

(Space Above This Line For Recording Data)

LOAN NUMBER: 900022300

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment"), is given on June 29, 2009 by Summer Properties LLC, an Alabama Limited Liability Company, a non-individual entity, whose address is P O Box 390, Montevallo, Alabama 35115 ; Fall Properties, LLC, an Alabama Limited Liability Company, a non-individual entity, whose address is 7000 Highway 25, Montevallo, Alabama 35115 ; and Winter Properties, LLC, an Alabama Limited Liability Company, a non-individual entity, whose address is 4257 Old Leeds Road, Birmingham, Alabama 35213 ("Owner") to Oakworth Capital Bank which is organized and existing under the laws of the state of Alabama, and whose address is 2100A Southbridge Parkway, Suite 445, Birmingham, Alabama 35209 ("Lender"). The Lender is, or is about to become, the holder of the following Mortgage dated June 29, 2009 in the amount of Four Hundred Eighty-one Thousand Two Hundred Thirty-nine and 18/100 Dollars (\$481,239.18) ("Mortgage") executed by Owner covering the following described property:

Address: 3661 Highway 25 South, Montevallo, Alabama 35115-0000

Legal Description: See attached Exhibit "A"

("Secured Property") which secures the following Note(s):

- Loan number 900022300 with a principal amount of \$481,239.18

and any other indebtedness of Owner to Lender, whether now or subsequently owing or to become due and no matter how created. The Secured Property has been demised by the Owner under a lease(s) which may be described as follows:

1. Assignment of Lease between Summer Properties, LLC and Winter Properties, LLC (Landlord) and Summer Classics Inc. (Tenant) dated 5/26/04.
2. Lease agreement between Summer Properties, LLC, Fall Properties, LLC and Winter Properties, LLC (Landlord) and Summer Classics Commercial Sales, LLC (Tenant) dated 6/14/06.
3. Lease agreement between Summer Properties, LLC, Fall Properties, LLC and Winter Properties, LLC (Landlord) and Summer Classics, Inc. (Tenant) dated 6/30/06.

Lender, as a condition of making the above loan(s), has required an assignment of the lease(s) and the rents, income and profits derived from the use of the Secured Property and every part thereof, as additional security for said loan(s).

In consideration of the recitals above and as additional security for the indebtedness above, Owner assigns, transfers, sets over to, and grants Lender a security interest in the lease(s) described herein and any guaranties, renewals or extensions thereof, together with any other lease(s), whether written or unwritten, entered into before





or after this Assignment and demising any part of the Secured Property, and all rents, income and profits derived from the Secured Property and any portion thereof.

**OWNER'S DUTIES; DEFAULT.** With respect to any lease(s) entered into before or after this Assignment demising any part of the Secured Property, Owner represents to and agrees with Lender that as long as any indebtedness of Owner to Lender shall remain unpaid, Owner shall not, without the written consent of Lender: (a) cancel any lease(s); (b) accept a surrender of any lease(s); (c) modify or alter any lease(s) in any way, either orally or in writing; (d) reduce the rental set forth in any lease(s); (e) consent to any assignment of the lessee's interest in any lease(s), or to any subletting thereunder; (f) collect or accept payment of rent, income or profit under any lease(s) for more than one (1) month in advance of the due date; (g) make any other assignment, pledge, encumbrance, or other disposition of any lease(s), or of the rents, income and profits derived from the use of the Secured Property; or, (h) fail to keep the Secured Property free and clear of all liens and encumbrances. Any of the above acts, if done without the written consent of Lender, shall be null and void and shall constitute a default under the aforesaid Note(s) and Mortgage and this Assignment.

**OWNER'S WARRANTIES.** Owner further covenants with and warrants to Lender that: (a) the said lease(s) are valid, presently in full force and effect and that there are no defaults now existing thereunder; and (b) Owner has not: (1) executed or granted any prior assignment, encumbrance, or security interest concerning any lease(s) or the rentals thereunder; (2) performed any acts or executed any other instruments or agreements which would limit and prevent Lender from obtaining the benefit of and exercising its rights conferred by this Assignment; (3) executed or granted any modification of any lease(s) either orally or in writing; and (c) the Secured Property and the rents, income and profit derived from the use of the Secured Property are free of liens, encumbrances, claims and setoffs.

**REMEDIES.** It is mutually agreed between Lender and Owner that until a default or breach shall occur in the performance of Owner's covenants hereunder, or any default shall occur under the Mortgage or any loan agreement between Owner and Lender pertaining to any indebtedness referred to herein, or any default shall occur in the making of any of the payments provided for in the above described Mortgage or Note, Owner may receive, collect and enjoy the rents, income and profits accruing from the Secured Property, but not more than one (1) month in advance of the due date. In the event of any such default or breach, Lender may, at its option, immediately thereafter receive and collect all rents, income and profits from the Secured Property as they come due under the lease(s) described herein and all renewals and extensions thereof, and under any other lease(s) heretofore or hereafter entered into demising any part of the Secured Property, and Lender shall thereafter continue to receive and collect all such rents, income and profits as long as such default or breach shall exist, and during the pendency of any foreclosure proceedings and throughout any applicable redemption period if there is a deficiency after foreclosure sale, and during all such periods. Lender may, but is not obligated to, apply some or all of the rents, income and profits to protect Lender's interest in the Property, including, but not limited to, payment of property taxes.

**NOTICE.** In the event of any such default or breach, Owner expressly authorizes Lender, at its option, to enter upon the Secured Property or any part thereof, by its officers, agents, or employees, for the collection of the rents, income and profits and for the operation and maintenance of the Secured Property. Owner authorizes Lender in general to perform all acts necessary for the operation and maintenance of the Secured Property in the same manner and to the same extent that the Owner might so act. After payment of all charges and expenses, including, without limitation, current and delinquent property taxes and customary operating expenses, the Lender shall credit the net amount of income received by virtue of Lender's exercise of this Assignment to any amounts due Lender under the terms and provisions of the aforesaid Note(s) and Mortgage, and in the event of any foreclosure sale, to any deficiency during any redemption period. The manner of the application of such net income and the item or items to which it shall be applied shall be within the sole discretion of the Lender, and Lender shall be accountable only for money actually received by it pursuant to this Assignment. Such entry and taking possession of the Secured Property or any part thereof by Lender, may be made by actual entry and possession or by written





notice served personally upon or sent by certified mail to the last owner of the Secured Property appearing on the records of the Lender, as the Lender may elect, and no further authorization or notice shall be required.

**WAIVER OF NOTICE. TO THE EXTENT PERMITTED BY LAW, OWNER WAIVES ANY RIGHT TO NOTICE, OTHER THAN THE NOTICE PROVIDED ABOVE, AND WAIVES ANY RIGHT TO ANY HEARING, JUDICIAL OR OTHERWISE, PRIOR TO THE LENDER EXERCISING ITS RIGHTS UNDER THIS ASSIGNMENT.**

**LENDER AS OWNER OF SECURED PROPERTY.** It is mutually agreed that nothing contained in the Remedies and Additional Remedies above shall in any way diminish, restrict, or affect any rights of Lender under the lease(s) referred to herein if Lender should become the owner of the Secured Property after the expiration of any redemption period in connection with any foreclosure proceedings.

**SUBSEQUENT LEASES.** Owner agrees to promptly inform Lender of, and to promptly transfer, assign and deliver to the Lender, any subsequent lease(s) of the Secured Property or any part thereof, and to make, execute and deliver to the Lender, upon demand, any and all documents, agreements and instruments as may, in Lender's opinion, be necessary to protect the Lender's rights under this Assignment. Owner's failure to comply with the agreements herein made shall not impair Lender's rights hereunder with respect to any such subsequent lease(s), nor shall such failure in any way affect the applicability of this Assignment to such lease(s) and the rentals receivable thereunder.

**PROTECTION OF LENDER'S RIGHTS AND INTERESTS; NO WAIVER; DEFAULT.** Owner further agrees to perform and discharge each and every obligation, covenant, and agreement required to be performed by the Landlord under the lease(s) referred to herein, and should Owner fail to do so, the Lender, without obligation to do so and without releasing Owner from any such obligation, may make or do the same in such manner and to such extent as the Lender deems necessary to protect its rights and interests under this Assignment. Nothing in this Assignment shall be construed to require the Lender to perform any of the terms and provisions contained in the lease(s), or otherwise to impose any obligation or liability upon the Lender. Neither the performance nor the nonperformance by the Lender of Owner's obligations shall be deemed a waiver of any default by the Owner under the Mortgage, this Assignment or under the Note(s). Owner agrees to indemnify and hold harmless Lender from all liability, loss, or damage, which may be incurred under the lease(s) or by reason of this Assignment. If Lender incurs any expenses due to performing Owner's obligations under the lease(s) and Assignment, or incurs damages, attorney fees or costs due to claims or demands under the lease(s) and Assignment, such amounts shall be payable on demand by Owner to Lender. Any default by Owner in the performance of any of the obligations in this Assignment shall be a default under the terms of the said Mortgage, entitling Lender to exercise all rights and remedies provided by the Mortgage, this Assignment, and under the Note(s).

**LESSEE PAYMENTS TO LENDER.** Owner irrevocably consents and agrees that any lessee(s) under any of the lease(s) referred to herein shall, upon demand and notice from Lender of Owner's default under said Note(s), Mortgage, or this Assignment, pay all rents, income, and profits under said lease(s) to Lender, without any obligation upon any such lessee(s) to determine the actual existence of any default by Owner.

**LENDER ASSIGNMENT OF LEASE.** Owner agrees that Lender shall have the right to assign Owner's right, title and interest in the lease(s) referred to herein to any subsequent holder of the Mortgage or Note(s) and to assign the same to any person acquiring title to the Secured Property through foreclosure.

**SCOPE OF ASSIGNMENT OF LEASE AND RENTS.** This Assignment extends to and includes every lease or rental agreement, whether written or unwritten, now existing or hereafter entered into, demising any part of the Secured Property. Wherever used herein, the term "lease" or "leases" includes all such rental agreements. If no specific lease is described above, then this Assignment shall be a general assignment of all leases and rental agreements concerning the Secured Property.





**LENDER'S RIGHTS AND REMEDIES.** The rights and remedies of the Lender under this Assignment are cumulative, and are not in lieu of, but are in addition to all other rights and remedies which Lender has under the Note(s), Mortgage, Loan Agreement and any related documents.

**SUCCESSORS AND ASSIGN.** All covenants and agreements contained in this Assignment shall apply to and bind the grantees, heirs, personal representatives, successors, and assigns of the respective parties.

**ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY.** This Assignment shall constitute the entire agreement between Lender and Owner. Any modification of this Assignment shall be binding only if placed in writing and signed by the Lender and Owner. The invalidity of any provision of this Assignment shall not affect the validity of any other provision.

**PARAGRAPH HEADINGS.** The titles to the paragraphs of this Assignment are solely for the convenience of the parties and shall not be used to interpret this Assignment.


**GOVERNING LAW.** This Assignment shall be interpreted, and the rights of the parties determined, under the laws of the State of Alabama.

**ORAL AGREEMENTS DISCLAIMER.** This Assignment represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

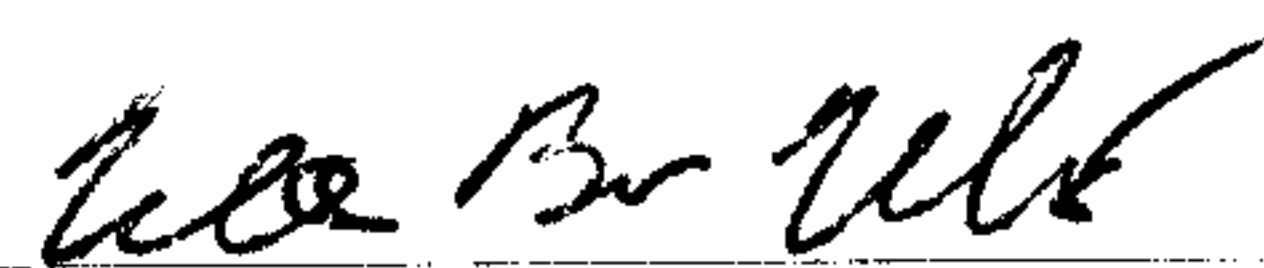
**ADDITIONAL PROVISIONS.** Original Lease agreement dated 5/26/04 was assigned to Summer Properties, LLC and Winter Properties, LLC from the previous landlord (J. Johnson, LLC). Such assignment was evidenced by an Assignment of Leases dated 11/18/2004.

**By signing this Assignment, Owner acknowledges reading, understanding, and agreeing to all its provisions.**

Summer Properties LLC

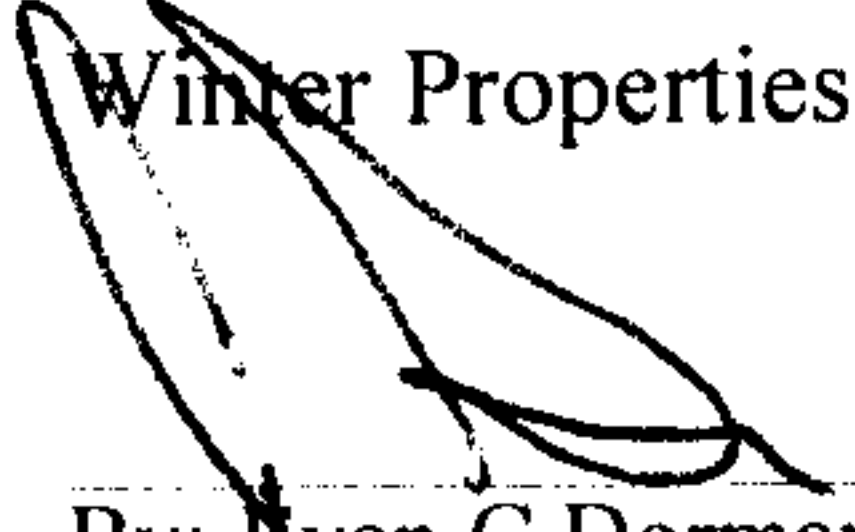
 6/29/09  
By: William Bew White III Date

Its: ~~Member~~  WBO  
Fall Properties, LLC

 6/29/09  
By: William Bew White IV Date

Its: Member

Winter Properties, LLC

 8/29/09  
By: Evan C Dorman Date

Its: Member



**BUSINESS ACKNOWLEDGMENT**

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, Leanne C. Cox, Notary in and for said County and in  
said State, hereby certify that

William Bew White III, Manager on behalf of Summer Properties LLC, an Alabama Limited Liability Company, 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 the instrument, he/she, in his/her official capacity and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company.

William Bew White IV, Member on behalf of Fall Properties, LLC, an Alabama Limited Liability Company, 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 the instrument, he/she, in his/her official capacity and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company.

Evan C Dorman, Member on behalf of Winter Properties, LLC, an Alabama Limited Liability Company, 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 the instrument, he/she, in his/her official capacity and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company.

Given under my hand this the 29th day of June, 2009.

My commission expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Aug 5, 2009  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

residing at  
Birmingham, AL

Leanne C. Cox

(Official Seal)

THIS INSTRUMENT PREPARED BY:  
Oakworth Capital Bank  
2100A Southbridge Parkway, Suite 445  
Birmingham, AL 35209-0000

AFTER RECORDING RETURN TO:  
Oakworth Capital Bank  
2100A Southbridge Parkway, Suite 445  
Birmingham, AL 35209-0000





Exhibit "A"

Begin at the Southeast corner of the West half of the Southeast quarter of Section 4, Township 24 North, Range 12 East; thence run Northerly along the East boundary of said half-quarter section 1,037.48 feet to intersection with the Northwest right of way boundary of Alabama Highway 25; said intersection being the point of beginning. Thence continue Northerly along said East boundary 997.03 feet to intersection with the centerline of a railroad; said intersection being in the arc of a curve turning left, having a radius of 1910.08 feet, being subtended by a central angle of 25 degrees 26 minutes and having a chord of 841.41 feet in length, said chord forming an angle of 120 degrees 03 minutes to the left from said East boundary; thence run Southwesterly along the arc of said curve 847.87 feet to intersection with the centerline of an old road. (The next 8 courses are along the centerline of said old road). Thence turn 56 degrees 45 minutes left and run Southerly 180.78 feet; thence turn 10 degrees 44 minutes and run Southwesterly 237.2 feet; thence turn 55 degrees 15 minutes left and run Southeasterly 126.94 feet; thence turn 15 degrees 04 minutes left and run Southeasterly 127 feet; thence turn 00 degrees 39 minutes left and run Southeasterly 129.53 feet; thence turn 37 degrees 20 minutes left and run Easterly 170.96 feet; thence turn 46 degrees 01 minutes right and run Southeasterly 116.91 feet; thence turn 34 degrees 24 minutes right and run Southerly 43.07 feet to intersection with said Northwest right of way boundary of Alabama Highway 25; thence 113 degrees 46 minutes left and run Northeasterly along said right of way boundary 20 feet; thence turn 86 degrees 31 minutes left and run Northwesterly 210 feet; thence turn 86 degrees 31 minutes right and run Northeasterly 210 feet; thence turn 93 degrees 29 minutes right and run Southeasterly 210 feet to intersection with said Northwest right of way boundary; thence turn 93 degrees 29 minutes left and run Northeasterly along said Northwest right of way boundary 60 feet to the point of beginning.



20090706000257740 6/6 \$26.00  
Shelby Cnty Judge of Probate, AL  
07/06/2009 12:49:05 PM FILED/CERT