

LEASE PURCHASE OPTION AGREEMENT

This Lease Purchase Option Agreement is made on December 1, 2006 between Hilltop Properties, LLC. (Hereinafter referred to as the "Seller/Lessor") and Robert E. Kirby, Jr. and wife Melissa R. Kirby (hereinafter referred to as the "Buyers/Lessees").

WHEREAS, Seller/ Lessor is the owner in fee simple (subject to a first mortgage in the approximate amount of \$200,000.00) of certain real property being, lying and situated in Shelby County, Alabama, with the following descriptions:

The residential house and the 10+/- acres on which it is situated together with all fixtures, appliances, amenities, hot tub, satellite equipment, outbuildings, pumps and other necessary items currently present on the property (hereinafter referred to as the "residential house and acreage"); and, the "Kennel Facility" including all buildings, runs, fencing, HVAC, and all other fixtures and amenities connected and/or used therewith.

The street address of the property is: 1724 Alston Farms Road, Columbiana, AL 35051

WHEREAS, Seller/Lessor and Buyer/Lessee have together executed the Residential Lease agreement attached hereto as Exhibit "A", the subject of which is the aforementioned Property (the "Residential Lease").

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller/Lessor hereby grants to Buyer/Lessee an exclusive option to purchase the aforementioned "Property." The parties hereto hereby agree as follows:

1. **OPTION TERM.** The option to purchase period commences on December 1, 2006 and expires at 11:59 PM, November 30, 2007. In the event Buyer/Lessee exercise their option to extend the Residential Lease term beyond November 30, 2007 as set forth in Exhibit "A", the option to purchase shall accordingly be extended to the last date of the term of the Residential Lease as extended.

2. **NOTICE REQUIRED TO EXERCISE OPTION.** To exercise the Option to Purchase, the Buyer/Lessee must deliver to the Seller/Lessor written notice of Buyer/Lessees' intent to purchase. In addition, the written notice must specify a reasonable closing date no later than six (6) months after the date of the notice of intent. The closing date must occur before the expiration date of the Lease Agreement and any extensions thereto, or prior to the date of the expiration of this Option to Purchase Agreement designated in paragraph 1, whichever occurs later.

3. **OPTION CONSIDERATION.** As consideration for this Option to Purchase Agreement, the Buyer/Lessee shall pay the Seller/Lessor a non-refundable fee of **\$200.00**. This fee shall be paid to Seller/Lessor on or before **December 1, 2006**.

4. **PURCHASE PRICE.** The total purchase price for the Property is **\$249,000.00**. Provided that the Buyer/Lessee timely executes the option to purchase, is not in default of the Residential Lease Agreement, and closes the conveyance of the Property, the Seller/Lessor shall credit as "equity payments" and accumulated equity towards the purchase price of the property at closing a sum equal to **25%** of each monthly lease payment made by Buyer/Lessee, plus the **\$2,000.00** security deposit payable pursuant to the Residential Lease made part of this Agreement by

reference and attachment. Buyer/Lessee shall receive no "equity payment" credit for the Option fee of \$200.00.

5. ADDITIONAL PAYMENTS. Provided that the Buyer/Lessee is not in default of the Residential Lease Agreement, Buyer/Lessee may at their option, make additional "equity payments" in addition to the monthly lease payment. Such additional payments will be credited to the Buyer/Lessee's accumulated equity toward purchase of the property provided that the Buyer/Lessee timely executes their option to purchase, is not in default of the Residential Lease Agreement, and closes the conveyance of the Property. Such additional payments shall be so designated upon delivery to the Seller/Lessor.

6. EXCLUSIVITY OF OPTION. This Option to Purchase Agreement is exclusive and non-assignable and exists solely for the benefit of the named parties above. Should Buyer/Lessee attempt to assign, convey, delegate, or transfer this option to purchase without the Seller/Lessor's express written permission, any such attempt shall be deemed null and void.

7. CLOSING AND SETTLEMENT. When Buyer/Lessee exercise their option to purchase pursuant to the terms of this agreement, Seller/Lessor shall determine the title company at which settlement shall occur and shall inform Buyer/Lessee of this location in writing. Buyer/Lessee agrees that closing costs in their entirety, including any points, fees, and other charges required by any third-party lender, shall be the sole responsibility of Buyer/Lessee. The only expense related to closing costs apportioned to Seller/Lessor shall be the pro-rated share of the property taxes due at the time of closing, for which Seller/Lessor is solely responsible.

8. FINANCING AVAILABILITY. SELLER/LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE AVAILABILITY OF FINANCING REGARDING THIS OPTION TO PURCHASE. BUYER/LESSEE IS SOLELY RESPONSIBLE FOR OBTAINING FINANCING IN ORDER TO EXERCISE THIS OPTION.

9. FINANCING DISCLAIMER. The parties acknowledge that it is impossible to predict the availability of obtaining financing towards the purchase of this Property. Obtaining financing shall not be held as a condition of performance of this Option to Purchase Agreement. The parties further agree that this Option to Purchase Agreement is not entered into in reliance upon any representation or warranty made by either party.

10. REMEDIES UPON DEFAULT BY BUYER/LESSEE. If Buyer/Lessee defaults under this Option to Purchase Agreement or the Residential Lease Agreement, then in addition to any other remedies available to Seller/Lessor at law or in equity, Seller/Lessor may terminate this Option to Purchase by giving written notice of the termination. If terminated, the Buyer/Lessee shall lose entitlement to any refund of rent or option consideration, including any and all "equity payments" made or accumulated. For this Option to Purchase Agreement to be enforceable and effective, the Buyer/Lessee must comply with all terms and conditions of the Residential Lease Agreement.

11. COMMISSION. No real estate commissions or any other commissions shall be paid in connection with this transaction.

12. RECORDING OF AGREEMENT. Buyer/Lessee may, at their option, record this Option to Purchase Agreement on the Public Records of any public office with jurisdiction over the property.

13. LIENS AND ENCUMBRANCES. Seller/Lessor warrants and represents that there are no liens against the property except the first mortgage in the approximate amount of \$200,000.00. Seller/Lessor warrants and represents that said mortgage payments will be paid timely during the term of this Option Agreement and the term of the Residential Lease. Seller/Lessor further warrants and represents that said mortgage and/or any future other liens or encumbrances can

and will be fully satisfied for an amount less than or equal to the total purchase price less the accumulated "equity payments" made by Buyer/Lessee, at the time Buyer/Lessee exercises their option to purchase the property.

14. REMEDIES UPON DEFAULT BY SELLER/LESSOR. In the event of default or breach by Seller/Lessor in any provision herein, or any default or breach of any term of the Residential Lease made part of this Agreement, Buyer/Lessee may at their option, terminate this Option and the Residential Lease without further obligation. In such a case, Seller/Lessor shall refund to Buyer/Lessee any and all "equity payments" and "accumulated equity" made or acquired by Buyer/Lessee. Seller/Lessor shall also reimburse Buyer/Lessee for any and all improvements made to the property during the term of the Residential Lease. Said amount may be calculated as the actual costs of the improvements or the amount of increase in value, whichever is greater at Buyer/Lessee's option. Buyer/Lessee will also be entitled to incidental and consequential damages suffered by Buyer/Lessee as the result of such breach or default.

15. ACKNOWLEDGMENTS. The parties are executing this Option to Purchase Agreement voluntarily and without any duress or undue influence. The parties have carefully read this Option to Purchase Agreement and have asked any questions needed to understand its terms, consequences, and binding effect and fully understand them and have been given an executed copy. The parties have sought the advice of an attorney of their respective choice if so desired prior to signing this Option to Purchase Agreement.

16. TIMING. Time is of the essence in this Option to Purchase Agreement.

17. GOVERNING LAW AND VENUE. This Option to Purchase Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Alabama. The parties further agree that the venue for any and all disputes related to this Option to Purchase shall be Shelby County, Alabama.

18. OPTION TO PURCHASE CONTROLLING. In the event a conflict arises between the terms and conditions of the Residential Lease Agreement and the Option to Purchase Agreement, the Option to Purchase Agreement shall control.

19. ENTIRE AGREEMENT; MODIFICATION. This document, together with the Residential Lease Agreement attached hereto as Exhibit "A", sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between the parties. No modification of or amendment to this Option to Purchase Agreement, nor any waiver of any rights under this Option to Purchase Agreement, will be effective unless in writing signed by the party to be charged.

Executed on this, the 16th day of November, 2006

SELLER/LESSOR:

Hilltop Properties, LLC. by:

Sign: Brian A. Hill Print: Brian A. Hill MEMBER

BUYER/LESSEE:

Robert E. Kirby, Jr. and Melissa R. Kirby



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Sign: [Signature] Print: Robert E. Kirby, Jr.

BUYER/LESSEE:

Sign: [Signature] Print: Melissa R. Kirby

Exhibit A



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RESIDENTIAL LEASE

1. This lease is made between Hilltop Properties, LLC., hereinafter called Lessor, and Robert E. Kirby, Jr. and Melissa R. Kirby, hereinafter called Lessees.

2. Lessees hereby lease from Lessor the Real Property (*hereinafter referred to as "the property"*) situated near the City of Columbiana, County of Shelby, and State of Alabama, described as:

The residential house and the 10+/- acres on which it is situated together with all fixtures, appliances, amenities, hot tub, satellite equipment, outbuildings, pumps and other necessary items currently present on the property (*hereinafter referred to as the "residential house and acreage"*); and, the "Kennel Facility" including all buildings, runs, fencing, HVAC, and all other fixtures and amenities connected and/or used therewith.

The street address of the property is: 1724 Alston Farms Road, Columbiana, AL 35051

3. **Term and Rent.** Lessor leases the above property for a term of One (1) year, commencing on December 1, 2006 and terminating on November 30, 2007, or sooner as provided herein, at the total monthly rental rate of \$2,000.00.

The first rent payment shall be due on December 1, 2006. Each rent payment thereafter is due and payable on the first day of each month during the term of this. All rental payments shall be made to Lessor, at an address specified by Lessor.

4. **Use.** Lessees are granted quiet enjoyment, use and occupancy of the property for the purpose of:

A. The residential house and all acreage not directly related to the kennel facility shall be used as Lessee's primary residence and for any and all purposes commonly associated therewith.

B. The kennel facility shall be used to house, raise, board, breed and train dogs.

The premises shall be used for no other purpose. Lessor represents and warrants that the premises may lawfully be used for such purposes.

5. **Care and Maintenance of Premises.** Lessees accept the premises "**AS IS**", with no repairs required of the Lessor under this lease. Lessees shall, at their own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment



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upon the premises, and shall surrender the same at termination hereof, in as good of condition as received, normal wear and tear excepted. Lessees shall be responsible for all repairs required to the specific items listed here in.

6. **Alterations and Improvements to the Property** Lessor acknowledges that Lessees intend to begin immediately with updates, remodeling, repairs, and/or otherwise make improvements with the design, intent and purpose of increasing the appeal, comfort and value of the Property during the term of this lease. Any and all such improvements shall inure to the benefit of the Lessor unless and until Lessees exercise their option to purchase the property pursuant to the "Lease Purchase Option Agreement" simultaneously executed herewith. None of the improvements or resulting increase in property value resulting therefrom shall in anyway affect, change or increase the sales price stated within the "Lease Purchase Option Agreement" simultaneously executed herewith and made a part of this lease agreement by reference thereto. (*"Lease Purchase Option Agreement" attached hereto as Exhibit "A"*)

7. **Ordinances and Statutes** Lessees shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force or which may hereafter be in force, pertaining to the property, occasioned by or affecting the use thereof by Lessee. Lessor warrants and represents that the intended use of the property by Lessees as stated above complies with all municipal, state and federal authorities now in force.

8. **Assignment and Subletting** Lessees shall not assign this lease or sublet any portion of the property without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may be terminated.

9. **Utilities** All applications and connections for necessary utility services on the demised property shall be made in the name of Lessees only, and Lessees shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services.

10. **Entry and Inspection** Lessees shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purposes of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the premises thereafter.

11. **Possession** If Lessor is unable to deliver possession of the property at the commencement hereof, Lessees shall not be liable for any rent until possession is delivered. Lessees may terminate this lease if possession is not delivered within **Fifteen (15)** days of the commencement of the term hereof.

12. **Indemnification of Lessor** Lessor shall not be liable for any damage or injury to Lessees, or any other person, or to any property, occurring on the demised property or

any part thereof, and Lessees agrees to hold Lessor harmless from any claim for damages, no matter how caused.

13. **Insurance** Unless and until Lessees exercise their option to purchase the property as set forth in the "Lease Purchase Option Agreement" simultaneously executed herewith and made a part of this lease agreement by reference thereto ("*Lease Purchase Option Agreement*" attached hereto as Exhibit "A"), Lessor having the insurable interest in the property, shall maintain a standard and customary Homeowner's Hazard Insurance Policy covering the property for damage due to common perils such as but not limited to: Fire, storms, windstorm, lightning, flood, and, vandalism and theft. Said coverage shall be of satisfactory minimum coverage to repair or replace any and all portions of the property so damaged. Should such damage occur during the term of this lease, Lessor agrees to cooperate with and assist Lessees in filing and pursuing any resulting claims against said policy for their mutual benefit.

Unless and until Lessees exercise their option to purchase the property as set forth in the "Lease Purchase Option Agreement" simultaneously executed herewith and made a part of this lease agreement by reference thereto ("*Lease Purchase Option Agreement*" attached hereto as Exhibit "A"), Lessees shall maintain a standard and customary Renter's Insurance Policy covering the property and contents to the mutual benefit of Lessor and Lessees to the extent allowable under such policies.

14. **Eminent Domain** If the property or any part thereof materially affecting Lessees' use of the property shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any accumulated balances designated as part of Lessees' "equity payments" pursuant to "Lease Purchase Option Agreement", shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessees. Lessees shall not be entitled to any part of the award for such taking beyond an apportioned balance of their accumulated equity, but Lessees may file a claim for any taking of fixtures and improvements made and/or owned by Lessees, and for moving expenses.

15. **Destruction of Premises** In the event of a partial or complete destruction of the property during the term hereof, from any cause, Lessor and Lessees shall cooperate forthwith to file and pursue any and all insurance claims in order to repair the same. If insurance coverage is in place and covers said loss, the loss shall not terminate any obligations under this lease.

16. **Lessor's Remedies on Default** If Lessees default in the payment of rent, or default in the performance of any of the other covenants or conditions hereof, Lessees shall be in default. Lessor may then give Lessees notice of such default and if Lessees do not cure any such default within Fifteen (15) days after the giving of such notice (or if such default is other than failure to pay rents and is of such a nature that it cannot be completely cured within such period, if Lessee does not commence such curing within Fifteen (15) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than Fifteen (15)



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days' notice to Lessees. On the date specified in such notice the term of this lease shall terminate if said default has not been cured by Lessees, and Lessees shall then quit and surrender the premises to Lessor, but Lessees shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessees or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

17. **Security Deposit** Lessees agree to pay a "security deposit" of \$2,000.00 receipt of which is hereby acknowledged. When Lessees exercise their option to purchase the property as set forth in the "Lease Purchase Option Agreement" simultaneously executed herewith and made a part of this lease agreement by reference thereto (*"Lease Purchase Option Agreement" attached hereto as Exhibit "A"*), said security deposit shall be an "equity payment" added to Lessees' accumulated equity and subtracted from the purchase price of the property.

18. **Property Tax.** Unless and until Lessees exercise their option to purchase the property as set forth in the "Lease Purchase Option Agreement" simultaneously executed herewith and made a part of this lease agreement by reference thereto (*"Lease Purchase Option Agreement" attached hereto as Exhibit "A"*), Lessor shall pay timely any all property taxes related to the property.

19. **Attorney's Fees** In case suit should be brought for recovery of the property or for any sum due hereunder, or because of any act which may arise out of Lessees possession of the property, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.

20. **Notices** Any notice which either party may, or is required to give, shall be given by mailing same, postage prepaid, to Lessees at the premises, or Lessor at the address to where monthly rent payments are made, or at such other places as may be designated by the parties from time to time.

21. **Heirs, Assigns, Successors** This lease and the attached "Lease Purchase Option Agreement" is binding upon and inures to the benefit of the heirs, assignees, purchasers and successors in interest to the parties.

22. **Option to renew** Provided that Lessees are not in default in the performance of this lease, Lessees shall have the option to renew the lease for an additional term of ONE YEARS (1-YEAR) commencing at the expiration of the initial lease term. All of the terms and conditions of the lease and the "Lease Purchase Option Agreement" shall apply during the renewal term except that the monthly rent shall be the sum of \$2,250.00. The option shall be exercised by written notice given to Lessor not less than THIRTY (30) days prior to the expiration of the initial lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire.

23. **Subordination** This lease is and shall be subordinated to all existing and future liens and encumbrances against the property. Lessor represents and warrants that the

only such lien against the property is that first mortgage in the approximate amount of \$200,000.00. Lessor further represents and warrants that all payments on said mortgage shall be paid timely by Lessor and that no additional liens or encumbrances will be placed against the property during the term of this residential lease and the "Lease Purchase Option Agreement" simultaneously executed herewith and made a part of this lease agreement by reference thereto ("*Lease Purchase Option Agreement*" attached hereto as Exhibit "A").

24. Entire Agreement The foregoing lease together with all exhibits hereto including the "Lease Purchase Option Agreement" simultaneously executed herewith and made a part of this lease agreement by reference thereto ("*Lease Purchase Option Agreement*" attached hereto as Exhibit "A"), constitute the entire agreement between the parties and may be modified only in a writing signed by both parties. Exhibits "A" and "B" have been made a part of this lease before the parties' execution hereof.

Signed this 18th day of November, 2006

Lessor: Brian Hill
As Authorized agent of Hilltop Properties, LLC.

Lessor: Brian Hill
~~K.V. Hill~~
Brian A. Hill MEMBER

Lessee: Robert E. Kirby, Jr.

Lessee: Melissa R. Kirby
Melissa R. Kirby

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Loan Number: 7007000996

Date: SEPTEMBER 3, 2004

Property Address: 270 REDDELL ACRES, COLUMBIANA, ALABAMA 35051

EXHIBIT "A"

LEGAL DESCRIPTION

A part of Lot 8, according to the survey of Beeswax Estates, as recorded in Map Book 10, Page 29, in the Probate Office of Shelby County, Alabama, being further described as follows:

A parcel of land in the Southeast Quarter of the Northwest Quarter of Section 17, Township 21 South, Range 1 East, being a part of the same land described in a deed to James and Nancy Reddell, recorded in Real Book 341, at Page 65, of the Real Property Records of Shelby County, Alabama, said parcel of land being more particularly described as follows: Commencing at the Northwest corner of the Southeast Quarter of the Northwest Quarter of said Section 17; thence South 89 degrees 59 minutes 16 seconds East along the North line of said sixteenth Section, a distance of 31.98 feet to a point; thence South 00 degrees 08 minutes 31 seconds East a distance of 665.67 feet to a point; thence South 89 degrees 57 minutes 07 seconds East a distance of 223.26 feet to the point of beginning; thence South 89 degrees 57 minutes 07 seconds East a distance of 674.28 feet to a point; thence South 00 degrees 02 minutes 53 seconds West a distance of 646.23 feet to a point; thence North 89 degrees 54 minutes 57 seconds West a distance of 674.28 feet to a point; thence North 00 degrees 02 minutes 53 seconds East a distance of 645.81 feet to the point of beginning.

ALSO, a 30-foot easement more particularly described as follows:

Commencing at the Northwest corner of the Southeast Quarter of the Northwest Quarter of said Section 17; thence South 89 degrees 59 minutes 16 seconds East along the North line of said sixteenth Section a distance of 31.98 feet to a point; thence South 00 degrees 08 minutes 31 seconds East a distance of 665.67 feet to a point; thence South 89 degrees 57 minutes 07 seconds East a distance of 223.26 feet to a point; thence South 00 degrees 02 minutes 53 seconds West a distance of 30.00 feet, to a point; thence North 89 degrees 57 minutes 07 seconds West a distance of 255.25 feet to a point on the West line of said sixteenth Section; thence North 00 degrees 08 minutes 31 seconds West a distance of 695.65 feet to the point of beginning.

ALSO, a non-exclusive right of way for an access road 20 feet in width for the purpose of ingress and egress which is described as follows:

From the Northwest corner of the Southeast 1/4 of the Northwest 1/4, Section 17, Township 21 South, Range 1 East, run East for a distance of 10 feet along the North line of said 1/4-1/4 section to the point of beginning of the centerline of said right-of-way and extend said centerline North to Alston Farm Road.

All in Shelby County, Alabama.

A.P.N. # : 58-20-4-17-0-000-005