

CONTRACT OF SALE AND PURCHASE

This Contract of Sale made and entered into this 5th day of ~~May~~ ^{JUNE}, 2006 by and between W. & C. L.L.C. (hereinafter referred to as "Seller") and **ROBERT C. BARNETT**, and **CHARLES G. KESSLER** or their assigns (hereinafter referred to as "Purchasers").

W I T N E S S E T H:

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, Seller agrees to sell, and the Purchasers agrees to buy, that certain property commonly known as a Warehouse on Hwy. 11, Shelby County, Alabama and being hereinafter referred to as the "Property", as set out in Exhibit "A" attached hereto.

TOGETHER with all of the fixtures and articles of personal property, including, but not limited to, machinery and equipment, attached to or appurtenant to the property or used in connection with the operation and the maintenance of the property; however, specifically excluding therefrom any such personal property which belongs to or which is the property of tenants who are in possession of any of the offices or stores on the property. (Said fixtures and personal property and the buildings on the property being hereinafter collectively referred to as the "Premises".)

Said sale and purchase shall be on the terms and conditions as herein set out, to-wit:

1. Purchase Price and Method of Payment - The purchase price, method of payment of said Premises and the manner of payment thereof, are agreed to be correctly set forth on Exhibit "B" hereto and by reference made a part hereof.

2. Deed - On the day of closing, and upon payment of the Purchase Price as set forth in Exhibit "B", Seller shall convey title to the Property and Premises to Purchasers by General Warranty Deed, free and clear of all liens and encumbrances, except:

- a. Ad valorem taxes for the year in which closing occurs.
- b. Utilities and drainage easements which do not affect the use and occupancy of the property.
- c. Any prior reservation or conveyance of minerals of record of every kind and character, including, but not limited to oil, gas, sand and gravel in, on and under subject property.

3. Bill of Sale - At closing, Seller shall also execute and deliver to Purchasers a Bill of Sale conveying title to all personal property sold hereunder free and clear of any conditional Bill of Sale, chattel mortgage, or other security interest.

4. Taxes - All current real estate taxes and personal property taxes shall be prorated by the parties as of the date of possession. All proration shall be based upon the current year's taxes as of the date of closing. Seller shall pay all special assessments in full, in any, and all of the aforementioned taxes, if any, which are unpaid for all prior years. The municipal taxes, if any, shall be prorated in the same manner as the other ad valorem taxes.

5. Insurance - From the date of execution of this Agreement until the date of possession, Seller shall continue to keep in effect all existing insurance, and the risk of loss or damage by fire or act of God prior to consummation of this Agreement, is hereby assumed by the Seller; thereafter Purchasers shall furnish its own coverage.

6. Title Insurance - Within 10 days of the earnest money deposit, Seller shall deliver to Purchasers at Seller's expense a standard form owner's title insurance policy issued by Alabama Title Company in the amount of the purchase price insuring Purchasers against loss on account of any defect or encumbrance in the title subject to the exceptions set forth in Paragraph 2.

7. Rental and Deposits - All proceeds of any leases shall be prorated between the Seller and Purchasers as of the date of closing. The Seller shall give an accounting to the Purchasers and turn over to Purchasers at closing, all security deposits and all deposits of every kind held for the tenants of the Premises. All leases shall be assigned to purchasers at closing

8. Status Quo - The real estate and personal property herein shall be preserved in its condition existing as of the date of full execution of this instrument and be so preserved and delivered intact at the time of possession is given to Purchasers. Normal wear and tear accepted.

9. Seller's Warranties - Seller, hereby expressly represents and warrants to Purchasers that, to the best of his knowledge:

- a. There are no contracts or agreements currently in force with respect to the maintenance or management of the Premises, pest control on the Premises and servicing of the Improvements which cannot be terminated without cause at or prior to closing hereunder. Seller shall deliver and transfer all leases to the Purchasers, free of any liens or encumbrances for commissions or other payment to any third party. Seller shall also deliver said property free and clear of any management

contracts for the management and leasing of the Premises.

b. All utilities, including, without limitation, sewer, water, electricity, gas and telephone, required for the operation of the Premises, as presently operated, either enter the Premises through adjoining public streets or if they pass through adjoining land, do so in accordance with valid easements.

c. The Property is legally occupied by the above described improvement and other facilities, and approved by all governmental authorities having jurisdiction, and all approvals and permits required to operate the Premises as presently operated have been obtained and remain in effect. The present use of the Premises is in compliance with all applicable zoning ordinance and any restrictive covenants which apply to the Property.

d. There is no litigation or proceeding pending or to Seller's knowledge threatened, against Seller, or against or relating to all or any part of the Premises or any interest of Seller therein, nor does Seller know or have reasonable grounds to know of any basis for any such action.

e. Seller has no knowledge of any pending or threatened condemnation or eminent domain proceedings which would affect any of the Premises.

f. All personal property is included in this sale and shall be conveyed by Bill of Sale to Purchasers at closing, free and clear of any conditional bill of sale, chattel mortgage, security agreement, or other security interest of any nature whatsoever except for the existing mortgages.

g. At all times between the date of this contract and the date of closing, Seller agrees:

1. That Seller will manage or cause to be managed the property in substantially the same manner as it has been operated and managed, subject however, to all relevant provisions of this contract.

2. Subject to the prorations provided herein, Seller will cause to be paid all trade accounts and all costs and expenses of operations and maintenance of the property incurred prior to closing.

h. Seller warrants that at the time of the closing there will be no outstanding agreement with any management company whereby any commissions or management fee would be due as a result of the management of the shopping center complex or as a result of any of the existing tenants being in possession and remaining in possession under any existing leases.

10. This contract shall be subject to the following contingencies. In the event that any of the contingencies are not met, to be determined solely within the Purchasers' discretion, then the Purchasers shall have the option to declare this contract Null and Void.

CONTINGENCIES:

a. The Purchasers shall have the right to inspect the Premises, including the heating, air conditioning, roof, electrical, structural, all interior offices, all leases, all income and expense statements for the past two years. In the event the Purchase solely within his discretion is not satisfied as to the economic feasibility of purchasing said property then the Purchasers shall have the option to declare this contract null and void and all earnest money deposited by the Purchasers shall be returned. Said inspection and due diligence shall take place within ten (10) days from the date of the acceptance of this contract by the Seller.

11. Closing - The closing shall take place as set out in Exhibit "B" attached hereto.

12. The Seller shall cooperate with the Purchasers in effecting a 1031 Tax Free Exchange and shall execute any and documents necessary to carry out said tax free exchange.

13. Possession - Purchasers shall take possession of the Premises on closing.

14. Agent Disclosure: This listing company is: NONE
The selling company is: NONE

The listing company is (Two blocks may be checked) ☐ An agent of the seller. ☐ An agent of the buyer. ☐ An agent of both seller and buyer and is acting as a limited consensual dual agent. ☐ Assisting the ☐ buyer ☐ seller (check one or both) as a transaction broker.

The selling company is: (Two blocks may be checked) ☐ An agent of the seller. ☐ An agent of the buyer. ☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent. ☐ Assisting the ☐ buyer ☐ seller (check one or both) as a transaction broker.

15. Default - In the event of Purchasers default hereunder, Seller shall be entitled to receive and retain as Seller's absolute property all earnest money paid by Purchasers hereunder, not as a penalty, but in mitigation of the damages sustained by Seller because of such default by Purchasers (the parties hereto recognizing the impossibility of precisely ascertaining the amount of the damages to Seller in consequence of such default and hereby declaring and agreeing that said earnest money represents the reasonable damages of Seller in such event; and thereupon, the parties hereto shall be released from their respective obligations hereunder, and this Contract of Sale shall be null and void. In the event of Seller's default, the Purchasers shall have the right to enforce this agreement by all legal means, including specific performance.

16. Settlement Cost - Each party shall be responsible for their own closing costs and attorneys fees.

17. Entire Contract - This Agreement shall constitute the entire contract between the parties and may not be modified or amended except by written instrument executed by the parties.

18. Construction - This Agreement shall be construed in accordance with the laws of the State of Alabama. The titles of the paragraphs are inserted only as a matter of convenience as for reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

19. Assignment - This Agreement shall bind and insure to the benefit of the personal representatives, successors and assignees of the respective parties hereto.

20. Seller's Obligation - At closing, Seller shall deliver to Purchasers:

- a. Warranty Deed conveying merchantable title to the Property.
- b. Written assignment in form satisfactory to Purchasers of the then outstanding leases regarding the premises.

c. Bill of Sale transferring all personal property located on the Property.

d. All Certificates of Occupancy, licenses and other evidence of authority required for the operation of, the Premises.

e. Current Certificates as to Rent Roll, Leases or other commitments existing beyond the closing. Affidavits that the matters contained in this Contract or in the documents delivered to the Purchasers hereunder are true and correct and without any change between the date of the delivery and the closing unless the change has been in writing.

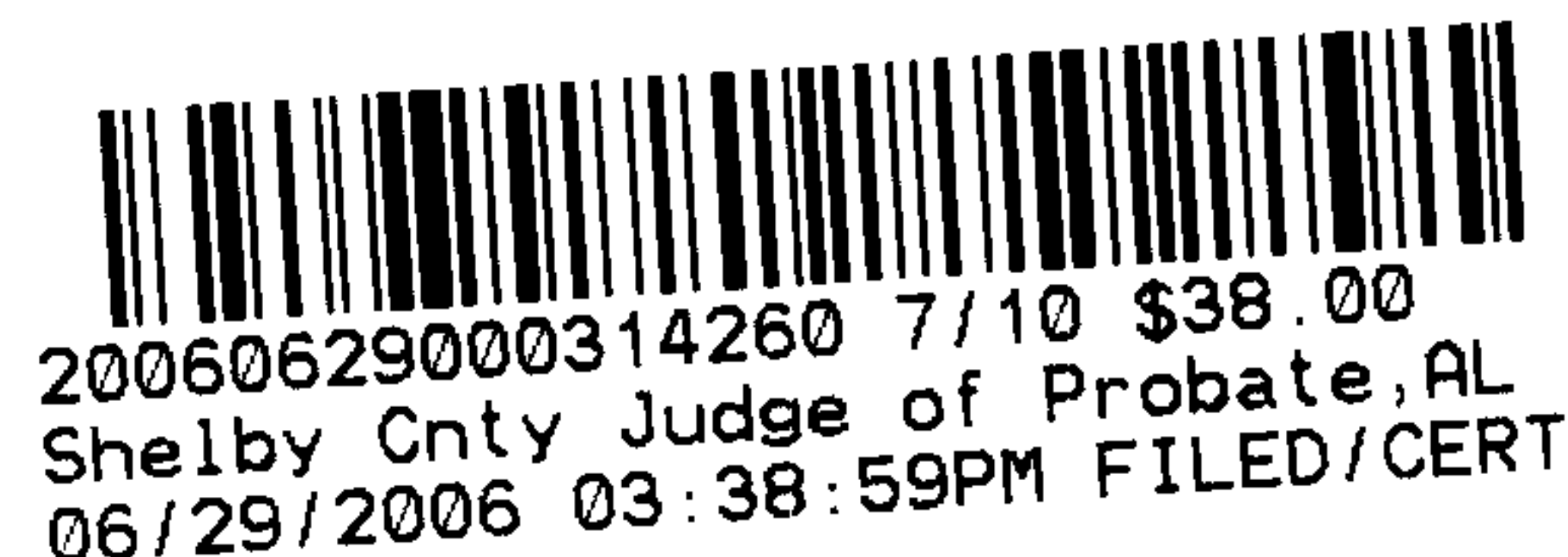
f. That prior to closing the Seller shall void and terminate any and all contracts for any maintenance, management, guard service and any and all contracts of every kind and character with any individual, firm, partnership or corporation. It being the expressed intent of this contract that the property be delivered to the Purchasers free and clear of all contracts and obligations concerning said property at the time of closing.

21. Purchasers's Obligation - At the closing, Purchasers shall:

- a. Pay the purchase price as set forth herein as adjusted;
- b. Assume the Leases;
- c. Deliver to Seller all documents to be delivered to Seller or other persons pursuant to the provisions hereof.

22. Notices - All notices, demands or requests provided for or permitted to be given pursuant to this Contract for sale must be in writing, and shall be deemed to have been properly given or served if delivered by hand or if deposited in the United States Mail, received by such party, postage prepaid, certified mail, return receipt requested, at the address of the party to be served set forth following the name of the Purchasers and the Seller hereinafter. Service of any notice or demand shall be deemed complete upon the day of actual delivery as shown by the addressees receipt. All notices shall be addressed as follows:

If to Seller	W. & C, L.L.C. C/O Kenneth Carter P. O. Box 1010 Alabaster, Alabama, 35007 Fax (205) 663-7138
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If to Purchasers:

Robert C. Barnett
2107 5th Avenue North
Suite 100
Birmingham, Alabama 35203
Fax (205) 323-8725

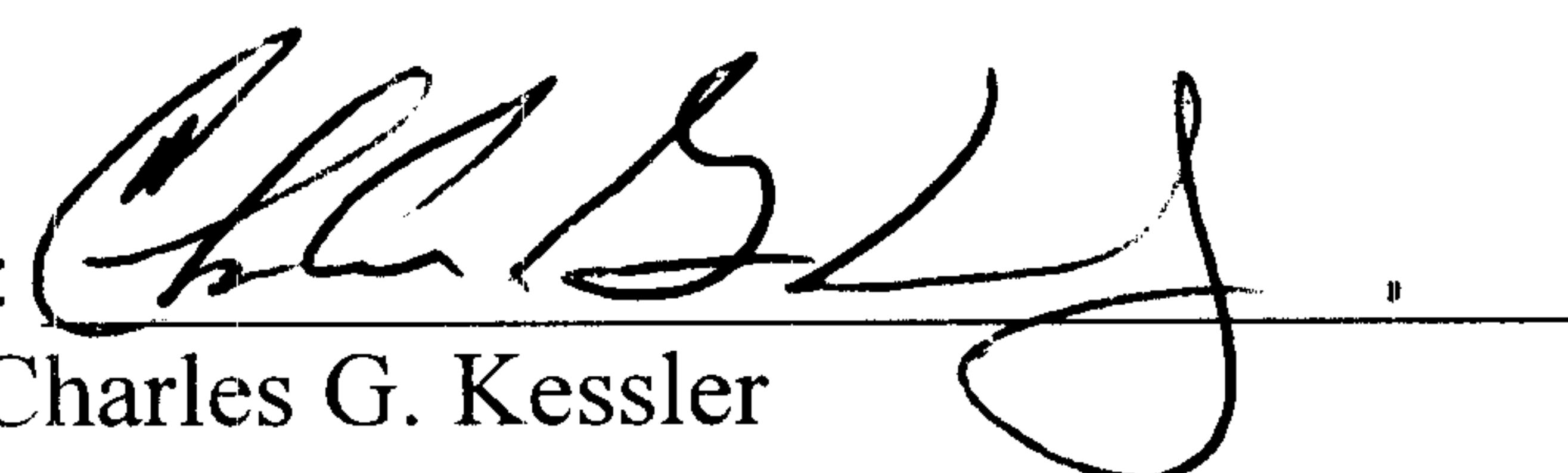
23. The Seller shall furnish to the Purchasers at the Seller's expense a survey of the premises. Said survey to be furnished after the contingencies have been met and prior to closing.

24. The Purchasers, Robert C. Barnett and Charles G. Kessler are a licensed real estate brokers in the State of Alabama.

PURCHASERS:

BY: 
Robert C. Barnett

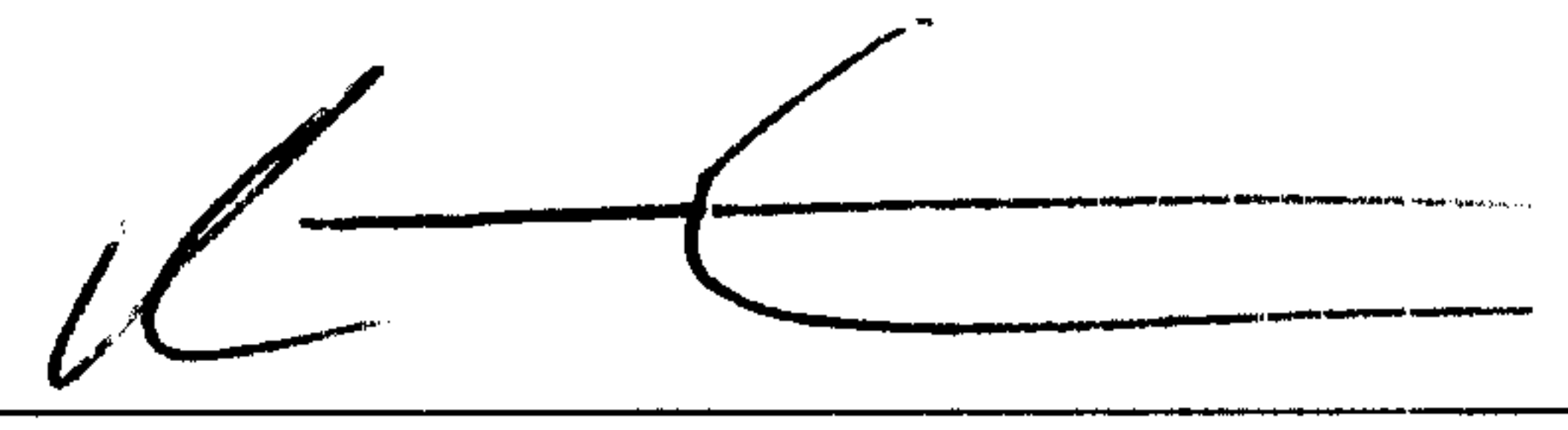
DATE: 6/5/2006

BY: 
Charles G. Kessler

DATE: 6/5/2006

SELLER:

W. & C., L.L.C.

BY: 
Kenneth Carter, Member

DATE: 6/5/2006

W. & C., L.L.C.
BY: 
Chris Williams, Member

DATE: 6/5/2006

File No. 26-35684C

Legal Description

EXHIBIT "A"

20060629000314260 8/10 \$38.00
Shelby Cnty Judge of Probate, AL
06/29/2006 03:38:59PM FILED/CERT

A parcel of land situated in the North $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, and being more particularly described as follows: Commence at the SW corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said section 36 and run North along West line of said $\frac{1}{4}$ - $\frac{1}{4}$ Section, for a distance of 447.26 ft to a point; thence left 90° and run west for a distance of 181.26 ft to a point on the Southeastern right of way of Shelby County Rd. #11; thence right 110°58'30" for a distance of 255.43 ft to a point on said right of way; thence left 90° and run Northwesterly 10.00 ft to a point on said right of way; thence right 90° and run northeasterly 122.94 ft to a point on said right of way and also being a point on a curve to the right, having a radius of 1607.04 ft and a central angle of 00°46'02" thence run northeasterly for an arc distance of 21.06 ft to a point on said right of way; thence right 90° from tangent southeasterly for 10.00 ft to a point on said right of way having a radius of 1597.04 ft and a central angle of 3°49'02" thence turn left 90 degrees to the tangent of said point on curve and run northeasterly and along arc of said right of way for an arc distance of 106.40 ft to a point on said right of way also being the southwest corner of Shelby County tax parcel 13-7-36-1-001-27.002 and also being the point of beginning of said parcel; thence run S64°27'25"E for a distance of 90.46 feet; thence run N89°29'04"E for a distance of 280.20 feet to a point on a curve having a radius of 11,334.30 feet and a delta of 02°51'00"; thence run along said curve for a distance of 563.79 feet; thence run N 56°17'34"W for a distance of 350.31 feet; thence run N60°56'33"W for a distance of 223.60 feet to a point on the Southeastern right of way of Shelby County Rd. #11; thence run N20°58'30"E for a distance of 70.00 feet; thence run N69°01'30"W for a distance of 10.00 feet; thence run N20°58'30"E for a distance of 122.94 feet to a point on a curve having a radius of 1607.04 feet and a delta of 00°45'02"; thence run along said curve for a distance of 21.05 feet; thence run S69°01'30"E for a distance of 10.00 feet to a point on a curve having a radius of 1597.04 feet and a delta of 03°49'02"; thence run along said curve for a distance of 106.40 feet to the point of beginning; said parcel containing 4.291+/- Acres of land.

JLR

CJR

WJL

6-5-06

EXHIBIT "B"

PURCHASE PRICE AND OTHER TERMS AND CONDITIONS

The purchase price shall be \$2,325,000.00 as adjusted according to the hereinafter terms and conditions. The Purchasers shall deposit with the Seller the sum of \$500,000.00 as earnest money to be applied toward the purchase price at closing or refunded to the Purchasers in the event they pay the total purchase price according to the terms and conditions of this agreement from a 1031 tax free exchange. The Seller shall have the right to use the aforesaid earnest money as he sees fit, solely at his discretion. The remaining balance of \$1,825,000.00 shall be paid in cash at closing, subject to terms and conditions of this agreement.

The Purchasers and Seller enter into the following additional terms and conditions to wit:

1. The Seller shall continue collecting the rent on the aforesaid property and Shall continue managing the property at no expense to the Purchasers.
2. The Seller shall pay the monthly installments on the underlying mortgage in the amount to wit: \$1,600,000.00 when they become due. In addition thereto the Seller shall maintain adequate fire insurance on the property and name the Purchasers as additional named insurers. The Seller shall pay all ad valorem taxes on the aforesaid property as they become due.
3. In the event the rent received from the property exceeds the monthly mortgage payments, then in that event, the purchase price shall be reduced each month by an amount equal to such ~~coverage~~ coverage. In the event the rent is insufficient to pay the monthly payments, then the purchase price shall be increased each month in an amount equal to said sum. The Seller shall provide to the Purchasers a monthly statement showing the rent received, mortgage payments made and any other expense incurred pursuant to this agreement.
4. The Seller agrees not to further encumber the aforesaid property and shall furnish to the Purchasers a monthly statement or copies of a check whereby the aforesaid monthly mortgage payments are made.
5. Prior to the deposit of the earnest money, the Seller shall furnish to the Purchasers a title policy indicating the property is vested in the Seller and is free and clear of all liens and encumbrances except the underlying first mortgage.
6. The Seller shall finish out, at their expense, the current 10,000 sq. ft. that is in the process of being rented at no cost to the Purchasers. In addition thereto the Seller shall attempt to rent and shall build out for the

Purchasers, the remaining vacant 6,750 sq. ft. with Purchasers paying for the Seller's cost thereof.

7. The Seller shall manage the aforesaid property and attempt to rent any vacant space in a reasonable and prudent manner and shall consult with the Purchasers prior to the rental rate for any vacant space the Seller is attempting to rent.
8. The Seller shall inform the Purchasers of any increase in the market value of the aforesaid property for ad valorem tax purposes. The Purchasers shall have the right to appeal said assessment for and on behalf of the Seller.
9. The Purchasers shall have the right to record a copy of the this contract in the Probate Court of Shelby County, Alabama.
10. The Purchasers anticipate this matter will close within the next one hundred and eighty (180) days. However, the Purchasers shall have one year from the date of the deposit of the \$500,000.00 earnest money to close this transaction.
11. The Seller shall not take any action that would place any lien, encumbrance, restriction, or other matters that might impede the closing of such said transaction.
12. In the event the Seller is unable to close this transaction for any reason, or violates any of the terms of this contract, then the Seller agrees to refund to the Purchasers the \$500,000.00 earnest money deposited with the execution of this contract plus interest at the rate of 8% per annum from the date the aforesaid earnest money is deposited with the Seller by the Purchasers. The Seller shall execute a mortgage to the Purchases on the property set out in Exhibit "A" as security for any violation of any of the terms and conditions of this contract.

PURCHASERS:

BY: Robert C. Barnett
Robert C. Barnett
DATE: 6/5/2006

BY: Charles G. Kessler
Charles G. Kessler
DATE: 6-5-06

SELLER:

W. & C. L.L.C.
BY: Kenneth Carter, Member
DATE: 6-5-06

W. & C. L.L.C.
BY: Chris Williams, Member
DATE: 6-5-06