


This instrument prepared by:  
Elene G. Garrison  
Burr & Forman LLP  
420 North 20<sup>th</sup> Street; Suite 3100  
Birmingham, Alabama 35203

  
20051228000667690 1/5 \$1060.00  
Shelby Cnty Judge of Probate, AL  
12/28/2005 03:37:10PM FILED/CERT

**COUNTY OF SHELBY     )**  
**STATE OF ALABAMA    )**

**MEMORANDUM OF LEASE AND GRANT OF EASEMENTS**

**THIS MEMORANDUM OF LEASE AND GRANT OF EASEMENTS** entered into as of the 27th day of April, 2005 by and between **THE BARBER COMPANIES, INC.**, an Alabama corporation ("Landlord") having a mailing address of 27 Inverness Center Parkway, Birmingham, Alabama 35242 and **TACALA, LLC**, a Delaware limited liability company ("Tenant") having a mailing address of 4268 Cahaba Heights Court, Birmingham, Alabama 35243.

**RECITALS:**

Landlord and Tenant entered into that certain lease agreement (the "Lease") dated January 1, 2005 whereby Landlord agreed to lease to Tenant, and Tenant agreed to lease from Landlord, certain real estate located in the City of Chelsea, Shelby County, Alabama.


**WITNESSETH:**

**NOW, THEREFORE**, pursuant to the provisions of the Lease, Landlord and Tenant mutually desire to execute this Memorandum of Lease in order to provide notice under the recording statutes of the State of Alabama:

1. The name of the Landlord is: The Barber Companies, Inc., an Alabama corporation.
2. The name of the Tenant is: Tacala, LLC, a Delaware limited liability company.
3. The term of the Lease commenced on January 1, 2005 and expires the last day of the month following the 240th complete month following the date this is the earlier of (i) when Tenant opens for business, or (ii) July 30, 2005. Landlord and Tenant agree to execute a letter that establishes the commencement date and rental schedule.
4. The specific legal description of the leased premises is set forth in Exhibit A attached hereto and made a part hereof.
5. The options to renew or extend the term of this lease are as follows: Tenant may extend the term of the Lease for four (4) successive periods of five (5) years each.

6. Covenant Not To Compete: Landlord agrees that except for the property that is leased to McDonald's, and so long as McDonald's is leasing said property, from the date hereof, it will not lease or sell any portion of the real property located on the north side of U.S. Highway 280 within 1,000 feet of the Premises (the "Restricted Area") to be used or occupied as a quick service Mexican restaurant with a drive-through (a "Prohibited Restaurant"), and that any deed or lease of such portion of the real property will contain a restrictive covenant prohibiting the use of such property as a Prohibited Restaurant. This restriction shall terminate upon the earlier of: (i) the end of the tenth year of the Lease; or (ii) six months after the date Tenant has ceased operating as a Taco Bell restaurant facility, subject to closure for remodeling, repair or alterations or force majeure.

7. Access Drive: Landlord also grants a non-exclusive easement during the term of this Lease and any extensions, appurtenant to the Premises, for the purpose of vehicular and pedestrian ingress and egress to and from the Premises, for the use and benefit of Tenant, its successors, assigns, licensees, suppliers and customers, over, upon, and across the property described on Exhibit B attached hereto, "Access Drive". Landlord shall be responsible for the expense of improving the Access Drive and shall coordinate construction of the Access Drive with Tenant's Contractor, and shall also be responsible for maintaining such drive using reasonable care not to interfere with Tenant's business, so long as Tenant pays the Access Drive fee pursuant to Section 2.5 of the Lease.

  
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IN WITNESS WHEREOF, the parties hereto have each caused this Memorandum of Lease to be executed, under seal, as of the date hereinabove written.

**LANDLORD:**

THE BARBER COMPANIES, INC.,  
an Alabama corporation


By: [Signature]  
Print Name: Charles M. Miller Jr.  
Its: Executive Vice President

**TENANT:**

TACALA, LLC,  
a Delaware limited liability company

By: [Signature]  
Print Name: John Figert  
Its: V.P. Development

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

  
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I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles M. Miller, Jr., whose name as Executive Vice President of **The Barber Companies, 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 the agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date. Given under my hand this 27<sup>th</sup> day of April, 2005.

[Signature]  
Notary Public  
My Commission Expires: 2008 JANUARY 12, 2008

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John Figert, whose name as Vice President of Development of **Tacala, LLC**, a Delaware limited liability company, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date. Given under my hand this 29<sup>th</sup> day of March, 2005.

[Signature]  
Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of Property**



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COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 19 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA; THENCE N 09°29'40" W FOR 2092.25 FEET TO THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 280; THENCE N 10°37'04" W FOR 270.99 FEET TO THE SOUTH RIGHT OF WAY LINE OF CHESSER DRIVE; THENCE S 77°07'37" W ALONG SAID RIGHT OF WAY FOR 150.19 FEET TO THE POINT OF BEGINNING; THENCE S 77°05'57" W ALONG SAID RIGHT OF WAY FOR 139.10 FEET THENCE S 10°42'00" E FOR 233.55 FEET; THENCE N 79°22'40" E FOR 139.00 FEET; THENCE N 10°42'00" W FOR 239.08 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED. CONTAINING 0.75 ACRES, MORE OR LESS.



**EXHIBIT B**  
**Legal Description of Access Drive**



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Shelby County, AL 12/28/2005  
State of Alabama

Deed Tax: \$1037.00

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 19 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA; THENCE N 09°29'40" W FOR 2092.25 FEET TO THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 280 TO THE POINT OF BEGINNING; THENCE S 79°22'40" W FOR 288.69 FEET; THENCE N 10°42'00" W FOR 26.00 FEET; THENCE N 79°22'40" E FOR 288.73 FEET; THENCE S 10°37'04" E FOR 26.00 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED. CONTAINING 0.09 ACRES, MORE OR LESS.