown Parcel Owner shall keep full, complete and proper books, records and accounts of Common Area Maintenance Charges. Upon reasonable notice, a Parcel owner and its tenants, agents and employees shall have the right within ninety (90) days of receipt of the statement during its regular business hours to examine and inspect all books and records of the Midtown Parcel owner pertaining to Common Area Maintenance Charges for the purpose of investigating and verifying the accuracy of any statement of Common Area Maintenance Charges. Once in any Calendar Year, a Parcel owner may cause an audit of Common Area Maintenance Charges to be made by an independent certified accountant of such owner's election and, if the Common Area Maintenance Charges for the accounting period covered by the statement which is the subject of the audit are found to be overstated by more than five percent (5%), the Midtown Parcel owner shall immediately pay to such Parcel owner conducting the audit the cost of such audit and shall pay to such Parcel owner and to the other Parcel owners the amount of any overpayment made by any Parcel owners; otherwise, the cost of such audit shall be paid by the Parcel owner who conducted the audit. If the statement of Common Area Maintenance Charges is otherwise found to be incorrect, the party found to be owing money shall promptly pay an offsetting sum to the other party.

**(D) Collection; Attorneys' Fees.** Should the owner of any Parcel (herein a "Delinquent Owner") fail to timely pay its Pro-Rata Share of the Common Area Maintenance Charges as required by this Article, then the owner of the Midtown Parcel may at any time notify the Delinquent Owner of such failure and demand that such payment be made within twenty (20) days. If, upon expiration of such twenty (20) day period, the Delinquent Owner has not paid its Pro-Rata Share of the Common Area Maintenance, then such unpaid amounts shall accrue interest at eighteen percent (18%) from its due date, and such unpaid amounts and interest together with all collection costs incurred and to be incurred in collecting such unpaid amounts (including reasonable attorneys' fees) shall become a lien on the Parcel owned by the Delinquent Owner. The Delinquent Owner shall execute such instruments as the owner of the Midtown Parcel may request to permit the recordation of such lien, and the Delinquent Owner hereby irrevocably designates the owner of the Midtown Parcel as the Delinquent Owner's attorney-in-

fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(E) **Failure to Maintain.** Should the owner of the Midtown Parcel fail to repair or maintain the Common Areas on any Parcel, including without limitation the Midtown Parcel, any other Parcel owner (herein a "Repairing Owner") shall be entitled to perform such obligations and to bill the owner of the Midtown Parcel or to deduct such reasonable out-of-pocket costs from any sums owed to the owner of the Midtown Parcel, provided that, except in the case of an emergency, the Repairing Owner shall first notify the owner of the Midtown Parcel of the default, in writing, and shall permit the same to perform the obligation within twenty (20) days after receipt of written notice. In the event that the owner of the Midtown Parcel fails to perform its obligations upon any Parcel in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Repairing Owner, the Repairing Owner may perform the Common Area repair and upkeep on the Parcel, provided that the owner of the Midtown Parcel is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Repairing Owner shall be immediately due and owing from the Midtown Parcel owner. Such unpaid amounts may be offset against any amounts owing from the Repairing Owner to the Midtown Parcel owner, and until paid or offset the amount owed the Repairing Owner shall constitute a lien upon the Midtown Parcel with a priority relating back to the date hereof. The Midtown Parcel owner shall execute such instruments as the Repairing Owner may request to permit the recordation of such lien, and the Shopping Mall Parcel owner hereby irrevocably designates the Repairing Owner as the Shopping Mall Parcel owner's attorney-in-fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(F) **Indemnity.** The owner of the Midtown Parcel shall indemnify and save harmless the other Parcel owners and their tenants and licensees from all claims, liens, damages, and expenses, including reasonable attorney's fees, arising out of the owner of the Midtown Parcel's refusal or failure to maintain or repair that portion of the Common Areas for which it is responsible hereunder except as results from the gross negligence or willful act of the owner of the another Parcel owner.

## **ARTICLE V**

### **INSURANCE**

The owner of the Midtown Parcel shall maintain, for the mutual benefit of the owners of the Midtown Parcel and the Verizon Parcel, the Bank Parcel and the TGIF Parcel commercial general liability insurance covering the Common Area of all Parcels from a reputable insurance company authorized to do business in the state of South Carolina. Such insurance shall provide coverage of at least Three Million Dollars (\$3,000,000.00) combined single limit for death or injury to one or more persons and property damage, and shall name the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel as additional insureds thereunder. Such insurance shall not be cancelable without thirty (30) days notice to the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel. The owner of the Midtown Parcel shall supply certificates

evidencing maintenance of the insurance required hereunder within ten (10) days of request by any Parcel owner.

With respect to the casualty, rental loss and other hazard related insurance required hereunder, each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining such insurance, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV above. The Midtown Parcel owner shall provide the Verizon Parcel owner, the Bank Parcel owner and the TGIF Parcel owner with a certificate of the company issuing such insurance, certifying that the same is in full force and effect. The Midtown Parcel owner may, at its option, bring its obligations to insure hereunder under a "blanket" policy of insurance; provided, however, that the interests of the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel shall be as fully protected thereby as if the owner of the Midtown Parcel obtained individual policies of insurance.

## **ARTICLE VI**

### **DAMAGE OR DESTRUCTION**

In the event all or any portion of the Common Area on the Mall is destroyed or damaged by fire, casualty or force majeure, the owner of the Midtown Parcel shall forthwith clear such area of debris and restore to the prior condition.

If all or any portion of the Midtown Parcel, including without limitation the Common Area on the Midtown Parcel, is damaged or destroyed in such a manner as prevents or interferes with the operation of the business on the Verizon Parcel, the Bank Parcel, or the TGIF Parcel, then the owner of the Midtown Parcel shall use all commercially reasonable efforts to repair such damaged or destroyed areas in a prompt and thorough fashion.

In the event the owner of the Midtown Parcel fails to perform its obligations under this Article VI, the owners of the other Parcels may perform such work and shall have such rights as are contemplated in Article (IV) (D), (E) and (F) hereof.

## **ARTICLE VII**

### **EFFECT AND DURATION**

The covenants, easements and restrictions provided for herein shall be effective upon the date hereof and shall run with the land and constitute reciprocal benefits to and burdens upon the Parcels. The covenants, easements and restrictions provided for herein shall inure to the benefit of and be binding upon the Parcels and the owners thereof and their respective successors, successors-in-title, assigns and tenants, and the customers, employees and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership or possession of the Parcels, or any of them, or by any change of use, demolition,

reconstruction, expansion or other circumstances. The parties acknowledge and agree that damages from a breach hereof are not readily ascertainable and an injunction and specific performance shall be available in the event of any breach hereunder, in addition to any other remedies available under law. The easements established herein shall be perpetual in duration.

### **ARTICLE VIII**

#### **NO DEDICATION**

This Agreement is not intended, and shall not be construed, to dedicate any portion of the Parcels to the general public.

### **ARTICLE IX**

#### **DEFAULT**

(A) **Default.** Should a Parcel owner breach any of its obligations hereunder and such breach continue for a period of fifteen (15) days after its receipt of written notice, the other Parcel owners shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such party furnish prior notice to the other owner, and further provided that no notice is required should the breach create an emergency or interfere with use of a Parcel. All reasonable out-of-pocket expenses required to cure the breach shall be paid by the defaulting owner within thirty (30) days after receipt of written evidence confirming the payment of such expenses and any unpaid expenses shall constitute a lien with priority dating to the date of this Agreement. Notwithstanding the foregoing, in the event of the redevelopment of those portions of the Midtown Parcel identified on Exhibit "G" hereto as residential spaces or assisted living or senior facilities (the "Residential Redevelopment Tracts"), then from and after the date of any construction loan closing for either Residential Redevelopment Tract, such tract shall be excluded and not subject to subsequently accruing liens which would otherwise apply against the Midtown Parcel (but the Residential Redevelopment Tracts shall be subject to liens which accrued prior to construction loan closing).

(B) **Attorneys' Fees.** In the event of litigation by reason of this Agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees actually incurred in addition to all other expenses incurred by such litigation.

### **ARTICLE X**

#### **OPT OUT**

(A) **Verizon Parcel.** Notwithstanding any provision in this Agreement to the contrary, the Verizon Parcel owner may elect at any time, by written notice provided to the owner of the Midtown Parcel, to maintain such Verizon Parcel's Common Area and insurance covering the Verizon Parcel and Common Area on such Verizon Parcel. Upon such notice, the owner of the Midtown Parcel shall no longer be responsible for these obligations with respect to the Verizon Parcel and the Verizon Parcel owner shall not be obligated to make the

contributions for such matters contemplated herein; provided that the Verizon Parcel owner shall still be responsible for its Pro Rata Share of only (i) common access facilities and utility facilities benefiting the Verizon Parcel and (ii) liability insurance maintained by the Midtown Parcel owner for the Common Areas.

(B) **Bank Parcel.** Notwithstanding any provision in this Agreement to the contrary, the Bank Parcel owner may elect, by written notice provided to the owner of the Midtown Parcel, to maintain such Bank Parcel's Common Area and insurance covering the Bank Parcel and the Common Area on such Bank Parcel. Upon such notice, the owner of the Midtown Parcel Owner shall no longer be responsible for these obligations with respect to the Bank Parcel. Thereafter, the owner of the subject Bank Parcel shall no longer be responsible for a Pro Rata Share for Common Area Maintenance Charges; provided, however, that until the Parcels are separately assessed for tax purposes, the owner of the Bank Parcel will in any event be responsible for its Pro Rata Share of real property taxes.

(C) No opting-out by any Parcel owner hereunder shall relieve such owner of the obligation to maintain the Parcel in good condition and repair.

## **ARTICLE XI**

**RESERVED**

## **ARTICLE XII**

### **ENVIRONMENTAL MATTERS**

(A) **Regulatory Compliance.** Each Parcel owner will not take any action or omit to take any action (including actions taken by or omissions of any contractors or agents of such owner) which would cause the Mall to be subject to any remedial obligations under any applicable environmental laws and regulations and/or any other applicable laws, statutes, ordinances, rules, regulations, orders, determinations and court decisions applicable to environmental laws (collectively, "**Applicable Environmental Laws**"). The Applicable Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, the Hazardous and Solid Waste Amendments of 1984 (as amended), and any local or state laws, rules or regulations.

(B) **Hazardous Waste.** Each owner shall obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of its Parcel by reason of any Applicable Environmental Laws. Each owner shall not take any action or omit to take any action (including actions or omissions of any contractors or agents of such owner) which would cause the disposal or other release of any hazardous substance or solid waste on or to the Mall and covenants and agrees to keep or cause its Parcel to be kept free of any hazardous substance or solid waste and to remove the same (or if

removal is prohibited by law, to take whatever action is required by law) promptly upon discovery at its sole expense, unless, under then applicable law and prudent real estate practices, no removal or other remedial action with respect to such hazardous waste or substances is required, due to the concentration of such substances or waste being below the mandated minimum limits for removal or remediation.

(C) **Remediation.** Should the owner of a Parcel fail to fulfill its obligations under this Article XII (herein a "Contaminating Owner"), any other Parcel owner (herein a "Remediating Owner") shall be entitled to perform such obligations and to bill the Contaminating Owner or to deduct such costs from any sums owed to the Contaminating Owner, provided that, except in the case of an emergency, the Remediating Owner shall first notify Contaminating Owner of the default, in writing, and shall permit the same to perform the obligation within ten (10) days after receipt of written notice. In the event that Contaminating Owner fails to perform its obligation to remediate in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Remediating Owner, the Remediating Owner may perform the remediation on its Parcel, provided that Contaminating Owner is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Remediating Owner shall be immediately due and owing from the Contaminating Owner. Such unpaid amounts may be offset against any amounts owing from the Remediating Owner to the Contaminating Owner, and until paid or offset the amount owed the Remediating Owner shall constitute a lien upon the Contaminating Owner's parcel as of the date of the Remediating Owner's demand for reimbursement thereof. The Contaminating Owner shall execute such instruments as the Remediating Owner may request to permit the recordation of such lien, and the Contaminating owner hereby irrevocably designates the Remediating Owner as the Contaminating Owner's attorney-in-fact (coupled with an interest) for such purpose.

**ARTICLE XIII**

**RESERVED**

**ARTICLE XIV**

**RESERVED**

**ARTICLE XV**

**VERIZON EXPENSE CONTRIBUTION**

(A) **Taxes.** Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to pay all real estate taxes, ad valorem taxes and assessments and general and special assessments (including special tax district assessments, if any) applicable to the Verizon Parcel. Once the owner of the Verizon Parcel is shown evidence of paid tax bills, the owner of the Verizon Parcel shall pay to the owner of the Shopping Mall Parcel all tax Payments made by Cellco pursuant to Section 6.1 of the Verizon Lease. After November 30, 2010 the owner of the Midtown Parcel shall be entitled to reimbursement from the Verizon

Parcel owner of taxes in a proportionate amount. The parties agree, on the request of any party, to cooperate in good faith to attempt to obtain separate tax parcels for each Parcel; provided that in all events the Midtown Parcel owner shall be responsible for all taxes on the Verizon Parcel due through November 30, 2010 subject to the reimbursement of the Verizon payment as set forth above; provided taxes due for the final calendar year shall be pro-rated.

(B) **Cooled Air.** Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to maintain, repair and replace as needed the cooled air system and any heating and ventilation systems for the Verizon Parcel and the owner of the Verizon Parcel shall pay to the owner of the Midtown Parcel, for such services, all sums received from Verizon pursuant to Section 8.4 of the Verizon Lease.

(C) **Roof and other Repairs.** Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, shall make all roof repairs, structural repairs to exterior walls, structural repairs to columns and structural floor (excluding floor coverings) which collectively enclose the building on the Verizon Parcel and the building systems (plumbing, sprinkler, electrical and HVAC) in the building on the Verizon Parcel.

(D) **Other Expenses.** Until November 30, 2010, Windsor, as owner of the Midtown Parcel, and any successor thereto, agrees to pay all costs and expenses which are the obligation of the owner of the Verizon Parcel, as landlord under the Verizon Lease, such that, until November 30, 2010, the Verizon Lease will be "triple net" and all customary "triple net" obligations (e.g. taxes, insurance, utilities, maintenance and repair but not costs of tenant upgrades or concessions) shall be paid by Cellco or the owner of the Midtown Parcel.

(E) **Nonperformance or Nonpayment.** In the event Windsor or any successor thereto defaults in the obligation at items (A) through (D) above, the owner of the Verizon Parcel may perform such obligations and the owner of the Midtown Parcel will reimburse the owner of the Verizon Parcel for such amounts immediately upon receipt of a bill with reasonable back-up documentation thereof from the owner of the Verizon Parcel. If not paid within ten (10) days of demand, the sums due hereunder shall accrue interest at eighteen percent (18%) and constitute a lien against the Midtown Parcel with a priority of the date of this Agreement (but subject to the release provision for the Residential Redevelopment Tracts contained in Article IX (A)).

(F) In consideration of the Verizon expense contributions which burden the owner of the Midtown Parcel and the Midtown Parcel, the owner of the Verizon Parcel hereby assigns to the Owner of the Midtown Tract the right to enforce against Cellco, the payment obligations of Cellco for tax contributions under Section 6.1 of the Verizon Lease and HVAC and cooled air contributions under Section 8.4 of the Verizon Lease; provided that the Midtown Parcel owner shall not enforce such obligations against Cellco if the payments are made instead by the owner of the Verizon Parcel.

## **ARTICLE XVI**

### **MISCELLANEOUS PROVISIONS**

(A) **Modification and Termination.** Except as set forth in Article X hereof, no part of this Agreement may be terminated or modified without the prior consent of the owner of any affected Parcel; provided however, in the event the proposed modification has no material affect on a particular Parcel, then such Parcel owner's consent shall not be required.

(B) **No Creation of Agency or Partnership.** This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Parcels or their tenants or licensees.

(C) **No Waiver.** No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

(D) **Partial invalidity.** Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

(E) **Notice.** All notices, demands, statements, and requests required or permitted to be given under this Agreement shall be in writing and given either by personal delivery, by recognized overnight courier service with receipt, or by certified or registered U.S. mail, return receipt requested. Notices shall be effective upon receipt; provided, however, inability to make delivery due to a changed address for which no notice was given or refusal to accept delivery shall constitute receipt for purposes hereof. In the event of a sale of any Parcel, either the owner selling such Parcel or the new owner of such Parcel shall give written notice to each of the parties of the name and address of the new owner. Until such time as any owner shall receive such a notice of the address of a new owner, the previous owner shall be deemed to be the agent for any such new owner for purposes of notices hereunder. For purposes hereof, until changed as hereinabove provided, all notices shall be given to the following addresses:

If to BRC Richland, LLC:

340 E. Paces Ferry Road  
Atlanta, Georgia 30305  
Attention: Fritz R. McPhail

If to Windsor Richland Mall, L.P.:

c/o Mrs. Angela Whichard  
3901 Lewis P. Olds  
Raleigh, NC 27612

(F) **No Other Agreement.** This Agreement contains the entire agreement between the parties and there are no other terms, expressed or implied, except as contained herein. Any

statement, representation or promise made by either party or an agent or employee thereof which is not contained herein shall be null and void.

## ARTICLE XVII

### REDEVELOPMENT AND OPTION TO PURCHASE

(A) **Redevelopment.** The owner of the Midtown Parcel desires the right to develop a portion of the Verizon Parcel now covered with surface parking and more particularly described on Exhibit "F" hereto (the "Commercial Development Tract") as a structured parking dock with a commercial development on top. The owner of the Verizon Parcel is conceptually amenable to such a concept and willing to grant to the owner of the Midtown Parcel an option to acquire the Commercial Development Tract subject to the following:

(i) The Verizon Parcel Owner shall have the right to approve the specific location and all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(ii) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(iii) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (A).

(iv) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(v) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may terminate this easement. Upon termination the Verizon Parcel Owner shall have the right to complete and be reimbursed for the same by the Midtown Parcel Owner.

(vi) The Midtown Parcel Owner shall maintain the new facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

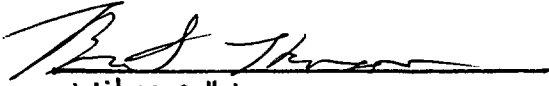
(vii) The Midtown Parcel Owner shall exercise and close the purchase right contemplated herein no later than ten (10) years after the date hereof and shall pay to the owner of the Verizon Parcel or its designee an amount equal to the greater of (i) \$1,000,000.00 or (ii) the fair market value of the Commercial Development Tract as determined by a mutually approved MAI appraiser.

(viii) The Midtown Parcel Owner shall provide the necessary reciprocal easements, etc., in form and substance similar to those provided herein.

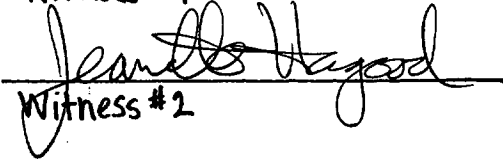
**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement under seal as of the date and year first above written.

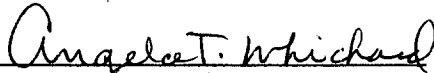
**WINDSOR RICHLAND MALL, LP,**  
a Texas limited partnership  
by: Windsor Investments, LLC  
General Partner



Witness #1



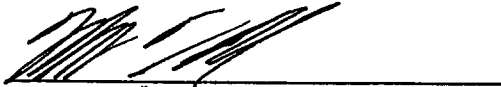
Witness #2

By:   
Name: Angela T. Whichard  
Title: Manager

[COMPANY SEAL]

**BRC RICHLAND, LLC,**  
a Georgia limited liability company

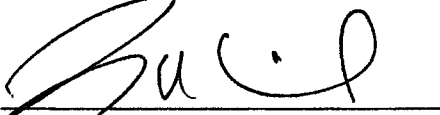
by: Blue Ridge Capital, LLC,  
its Manager



Witness #1



Witness #2

By:   
Name: Fritz R. McPhail  
Title: Manager

[COMPANY SEAL]

**IN WITNESS WHEREOF**, the parties have executed this Agreement under seal as of the date and year first above written.

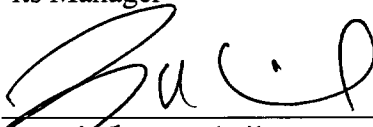
**WINDSOR RICHLAND MALL, LP,**  
a Texas limited partnership  
by: Windsor Investments, LLC  
General Partner

By: \_\_\_\_\_  
Name: Angela T. Whichard  
Title: Manager

[COMPANY SEAL]

**BRC RICHLAND, LLC,**  
a Georgia limited liability company

by: Blue Ridge Capital, LLC,  
its Manager

By:  \_\_\_\_\_  
Name: Fritz R. McPhail  
Title: Manager

[COMPANY SEAL]

  
\_\_\_\_\_  
Witness #1

  
\_\_\_\_\_  
Witness #2

**ACKNOWLEDGMENTS**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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

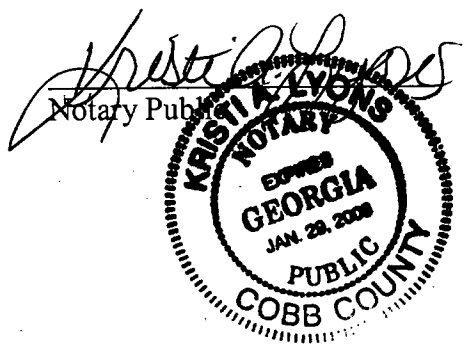
My Commission Expires:  
\_\_\_\_\_

STATE OF Georgia  
COUNTY OF Fulton

Before me, Kristi A. Lyons, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Atlanta, GA, this 7th day of September, 2005.

My Commission Expires:  
1/29/08



**ACKNOWLEDGMENTS**

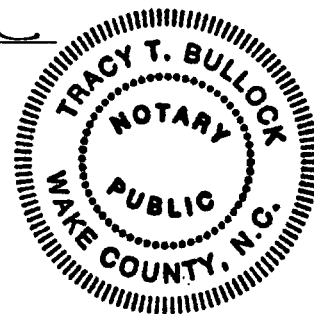
STATE OF North Carolina  
COUNTY OF Wake

Before me, Tracy T. Bullock, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Wake County, N.C., this 7 day of September, 2005.

Tracy T. Bullock  
Notary Public

My Commission Expires:  
11.28.2009



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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

My Commission Expires:  
\_\_\_\_\_

### Schedule of Exhibits

Exhibit A	Shopping Mall Parcel Legal Description
Exhibit B	Verizon Parcel Legal Description
Exhibit C	TGIF Parcel Legal Description
Exhibit D	Bank Parcel Legal Description
Exhibit E	Site Plan
Exhibit F	Commercial Development Tract
Exhibit G	Residential Development Tracts

**EXHIBIT "A"****LEGAL DESCRIPTION  
SHOPPING MALL PARCEL**

That certain tract of land, with improvements thereon, situate, in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on ALTA/ACSM Land Title Survey prepared for JTL Capital, LLC by Steadman & Associates, Inc. dated October 3, 2002, revised December 13, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 739 at page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 16) where the subject property corners with property of Colt Site 12 Inc. a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: in a curve to the right having a radius of 141.03 feet, an arc distance of 38.64 feet, the chord of which runs S06°00'05"W - 38.52 feet to a rebar; S76°30'04"E - 29.01 feet to an "X" in concrete; S24°20'15"E - 66.01 feet to a PK nail; S20°58'56"W - 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S49°48'51"E - 22.06 feet to a PK nail; S27°51'15"E - 103.05 feet to a rebar; S28°34'06"E - 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S48°47'02"E - 34.53 feet to a rebar; S28°43'30"E - 131.12 feet to a rebar; S21°53'30"E - 101.50 feet to a rebar; S31°13'04"E - 149.11 feet to a rebar; S31°45'00"E - 19.48 feet to a rebar; S40°50'56"E - 84.66 feet to a PK nail; S40°56'04"E - 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S42°18'17"W - 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N59°24'55"W - 186.52 feet to a rebar; N64°17'05"W - 51.76 feet to an open top; S03°25'35"E - 104.94 feet to an open top; thence turning and running along Brookwood Court S85°00'43"W - 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N04°44'57"W - 120.00 feet to an open top; N53°20'55"W - 66.63 feet to an open top; S63°51'41"W - 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N26°02'32"W - 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N26°28'42"W - 65.03 feet to a rebar; N26°29'46"W - 64.72 feet to a calculated point in concrete; S63°33'42"W - 150.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N25°26'03"W - 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N52°37'33"W - 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S87°56'06"W - 76.67 feet to a rebar; S63°34'32"W - 250.47 feet to an open top; thence turning and running along McArthur Avenue N26°18'28"W - 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula R. Bunt S63°46'47"W - 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N26°38'48"W - 102.35 feet to an open top; N26°31'13"W - 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder and Nancy P. Reeder N25°58'44"W - 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder and Nancy P. Reeder and long properties of C. H. Reeder and Nancy P. Reeder, Robert G. Cook and Robin D. Anderon,

George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz and Martha Diaz N26°15'04"W – 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N63°38'18"E – 52.16 feet to an open top; N76°42'51"W – 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tablas N25°58'03"W – 103.51 feet to a rebar; thence turning and continuing along property of Lorraine M. Tablas S63°34'24"W – 53.87 feet to a rebar; thence turning and running along property of Bruckner Associates A Partnership as follows: N26°38'33"W – 87.35 feet to a rebar; S68°31'11"W – 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A.S.C. Partnership N26°31'33"W – 79.43 feet to an open top; thence turning and running along Forest Drive N68°21'02"E – 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S09°42'05"E – 31.88 feet to a PK nail; in a curve to the left having a radius of 100.00 feet, an arc distance of 84.59 feet, the chord of which runs S35°10'53"E – 82.09 feet to a PK nail; S58°09'49"E – 36.04 feet to a rebar; N44°44'46"E – 164.97 feet to a magnetic nail; N36°34'36"W – 59.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N68°16'41"E – 594.92 feet to a rebar; in a curve to the right having a radius of 92.93 feet, an arc distance of 44.96 feet, the chord of which runs N81°57'26"E – 44.52 feet to a rebar; N09°27'43"E – 23.49 feet to an "X" cut in concrete; N69°11'44"E – 140.34 feet to a rebar; S46°09'12"E – 29.02 feet to a rebar; in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N60°56'39"E – 54.54 feet to a rebar; N78°48'08"E – 17.00 feet to a calculated point in grate; thence turning and running along property of Colt Site 12 Inc. as follows: S16°47'13"E – 165.96 feet to a rebar; N77°22'02"E – 169.17 feet to the Point of Beginning.

**EXHIBIT "B"**

**LEGAL DESCRIPTION  
VERIZON PARCEL**

All that certain piece, parcel or tract of land with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina; the same being shown as 9.391 acres on a Boundary Survey of Richland Mall Verizon Wireless for Windsor Richland Mall, Limited Partnership by B. P. Barber & Associates, Inc. dated April 4, 2005, revised April 16, 2005, last revised June 7, 2005 and recorded in the Office of the Register of Deeds for Richland County on June 14, 2005 in Book 1063 at page 652.