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Shelby Cnty Judge of Probate, AL
03/09/2010 12:27:54 PM FILED/CERT

INLAND AMERICAN BIRMINGHAM SOUTHGATE, L.L.C., a Delaware limited liability
company (Borrower)

To

RBS CITIZENS, N.A. D/B/A CHARTER ONE, a national banking association, as assignee
(Lender)

MODIFICATION OF ASSIGNMENT OF LEASES AND RENTS
(Borrower's Organizational Number: 4633196)

Dated: As of MARCH 2, 2010
Location: Pelham, Alabama
County: Shelby County, Alabama

PREPARED BY AND UPON
RECORDATION RETURN TO:

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022-2585
Attention: Victoria Shusterman, Esq.

MODIFICATION OF ASSIGNMENT OF LEASES AND RENTS

This **MODIFICATION OF ASSIGNMENT OF LEASES AND RENTS** (this "**Modification Agreement**") is entered into as of the 2ND day of MARCH, 2010, between **RBS CITIZENS, N.A. D/B/A CHARTER ONE**, a national banking association, having an address at 1215 Superior Avenue, OHS675, Cleveland, Ohio 44114 ("**Lender**"), and **INLAND AMERICAN BIRMINGHAM SOUTHGATE, L.L.C.**, a Delaware limited liability company, having an address at 2901 Butterfield Road, Oak Brook, Illinois 60523 ("**Borrower**").

WITNESSETH:

WHEREAS, pursuant to that certain Loan and Security Agreement dated as of September 29, 2009 among Borrower, INLAND AMERICAN COLUMBIA ROSEWOOD, L.L.C., a Delaware limited liability company ("**Rosewood**"), INLAND AMERICAN WOODSTOCK ROSE CREEK, L.L.C., a Delaware limited liability company ("**Rose Creek**"), INLAND AMERICAN TACOMA JAMES, L.L.C., a Delaware limited liability company ("**Tacoma James**"), INLAND AMERICAN PORT CHARLOTTE PEACHLAND, L.L.C., a Delaware limited liability company ("**Peachland**"), INLAND AMERICAN RALEIGH BENT TREE, L.L.C., a Delaware limited liability company ("**Bent Tree**") and INLAND AMERICAN NEWNAN THOMAS, L.L.C., a Delaware limited liability company ("**Newnan Thomas**") (Southgate, Rose Creek, Tacoma James, Peachland, Bent Tree, and Newnan Thomas, are hereinafter referred to collectively as the "**Other Borrowers**"), and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Original Loan Agreement**"), Borrower and Other Borrowers agreed to borrow from Lender the sum of Thirty-Nine Million Ninety-Two Thousand and 00/100 Dollars (\$39,092,000.00) (the "**Original Loan**") as evidenced by that certain Promissory Note dated as of September 29, 2009 made by Borrower and Other Borrowers to Lender (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the "**Original Note**").

WHEREAS, the Original Note is secured by, among other things, that certain Mortgage, Security Agreement and Fixture Filing made by Borrower to Lender dated September 29, 2009 and filed for record on October 5, 2009 and recorded with the Office of the Judge of Probate for Shelby County, Alabama as Document No. 20091005000376760 (the "**Mortgage**"), which Mortgage covers the real property described in Exhibit A attached hereto and made a part hereof (the "**Land**").

WHEREAS, as a condition to Lender's willingness to make the Original Loan to Borrower, Borrower entered into that certain Assignment of Leases and Rents, dated September 29, 2009, recorded in the with the Office of the Judge of Probate for Shelby County, Alabama as Document Number 20091005000376770 (the "**Assignment of Leases and Rents**").

WHEREAS, Borrower and Other Borrowers have requested and Lender has agreed to upsize the Original Loan to, among other things, increase the amount of the Original Loan, add additional collateral and additional obligors to the facility (the "**Upsize**").

WHEREAS, in connection with the Upsize, Borrower, Other Borrowers and Lender have agreed to amend and restate the Original Loan Agreement to reflect, among other things, that the Original Loan is simultaneously herewith being increased by an amount equal to \$17,610,000 such that the total loan being advanced by Lender is equal to \$56,702,000.00 (the "**Loan**") pursuant to that certain Amended and Restated Loan and Security Agreement dated as of even date herewith (the "**Loan Agreement**") by and among Lender, Borrower, Other Borrowers, Inland American Erlanger Silverlake, L.L.C., a Delaware limited liability company, Inland American Colorado Springs Cheyenne, L.L.C., a Delaware limited liability company, and Inland American San Pedro Garden, L.L.C., a Delaware limited liability company (collectively, the "**Additional Borrowers**", and together with Borrower and the Other Borrowers, the "**Borrowers**" or individually, each, as a "**Borrower**"), as evidenced by that certain Amended and Restated Promissory Note, dated as of even date herewith (the "**Note**").

WHEREAS, Borrower and Lender have agreed to modify the Mortgage as set forth in that certain Modification of Mortgage, Security Agreement and Fixture Filing, dated as of the date hereof, between Borrower and Lender (the "**Mortgage Modification**").

WHEREAS, in order to reflect the Upsize, Borrower and Lender have agreed to modify certain provisions of the Assignment of Leases and Rents pursuant to this Modification Agreement.

WHEREAS, any defined terms contained in this Modification Agreement not otherwise defined herein shall have the meanings as set forth in the Loan Agreement.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The recitals to this Modification Agreement are hereby incorporated into and made a part of this Modification Agreement, and shall constitute covenants and representations of Borrower and shall be binding upon and enforceable against Borrower.
2. The term "Assignment of Leases and Rents" as used in the Loan Documents shall now also include this Modification Agreement.
3. The term "Mortgage" as set forth in the Assignment of Leases and Rents shall be modified to mean the Mortgage as modified by the Mortgage Modification.
4. The term "Loan Agreement" as set forth in the Assignment of Leases and Rents shall be modified to mean the Loan Agreement as amended and restated by the Amended and Restated Loan Agreement.
5. The term "Note" as set forth in the Assignment of Leases and Rents shall be modified to mean that certain Amended and Restated Promissory Note in the principal amount of \$56,702,000.00.
6. The term "Debt" as set forth in the Assignment of Leases and Rents shall be modified to mean the Debt as defined in the Loan Agreement.

7. Nothing contained in this Modification Agreement is intended to impair or diminish the priority or validity of the liens or the rights granted by the Assignment of Leases and Rents.

8. All the terms, provisions, stipulations, powers, and covenants in the Loan Documents shall remain unchanged and unmodified, except as expressly set forth in this Modification Agreement, and the Assignment of Leases and Rents, as so changed or modified, is hereby ratified and confirmed and shall remain in full force and effect and shall be binding upon all parties thereto.

9. Notwithstanding anything contained in this Modification Agreement or any of the other Loan Documents to the contrary or any prior act of Lender or any procedure established by Lender with regard to the Loan, Borrower acknowledges and agrees that Lender has not heretofore waived any of its rights or remedies under the Loan Documents nor has Lender waived any of the duties or obligations of Borrower thereunder. No waiver by Lender of any covenant or condition under the Loan Documents shall be deemed a subsequent waiver of the same or any other covenant or condition. No covenant, term or condition of the Loan Documents shall be deemed waived by Lender unless waived in writing.

10. This Modification Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.

11. The terms, covenants and conditions of the Assignment of Leases and Rents shall remain unchanged and unmodified, except as expressly set forth in this Modification Agreement, and the terms, covenants and conditions of the Assignment of Leases and Rents, as so modified, are hereby ratified and confirmed.

12. None of the covenants, terms or conditions of this Modification Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.

13. This Modification Agreement contains the entire agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind.

14. In the event of any inconsistency between the terms of the Loan Documents and the terms of this Modification Agreement, the terms of this Modification Agreement control.

15. THIS MODIFICATION AGREEMENT SHALL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES, AND BORROWER AGREES THAT THE PROPER VENUE FOR ANY MATTERS IN CONNECTION HERewith SHALL BE IN THE STATE OR FEDERAL COURTS LOCATED IN CHICAGO, ILLINOIS AS ASSIGNEE MAY ELECT AND BORROWER HEREBY SUBMITS ITSELF TO THE JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF ADJUDICATING ANY MATTERS RELATED TO THE LOAN, PROVIDED, HOWEVER, THAT TO THE EXTENT THE MANDATORY PROVISIONS OF THE LAWS OF ANOTHER JURISDICTION RELATING TO (i) THE PERFECTION OR THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTERESTS IN

ANY OF THE PROPERTY, (ii) THE LIEN, ENCUMBRANCE OR OTHER INTEREST IN THE PROPERTY GRANTED OR CONVEYED BY THIS MODIFICATION AGREEMENT, OR (iii) THE AVAILABILITY OF AND PROCEDURES RELATING TO ANY REMEDY HEREUNDER OR RELATED TO THIS MODIFICATION AGREEMENT ARE REQUIRED TO BE GOVERNED BY SUCH OTHER JURISDICTION'S LAWS, SUCH OTHER LAWS SHALL BE DEEMED TO GOVERN AND CONTROL. THE INVALIDITY, ILLEGALITY OR UNENFORCEABILITY OF ANY PROVISION OF THIS MODIFICATION AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL NOT AFFECT OR IMPAIR THE VALIDITY, LEGALITY OR ENFORCEABILITY OF THE REMAINDER OF THIS MODIFICATION AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND TO THIS END, THE PROVISIONS OF THIS MODIFICATION AGREEMENT AND THE OTHER LOAN DOCUMENTS ARE DECLARED TO BE SEVERABLE.

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IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

BORROWER:

**INLAND AMERICAN BIRMINGHAM
SOUTHGATE, L.L.C.**, a Delaware limited
liability company

By: Inland American MAC
Corporation, a Delaware
corporation, its sole member

By: Mary J. Pechous
Name: **Mary J. Pechous**
Title: **Assistant Secretary**

Address of Borrower:
2901 Butterfield Road
Oak Brook, Illinois 60523

LENDER:

**RBS CITIZENS, N.A., d/b/a CHARTER
ONE,**
a national banking association

By: _____
Name: Andrew Romanosky
Title: Vice President

Address of Lender:
1215 Superior Avenue
OHS675
Cleveland, Ohio 44114

IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

BORROWER:

**INLAND AMERICAN BIRMINGHAM
SOUTHGATE, L.L.C.**, a Delaware limited
liability company

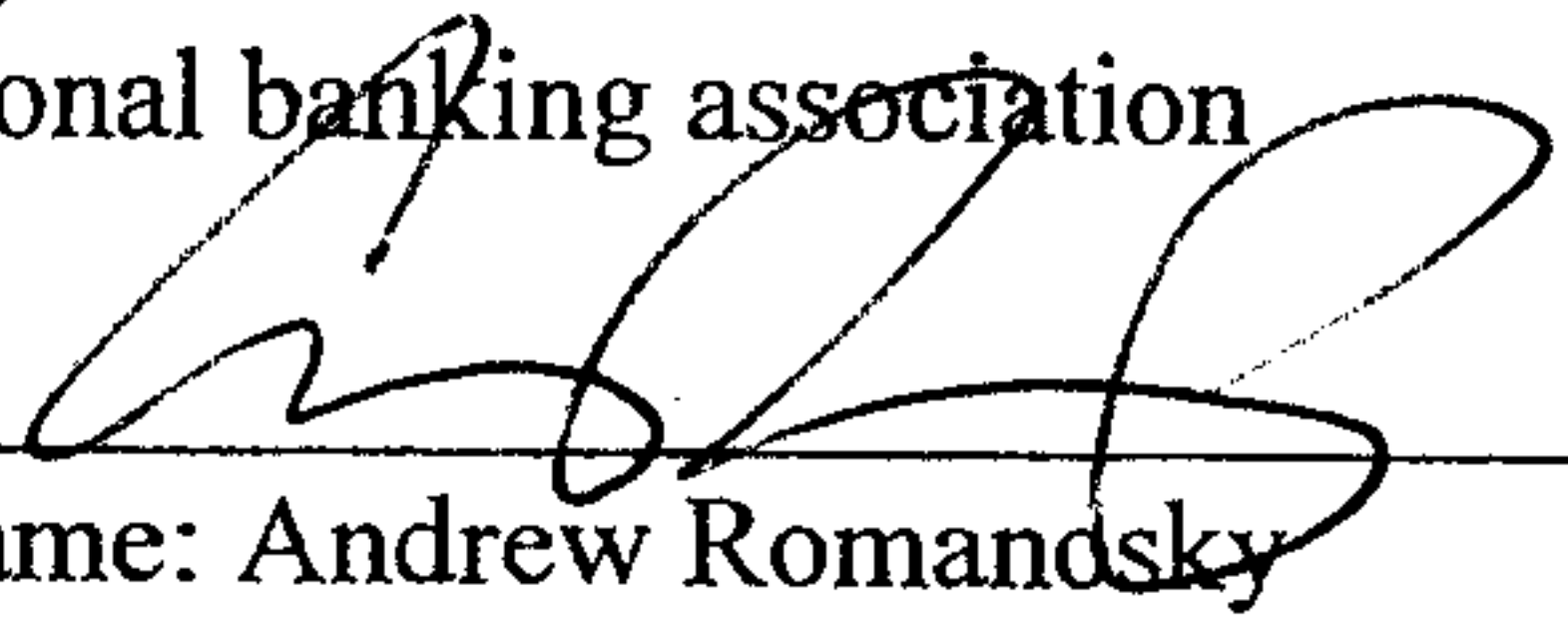
By: Inland American MAC
Corporation, a Delaware
corporation, its sole member

By: _____
Name: _____
Title: _____

Address of Borrower:
2901 Butterfield Road
Oak Brook, Illinois 60523

LENDER:

**RBS CITIZENS, N.A., d/b/a CHARTER
ONE,**
a national banking association

By: 
Name: Andrew Romandsky
Title: Vice President

Address of Lender:
1215 Superior Avenue
OHS675
Cleveland, Ohio 44114

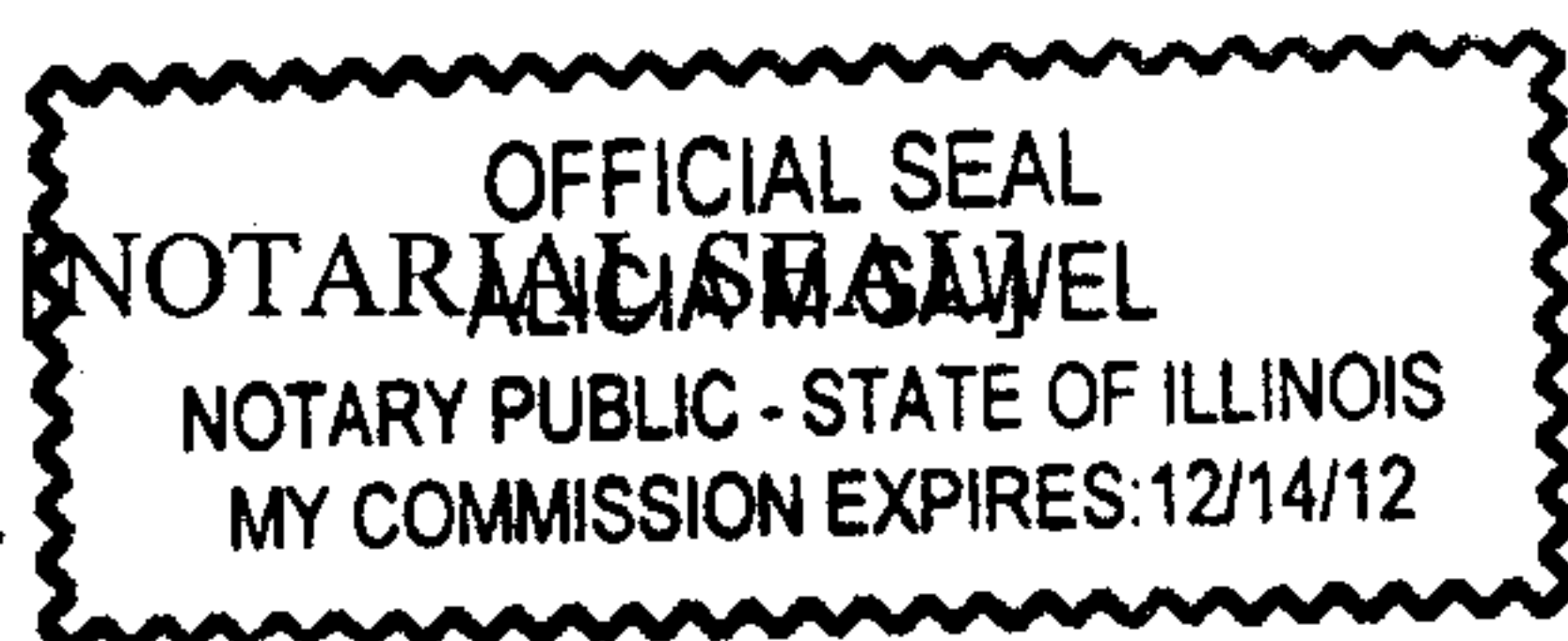


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STATE OF Illinois)
)
COUNTY OF DuPage)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mary J. Petras, whose name as Assistant Secretary of Inland American MAC Corporation, a Delaware corporation, the sole member of Inland American Birmingham Southgate, L.L.C., a Delaware limited liability company, 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 such instrument, she/~~he~~, as such Assistant Secretary and with full authority, executed the same voluntarily for and as the act of said corporation on behalf of itself and the limited liability company.

Given under my hand and official seal this 25th day of February, 2010.



Alicia M. Hawel
Notary Public
My Commission Expires: 12/14/12



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STATE OF Illinois)
COUNTY OF COOK) SS:

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Andrew Romanosky, whose name as _____ of Vice President of RBS CITIZENS, N.A., d/b/a CHARTER ONE, 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 such instrument, he, as such _____ and with full authority, executed the same voluntarily for and as the act of said corporation on behalf of itself and the national banking association.

Given under my hand and official seal this 26 day of FEBRUARY 2010.

[NOTARIAL SEAL]

Lottie Kearns

Notary Public

My Commission Expires: 11-15-2012

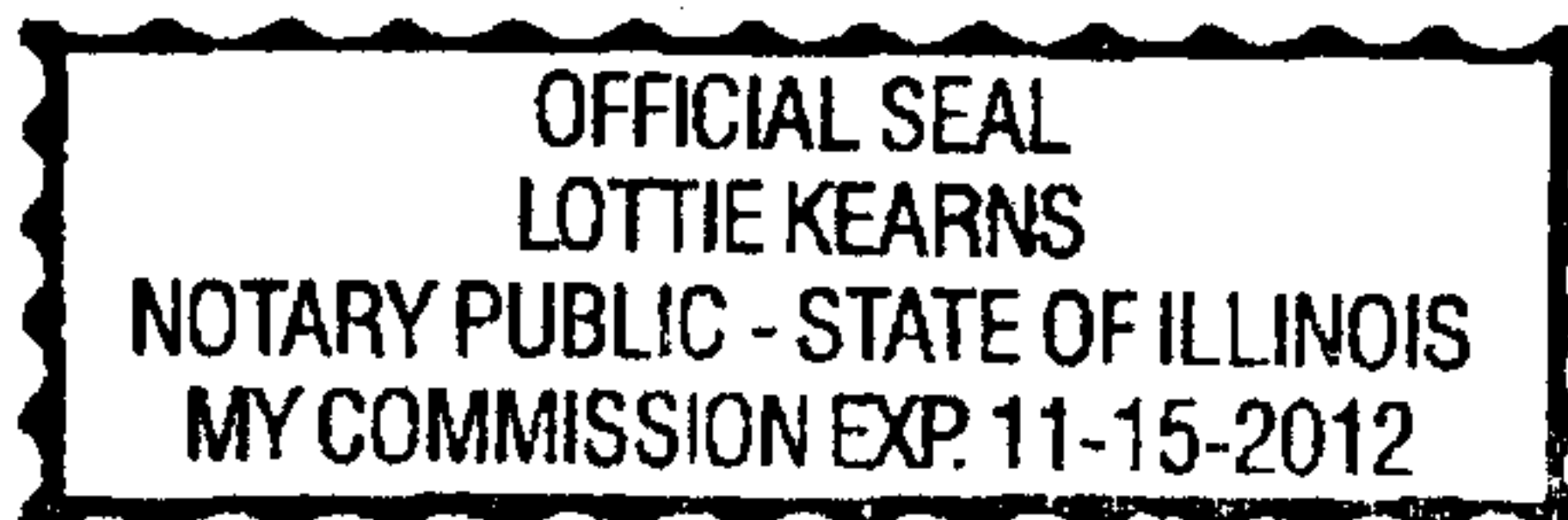


EXHIBIT A

Legal Description

A tract of land situated in the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 25, Township 19 South, Range 3 West, Shelby County, Alabama, and more particularly described as follows:

Commence at the Northeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section and run North $87^{\circ}18'38''$ West, along the North line thereof a distance of 422.06 feet; thence run South $01^{\circ}17'56''$ West, for a distance of 412.83 feet to the Point of Beginning; thence run South $87^{\circ}17'54''$ East, for a distance of 417.36 feet to a point on the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence run South $01^{\circ}57'45''$ West, along said East line a distance of 189.93 feet; thence run South $88^{\circ}02'15''$ East, for a distance of 3.83 feet to a point on the West right of way line of U.S. Highway No. 31; thence run along said right of way South $10^{\circ}40'00''$ West, a distance of 434.26 feet; thence run South $32^{\circ}01'05''$ West, a distance of 188.80 feet to a point on the Northwest right of way line of Alabama Highway No. 261; thence run South $61^{\circ}31'05''$ West, along said right of way a distance of 122.50 feet; thence run North $32^{\circ}30'55''$ West, along the Northeast boundary of Riverchase Animal Clinic property a distance of 141.48 feet; thence run South $57^{\circ}29'05''$ West, along the Northwest line of said property a distance of 100.00 feet to the Northeast right of way line of Valleydale Terrace; thence run North $32^{\circ}30'55''$ West, along right of way line a distance of 25.60 feet to the beginning of a curve to the right, said curve having a radius of 419.64 feet and subtending a central angle of $13^{\circ}13'21''$; thence run Northwest along the arc of said curve a distance of 96.84 feet; thence on a line tangent to curve, continue North $19^{\circ}17'34''$ West, along right of way line a distance of 166.06 feet; thence run North $58^{\circ}04'35''$ East, along right of way a distance of 13.01 feet; thence an angle to the left to tangent of a curve to the left of $77^{\circ}07'41''$, said curve having a radius of 174.25 feet and subtending a central angle of $30^{\circ}07'58''$; thence run along the arc of said curve a distance of 91.61 feet; thence on a line tangent to curve, continue along right of way line North $49^{\circ}11'04''$ West, a distance of 67.40 feet; thence run North $40^{\circ}48'56''$ East, a distance of 147.17 feet; thence run North $50^{\circ}36'35''$ East, a distance of 175.89 feet; thence run North $01^{\circ}17'56''$ East, for a distance of 175.35 feet to the Point of Beginning.

TOGETHER WITH all of owner's right, title and interest in and to that certain Easement dated November 18, 1987, and recorded in Book 161, page 3, in the Probate Office of Shelby County, Alabama.