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#1107682

3 2 00

MORTGAGE FILING PRIVILEGE TAXES HAVE PREVIOUSLY BEEN PAID ON INDEBTEDNESS IN THE AMOUNT OF \$6,760,435.33 IN CONNECTION WITH THE RECORDATION OF THAT CERTAIN FUTURE ADVANCE MORTGAGE DESCRIBED HEREIN AND SUBSEQUENT AMENDMENTS THERETO. MORTGAGE FILING PRIVILEGE TAXES ARE NOW DUE ON AN ADDITIONAL \$715,000.00 OF INDEBTEDNESS TO BE SECURED BY THE FUTURE ADVANCE MORTGAGE, AS AMENDED BY THIS INSTRUMENT.

STATE OF ALABAMA

JEFFERSON, SHELBY
AUTAUGA AND WALKER COUNTIES

)

(2 0 0 3 0 8 / 4 2 6 5 )

### NINTH AMENDMENT TO CREDIT DOCUMENTS

THIS NINTH AMENDMENT TO CREDIT DOCUMENTS ("this Amendment") is entered into as of April 6, 2003 (the "Effective Date"), by GREENSPRINGS ASSOCIATES, INC., an Alabama corporation (the "Borrower"), and NATIONAL BANK OF COMMERCE OF BIRMINGHAM, a national banking association (the "Lender").

#### Recitals

20030620000388350 Pg 1/14 51.00 Shelby Cnty Judge of Probate, AL 06/20/2003 10:46:00 FILED/CERTIFIED

- A. The Borrower and the Lender have previously entered into that certain Credit Agreement dated September 30, 1996, as amended by (i) that certain First Amendment to Credit Documents dated October 15, 1996; (ii) that certain Second Amendment to Credit Documents dated September 10, 1997; (iii) that certain Third Amendment to Credit Documents dated July 28, 1998; (iv) that certain Fourth Amendment to Credit Documents dated September 2, 1998; (v) that certain Fifth Amendment to Credit Documents dated September 24, 1998; (vi) that certain Third Amendment to Promissory Note and Amendment to other Credit Documents dated December 3, 1998; (vii) that certain Seventh Amendment to Credit Documents dated September 22, 1999; and (viii) that certain Eighth Amendment to Credit Documents dated July 27, 2000 (as amended, the "Credit Agreement"), pursuant to which the Lender agreed to make a construction/permanent loan (the "Loan") available to the Borrower to finance the refinancing and/or acquisition, construction and development of the Project, as more particularly described in the Credit Agreement. Capitalized terms used in this Amendment and not otherwise defined herein have the respective meanings attributed thereto in said Credit Agreement.
- B. The Loan is evidenced by the Borrower's Promissory Note dated September 30, 1996, as amended by (i) that certain First Amendment to Promissory Note dated July 28, 1998; (ii) that certain Second Amendment to Promissory Note dated September 24, 1998; (iii) that certain Third Amendment to Promissory Note and Amendment to other Credit Documents dated December 3, 1998; (iv) that certain Fourth Amendment to Promissory Note dated September 22, 1999; (v) that certain Fifth Amendment to Promissory Note dated July 27, 2000; (vi) that certain Sixth Amendment to Promissory Note dated November 24, 2000; and (vii) that certain Note Modification [and] Seventh Amendment to Loan No. 3179801 dated October 24, 2002; which Promissory Note, as amended, represents indebtedness in the maximum principal amount of \$6,696,468.60 (as amended, the "Note"), which Note bears interest as provided therein and is payable in accordance with the terms thereof. As of the date hereof, the outstanding principal balance of the Loan is \$5,523,655.65.

No Tax Collected Recording Fee TOTAL

1.00 58.00 59.00 Recorded In DML BK 1839 PG 434, 06/13/2003 10:48:05 AM Rick Allison, Judge of Probate, Walker County, Alabama

To secure the Obligations and to induce the Lender to extend Credit to the Borrower under the Credit Agreement and the other Credit Documents as described therein, the Borrower and Edward J. Marino, Jr. and Anthony P. Marino (collectively, the "Guarantors") executed certain Security Documents (as the same may have been amended from time to time) more particularly described in said Credit Agreement, including, among others, (i) that certain Future Advance Mortgage dated September 30, 1996 recorded with (a) the Judge of Probate of Jefferson County, Alabama (Birmingham Division) as Instrument #9611/7127, (b) the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Instrument #9662/5027, (c) the Judge of Probate of Shelby County, Alabama as Instrument #1996/32289, (d) the Judge of Probate of Autauga County, Alabama in Real Property Volume 0447, page 0003, and (e) the Judge of Probate of Walker County, Alabama in Book 1559, page 291; as amended by that certain First Amendment to Credit Documents dated October 15, 1996 recorded with (a) the Judge of Probate of Jefferson County, Alabama (Birmingham Division) as Instrument #9613/1555, (b) the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Instrument #9662/9726, (c) the Judge of Probate of Shelby County, Alabama as Instrument #1996-37107, (d) the Judge of Probate of Autauga County, Alabama in Real Property Volume 0447, page 0057, and (e) the Judge of Probate of Walker County, Alabama in Book 1559, page 329 (the "First Amendment"); as further amended by that certain Second Amendment to Credit Documents dated September 10, 1997 recorded with (a) the Judge of Probate of Jefferson County, Alabama (Birmingham Division) as Instrument #9711/6208, (b) the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Instrument #9762/4846, (c) the Judge of Probate of Shelby County, Alabama as Instrument #1997-33251, (d) the Judge of Probate of Autauga County, Alabama in Real Property Volume 478, page 398, and (e) the Judge of Probate of Walker County, Alabama in Book 1559, page 341 (the "Second Amendment"); as further amended by that certain Third Amendment to Credit Documents dated July 28, 1998 recorded with (a) the Judge of Probate of Jefferson County, Alabama (Birmingham Division) as Instrument #9809/8413, (b) the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Instrument #9862/1102, (c) the Judge of Probate of Shelby County, Alabama as Instrument #1998-29636, (d) the Judge of Probate of Autauga County, Alabama in Real Property Volume 501, page 25, and (e) the Judge of Probate of Walker County, Alabama in Book 1596, page 518 (the "Third Amendment"); as further amended by that certain Fourth Amendment to Credit Documents dated September 2, 1998 recorded with (a) the Judge of Probate of Jefferson County, Alabama (Birmingham Division) as Instrument #9812/0774, (b) the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Instrument #9862/4996, (c) the Judge of Probate of Shelby County, Alabama as Instrument #1998-36163, (d) the Judge of Probate of Autauga County, Alabama in Real Property Volume 505, page 237, and (e) the Judge of Probate of Walker County, Alabama in Book 1600, page 413 (the "Fourth Amendment"); as further amended by that certain Fifth Amendment to Credit Documents dated September 24, 1998 recorded with (a) the Judge of Probate of Jefferson County, Alabama (Birmingham Division) as Instrument #9812/4719, (b) the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Instrument #9862/5741, (c) the Judge of Probate of Shelby County, Alabama as Instrument #1998-37538, (d) the Judge of Probate of Autauga County, Alabama in Real Property Volume 506, page 111, and (e) the Judge of Probate of Walker County, Alabama in Book 1604, page 264 (the "Fifth Amendment"); as further amended by that certain Third Amendment to Promissory Note and Amendment to Other Credit Documents dated December 3, 1998 recorded with (a) the Judge of Probate of Jefferson County, Alabama (Birmingham Division) as Instrument #9903/3346, (b) the

Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Instrument #9960/5859, (c) the Judge of Probate of Shelby County, Alabama as Instrument #1999-08941, (d) the Judge of Probate of Autauga County, Alabama in Real Property Volume 522, page 571, and (e) the Judge of Probate of Walker County, Alabama in Book 1627, page 529 (the "Sixth Amendment"); and as further amended by that certain Seventh Amendment to Credit Documents dated September 22, 1999 recorded with (a) the Judge of Probate of Jefferson County, Alabama (Birmingham Division) as Instrument #9915/7033, (b) the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Instrument #9963/5186, (c) the Judge of Probate of Shelby County, Alabama as Instrument #1999-39649, (d) the Judge of Probate of Autauga County, Alabama in Real Property Volume 546, page 19, and (e) the Judge of Probate of Walker County, Alabama in Book 1657, page 112 (the "Seventh Amendment"); and as further amended by that certain Eighth Amendment to Credit Documents dated July 27, 2000 recorded with (a) the Judge of Probate of Jefferson County, Alabama (Birmingham Division) as Instrument #200008/9043, (b) the Judge of Probate of Jefferson County, Alabama (Bessemer Division) as Instrument #200061/9258, (c) the Judge of Probate of Shelby County, Alabama as Instrument #2000-27233, (d) the Judge of Probate of Autauga County, Alabama in Real Property Volume 566, page 636, and (e) the Judge of Probate of Walker County, Alabama in Book 1683, page 578 (the "Eighth Amendment") (said Future Advance Mortgage, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment and the Eighth Amendment, the "Mortgage"); (ii) that certain Absolute Assignment of Rents and Leases dated as of September 30, 1996 duly recorded in Jefferson, Shelby, Walker and Autauga Counties, Alabama (as amended, the "Assignment of Rents and Leases"); (iii) that certain Environmental Indemnity Agreement dated as of September 30, 1996 (as amended, the "Environmental Indemnity Agreement"); and (iv) that certain Security Agreement dated as of September 30, 1996 (as amended, the "Security Agreement"). The Mortgage and the Assignment of Rents and Leases presently encumber that certain real property more particularly described on Exhibit A attached thereto.

D. The Borrower and the Guarantors have now requested the Lender to make an additional loan to the Borrower in the maximum amount of \$715,000.00, which the Lender has agreed to do upon the condition that the Borrower execute this Amendment in order to amend the Security Documents upon the terms and conditions set forth herein.

### **Agreement**

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth in this Amendment, effective as of the Effective Date, the Borrower and the Lender hereby agree as follows:

- 1. Capitalized terms used in this Amendment and not otherwise defined herein shall have the respective meanings attributed thereto in the Credit Agreement and the Security Documents.
- 2. The General Rules of Construction set forth in Section 1.1 of the Mortgage shall govern the construction and interpretation of this Amendment.

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- 3. From and after the Effective Date, all references in the Credit Documents to the defined term "Credit Documents" shall refer to the Credit Documents as amended by this Amendment.
- 4. From and after the Effective Date, the Credit Agreement is hereby amended as follows:

Section 1.2(a)(c) of the Agreement is hereby replaced in its entirety with the following:

#### SECTION 1.2 Definitions.

- (a)(c) Maturity Date means December 31, 2017, or any earlier date on which the Lender elects to accelerate the Loan because of the existence of an Event of Default.
- 5. From and after the Effective Date, the Credit Agreement is hereby further amended as follows:

The last sentence of Section 2.4 of the Credit Agreement is hereby replaced in its entirety with the following:

The Note will have a final maturity date of December 31, 2017.

6. From and after the Effective Date, the Credit Agreement is hereby further amended as follows:

Section 6.1 of the Credit Agreement is hereby replaced in its entirety with the following:

**SECTION 6.1 <u>Financial Covenants</u>**. The Borrower and Shop-a-Snak Food Mart, Inc. shall:

- (a) <u>Tangible Net Worth</u>. Not permit its Tangible Net Worth to be at any time less than \$5,000,000.00.
- (b) <u>Leverage Ratio</u>. Not permit its ratio of Total Liabilities to Tangible Net Worth to be at any time greater than 5.5 to 1.0.
- (c) <u>Debt Service Coverage Ratio</u>. With respect to any of the Shop-A-Snak locations, not permit its ratio of Net Income Available for Debt Service for any fiscal year for such location to Interest Expense and Principal Maturities for such fiscal year for such location to be less than 1.0 to 1.0.
- (d) <u>Fixed Charge Coverage Ratio</u>. Not permit its Fixed Charge Coverage Ratio for any fiscal year to be less than 1.0 to 1.0 for such fiscal year.

- (e) <u>Certain Defined Terms</u>. For purposes of this Section 6.1 the following terms are defined as follows:
- (1) <u>Debt</u> of any person means (a) all indebtedness, whether or not represented by bonds, debentures, notes or other securities, for the repayment of borrowed money, (b) all deferred indebtedness for the payment of the purchase price of property or assets purchased, (a) all capitalized lease obligations, (c) all indebtedness secured by any Lien on any property of such person, whether or not indebtedness secured thereby has been assumed, (d) all obligations with respect to any conditional sale contract or title retention agreement, (e) all indebtedness and obligations arising under acceptance facilities or in connection with surety or similar bonds, and the outstanding amount of all letters of credit issued for the account of such person, and (f) all obligations with respect to interest rate swap agreements.
- (2) <u>Fixed Charge Coverage Ratio</u> means, for any period, the ratio of (a) net income (after provision for federal and state taxes) (or the net deficit, if expenses and charges exceed revenues and other proper income credits) for such period, plus amounts that have been deducted for (i) Interest Expense, (ii) lease and rental expenses, (iii) the sum of such entity's non-cash expenses or allowances for such period (including amortization or write-down of intangible assets, depreciation, and depletion to) (b) the sum of (i) Interest Expense, (ii) Funded Debt, and (iii) lease and rental expenses.
- (3) <u>Funded Debt</u> means all Debt maturing by its terms more than one year after, or which is renewable or extendible at the option of the obligor to a date more than one year after, the date as of which Funded Debt is being determined.
- (4) Interest Expense means interest payable on Debt during the period in question.
- (5) Net Income Available for Debt Service for any period means net income (or the net deficit, if expenses and charges exceed revenues and other proper income credits) for such period, plus amounts that have been deducted for (a) depreciation, (b) amortization and (c) Interest Expense in determining net income for such period.
- (6) Tangible Net Worth means the sum of the amounts set forth on the balance sheet as shareholders' equity (including the par or stated value of all outstanding capital stock, retained earnings, additional paid-in capital, capital surplus and earned surplus), less the sum of (a) any amount of any write-up of assets, (b) goodwill, (c) patents, trademarks, copyrights, leasehold improvements not recoverable at the expiration of a lease, and deferred charges (including unamortized debt, discount and expense, organization expenses, experimental and developmental expenses, but excluding prepaid expenses), (d) any amounts at which shares of capital stock of such

person appear on the asset side of the balance sheet and (e) any amounts due from or owed by any shareholder or affiliate.

- (7) Total Liabilities means all Debt and all other items (including taxes accrued as estimated) that, in accordance with generally accepted accounting principles, would be included in determining total liabilities as shown on the liabilities side of a balance sheet.
- 7. From and after the Effective Date, the Credit Agreement is hereby further amended as follows:

Section 7.1(f) of the Agreement is hereby deleted in its entirety.

8. From and after the Effective Date, the Credit Agreement is hereby further amended as follows:

Section 8.1(b) of the Agreement is hereby replaced in its entirety with the following:

## SECTION 8.1 Notices.

(b) 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:

Borrower

By hand or mail:

Greensprings Associates, Inc.

833 Greensprings Highway

Birmingham, Alabama 35209

Attn: Mr. Edward J. Marino, Jr.

By facsimile:

(205) 942-9799

### with a copy to Borrower's Counsel

By hand or mail: Charles A.J. Beavers, Jr., Esq.

Bradley, Arant, Rose & White

One Federal Place 1819 5th Ave North

Birmingham, Alabama 35203

By facsimile:

(205) 488-6620

Lender

By hand or mail: National B

National Bank of Commerce of Birmingham

1927 First Avenue North Birmingham, Alabama 35203 Attn: Mr. Stephen F. Vickery

By facsimile:

(205) 583-3275

Any of such parties may change the address or facsimile transmission notice for receiving any such notice or other document by giving notice of the change to the other parties named in this Section 8.1.

9. From and after the Effective Date, the Credit Documents are hereby amended as follows:

Exhibit A-1 of the Credit Agreement, Exhibit B of the Mortgage and Exhibit B of the Environmental Indemnity Agreement are hereby amended to add the following to the schedule of Credit Documents: Promissory Note dated April 6, 2003 in the maximum principal amount of \$715,000.00 executed by the Borrower in favor of the Lender.

Exhibit A-1 of the Credit Agreement, Exhibit B of the Mortgage and Exhibit B of the Environmental Indemnity Agreement are hereby amended to delete the following from the schedule of Credit Documents: Guaranty Agreement dated September 30, 1996 executed by James C. Wilson, Jr. in favor of the Lender.

- 10. Simultaneously herewith, the Borrower will execute a Promissory Note in the maximum principal amount of \$715,000.00 in favor of the Lender. The parties hereby expressly agree that the indebtedness owed by the Borrower pursuant to said Promissory Note is, and shall be, secured by the Mortgage.
- 11. All other provisions of the Credit Documents that are inconsistent with this Amendment are hereby modified so as to be consistent herewith.
- 12. Except as specifically modified and amended hereby, the Credit Documents shall remain in full force and effect in accordance with their respective terms.

- by the Note shall remain in full force and effect, as modified hereby, and all of the Property described in the Mortgage and the Collateral described in the Security Documents, as amended hereby, shall remain subject to the liens, security interests and assignments of the Credit Documents as security for the indebtedness evidenced by the Note and all other indebtedness described therein; and the Borrower agrees that as to such Property and Collateral nothing contained in this Amendment shall be construed to constitute a novation of the indebtedness evidenced by the Note or to release, satisfy, discharge, terminate or otherwise affect or impair in any manner whatsoever (a) the validity or enforceability of the indebtedness evidenced by the Note; (b) the liens, security interests, assignments and conveyances effected by the Credit Documents, or the priority thereof; (c) the liability of any maker, endorser, surety, guarantor or other person that may now or hereafter be liable under or on account of the Note or the Credit Documents; or (d) any other security or instrument now or hereafter held by the Lender as security for or as evidence of any of the above-described indebtedness.
- 14. The Borrower hereby represents and warrants to the Lender that (a) all representations and warranties contained in the Credit Documents are true and correct as of the date hereof (except any such representations and warranties that are expressly limited to another date and those heretofore specifically waived, in writing, by the Lender for the specific instances and purposes set forth therein); and (b) no Event of Default nor any event that, upon notice or lapse of time or both, would constitute an Event of Default, has occurred and is continuing (except any such Event of Default that has been expressly and specifically waived, in writing, by the Lender for the specific instances and purposes set forth therein).
  - 15. The effective date of this Amendment shall be January 15, 2003.

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment or caused this Amendment to be executed in its name and on its behalf by its officer thereunto duly authorized.

	NSPRI na corpo		ASSO	CIATES,	INC.,	ar
	s: <u>/</u>	16016 610	- PK	5. de 117	· · · · · · · · · · · · · · · · · · ·	
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By:	S: 5		<u>//</u>			<del> </del>

STATE OF ALABAMA	)
COUNTY OF JEFFERSON	)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Edward J. Marino, Jr., whose name as Vice-President of Greensprings Associates, Inc., an Alabama corporation, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 6 day of April, 2003.

Notary Public

AFFIX SEAL

My commission expires: 3/4

STATE OF ALABAMA COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Stephen F. Vickery, whose name as Senior Vice President of National Bank of Commerce of Birmingham, a national banking association, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said national banking association.

Given under my hand and official seal, this the day of April, 2003

Notary Public

AFFIX SEAL

My commission expires:

My Commission Expires 8-11-2003

This Instrument Was Prepared By: Matthew W. Grill Maynard, Cooper & Gale, P.C. 1901 Sixth Avenue North, Suite 2400 Birmingham, Alabama 35203 (205) 254-1000

## Certificate Regarding Appraised Values

With respect to that certain Ninth Amendment to Credit Documents dated April 16, 2003 executed by Greensprings Associates, Inc. in favor of National Bank of Commerce of Birmingham, for purposes of determining each county's proportionate share of the mortgage filing privilege taxes, the following are the approximate appraised values and approximate relative percentages for each of the mortgaged properties:

Parcel #	County	Percentage	Portion of  Debt Secured	Martaga Tax
<u>rarour</u>	County	<u>1 CICCIItage</u>	Debt Secured	Mortgage Tax
I	Jefferson (Bessemer)	2.70	\$19,303	\$28.95
II	Shelby	8.10	\$57,910	\$86.86
III	Shelby	7.78	\$55,594	\$83.44
IV	Shelby	8.10	\$57,910	\$86.86
V	Jefferson (B'ham)	10.26	\$73,353	\$110.03
VI	Autauga	14.58	\$104,239	\$156.37
VII & XI	Walker	12.04	\$86,093	\$129.11
VIII	Jefferson (Bessemer)	1.94	\$13,898	\$20.80
IX	Jefferson (B'ham)	6.32	\$45,170	\$67.77
X	Jefferson (B'ham)	3.67	\$26,263	\$39.36
XII	Jefferson (Bessemer)	5.18	\$37,063	\$55.55
XIII	Shelby	11.02	\$78,758	\$118.18
XIV	Shelby	6.48	\$46,328	\$69.49
XV	Jefferson (Bessemer)	1.84	\$13,126	\$19.73
<u>Total</u>		<u>100%</u>	<u>\$715,000</u>	\$1,072.50

County	Mortgage Tax
Jefferson (B'ham)	\$217.16
Jefferson (Bessemer)	\$125.03
Shelby	\$444.83
Walker	\$129.11
Autauga	\$156.37
<u>Total</u>	<u>\$1,072.50</u>

STATE OF ALABAMA, JEFFERSON COUNTY I hereby certify that no mortgage tax or deed

tax has been collected on this instrument.

Judge of Probate

"NO TAX COLLECTED"

State of Alabama - Jefferson County I certify this instrument filed on:

2003 JUN 06 P.M. 15:16 Mtg. Tax Recorded and \$

and \$

Deed Tax and Fee Amt.

MICHAEL F. BOLIN, Judge of Probate



200362/0563 BESS

State of Alabama - Jefferson County I certify this instrument filed on:

2003 MAY 30 P.M. 15:23 Recorded and \$ 1,072.50

and \$

Mtg. Tax Deed Tax and Fee Amt.

32.00 32.00 Total \$ 1,104.50 MICHAEL F. BOLIN, Judge of Probate

200308/4265

# PROBATE COURT OF JEFFERSON COUNTY 110 COURTHOUSE BIRMINGHAM, ALABAMA 36263-0068 MICHAEL F. BOLIN, JUDGE 205-325-5411

I, Michael F. Bolin, Judge of	of Probate of Jefferson County,
do hereby certify that this	office collected a total tax of
\$ 129.11	on a mortgage/deed from
Greensprings Associat	es Inc. to
National Bank of	Commerce filed
on May 31, 2003	and recorded in
Volume 200308	Page 4245

Michael F. Bolin Judge of Probate

Wishart. Solin

Shelley County

# PROBATE COURT OF JEFFERSON COUNTY 110 COURTHOUSE BIRMINGHAM, ALABAMA 36263-0068 MICHAEL F. BOLIN, JUDGE 205-325-5411

I, Michael F. Bolin, Judge of Pro	obate of Jefferson County,
do hereby certify that this offic	ce collected a total tax of
\$ <u>444.83</u>	on a mortgage/deed from
Greensprings Associates	INC
National Bank of Comm	oree filed
on May 30, 2003	and recorded in
Volume 200308	Page Ualos

Michael F. Bolin Judge of Probate

Wichart Solin