

**STATE OF ALABAMA  
SHELBY COUNTY**

**AGREEMENT NOT TO ENCUMBER PROPERTY**

**THIS AGREEMENT NOT TO ENCUMBER PROPERTY**, dated July 16, 2010, is entered into by and among Neil Gagnon and Jack McLeod, c/o Martin P. Unger, Esq., Certilman, Balin, Adler & Hyman, LLP ("Lender") and William T. Carter ("Borrower").

**WITNESSETH:**

**WHEREAS**, Borrower owns the real property being described on Exhibit "A" attached hereto and made a part hereof and any improvements thereon (the "Real Property"); and

**WHEREAS**, Borrower has this date entered into that certain Amended and Restated Settlement Agreement dated October 22, 2010 (the "Settlement Agreement") which settlement is further evidenced by the following agreements and security instruments (the "Loan Documents"), to wit: (i) Promissory Note for \$1,450,000.00 (the "Note"), (ii) an Assignment and Pledge of LLC Interest, (iii) a Stock Pledge Agreement, (iv) a Patent Security Agreement, (v) a Personalty Security Agreement, (vi) this Agreement Not to Encumber Property, (vii) any other agreements, instruments, affidavits which evidence or secure the Note (the Loan Documents evidencing the Note are also sometimes referred to herein as the "Loan"); and

**WHEREAS**, Borrower has further agreed with Lender that it shall not further encumber or place additional mortgages or liens on the Real Property described herein except in favor of Lender so long as the Loan is outstanding and except under the circumstances provided for herein and Borrower and Lender desire to enter into this instrument evidencing such agreement; and

**NOW, THEREFORE**, in consideration of the premises, the Loan heretofore made by Lender to Borrower, the covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein as a material part of this Agreement.

2. Borrower does hereby warrant and represent to Lender that as of the date hereof: (i) Borrower owns a fee simple interest in and to the Real Property, subject only to covenants, restrictions, reservations, easements and rights-of-way, if any, heretofore imposed of record affecting title to said Real Property and further subject to municipal zoning ordinances now or, hereafter becoming applicable, matters of survey, and taxes or assessments hereafter becoming due against said Real Property, and subject to (a) a mortgage dated July 6, 2007 from William T. Carter, an unmarried man, to U.S. Bank National Association, ND, in the amount of Five



Hundred Thousand (\$500,000.00) Dollars recorded at 20070912000427160 in the Office of the Judge of Probate of Shelby County, Alabama held by U.S. Bank National Association, ND, A National Banking Association and (b)a Mortgage from William T. Carter to U.S. Bank National Association ND, a National Banking Association dated July 6, 2007 for \$85,000.00 being recorded at 20070912000427170 in the Office of Judge of Probate of Shelby County, Alabama (collectively, the "Prior Mortgage"); (ii) Borrower has not granted any mortgage, lien or other encumbrance against the Real Property nor is there any mortgage, lien or other encumbrance against the Real Property except for the Prior Mortgage; (iii) Borrower is not obligated as a surety or guarantor on any bond or other obligation that would, through of the principal therein, create a lien on said Real Property and there is no outstanding indebtedness for equipment, appliances, fixtures, or other improvements attached to said Real Property; (iv) There are no pending suits, proceedings, judgments, bankruptcies, liens, or claims of liens by laborers, materialmen, architects, surveyors, engineers, or others for improvements or repairs on said Real Property, or executions against the Borrower in any county of the State of Alabama.

3. Borrower agrees that, so long as any amount is owing on the Loan, Borrower shall not place (or allow to be placed) on the Real Property or any part thereof, any mortgage, lien (other than the lien of current ad valorem taxes which must be paid prior to their delinquency) or other encumbrance except in favor of Lender, and then only in the event of any of the Activating Events provided for herein. Borrower further agrees that so long as any amounts are owing on the Loan it shall not lease the Real Property or convey or transfer the Real Property or any interest therein.

4. The following shall constitute "Activating Events" hereunder: (i) any default hereunder, (ii) any default under the Loan Documents, or (iii) Borrower's written request that Lender accept a mortgage on the Real Property. In the event of an Activating Event, at Lender's option and upon Lender's request, Borrower agrees that it shall grant and enter into a first mortgage on the Real Property in favor of Lender to secure the Loan or any other loans and obligations in favor of Lender for which Borrower is then (or may thereafter become) obligated. Such mortgage in favor of Lender shall be subject only to matters of survey, easements and covenants of record in the office of the Judge of Probate of Shelby County, Alabama, taxes then due and payable and any then existing utility easements of record and the Prior Mortgage. Borrower shall further provide to Lender an ALTA loan policy of title insurance covering the Real Property, issued by a nationally recognized title insurance company acceptable to Lender in the amount of all then existing indebtedness secured by said mortgage and showing only the title exceptions described in the immediately preceding sentence and shall enter into such agreements and instruments as may be requested by Lender to evidence or secure said mortgage. Mortgage recording cost will be paid by Borrower and Borrower shall pay the cost of title insurance.

In the event of an Activating Event, Borrower shall also assign any lease or leases of the Real Property to Lender and shall cause any tenant of the Real Property to enter into a Subordination and Non-Disturbance Agreement acknowledging Lender's mortgage interest in the Real Property and that said lease of the Real Property is subordinate to Lender's mortgage interest. Borrower further agrees that any lease of the Real Property shall contain a disclosure that



the premises are leased subject to this Agreement.

5. As used in this Agreement, the terms listed below shall have the following meaning: (a) "Obligation" shall mean any liability, indebtedness, or obligation of the Borrower to Lender of every kind and nature including but not limited to the obligations provided for under the Loan Documents, now existing or hereafter arising, whether created directly or acquired by assignment, whether matured or unmatured; and (b) Security Agreement shall mean any existing or future agreement between the Borrower and Lender which creates or provides for a security interest in or lien upon any of the assets or property (tangible or intangible, real or personal) of Borrower or any covenant or agreement of non encumbrance with respect to the personal or real property of the Borrower, including but not limited to the Loan Documents.

All collateral now or hereafter subject to a security interest or lien of Lender pursuant to any or all of the Security Agreements shall secure any and all Obligations and any proceeds of any collateral may be applied to any of the Obligations as Lender may see fit, subject to applicable law. In addition to and not in substitution for any provisions in any of the Security Agreements evidencing Obligations, it is agreed that any default or breach by the Borrower in the payment or default under any Security Agreement shall, at the option of Lender, constitute a default under each Security Agreement and any and all promissory notes or other collateral instruments arising therefrom. This Agreement shall constitute an amendment and supplement of each of the Security Agreements now or hereafter executed and shall augment and be in addition to and not in substitution for any provision of any Security Agreement or Obligation and shall not otherwise limit or affect the rights and remedies of Lender under any such Security Agreement or Obligation.

6. During the term of the Loan, Borrower further agrees to the following:

(a) To pay all taxes, assessments, and other liens against the Real Property or any part thereof (hereinafter jointly called "Liens") and if default is made in the payment of the Liens, or any part thereof, Lender, at its option, may pay the same; notwithstanding anything herein to the contrary, Borrower reserves the right to contest, in good faith, any such Lien, provided that within thirty (30) days after the date said Lien is filed, Borrower posts a bond in form and content and with a surety satisfactory to Lender, which bond guarantees payment and discharge of the Lien in the event Borrower is unsuccessful or provided that within said thirty (30) day period Borrower provides affirmative title insurance coverage insuring against such Lien; and

(b) To take good care of the Real Property and all improvements located thereon and not to commit or permit any waste thereon, and at all times to maintain such improvements in as good condition as they now are, or as they may be put, reasonable wear and tear excepted.

7. Borrower further agrees that if all or any part of the Real Property or any interest therein is sold, leased or transferred by the Borrower without the Lender's prior written consent (which consent may be granted or withheld in the Lender's sole, absolute and uncontrolled discretion), Lender may, at its option, declare the Loan to be immediately due and payable.



8. A Default shall have occurred or be deemed to have occurred and be deemed a Default hereunder if: (a) the Borrower shall fail to pay in full all or any part of the Loan and each installment thereof when due; (b) the Borrower shall fail to discharge or contest, in the manner set forth above, any Lien within thirty (30) days after the date said Lien is filed; (c) the Borrower shall fail to maintain the Real Property as provided for above; (d) the Borrower shall fail to reimburse Lender for any sums advanced hereunder within thirty (30) days after Lender gives Borrower written notice of such advance; (e) the Borrower shall fail duly to observe and perform any other covenant, condition or agreement of this Agreement, or the other Loan Documents; (f) any warranties or representations made or agreed to be made in any of the Loan Documents shall be breached by the Borrower or shall prove to be false or misleading; (g) any lien for labor or materials, taxes, judgment or otherwise shall be filed against the Real Property or any part thereof and the same remains unsatisfied, or uncontested in the manner provided herein; (h) Borrower shall commit any act of bankruptcy; (i) Borrower shall file a voluntary petition in bankruptcy, or any other petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation or similar relief for the Borrower or such partner under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; (j) Borrower shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Borrower or such other obligor or guarantor of all the rents, revenues, issues, earnings, profits or income thereof; (k) Borrower shall make any general assignment for the benefit of creditors; or (l) if there occurs or exists any other event so deemed to be a default under the Loan Documents. Any such event of Default shall constitute a Activating Event hereunder and Lender may assert the rights and remedies provided for in Section 4 above.

9. This Agreement is not a lien or encumbrance upon the Real Property or any part thereof but rather constitutes the covenant and agreement of Borrower set out hereinabove.

10. This Section is Intentionally Deleted.

11. This Section is Intentionally Deleted.

12. This Section is Intentionally Deleted.

13. Miscellaneous.

A. Any captions used in connection with the paragraphs in this Agreement are for convenience only and are not intended in any way to amplify or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

B. This Agreement shall be construed and interpreted under the laws of the State of Alabama. The Borrower agrees that the Loan Documents shall be governed by and construed under the laws of the State of Alabama, including without limitation applicable usury laws. The



Loan Documents have been negotiated, and are being executed and delivered in the State of Alabama. It is intended, and Borrower and Lender specifically agree, that the laws of the State of Alabama governing interest shall apply to this transaction. Borrower hereby acknowledges that (i) the negotiation, execution, and delivery of any commitment and the Loan Documents constitutes the transaction of business within the State of Alabama, (ii) any cause of action arising under any commitment or any of said Loan Documents will be a cause of action arising from such transaction of business, and (iii) Borrower understands, anticipates and foresees that any action for enforcement of this commitment and the Loan or the Loan Documents may be brought against it in the State of Alabama. To the extent allowed by law, Borrower hereby submits itself to jurisdiction in the State of Alabama for any action or cause of action arising out of or in connection with any commitment and the Loan or the Loan Documents, shall waive any and all rights under the laws of any state to object to jurisdiction or venue within Shelby County, Alabama.

C. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

D. Time shall be of the essence of this Agreement.

E. The Loan Documents contain the entire agreement between the parties and, and shall not be amended, modified, supplemented or changed in any way except by written agreement of the parties.

F. Any reference in this contract to the "date of this Agreement" or the "date hereof" shall mean the date on which this document has been signed by all parties as designated below.

G. There shall be no inference or rule of construction which shall apply based on the fact or circumstance that Lender's counsel drafted any or all of the provisions of this Agreement.

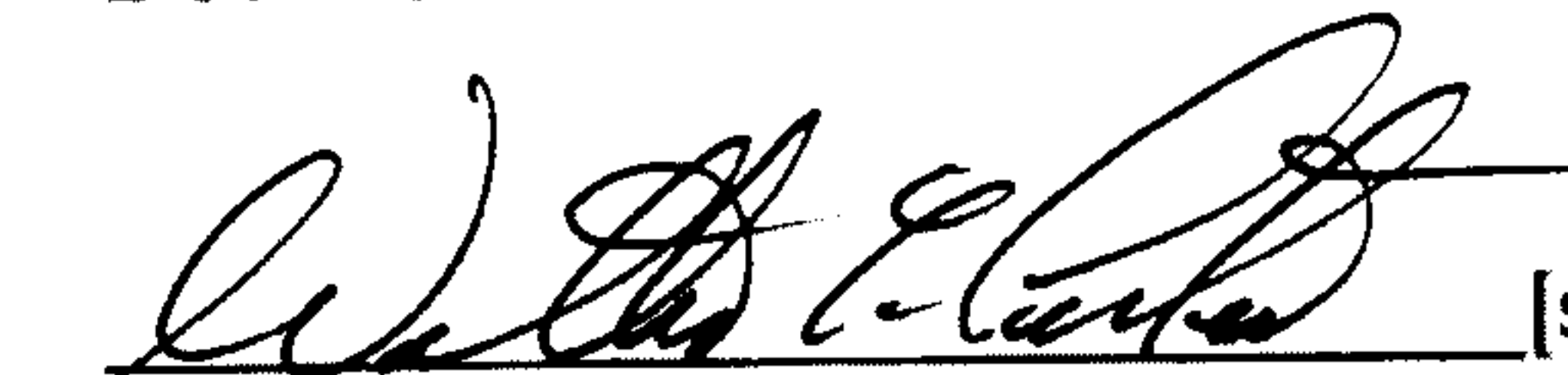
H. No person shall be deemed to possess any third-party beneficiary right pursuant to this Agreement. It is the intent of the parties hereto that no direct benefit to any third party is intended or implied by the execution of this Agreement.

14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed counterparts.

There is Nothing Further on This Page

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their names and on their behalf by its duly authorized officers or have hereunto set their hand and seal, on the day and year first above written.

BORROWER:


 [seal]  
William T. Carter

STATE OF ALABAMA  
SHELBY COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that William T. Carter, 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 same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this 28th day of October, 2010.

(SEAL)

  
Notary Public  
My Commission Expires: May 31, 2014  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: May 31, 2014  
BONDED BY NOTARY PUBLIC UNDERWRITERS



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their names and on their behalf by its duly authorized officers or have hereunto set their hand and seal, on the day and year first above written.

LENDER:

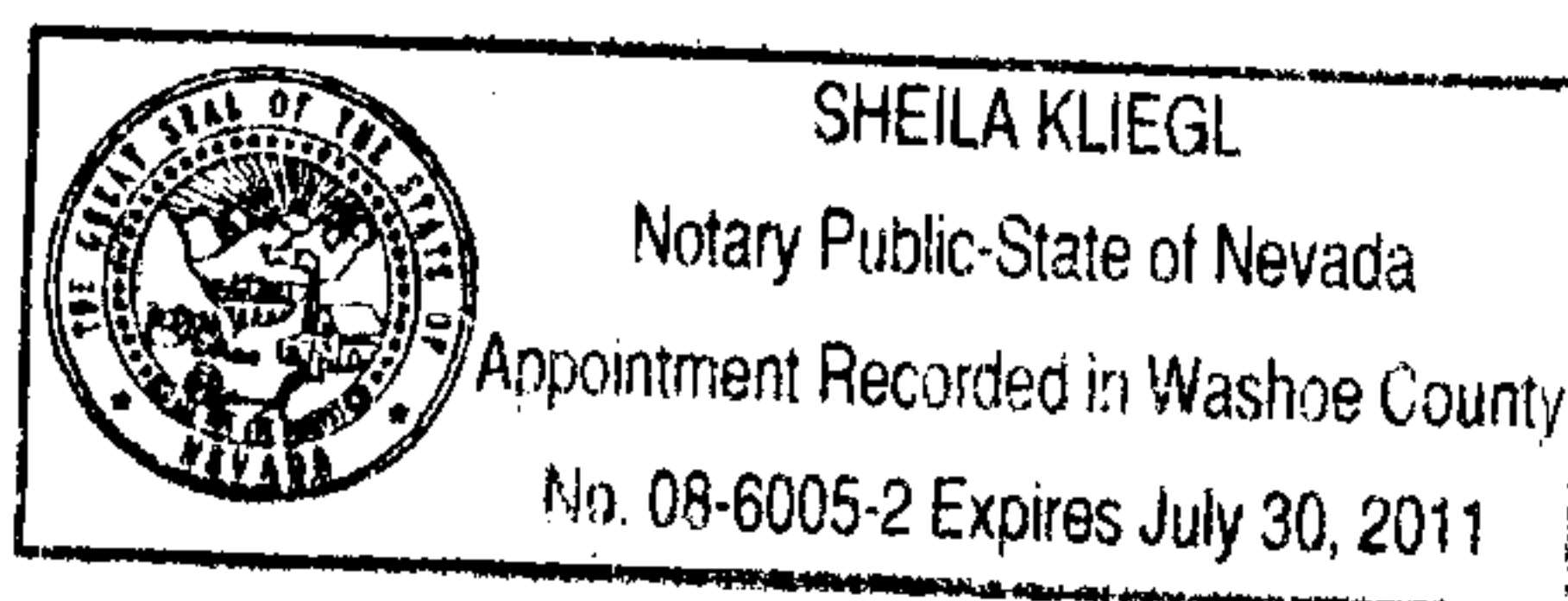
Jack McLeod [seal]  
Jack McLeod

Nevada  
STATE OF ~~NEW YORK~~  
~~NEW YORK COUNTY~~  
Washoe

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Jack McLeod, 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 same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this 3 day of <sup>Nov.</sup> ~~October~~, 2010.

(SEAL)



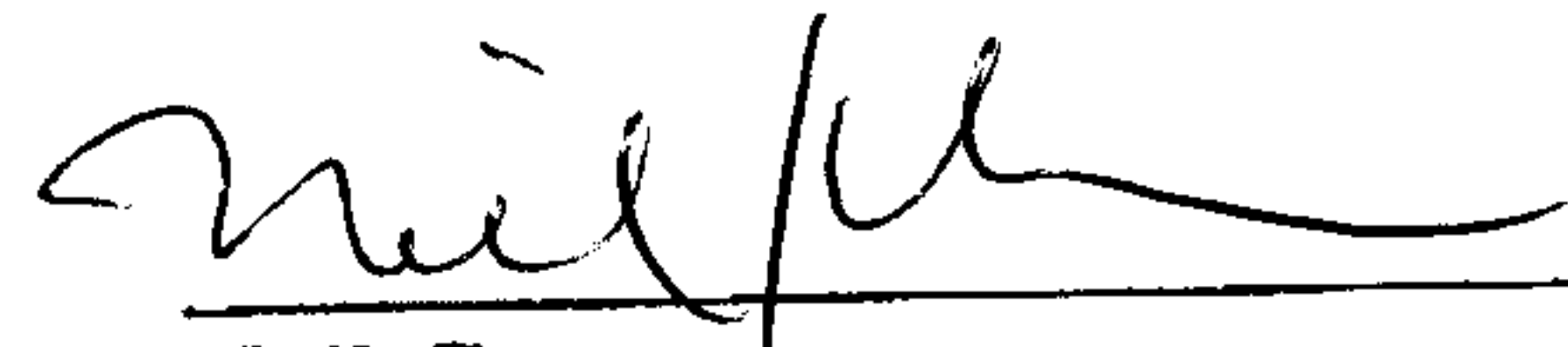
Sheila Kliegl  
Notary Public  
My Commission Expires: July 30, 2011



20110112000012210 8/9 \$37.00  
 Shelby Cnty Judge of Probate, AL  
 01/12/2011 03:21:07 PM FILED/CERT

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their names and on their behalf by its duly authorized officers or have hereunto set their hand and seal, on the day and year first above written.

LENDER:

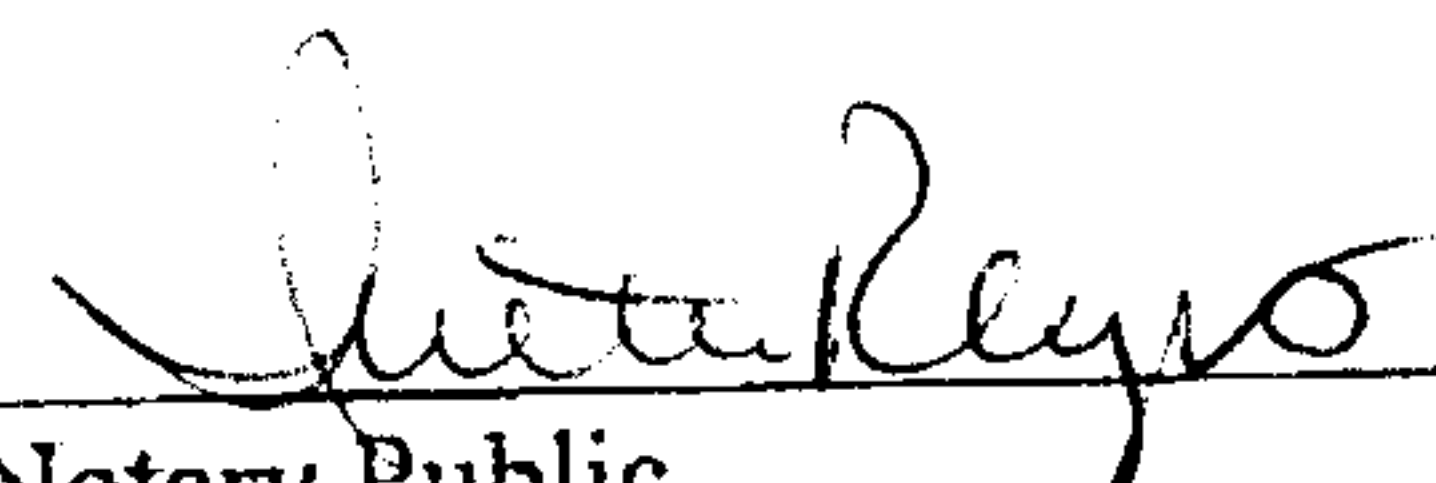
 [seal]  
 Neil Gagnon

STATE OF ~~NEVADA~~ New York  
New York COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Neil Gagnon, 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 same voluntarily on the day the same bears date.


GIVEN under my hand and official seal this 8<sup>th</sup> day of November, 2010.

(SEAL)

  
 Notary Public  
 My Commission Expires: 1/2/2011

IVETTE REYES  
 NOTARY PUBLIC, State of New York  
 No. 01RE6053182  
 Qualified in Westchester County  
 Commission Expires 1/2, 20 11



  
20110112000012210 9/9 \$37.00  
Shelby Cnty Judge of Probate, AL  
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**EXHIBIT "A"**

**Lots 22 and 27, according to the survey of Sector Two, Spring Garden Estates, as recorded in Map Book 5, Page 12, in the Probate Office of Shelby County, Alabama.**

AFTER RECORDING RETURN TO:  
Mark A. Franco, Esq.  
Copeland, Franco, Screws & Gill, P.A.  
444 S. Perry Street  
Montgomery, AL 36104