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Bk: LR200910 Pg:6473  
Jefferson County, Alabama  
I certify this instrument filed on  
10/08/2009 09:54:00 AM XFRL  
Judge of Probate- Alan L. King

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# **ACCOMMODATION ABSOLUTE ASSIGNMENT OF RENTS AND LEASES**

**Between**

**RBC BANK (USA),  
as Assignee**

**and**

**NALL PARTNERSHIP, LTD.  
and  
WESLEY L. BURNHAM, JR.,  
as Assignor**

**September 30, 2009**

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Julia G. Bernstein, Esq.  
Maynard, Cooper & Gale, P.C.  
2400 Regions Harbert Plaza  
1901 Sixth Avenue North  
Birmingham, Alabama 35203-2618

## TABLE OF CONTENTS

<b>ARTICLE 1 RULES OF CONSTRUCTION AND DEFINITIONS.....</b>	<b>1</b>
Section 1.1 Rules of Construction .....	1
Section 1.2 Definitions.....	1
<b>ARTICLE 2 GRANTING CLAUSES.....</b>	<b>2</b>
Section 2.1 Assignment .....	2
<b>ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS.....</b>	<b>3</b>
Section 3.1 Representations and Warranties.....	3
Section 3.2 Covenants of Grantor .....	4
<b>ARTICLE 4 DEFAULT AND REMEDIES .....</b>	<b>5</b>
Section 4.1 Events of Default .....	5
Section 4.2 Rights and Remedies of Lender Upon Default.....	5
Section 4.3 Default Rate .....	7
Section 4.4 Remedies Cumulative .....	7
<b>ARTICLE 5 MISCELLANEOUS .....</b>	<b>7</b>
Section 5.1 Notices .....	7
Section 5.2 Expenses .....	7
Section 5.3 Heirs, Successors and Assigns.....	8
Section 5.4 Joint and Several Liability .....	8
Section 5.5 Independent Obligations .....	8
Section 5.6 Governing Law .....	8
Section 5.7 Date of Agreement.....	8
Section 5.8 Separability Clause .....	8
Section 5.9 Counterparts .....	8
Section 5.10 Waiver and Election.....	9
Section 5.11 No Obligations of Lender; Indemnification.....	9
Section 5.12 Advances by the Lender.....	9
Section 5.13 Rights and Obligations Absolute .....	9
Section 5.14 Absolute Assignment .....	10
Section 5.15 Re-Assignment of Leases and Rents.....	10
Section 5.16 Arbitration.....	10

EXHIBIT A - Land Description  
EXHIBIT B - Existing Leases  
EXHIBIT C – Permitted Encumbrances  
SCHEDULE I to Financing Statement

**NOTE TO PROBATE JUDGE:** This Agreement is being recorded as additional security for the Obligations described in a Mortgage of even date herewith between the Grantor and the Lender, which Mortgage is being filed for record concurrently with the recording of this Agreement.

**ACCOMMODATION ABSOLUTE ASSIGNMENT OF RENTS AND LEASES**

**THIS ACCOMMODATION ABSOLUTE ASSIGNMENT OF RENTS AND LEASES** (this "Agreement") dated September 30, 2009 is between **NALL PARTNERSHIP, LTD.**, an Alabama limited partnership and **WESLEY L. BURNHAM, JR.**, an individual (herein jointly and severally called the "Grantor"), as assignor, and **RBC BANK (USA)**, a North Carolina corporation (the "Lender"), as assignee.

**Recitals**

Capitalized terms used in these Recitals have the meanings defined for them above or in Section 1.2. The Grantor has requested that the Lender modify certain Credit extended to the Borrower under the Credit Documents. To induce the Lender to modify such Credit, the Grantor has (a) executed and delivered to the Lender a mortgage of even date herewith (the "Mortgage") covering the land described in Exhibit A (the "Land"), which Mortgage is being recorded in the office of the Judge of Probate of the county in which the Land is situated concurrently with the recording of this Agreement, and (b) agreed to execute this Agreement.

**Agreement**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and to induce the Lender to modify certain Credit extended to the Borrower under the Credit Documents, the Grantor agrees with the Lender as follows:

Article 1

**RULES OF CONSTRUCTION AND DEFINITIONS**

**SECTION 1.1** **Rules of Construction.** This Agreement is subject to the rules of construction set forth in the Mortgage.

**SECTION 1.2** **Definitions.** As used in this Agreement, capitalized terms that are not otherwise defined herein have the meanings defined for them in the Mortgage and the following terms are defined as follows:

(a) Borrower means Antigua Developers, L.L.C., a Florida limited liability company, its successors and assigns.



- (b) Events of Default is defined in Section 4.1. An Event of Default shall “exist” if the same has occurred and is continuing.
- (c) Existing Leases is defined in Section 2.1(a).
- (d) Improvements is defined in Section 2.1(a).
- (e) Leases is defined in Section 2.1(a).
- (f) Permitted Encumbrances means any Liens and other matters affecting title to the Property that are described in Exhibit C.
- (g) Property is defined in Section 2.1.
- (h) Real Property is defined in Section 2.1(a).
- (i) Rents is defined in Section 2.1(c).

## Article 2

### GRANTING CLAUSES

**SECTION 2.1** Assignment. The Grantor does hereby sell, assign, transfer and set over to the Lender, its successors and assigns, and does hereby grant to the Lender, its successors and assigns the following (collectively, the “Property”):

(a) All leases and subleases, written or oral, and all agreements for use or occupancy of any portion of the Land or any improvements, buildings, structures and fixtures now or hereafter located thereon (the “Improvements”) (the Land and the Improvements being hereinafter sometimes together called the “Real Property”) with respect to which the Grantor is the lessor or sublessor, including the existing leases, if any, described on Exhibit B attached hereto and made a part hereof (the “Existing Leases”), any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Land or the Improvements, all such leases, subleases, agreements and tenancies heretofore mentioned (including the Existing Leases), whether entered into before or after the filing by or against the Grantor of any petition for relief under the federal Bankruptcy Code, being covered by this assignment and being hereinafter collectively referred to as the “Leases”;

(b) any and all guaranties of the lessee's and any sublessee's performance under any of the Leases;

(c) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which the Grantor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, whether paid or accruing before or after the filing of any petition by or against the Grantor for relief under the federal Bankruptcy Code, arising or issuing from or out



of the Leases or from or out of the Land or the Improvements, or any part thereof, including minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Land or the Improvements, together with any and all rights and claims that the Grantor may now or hereafter have against any such lessee under the Leases or against any subtenants or occupants of the Land or any of the Improvements, all such moneys, rights and claims described in this Section 2.1(c) being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default exists, the Grantor shall have the right under a license granted hereby to collect, receive and retain the Rents, but except as permitted in Section 3.2(d), no Rents shall be collected in advance of the due date thereof; and

(d) any award, dividend or other payment made hereafter to the Grantor in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Grantor hereby appoints the Lender as the Grantor's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend or other payment after the occurrence of an Event of Default.

SUBJECT, HOWEVER, to the encumbrances, if any, described on Exhibit C hereto ("Permitted Encumbrances").

### Article 3

## REPRESENTATIONS, WARRANTIES AND COVENANTS

**SECTION 3.1** Representations and Warranties. The Grantor represents and warrants to the Lender that, except for Permitted Encumbrances:

(a) The Grantor has good title to the Rents and Leases and good right to assign the same, and no other person has any right, title or interest therein.

(b) The Grantor has duly and punctually observed and performed all and singular the terms, covenants, conditions and warranties of the Existing Leases on the Grantor's part to be observed and performed.

(c) The Grantor has not previously sold, assigned, transferred or granted any Lien on the Leases or the Rents, whether now due or hereafter to become due.

(d) No Rents due for any period subsequent to the month next succeeding the date of this Agreement have been collected, and no payment of any of the Rents has been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised.

(e) The Grantor has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents.



(f) To the best of the Grantor's knowledge, the lessees under the Existing Leases are not in default under any of the terms thereof.

**SECTION 3.2**      **Covenants of Grantor.**      The Grantor covenants and agrees that the Grantor shall:

(a) observe and perform all of the Grantor's obligations under the Leases and give prompt notice to the Lender if the Grantor fails to do so;

(b) enforce or secure in the name of the Lender the performance of each obligation to be performed by any lessee under the Leases;

(c) appear in and defend any proceeding arising under, or in any manner connected with the Leases or the obligations of the Grantor and any lessee thereunder, and upon request by the Lender, do so in the name and on behalf of the Lender but at the expense of the Grantor, and pay all costs and expenses of the Lender, including reasonable attorneys' fees, in any proceeding in which the Lender may appear;

(d) not receive or collect any Rents from any lessee of any of the Real Property for a period of more than one month in advance, or sell, assign, transfer or grant any Lien on future payments of the Rents;

(e) not waive, excuse, discount, set off, compromise, or in any manner release or discharge any lessee of any of the Real Property from any of the lessee's obligations under any Lease, including the obligation to pay rent as specified in any Lease;

(f) not enter into any Leases except on a form approved by the Lender, nor cancel, terminate or consent to the surrender of any Lease, or modify the provisions thereof without the prior written consent of the Lender;

(g) not renew or otherwise extend the term of any of the Existing Leases; provided, however, that the Grantor may, upon the expiration of the term of any of the Existing Leases, lease the property covered thereby to the lessee thereunder by a lease or leases expressly subject and fully subordinate to the Lien of the Mortgage and to this Agreement;

(h) promptly upon the execution by the Grantor of any future Lease, (1) furnish the Lender with the name and address of the lessee thereunder, the term of such Lease and a description of the premises covered thereby and, upon request of the Lender, a copy of such Lease, and (2) execute all such further assignments of such Lease and the Rents therefrom as the Lender may require;

(i) not, without the prior written approval of the Lender, execute any management or leasing agreements affecting any of the Real Property; and

(j) if required by the Lender, cause each Lease to provide, in a manner approved by the Lender, that the Lease is junior and subordinate to the Lien of the Mortgage and to this Agreement and that the Lessee will recognize as lessor, Lender or any person succeeding to the



interest of the Grantor, upon the foreclosure of the Mortgage or any exercise by the Lender of its rights, powers and remedies under this Agreement or the Mortgage with respect to the Lease.

#### Article 4

### DEFAULT AND REMEDIES

**SECTION 4.1**      **Events of Default.**    The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Agreement (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any Governmental Requirement):

(a)      any representation or warranty made in this Agreement or in any of the other Credit Documents shall prove to be false or misleading in any material respect as of the time made; or

(b)      any report, certificate, financial statement or other instrument furnished in connection with the Credit, this Agreement or any of the other Credit Documents, shall prove to be false or misleading in any material respect as of the time furnished; or

(c)      default shall be made in the payment when due of any of the Obligations; or

(d)      default shall be made in the due observance or performance of any covenant, condition or agreement on the part of the Grantor to be observed or performed pursuant to the terms of this Agreement (other than any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 4.1 specifically dealt with) and such default shall continue unremedied for a period of thirty (30) days; or

(e)      any default or event of default, as therein defined, shall occur under any of the other Credit Documents (after giving effect to any applicable notice, grace or cure period specified therein).

### **SECTION 4.2**      **Rights and Remedies of Lender Upon Default.**

(a)      **Acceleration of Obligations.**    If an Event of Default exists that does not already result in the automatic acceleration of the Obligations under another Credit Document, the Lender shall have the right without further notice to the Grantor (except any such notice as may be specifically required under the other Credit Documents) to declare all of the Obligations immediately due and payable.

(b)      **Operation of Real Property.**    If an Event of Default exists, in addition to all other rights herein conferred on the Lender, the Lender (or any person designated by the Lender) may, but shall not be obligated to, enter upon and take possession of any or all of the Real Property, exclude the Grantor therefrom, and hold, use, administer, manage and operate the same to the extent that the Grantor could do so, without any liability to the Grantor resulting therefrom; and the Lender may collect, receive and receipt for all proceeds accruing from such



operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of the Grantor with respect to the Real Property.

(c) **Right to Receiver.** If an Event of Default exists, the Lender shall be entitled, as a matter of right, to the appointment by any competent court or tribunal, without notice to the Grantor or any other party, of a receiver of the rents, issues and profits of the Real Property, with power to lease and control the Real Property and with such other powers as may be deemed necessary.

(d) **Rents and Leases.** If an Event of Default exists, the Lender at its option, shall have the right, power and authority without the need to take possession of the Real Property or to obtain the appointment of a receiver, to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(1) to terminate the license granted to the Grantor in Section 2.1(c) to collect the Rents, to notify the tenants under the Leases or any other parties in possession of any of the Real Property to pay all Rents directly to the Lender and, without taking possession, in the Lender's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor;

(2) with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Real Property or any part thereof for the account of the Grantor, to make, modify, enforce, cancel or accept surrender of any Lease, to remove and evict any lessee or sublessee, to increase or reduce rents, to decorate, clean and make repairs, and otherwise to do any act or incur any cost or expenses the Lender shall deem proper to protect the security hereof, as fully and to the same extent as the Grantor could if in possession; and

(3) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation of the Grantor under this Agreement.

The Grantor hereby releases any claims against any tenants under the Leases or any other parties in possession of any of the Real Property for any Rents or other sums paid to the Lender in accordance with this Agreement. The collection of the Rents and application thereof as aforesaid or the entry upon and taking possession of the Real Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Agreement, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Lender, once exercised, shall continue for so long as the Lender shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default.

(e) **Order of Application of Proceeds.** All payments received by the Lender as proceeds of any of the Real Property, as well as any and all amounts realized by the Lender in connection with the enforcement of any right or remedy under this Agreement, shall be applied by the Lender as set forth in the Mortgage.

(f) **Waiver of Certain Laws.** The Grantor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (1) any appraisalment



before disposition of any portion of the Property (commonly known as appraisement laws), or (2) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any disposition made in collecting the Obligations (commonly known as stay laws and redemption laws). The Grantor also waives any and all rights the Grantor may have to a hearing before any Governmental Authority prior to the exercise by the Lender of any of its rights or remedies under the Credit Documents and applicable law.

**SECTION 4.3**      **Default Rate.** If an Event of Default exists, the Obligations shall bear interest at the Default Rate, until the earlier of (a) such time as all of the Obligations are paid in full or (b) no such Event of Default exists.

**SECTION 4.4**      **Remedies Cumulative.** The rights, powers and remedies of the Lender under this Agreement are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.

## Article 5

### MISCELLANEOUS

**SECTION 5.1**      **Notices**

(a) Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement shall be given in the manner, and shall be effective at the time, provided in Section 6.1 of the Mortgage.

(b) Five Business Days' written notice to the Grantor as provided above shall constitute reasonable notification to the Grantor when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

**SECTION 5.2**      **Expenses.** The Grantor shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to the Lender, incurred by the Lender in connection with (a) the negotiation, preparation and review of this Agreement (whether or not the transactions contemplated by this Agreement shall be consummated), (b) the enforcement of this Agreement, (c) the custody and preservation of the Property, (d) the protection or perfection of the Lender's rights and interests under this Agreement in the Property, (e) the filing or recording of this Agreement or any related financing, continuation or termination statements, or similar documents (including any stamp, documentary, mortgage, recording and similar taxes and fees), (f) the exercise by or on behalf of the Lender of any of its rights, powers or remedies under this Agreement and (g) the prosecution or defense of any action or proceeding by or against the Lender, the Grantor, any other Obligor, or any one or more of them, concerning any matter related to this Agreement, the Real Property, any of the Property, or any of the Obligations. All such amounts shall bear interest from the date demand is made at the Default Rate and shall be included in the Obligations. The Grantor's obligations under this Section 5.2 shall survive the payment in full of the Obligations and the termination of this Agreement.



**SECTION 5.3      Heirs, Successors and Assigns.** Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party, except that the Grantor may not assign or transfer this Agreement without the prior written consent of the Lender; and all covenants and agreements of the Grantor contained in this Agreement shall bind the Grantor's heirs, successors and assigns and shall inure to the benefit of the successors and assigns of the Lender.

**SECTION 5.4      Joint and Several Liability.** If the Grantor is comprised of more than one person, all of the Grantor's representations, warranties, covenants and agreements under this Agreement shall be joint and several and shall be binding on and enforceable against either, any or all of such persons comprising the Grantor. If any one or more of the persons comprising the Grantor is in default, the Lender may exercise its remedies on default against any or all of the persons comprising the Grantor.

**SECTION 5.5      Independent Obligations.** The Grantor agrees that each of the obligations of the Grantor to the Lender under this Agreement may be enforced against the Grantor without the necessity of joining any other Obligor, any other holders of Liens in any Property or any other person, as a party.

**SECTION 5.6      Governing Law.** This Agreement shall be construed in accordance with and governed by Title 9 of the U.S. Code and the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the assignment of the Property hereunder are governed by the laws of any jurisdiction other than the State of Alabama.

**SECTION 5.7      Date of Agreement.** The date of this Agreement is intended as a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on that date.

**SECTION 5.8      Separability Clause.** If any provision of the Credit Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**SECTION 5.9      Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

**SECTION 5.10      Waiver and Election.** The exercise by the Lender of any option given under this Agreement shall not constitute a waiver of the right to exercise any other option. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Credit Documents, nor consent to any departure by the Grantor therefrom, shall be effective unless in writing and signed by an authorized officer of the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which





given. No notice to or demand on the Grantor in any case shall entitle the Grantor to any other or further notice or demand in similar or other circumstances.

**SECTION 5.11      No Obligations of Lender; Indemnification.** The Lender does not by virtue of this Agreement or any of the transactions contemplated by the Credit Documents assume any duties, liabilities or obligations with respect to any of the Real Property or the Property unless expressly assumed by the Lender under a separate agreement in writing, and this Agreement shall not be deemed to confer on the Lender any duties or obligations that would make the Lender directly or derivatively liable for any person's negligent, reckless or willful conduct. The Grantor agrees to indemnify and hold the Lender harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including attorney's fees) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the Grantor or any Obligor in this Agreement or any other Credit Document; (b) any breach of any of the warranties or obligations of the Grantor or any Obligor under this Agreement or any other Credit Document; and (c) the Real Property, or the assignment to the Lender of the Property. The provisions of this Section 5.11 shall survive the payment of the Obligations in full and the termination, satisfaction and release (in whole or in part) of this Agreement.

**SECTION 5.12      Advances by the Lender.** If the Grantor shall fail to comply with any of the provisions of this Agreement, the Lender may (but shall not be required to) make advances to perform the same, and where necessary enter the Real Property for the purpose of performing the Grantor's obligations under any such provision. The Grantor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at the Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Lender of any Event of Default resulting from the Grantor's failure to pay such amounts.

**SECTION 5.13      Rights and Obligations Absolute.** All rights of the Lender hereunder and all obligations of the Grantor hereunder shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any of the Credit Documents, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Credit Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

**SECTION 5.14      Absolute Assignment.** The assignment of the Property by the Grantor to the Lender under this Agreement is intended to be an absolute assignment and not merely a conditional assignment or security interest. The Property is intended to be, and hereby is, assigned absolutely by the Grantor to the Lender, subject only to the license granted to the Grantor under Section 2.1(c), which license is terminable at the option of the Lender upon the occurrence of an Event of Default.

**SECTION 5.15      Re-Assignment of Leases and Rents.** When the Obligations are paid in full and such payment is evidenced by a recorded written instrument of

satisfaction of the Mortgage, the Lender shall, upon written request by the Grantor, transfer, assign and set over to the Grantor all of the Lender's right, title and interest in, to and under the Property.

**SECTION 5.16**      **Arbitration**. This Agreement incorporates by reference requirements for arbitration of disputes set forth in the Credit Agreement.

[Signature page follows]



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Shelby Cnty Judge of Probate, AL  
10/15/2009 01:03:54 PM FILED/CERT

**NALL PARTNERSHIP, LTD.**

By: J. Wallace Nall, Jr.  
J. Wallace Nall, Jr., general partner

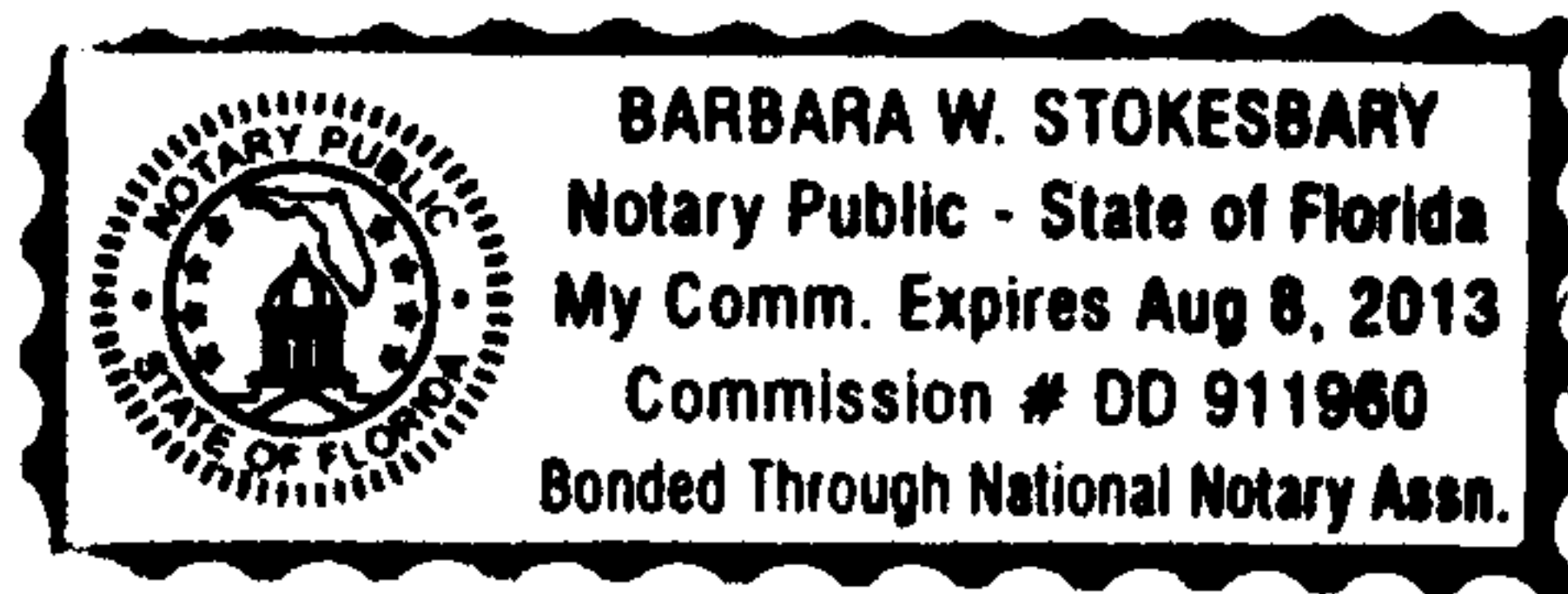
Wesley L. Burnham, Jr.  
WESLEY L. BURNHAM, JR.

STATE OF FLORIDA )  
COUNTY OF Bay )

20091015000390210 14/20 \$68.00  
Shelby Cnty Judge of Probate, AL  
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I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J. Wallace Nall, Jr., whose name as general partner of Nall Partnership, Ltd., an Alabama limited partnership, 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 limited partnership.

Given under my hand and official seal this the 18 day of October, 2009.



Barbara W. Stokesbary  
Notary Public

[AFFIX SEAL]

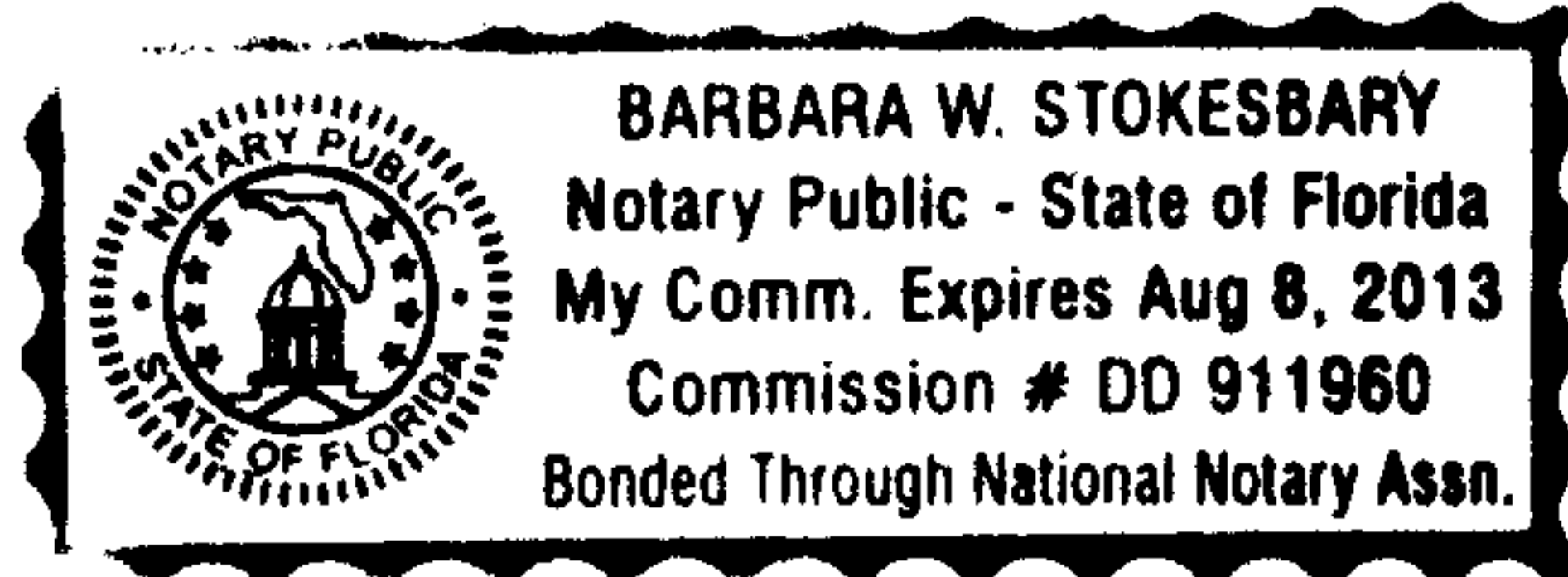
My commission expires: 8/8/13



STATE OF FLORIDA )  
COUNTY OF Bay )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Wesley L. Burnham Jr., 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 said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 1st day of October, 2009.



Barbara W. Stokesbary  
Notary Public


[AFFIX SEAL]

My commission expires: 8/8/13

This instrument prepared by:  
Julia G. Bernstein  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North  
2400 Regions Harbert Plaza  
Birmingham, Alabama 35203-2602  
(205) 254-1000

## EXHIBIT A

### (Land Description)

  
20091015000390210 16/20 \$68.00  
Shelby Cnty Judge of Probate, AL  
10/15/2009 01:03:54 PM FILED/CERT

#### TRACT "B"

A parcel of land located in the Northeast 1/4 of Section 4, Township 19 South, Range 2 West, and the Northwest 1/4 of the Northwest 1/4 of Section 3, Township 19 South, Range 2 West, all in Shelby County, Alabama, more particularly described as follows:

Begin at the Northeast corner of Section 4, Township 19 South, Range 2 West; thence in a Westerly direction along the North line of said Section 4, a distance of 1588.12 feet; thence 48°49'45" left, in a Southwesterly direction a distance of 236.84 feet; thence 3°11'48" left in a Southwesterly direction a distance of 508.95 feet; thence 2°15'12" left in a Southwesterly direction a distance of 412.0 feet; thence 82°57' right in a Northwesterly direction a distance of 79.0 feet; thence 30°51' left in a Westerly direction a distance of 201.0 feet; thence 90° right in a Northerly direction a distance of 258.0 feet; thence 37°57' right in a Northeasterly direction a distance of 207.0 feet; thence 6°11'29" left in a Northeasterly direction a distance of 379.33 feet; thence 11°35'29" right in a Northeasterly direction a distance of 170.11 feet to the intersection with the North line of said Section 4; thence 131°10'15" left in a Westerly direction along the North line of said Section 4 to the intersection with the Southeasterly right of way line of Acton Road; thence in a Southwesterly direction along said right of way line to the intersection with the West line of the Northeast 1/4 of said Section 4; thence 33°37'45" left in a Southerly direction along said West line of said Section 4, a distance of 1366.15 feet; thence 112°21'45" left, in a Northeasterly direction a distance of 494.18 feet; thence 12°05'15" right in a Northeasterly direction a distance of 683.44 feet; thence 11°49' left, in a Northeasterly direction a distance of 574.27 feet; thence 2°45'45" right in a Northeasterly direction a distance of 773.80 feet; thence 3°55'15" left in a Northeasterly direction a distance of 585.62 feet; thence 49°44'45" left in a Northeasterly direction a distance of 134.22 feet to the Southwest corner of Lot 39 River Estates, as recorded in Map Book 4, page 27, in the Probate Office of Shelby County, Alabama; thence 112°53'30" left in a Southwesterly direction a distance of 203.96 feet; thence 145°53'30" right in a Northeasterly direction a distance of 345.0 feet to a point in the Westerly line of said Lot 39; thence 33° left, in a Northeasterly direction along the Westerly line of said Lot 39, a distance of 360.0 feet to the Northwest corner of said Lot 39, said point being the Southwesterly line of River Estates Road; thence 73°30' left in a Northwesterly direction along said Southwesterly line of River Estates Road, a distance of 83.45 feet to the intersection with the North line of the Northwest 1/4 of the Northwest 1/4 of Section 3, Township 19 South, Range 2 West; thence 31°26' left in a Westerly direction along the North line of said 1/4 - 1/4 section a distance of 417.20 feet to the Point of Beginning.

Less and except any portion of subject property lying within a road right of way.

Situated in Shelby County, Alabama.

LESS AND EXCEPT that portion conveyed in Instrument 200209/6959, in the Probate Office of Jefferson County, Alabama, and re-recorded in Instrument 20020710000318550 in the Probate Office of Shelby County, Alabama, more particularly described as follows:

That part of the Northwest 1/4 of the Northeast 1/4 of Section 4, Township 19 South, Range 2 West lying South and West of an unnamed tributary of Cahaba River; and that part of the Southwest 1/4 of the Northeast 1/4 of Section 4, Township 19 South, Range 2 West lying North and West of an unnamed tributary of Cahaba River, more particularly described as follows:

Commence at the Southwest corner of the Northwest 1/4 of the Northeast 1/4 of Section 4, Township 19 South, Range 2 West, said corner being the Point of Beginning of the property herein described; thence run Northerly along the West boundary of said 1/4 - 1/4 section a distance of 356.4 feet; thence turn an angle to the right of 125°02'25" and run in a Southeasterly direction a distance of 219.6 feet; thence turn an angle to the right of 31°09'51" and run in a Southeasterly direction along the centerline of an unnamed

Exhibit A

Page 1





tributary of the Cahaba River a distance of 190.1 feet, more or less, to the centerline of an unnamed tributary of the Cahaba River; thence turn an angle to the right of  $62^{\circ}58'14''$  and run in a Southwesterly direction along the centerline of an unnamed tributary of the Cahaba River a distance of 406.0 feet, more or less, to the West boundary of the Southwest 1/4 of the Northeast 1/4 of Section 4, Township 19 South, Range 2 West; thence turn an angle to the right of  $140^{\circ}49'30''$  and run Northerly along the West boundary of the Southwest 1/4 of the Northeast 1/4 of Section 4, Township 19 South, Range 2 West, a distance of 258.4 feet, more or less, back to the point of beginning.

All of said property lies in the Northwest 1/4 of the Northeast 1/4 and the Southwest 1/4 of the Northeast 1/4 of Section 4, Township 19 South, Range 2 West, Jefferson County, Alabama, Birmingham Division and in Shelby County, Alabama.

#### TRACT "C"

A parcel of land located in the South 1/2 of the Southeast 1/4 of Section 33, Township 18 South, Range 2 West and the Southwest 1/4 of the Southwest 1/4 of Section 34, Township 18 South, Range 2 West, all in Jefferson County, Alabama, more particularly described as follows:

Begin at the Southeast corner of said Section 33; thence in a Westerly direction along the South line of said Section 33, a distance of 1588.12 feet; thence  $41^{\circ}10'15''$  right in a Northwesterly direction a distance of 159.10 feet; thence  $94^{\circ}26'22''$  right in a Northeasterly direction a distance of 163.65 feet; thence  $94^{\circ}26'22''$  left in a Northwesterly direction a distance of 62.01 feet; thence  $71^{\circ}49'10''$  right in a Northeasterly direction a distance of 69.25 feet to the beginning of a curve to the right, having a central angle of  $18^{\circ}10'50''$  and a radius of 600.0 feet; thence in a Northeasterly direction along said curve a distance of 190.39 feet to end of curve; thence in a Northeasterly direction a distance of 97.0 feet; thence  $90^{\circ}$  right in a Southeasterly direction a distance of 218.43 feet; thence  $90^{\circ}$  left in a Northeasterly direction a distance of 264.98 feet; thence  $15^{\circ}31'$  left in a Northeasterly direction a distance of 331.28 feet; thence  $67^{\circ}21'45''$  left in a Northwesterly direction a distance of 345.73 feet; thence  $91^{\circ}56'55''$  left in a Southwesterly direction a distance of 629.60 feet; thence  $16^{\circ}53'14''$  left in a Southwesterly direction a distance of 499.50 feet; thence  $11^{\circ}42'54''$  right in a Southwesterly direction a distance of 398.89 feet to the intersection with the South line of said Section 33, said point being 494.09 feet East of the Southwest corner of the Southeast 1/4 of said Section 33; thence  $48^{\circ}49'45''$  right in a Westerly direction along said South line of said Section 33 to the intersection with the Southeasterly right of way line of Acton Road; thence in a Northeasterly and Easterly direction along said right of way line until it intersects the Southwesterly right of way line of River Estates Road as shown on Plat of River Estates and recorded in Map Book 53, page 55 in the Probate Office of Jefferson County, Alabama; thence in a Southeasterly direction along said right of way of River Estates Road to the intersection with the South line of the Southwest 1/4 of the Southwest 1/4 of Section 34, Township 18 South, Range 2 West; thence  $148^{\circ}34'$  right in a Westerly direction along the South line of said 1/4 - 1/4 section a distance of 417.20 feet to the Point of Beginning.

Less and except any portion of subject property lying within a road right of way.

EXCEPT the following 50 foot wide road right of way located in the Southwest 1/4 of the Southeast 1/4 of said Section 33:

Commence at the Southwest corner of said Southwest 1/4 of Southeast 1/4; thence in an Easterly direction along the South line of said 1/4 - 1/4 section, a distance of 494.09 feet; thence  $48^{\circ}49'45''$  left in a Northeasterly direction a distance of 398.89 feet to the point of beginning of herein described 50 foot wide road right of way, said point being the P.I. of a curve to the left having a central angle of  $35^{\circ}$  and a tangent of 90.0 feet; thence  $75^{\circ}28'45''$  left in a Northwesterly direction along the tangent extended of said curve, a distance of 90.0 feet to the end of said curve; thence in a Northwesterly direction along the centerline of said 50 foot wide road right of way to the intersection with the Southeasterly right of way of Acton Road, said point being the end of herein described right of way.

Situated in Jefferson County, Alabama, Birmingham Division.

TRACT "D"

A parcel of land located in the South 1/2 of the Southeast 1/4 of Section 33, Township 18 South, Range 2 West, more particularly described as follows:


Commence at the Southwest corner of the Southeast 1/4 of Section 33, Township 18 South, Range 2 West, thence in an Easterly direction along the South line of said 1/4 section a distance of 494.09 feet; thence 48°49'45" left in a Northeasterly direction a distance of 398.89 feet; thence 11°42'54" left in a Northeasterly direction a distance of 499.50 feet to the Point of Beginning; thence 16°53'14" right in a Northeasterly direction a distance of 629.60 feet; thence 91°56'55" right in a Southeasterly direction a distance of 345.73 feet; thence 67°21'45" right in a Southwesterly direction a distance of 331.28 feet; thence 15°31' right in a Southwesterly direction a distance of 264.98 feet; thence 90° right in a Northwesterly direction a distance of 488.43 feet to the Point of Beginning.

Less and except any portion of subject property lying within a road right of way.



**EXHIBIT B**

(Existing Leases)

  
20091015000390210 19/20 \$68.00  
Shelby Cnty Judge of Probate, AL  
10/15/2009 01:03:54 PM FILED/CERT

**Lessor**

See Land Corporation and  
Altadena Valley Golf Club,  
Inc.

**Lessee**


Altadena Valley Golf and  
Country Club

**Date**

January 26, 1966

**EXHIBIT C**

(Permitted Encumbrances)

  
20091015000390210 20/20 \$68.00  
Shelby Cnty Judge of Probate, AL  
10/15/2009 01:03:54 PM FILED/CERT

1. The Mortgage.
2. Permitted Encumbrances listed in Exhibit C to the Mortgage.

20091008001154850 20/20  
**Bk: LR200910 Pg:6473**  
**Jefferson County, Alabama**  
10/08/2009 09:54:00 AM XFRL  
Fee - \$62.00

Total of Fees and Taxes-\$62.00  
JCOCKRELL