



ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment"), dated as of the 7th day of March, 2003, is by **SCHILLING INVESTMENTS, LLC**, an Alabama Limited Liability Company (hereinafter called the "Borrower"), Mortgagor, whose address is 1032 26th Street South, Birmingham, Alabama 35205, Attn: William Dennis Schilling, in favor of **FIRST COMMERCIAL BANK**, a State Bank (hereinafter called "Lender"), Mortgagee, whose address is 800 Shades Creek Parkway, Birmingham, Alabama 35209, Attn: B. Boozer Downs.

I. RECITALS

This Assignment is made as additional security for a loan by Lender to Borrower in the principal amount of One Million Two Hundred Eight Thousand and No/100 Dollars (\$1,208,000.00) (the "Loan"). The Loan is evidenced by a Promissory Note of even date herewith executed and delivered by Borrower to Lender in said amount (as the same may hereafter be extended, renewed, modified or amended, the "Note"). The Loan is secured by the real property more particularly described on Exhibit "A" attached hereto and the improvements located thereat (collectively, the "Property").

II. GRANTING CLAUSE

In consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration and to secure the payment of the Note and any and all renewals, extensions, modifications, and replacements thereof, and to assure performance of the agreements contained herein and in the Loan Documents, Borrower hereby assigns to Lender (the fullest extent assignable), Borrower's right, title and interest (if any) in:

(a) Any and all Lease Agreements entered into between the Borrower, as lessor, and various parties, as lessee, (the "Leases"), copies of which will be provided to Lender upon execution, together with any other oral and written leases and other agreements for the use or occupancy made or agreed to by, any person or entity (including, without limitation of the foregoing, Borrower and Lender under the powers granted herein) and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to allow any part of the Property, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases");

(b) The rents, issues and profits and any other payments by any and all lessees under the Leases in addition to rent (collectively the "Rents") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

(c) Any and all moneys, awards or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

(d) All rights, powers, privileges, options and other benefits (collectively the "Rights") of Borrower under the Leases, upon default by Borrower hereunder, including without limitation of the foregoing:

(i) the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions

thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

(ii) the right to make all waivers and agreements, including waivers of obligations of lessees;

(iii) the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;

(iv) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(v) the right to do any and all other things whatsoever which Borrower is or may become entitled to under the Leases;

(vi) the right to exercise any option required or permitted; and

and Borrower authorizes Lender:

(vii) to manage the Property and let and relet the Property, or any part thereof according to Lender's own discretion;

(viii) to prosecute or defend any suits in connection with the Property in the name of any or all of Lender or Borrower as it may consider desirable;

(ix) to enforce or take any other action in connection with the Leases in the name of any or all of Lender or Borrower;

(x) to make such repairs to the Property as Lender may deem reasonably advisable; and

(xi) to do anything in or about the Property that Lender may deem reasonably advisable or that the Borrower has the right or power to do.

TO HAVE AND TO HOLD unto Lender, its successors and assigns, forever, subject to and upon the terms set forth herein.

Although this instrument constitutes a present assignment of the foregoing Leases, Rights, Rents, Guaranties, Damages, interests and privileges, Borrower shall have the right and license to collect and use all rentals due under the Leases, and subject to the covenants and restrictions on Borrower contained in Section III and the other paragraphs of this instrument, to exercise the rights and privileges herein, provided, herein, that such license shall be revoked during the pendency of an Event of Default (as herein defined).

III. COVENANTS

3.1 **No Other Assignment.** Borrower warrants, represents, and covenants that it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the rents due or to become due thereunder, that there has been no previous and, without Lender's prior written consent as to form and substance, Borrower will permit no future assignment (as collateral or otherwise) of the Borrower's right, title, and interest in any of the Leases, that the Leases are in full force and effect in accordance with their terms and have not been altered, modified, or amended in any manner whatsoever, except as otherwise disclosed to Lender, that, to the best of Borrower's knowledge, the lessees are not in default under the Leases and the best of Borrower's knowledge as of the date hereof, have no defenses, setoffs, or counterclaim against the lessor under the Leases, that no rent reserved in the Leases has been assigned or anticipated, and that no rent for any period subsequent to the date hereof has been collected for more than one (1) month

in advance of the time when the said rent becomes or would become due under the terms of the Leases except for security deposits and except as otherwise disclosed in writing to Lender by Borrower.

3.2 **Management.** At all times until this Assignment is released, or until the assignment granted hereby is exercised by Lender, and at all times thereafter during which Lender is not in actual or constructive possession of the Property, Borrower shall use all reasonable effort to cause the Property to be managed in accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Borrower shall not, within the exercise of all reasonable effort, permit any of the Rents to be collected in advance, except that monthly rent due and payable under the Leases may be collected for each current month in advance. Except as otherwise permitted in the Loan Agreement (if applicable), Borrower shall not terminate or alter, modify, amend, or change in any material manner any of the terms of any of the Leases or the Guaranties, or give any consent, concession, or waiver under any of the Leases, or exercise any option available to the lessor under the Leases in the event of casualty damage or condemnation affecting the Property, or accept the surrender thereof or consent to any assignment or subletting under any of the Leases, or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any or all of the Leases or of any interest therein so as to effect directly or indirectly, promptly or remotely, a merger of the estates and rights of, or a termination or elimination of, the obligations of lessees thereunder, without the prior written consent of the Lender, which consent will not be unreasonably withheld or delayed. Borrower shall not make any other assignment of any interest in the Leases or the Rents accruing from such Leases or from the Property, or subordinate any of the Leases or any security deed, mortgage, or other encumbrance, or permit (within the exercise of all reasonable effort), consent, or agree to such subordination without the prior written consent of the Lender, which consent will not be unreasonably withheld. Subject to Borrower's sound business judgment exercised in good faith, Borrower shall cause prompt action, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder to be commenced against any delinquent or defaulting lessee as soon as reasonably necessary to protect such lessor's interest or immediately upon written request from Lender, and in the event Lender reasonably requests that such a specific action be taken, to use all reasonable efforts to cause such action to be taken promptly. Borrower shall, but only at the discretion of Lender, give any consent of lessor under any of the Leases, or exercise any option available to lessor under any of the Leases in the event of casualty or condemnation affecting the Property. Borrower shall execute and deliver, at the reasonable written request of Lender, all such further assurances and assignments as Lender from time to time shall require.

3.3 **Execution of Leases.** During the term of the Loan, Borrower shall not permit any Leases to be made hereafter of all or any portion of the Property except with Lender's prior written consent.

3.4 **Notice of Lessor's Default.** Borrower shall cause notice to be given to Lender of any notice of default by the lessor under any of the Leases, which default is of a nature which would permit such lessee to terminate such lessee's lease, promptly upon the receipt of notice of such default, but in all events in sufficient time to afford to Lender an opportunity to cure any such default prior to the lessee under the subject lease having any right to terminate the lease by reason of such default.

3.5 **Lender to be Creditor of Lessee.** To the extent permitted by law, Lender shall be deemed to be the creditor of each lessee in the Leases with respect of any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such lessee (without obligation on the part of Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein). Borrower hereby assigns to Lender any and all Damages and any and all money received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with Lender to receive such Damages and monies and hold them in escrow for the purposes of applying Damages or any money received by Lender as such creditor in payment of the principal and interest installments secured by or to be paid under the Loan next falling due. To the extent permitted by law, Borrower hereby appoints Lender as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award or payment.

IV. DEFAULTS AND REMEDIES

4.1 **Defaults.** The occurrence of an Event of Default under the Loan Agreement (if applicable) or any of the other Loan Documents shall constitute an Event of Default hereunder.

4.2 **Exercise of This Assignment of Leases and Rents.**

(a) Lender may exercise the assignment hereby granted upon the occurrence and during the continuation of any Event of Default and pursue its rights to collect the Rents or manage the Property, or both, and otherwise exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Lender and without waiving such Event of Default.

(b) In the event Lender elects to invoke any of its rights hereunder, and thereafter for any reason relinquishes to the Borrower such rights, this Assignment shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Lender, from time to time upon the occurrence of any Event of Default under this Assignment, which such Event of Default is continuing shall have all the rights granted hereby.

4.3 **Nature of Remedies.** No delay or omission on the part of Lender in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Lender under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the other Loan Documents. The said remedies shall be cumulative and concurrent, may be pursued separately, successively or together against Borrower or the Property, or either of them, at the sole discretion of Lender and may be exercised as often as occasion therefor shall arise.

4.4 **Application of Rents.** Lender shall have the power to apply the Rents and Damages, in such order as lender may reasonably determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note to the payment of the Loan Documents, including without limitation the payment of all advances and reasonable expenses incurred by Lender under the Mortgage and all reasonable expenses for the care and management of the Property, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting rents, and the reasonable expenses and fees of all attorneys, agents, and servants, which expenses Lender may reasonably deem to be necessary to exercise the powers granted to the Lender hereunder. The receipt by Lender of any Rents pursuant to this Assignment following an Event of Default and the exercise of any remedies provided for in the Note or the other Loan Documents shall not cure such Event of Default or affect or prejudice the exercise of such remedies.

4.5 **Limitation of Lender's Obligations.** Lender's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment. Lender shall not be liable for uncollected rents or for any claim for damages or set-offs arising out of Lender's management of the Property other than for damages arising from Lender's gross negligence or willful misconduct. Lender shall not be liable to any lessee under the Leases for the return of any security deposit made under any lease of any portion of the Property unless Lender shall have received such security deposit from the lessor or such lessee. Lender shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Lender a mortgagee in possession of the Property or any part thereof.

4.6 **Reimbursement.** Borrower shall reimburse, indemnify, and hold harmless Lender for and from any and all reasonable expenses, losses, damages, and liabilities which Lender may incur by reason of this Assignment, except for any such caused by Lender's gross negligence or willful misconduct, any of the Leases, or reasonable expenses, losses, damages, and liabilities incurred in exercising any of the rights granted in this Assignment other than for Lender's gross negligence or willful misconduct. Any and all amount

due to Lender under this Section 4.6 shall be immediately due and payable following written notice to Borrower, and shall be added to the principal amount of the Note and secured by this Assignment and the other Loan Documents.

4.7 **Authorization to Lessees.** Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Lender upon written demand from Lender stating that an Event of Default has occurred and is continuing under this Assignment without inquiry as to whether any such Event of Default has occurred or whether Lender is rightfully entitled to such rent.

V. MISCELLANEOUS

5.1 **Modification of Loan Terms.** If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, or if the Loan is renewed, modified, or replaced, or if any security for the Loan is released, Borrower and any other parties now or hereafter liable therefor or interested in the Property shall be held to consent to such extensions, renewals, modifications, replacements, and releases, and their liability and the lien hereof and of the other Loan Documents shall not be released and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Lender.

5.2 **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon the respective successors and assigns of Borrower and Lender and all persons or entities (including owners and lessees) which may hereafter obtain any interest in the Property.

5.3 **Notices.** Whenever notice may appropriately be given under this Assignment, such notice shall be given in accordance with the provisions for notices as set forth in the Mortgage and Security Agreement of even date herewith.

5.4 **Severability.** If any term, restriction or covenant of this Assignment is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction, or covenant to any other persons or circumstances shall remain unaffected to the extent permitted by Law.

5.5 **Termination.** The recording of a satisfaction of the Mortgage executed by Borrower to Lender as security for the Loan by Lender shall terminate this Assignment.

5.6 **Governing Law.** THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA. THE LENDER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN JEFFERSON COUNTY IN THE STATE OF ALABAMA, AND THE BORROWER AGREES THAT THIS ASSIGNMENT SHALL BE DELIVERED TO AND HELD BY LENDER AT SUCH PRINCIPAL PLACE OF BUSINESS, AND THE HOLDING OF THIS ASSIGNMENT BY LENDER THEREAT SHALL CONSTITUTE SUFFICIENT MINIMUM CONTACTS OF BORROWER WITH JEFFERSON COUNTY AND THE STATE OF ALABAMA FOR THE PURPOSE OF CONFERRING JURISDICTION UPON THE FEDERAL AND STATE COURTS PRESIDING IN SUCH COUNTY AND STATE. BORROWER CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER MAY BE BROUGHT IN THE CIRCUIT COURT OF LAW; STATE OF ALABAMA, JEFFERSON COUNTY, ALABAMA OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND ASSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY SUCH COURT IN ANY ACTION OR PROCEEDING INVOLVING THIS ASSIGNMENT. NOTHING HEREIN SHALL LIMIT THE JURISDICTION OF ANY OTHER COURT.

5.7 **Waiver of Jury Trial.** BORROWER WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF

OR IN ANY WAY RELATED TO THIS ASSIGNMENT OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS ASSIGNMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS ASSIGNMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF LENDER TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER AND LENDER SHALL INSTEAD BY TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized officer on the day and year first above written.

BORROWER:

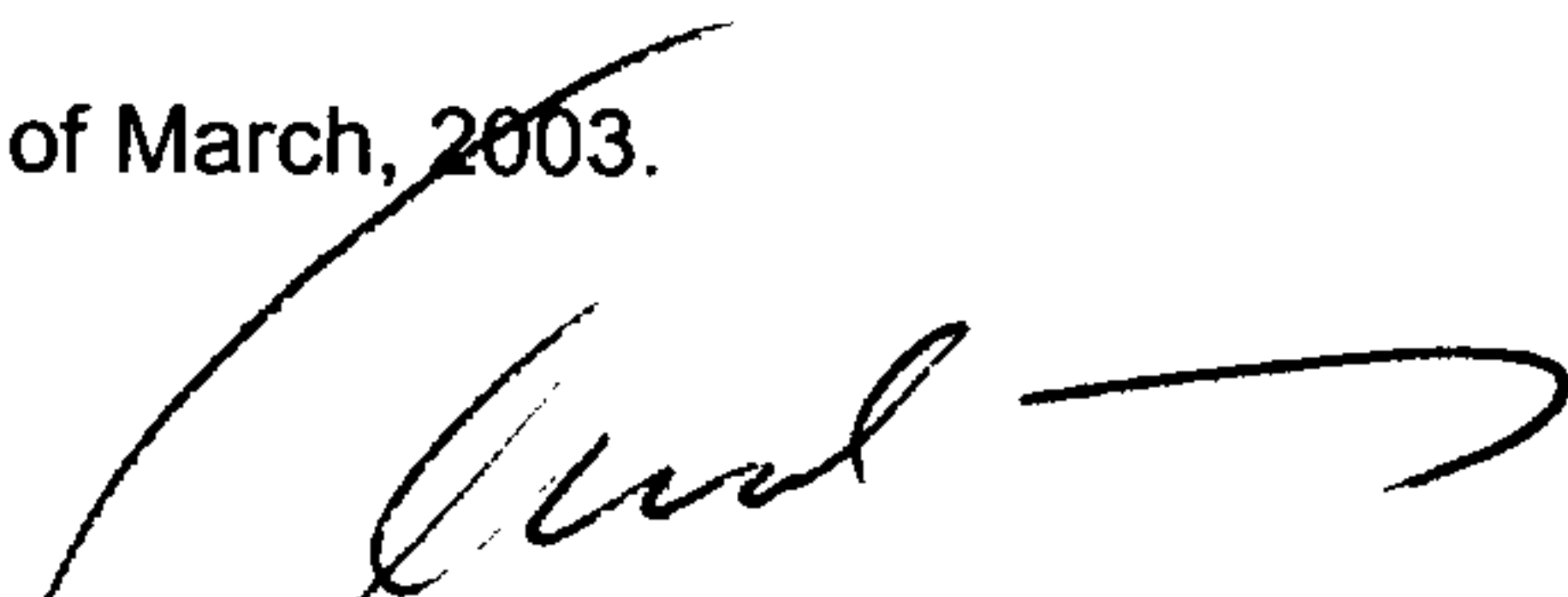
SCHILLING INVESTMENTS, LLC, an Alabama Limited Liability Company

By:  [SEAL]
William Dennis Schilling
Its Sole Member

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that William Dennis Schilling, whose name as Sole Member of **SCHILLING INVESTMENTS, LLC**, an Alabama Limited Liability Company, 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 the instrument, he as such Sole Member and with full authority, executed the same for and as the act of said limited liability company.

Given under my hand and official seal this 7th day of March, 2003.


NOTARY PUBLIC - Claude M. Moncus
My Commission Expires: 12/28/03

[NOTARIAL SEAL]

This Instrument Prepared By:

Claude McCain Moncus, Esq.
CORLEY, MONCUS & WARD, P.C.
400 Shades Creek Parkway
Suite 100
Birmingham, Alabama 35209
(205) 879-5959

EXHIBIT "A"

Parcel I:

Tract I:

The Northwest half of Lot 1, Birmingham Realty Company's Resubdivision of Block 897 of the City of Birmingham, a map of which resubdivision is recorded in Map Book 7, Page 89, in the Office of the Judge of Probate of Jefferson County, Alabama, said property being situated in the N E $\frac{1}{4}$ of N W $\frac{1}{4}$ of Section 6, Township 18, Range 2 West. Said parcel of land fronting 36.09 feet on the Western side of 26th Street and extending back Southwestward 110 feet more or less to the Eastern line of an alley.

Also a part of Lot 2, of said Block and Survey more particularly described as follows:

Begin at the Southeasterly corner of said Lot 2 and run Northwesterly along the Northeasterly line of said lot and the Southwesterly right of way line of 26th Street South and run Northwesterly along said right of way for 7.72 feet; thence 82 degrees, 57 minutes, 13 seconds left and run Southwesterly for 110.08 feet to the Southwesterly line of said lot; thence Southeasterly along said Southwesterly line for 8.92 feet to the Southwest corner of said lot; thence Northeasterly along the Southeasterly line of said lot for 110.1 feet to the point of beginning.

Tract II:

Part of Lot 2, in Block 897, according to the Birmingham Realty Company's Resurvey, as recorded in Map Book 7, Page 89, in the Office of the Judge of Probate of Jefferson County, Alabama, more particularly described as follows:

Begin at a point on the Western line of 26th Street, 72.18 feet North of the intersection for the Westerly line of said 26th Street, with the Northern line of Bay Avenue; thence at an angle to the left of 83 degrees, 36 minutes and in a Westerly direction for a distance of 110.1 feet to the Eastern line of a 15 foot alley; thence in a Northern direction along the Easterly line of said alley, for a distance of 53.7 feet; thence at an angle to the right of 98 degrees, 5 minutes and in an Easterly direction for a direction of 115.3 feet to the Western line 26th Street; thence in a Southern direction along the West line of 26th Street for a distance of 50 feet to the point of beginning.

LESS AND EXCEPT THE FOLLOWING:

A part of Lot 2 of said Block and Survey more particularly described as follows:

Begin at the Southeasterly corner of said Lot 2 and run Northwesterly along the Northeasterly line of said lot and the Southwesterly right of way line of 26th Street, South, and run Northwesterly along said right of way for 7.72 feet; thence 82 degrees, 57 minutes, 13 seconds left and run Southwesterly for 110.08 feet to the Southwesterly line of said lot; thence Southeasterly along said Southwesterly line for 8.92 feet to the Southwest corner of said lot; thence Northeasterly along the Southeasterly line of said lot for 110.1 feet to the point of beginning.

1030 and 1032 26th Street South, Birmingham, AL 35205

Parcel II:

Commencing at the NE corner of Section 9, run thence in a Westerly direction along the North line of Section 9 for a distance of 134 yards, more or less, to an iron pin set in a concrete base, which is the point of beginning of the tract of land herein described and conveyed, said point being in line with a pasture fence as now located; from said point of beginning, run in a Southerly direction along said pasture fence for a distance of 1175.5 feet, more or less, to an iron pin set in a concrete base on the North line of the right of way of the public road known as the Vincent Road; run thence in a Westerly direction along the North right of way line of said road for a distance of 1340 feet to a point; thence run 86 degrees 30 minutes to the right and run North for a distance of 1262 feet to a point on the North line of the lands described in Deed Book 168, on page 320, in the deed from George W. Smith to Clolece Williamson and Christine Williamson; run thence along the North line of said last named deed North 86 degrees 45 minutes East for a distance of 1340 feet, more or less, to the point of beginning of the tract of land herein described and conveyed; all of this land being in Section 9, Township 19 South, Range 2 East, Shelby County, Alabama.

1045 Hwy. 81, Vincent, AL 35178

Parcel III:

Lot 26, according to the Amended Map of Williamsburg Country Estates, as recorded in Map Book 117, Page 43, in the Probate Office of Jefferson County, Alabama.

3501 William and Mary Road, Birmingham, AL 35216

Parcel IV:

Part of Lot 11 and 12, Block 896, according to the Survey of the City of Birmingham, as made by the Elyton Land Company and more particularly described as follows:

Beginning on the North line of Highland Avenue in said City, at a point 50 feet West of its intersection with the West line of Adams Street and continue Westward along said line of Highland Avenue 50 feet; thence Northeastward about 140.1 feet to a point of South line of an alley which is 88.58 feet West of the West line of Adams Street; thence East along said line of said alley 44.29 feet; thence South about 131.7 feet to the point of beginning.

NOTE: This survey has never been recorded and is not available for recordation.

2326 Highland Avenue, Birmingham, AL 35205

Parcel V:

Lot 5, according to the Survey of Brookwood Forest, Third Sector, as recorded in Map Book 92, Page 46, in the Probate Office of Jefferson County, Alabama.

3500 South Brookwood Road, Birmingham, AL 35209

All being Situated in Jefferson County, Alabama.

