

33 71309  
Jeff 22<sup>00</sup>  
Shelby 32<sup>00</sup>

**AGREEMENT NOT TO CONVEY OR ENCUMBER (REAL PROPERTY)**

**THIS AGREEMENT NOT TO CONVEY OR ENCUMBER (REAL PROPERTY)** ("this Agreement") is entered into on June 25, 2001 by **WESLEY L. BURNHAM, JR.**, an individual ("Burnham") and **NALL PARTNERSHIP, LTD.**, an Alabama limited partnership (the "Partnership," and collectively with Burnham, the "Owner") and **NATIONAL BANK OF COMMERCE OF BIRMINGHAM**, a national banking association (the "Lender").

**Recitals**

A. The Lender is making a \$1,200,000 term loan (the "Loan") to J. Wallace Nall, Jr. ("Nall") and Burnham (collectively, the "Borrower"), which Loan will be evidenced by a certain Master Note - Commercial Loans dated of even date herewith in the principal amount of the Loan executed by the Borrower in favor of the Lender (the "Note").

B. In consideration of the benefits to be derived by the Owner from the Loan, and to induce the Lender to make the Loan to the Borrower, the Owner has agreed not to encumber or convey its interests in any of the real estate described in Exhibit A attached hereto and improvements thereto (the "Property") and to execute and deliver this Agreement to the Lender.

**Agreement**

NOW, THEREFORE, in consideration of the foregoing recitals, and in further consideration of the making of the Loan by the Lender to the Borrower, the Owner covenants and agrees with the Lender as follows:

1. **Representations and Warranties.** The Owner represents and warrants to the Lender that the Owner is the owner of the Property and that the Property is free and clear of any mortgage, deed of trust, security deed, security agreement, financing statement, pledge, security interest, lien, or charge whatsoever (hereinafter collectively sometimes called "Liens"), other than the permitted liens listed on Exhibit B attached hereto (the "Permitted Liens").

2. **No Lien or Transfer.** From the date hereof until payment in full of the Loan and the termination of this Agreement by the Lender in writing, the Owner will not, whether directly or indirectly or voluntarily or involuntarily, without the Lender's express, written consent:

(a) Incur, create, assume or suffer to exist any Liens with respect to any of the Property, or any legal, beneficial or equitable interest therein other than the Permitted Liens.

(b) (i) Except for that certain Lease dated January 20, 1966 by and between See Land Corporation and Altadena Valley Golf Club, Inc., as lessor, and Altadena Valley Golf and Country Club, as lessee, (as subsequently amended and assigned, the "Altadena Lease"), lease for any period longer than six months, or sell, grant, convey, assign or otherwise transfer, by operation of law or otherwise, (ii) permit to be the subject of any transaction described in clause (i) above, (iii) enter into an agreement for any transaction described in clause (i) above with respect to, or (iv) grant an option which or take any action which pursuant to the terms of any agreement to which the Owner is a party may result in any transaction described in clause (i) above with respect to, any of the Property, or any legal, beneficial or equitable interest therein (the foregoing, collectively or severally, called "Transfer").

Any person or legal representative of the Owner to whom the Owner's interest in the Property or any Lien thereon passes, by operation of law or otherwise, shall be bound by the provisions of this Agreement. The provisions of this Agreement shall apply to each and every such Lien or Transfer for all or any portion of the Property or any legal or equitable interest therein, regardless of whether or not the Lender has consented to, or waived by its action or inaction its rights hereunder with respect to any previous Lien or Transfer of all or any portion of the Property or any legal, equitable or beneficial interest therein.

3. **Severability.** If all or any portion of this Agreement shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, and such provision shall be limited and construed in and only in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein.

4. **Notice.**

(a) **Methods.** Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, the Owner or the Lender must (except as otherwise expressly provided in this Agreement) be in writing and be delivered by one of the following methods: by personal delivery at the hand delivery address specified below, by first-class, registered or certified mail, postage prepaid, addressed as specified below, or if facsimile transmission facilities for such party are identified below or pursuant to a separate written notice from such party, sent by facsimile transmission to the number specified below or in such notice.

(b) **Addresses.** The hand delivery address, mailing address and (if applicable) facsimile transmission number for receipt of notice or other documents by such parties are as follows:

(1) If to the Owner:

c/o Mr. Bob Deich  
119 Euclid Avenue  
Birmingham, AL 35213-2906

(2) If to the Lender, at:

National Bank of Commerce of Birmingham  
1927 First Avenue North  
Birmingham, Alabama 35203  
Attention: Mr. Stephen F. Vickery

Any of such parties may change the address for receiving any such notice or other document by giving notice of the change to the other parties named in this Section.

(c) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, director, partner or other legal representative of the party) at the address specified pursuant to this Section or, if sent by mail, five business days after such notice or document is deposited in the United States mail, addressed as provided above.

(d) Five business days' written notice to the Owner as provided above shall constitute reasonable notification to the Owner when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five business days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

5. **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Alabama without regard to principles of conflicts of laws.

6. **Sole Discretion of Lender.** Whenever the Lender's judgment, consent or approval is required hereunder for any matter, or the Lender shall have an option or election hereunder, such judgment, the decision whether or not to consent to or approve the same, or the exercise of such option or election shall be in the sole discretion of the Lender.

7. **Provisions as to Covenants and Agreements.** All of the Owner's covenants and agreements hereunder shall run with the land and time is of the essence with respect thereto.

8. **Matters to be in Writing.** This Agreement cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

9. **Construction of Provisions.** This Agreement is subject to the rules of construction set forth in the Credit Agreement.



10. **Successors and Assigns.** The provisions hereof shall be binding upon the Owner and the heirs, representatives, successors and permitted assigns of the Owner, including the successors in interest of the Owner in and to all or any part of the Property, and shall inure to the benefit of the Lender and its successors, legal representatives, substitutes and assigns.

11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned has executed this Agreement on the date first set forth above.

**NALL PARTNERSHIP, LTD.**

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

J. Wallace Nall, Jr., its General Partner

\_\_\_\_\_  
Wesley L. Burnham, Jr.

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned authority, a Notary Public in and for said County and said State, hereby certify that J. Wallace Nall, Jr., whose name as general partner of Nall Partnership, Ltd., an Alabama limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this the day that, being informed of the contents of said instrument, he, as such general partner and with full authority, executed the same voluntarily for and as the act of said limited partnership.

Given under my hand and official seal this the 25<sup>th</sup> day of June, 2001.

Judith D. Imbelle  
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: May 9, 2005  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

[AFFIX SEAL]

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

STATE OF ~~ALABAMA~~ Florida )  
COUNTY OF Bay )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that <sup>PERSONALLY</sup> Wesley L. Burnham, Jr., whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 26<sup>th</sup> day of June, 2001.



Barbara L. Weekes  
Notary Public

[AFFIX SEAL]

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

This instrument was prepared by:  
Stephen W. Stallcup  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2618  
(205) 254-1000

EXHIBIT "A"

TRACT B

A parcel of land located in the NE 1/4 of Section 4, Township 19 South, Range 2 West, and the NW 1/4 of the NW 1/4 of Section 3, Township 19 South, Range 2 West, all in Shelby County, Alabama, more particularly described as follows: Begin at the NE corner of Section 4, Township 19 South, Range 2 West; thence in a westerly direction, along the north line of said Section 4, a distance of 1588.12 feet; thence 48 degrees 49 minutes 45 seconds left, in a southwesterly direction, a distance of 236.84 feet; thence 3 degrees 11 minutes 48 seconds left, in a southwesterly direction, a distance of 508.95 feet; thence 2 degrees 15 minutes 12 seconds left, in a southwesterly direction, a distance of 412.0 feet; thence 82 degrees 57 minutes right, in a northwesterly direction, a distance of 79.0 feet; thence 30 degrees 51 minutes left, in a westerly direction, a distance of 201.0 feet; thence 90 degrees right, in a northerly direction a distance of 258.0 feet; thence 37 degrees 57 minutes right, in a northeasterly direction, a distance of 207.0 feet; thence 6 degrees 11 minutes 29 seconds left, in a northeasterly direction, a distance of 379.33 feet; thence 11 degrees 35 minutes 29 seconds right, in a northeasterly direction, a distance of 170.11 feet to the intersection with the north line of said Section 4; thence 131 degrees 10 minutes 15 seconds left, in a westerly direction along north line of said Section 4 to the intersection with the southeasterly right of way line of Acton Road; thence in a southwesterly direction along said right of way line to the intersection with the west line of the NE 1/4 of said Section 4; thence 33 degrees 37 minutes 45 seconds left, in a southerly direction along said west line of said Section 4, a distance of 1366.15 feet; thence 112 degrees 21 minutes 45 seconds left, in a northeasterly direction, a distance of 494.18 feet; thence 12 degrees 05 minutes 15 seconds right, in a northeasterly direction, a distance of 683.44 feet; thence 11 degrees 49 minutes 45 seconds right, in a northeasterly direction, a distance of 773.80 feet; thence 3 degrees 55 minutes 15 seconds left, in a northeasterly direction, a distance of 585.62 feet; thence 49 degrees 44 minutes 45 seconds left, in a northeasterly direction, a distance of 134.22 feet to the SW corner of Lot 39 of River Estates, as recorded in Map Book 4, Page 27 in the office of the Judge of Probate in Shelby County, Alabama; thence 112 degrees 53 minutes 30 seconds left, in a southwesterly direction, a distance of 203.96 feet; thence 145 degrees 53 minutes 30 seconds right, in a northeasterly direction, a distance of 345.0 feet to a point in the westerly line of said Lot 39; thence 33 degrees left, in a northeasterly direction, along the westerly line of said Lot 39, a distance of 300.0 feet to the NW Corner of said Lot 39, said point being in the southwesterly line of River Estates Road; thence 73 degrees 30 minutes left, in a northwesterly direction along said southwesterly line of River Estates Road, a distance of 03.49 feet to the intersection with the north line of the NW 1/4 of the NW 1/4 of Section 3, Township 19 South, Range 2 West; thence 31 degrees 26 minutes left, in a westerly direction along the north line of said 1/4 - 1/4 Section, a distance of 417.20 feet to the Point of Beginning, containing 78.8 acres, more or less.

TRACT C

A parcel of land located in the South 1/2 of the SE 1/4 of Section 33, Township 18 South, Range 2 West, and the SW 1/4 of the SW 1/4 of Section 34, Township 18 South, Range 2 West, all in Jefferson County, Alabama, more particularly described as follows: Begin at the SE corner of said Section 33; thence in a westerly direction along the south line of said Section 33, a distance of 1588.12 feet; thence 41 degrees 10 minutes 15 seconds right, in a northwesterly direction, a distance of 159.10 feet; thence 94 degrees 26 minutes 22 seconds right, in a northeasterly direction, a distance of 163.65 feet; thence 94 degrees 26 minutes 22 seconds left, in a northwesterly direction, a distance of 62.01 feet; thence 71 degrees 49 minutes 10 seconds right, in a northeasterly direction, a distance of 69.25 feet to the beginning of a curve to the right, having a central angle of 18 degrees 10 minutes 50 seconds and a Radius of 600.0 feet; thence in a northeasterly direction along said curve, a distance of 190.39 feet to end of curve; thence in a northeasterly direction, a distance of 97.0 feet; thence 90 degrees right, in a southeasterly direction, a distance of 218.43 feet; thence 90 degrees left, in a northeasterly direction, a distance of 264.98 feet; thence 15 degrees 31 minutes left, in a northeasterly direction, a distance of 331.28 feet; thence 67 degrees 21 minutes 45 seconds left, in a northwesterly direction, a distance of 345.73 feet; thence 91 degrees 56 minutes 35 seconds left, in a southwesterly direction, a distance of 629.60 feet; thence 16 degrees 53 minutes 14 seconds left, in a southwesterly direction, a distance of 499.50 feet; thence 11 degrees 42 minutes 54 seconds right, in a southwesterly direction, a distance of 398.89



EXHIBIT "A" - CONTINUED

TRACT C - CONTINUED

feet to the intersection with the south line of said Section 33, said point being 494.09 feet east of the SW corner of the SE 1/4 of said Section 33; thence 48 degrees 49 minutes 45 seconds right, in a westerly direction along said south line of said section 33 to the intersection with the southeasterly right of way line of Acton Road; thence in a northeasterly and easterly direction along said right of way line until it intersects the southwesterly right of way line of River Estates Road as shown on plat of River Estates and recorded in Map Book 53, Page 55 in the office of the Judge of Probate in Jefferson County, Alabama; thence in a southeasterly direction along said right of way of River Estates Road to the intersection with the south line of the SW 1/4 of the SW 1/4 of Section 34, Township 18 South, Range 2 West; thence 148 degrees 34 minutes right, in a westerly direction along the south line of said 1/4 - 1/4 Section, a distance of 417.20 feet to the Point of Beginning, EXCEPT the following 50 foot wide road right of way located in the SW 1/4 of the SE 1/4 of said Section 33; Commence at the SW corner of said SW 1/4 of SE 1/4; thence in an easterly direction, along the south line of said 1/4 - 1/4 section, a distance of 494.09 feet; thence 48 degrees 49 minutes 45 seconds left, in a northeasterly direction, a distance of 398.89 feet to the Point of Beginning of herein described 50 foot wide road right of way, said point being the P.I. of a curve to the left, having a central angle of 35 degrees, and a Tangent of 90.0 feet; thence 75 degrees 28 minutes 45 seconds left, in a northwesterly direction along the tangent extended of said curve, a distance of 90.0 feet to the end of said curve; thence in a northwesterly direction along the center line of said 50 foot wide road right of way to the intersection with the southeasterly right of way of Acton Road, said point being end of herein described right of way. The above described tracts of land contains 33.2 acres, more or less.

TRACT D

A parcel of land located in the S 1/2 of SE 1/4 of Section 33, Township 18 South Range 2 West, more particularly described as follows: Commence at the southwest corner of the SE 1/4 of Section 33, Township 18 South Range 2 West, thence in an Easterly direction along the south line of said 1/4 section a distance of 494.09 feet, thence 48° 49' 45" left in a northeasterly direction a distance of 398.89 feet, thence 11° 42' 54" left in a northeasterly direction a distance of 499.50 feet, to the point of beginning, thence 16° 53' 14" right in a northeasterly direction a distance of 629.60 feet, thence 91° 36' 55" right in a southeasterly direction a distance of 345.73 feet, thence 67° 21' 45" right in a southwesterly direction a distance of 331.28 feet, thence 15° 31' right in a southwesterly direction a distance of 264.98 feet, thence 90° right in a northwesterly direction a distance of 488.43 feet, to the point of beginning, containing 6 acres more or less, and being situated in Jefferson County, Alabama.

Inst # 2001-54393

12/12/2001-54393  
09:32 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
DOH NEL