
20141003000310250 1/12 \$48.00
Shelby Cnty Judge of Probate, AL
10/03/2014 08:32:47 AM FILED/CERT

**THIRD MODIFICATION OF MORTGAGE, SECURITY AGREEMENT AND FIXTURE
FILING AND ASSIGNMENT OF LEASES AND RENTS**

IA BIRMINGHAM SOUTHGATE, L.L.C.
formerly known as Inland American Birmingham Southgate, L.L.C.,
a Delaware limited liability company,
as mortgagor and borrower

for the benefit of

CITIZENS BANK, NATIONAL ASSOCIATION
formerly known as RBS Citizens, N.A. d/b/a Charter One,
a national banking association,
as Agent for itself and the other Lenders under the Loan Agreement,
as mortgagee and lender


Borrower's Organizational No.: 4633196

Dated: As of September 30, 2014
Location: 1920-1950 Montgomery Hwy S
Birmingham, Alabama 35244
County: Shelby County, Alabama

NOTE TO PROBATE JUDGE: The existing mortgage secures payment of an existing loan in the aggregate principal amount of \$65,600,000.00. A part of the collateral securing said existing loan is located outside of the State of Alabama. As a result, recording privilege tax was paid on the amount of said existing loan allocable to the State of Alabama pursuant to Section 40-22-2(8) in connection with the instruments recorded as Document Nos. 20091005000376760, 20100309000068360 and 20111103000330270. This instrument evidences a reduction of the aggregate principal amount of the loan to \$56,383,599.92. Because the amount of the reduced loan allocable to the State of Alabama is less than the amount of the existing loan allocable to the State of Alabama, no additional recording privilege tax is due in connection with the recording of this instrument.

PREPARED BY AND UPON
RECORDATION RETURN TO:

Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, Illinois 60661-3693
Attention: Jason Gorczynski, Esq.



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THIRD MODIFICATION OF MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS

This **THIRD MODIFICATION OF MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS** (this "**Modification Agreement**") is entered into as of the 30th day of September, 2014, by and between **IA BIRMINGHAM SOUTHGATE, L.L.C.** formerly known as Inland American Birmingham Southgate, L.L.C., a Delaware limited liability company, having its principal place of business at 2809 Butterfield Road, Suite 360, Oak Brook, Illinois 60523 ("**Borrower**"), and **CITIZENS BANK, NATIONAL ASSOCIATION** formerly known as RBS Citizens, N.A. d/b/a Charter One, a national banking association, having an address at 71 S. Wacker Drive, IH2915, Chicago, Illinois 60606 ("**Citizens**"), as Agent for itself and the other Lenders under the Loan Agreement, as beneficiary and lender (in such capacity, together with its successors and assigns, "**Agent**").

WITNESSETH:

WHEREAS, Citizens made a loan (the "**Existing Loan**") to Borrower and **IA TACOMA JAMES, L.L.C.** formerly known as Inland American Tacoma James, L.L.C., a Delaware limited liability company ("**Tacoma James**"), **IA WOODSTOCK ROSE CREEK, L.L.C.** formerly known as Inland American Woodstock Rose Creek, L.L.C., a Delaware limited liability company ("**Rose Creek**"), **IA COLUMBIA ROSEWOOD, L.L.C.** formerly known as Inland American Columbia Rosewood, L.L.C., a Delaware limited liability company ("**Rosewood**"), **INLAND AMERICAN PORT CHARLOTTE PEACHLAND, L.L.C.**, a Delaware limited liability company ("**Peachland**"), **IA RALEIGH BENT TREE, L.L.C.** formerly known as Inland American Raleigh Bent Tree, L.L.C., a Delaware limited liability company ("**Bent Tree**"), **IA NEWNAN THOMAS, L.L.C.** formerly known as Inland American Newnan Thomas, L.L.C., a Delaware limited liability company ("**Newnan Thomas**"), **IA ERLANGER SILVERLAKE, L.L.C.** formerly known as Inland American Erlanger Silverlake, L.L.C., a Delaware limited liability company ("**Silverlake**"), **IA COLORADO SPRINGS CHEYENNE, L.L.C.** formerly known as Inland American Colorado Springs Cheyenne, L.L.C., a Delaware limited liability company ("**Colorado Springs**"), and **IA SAN PEDRO GARDEN, L.L.C.** formerly known as Inland American San Pedro Garden, L.L.C., a Delaware limited liability company ("**San Pedro**"), collectively with Tacoma James, Rose Creek, Rosewood, Peachland, Bent Tree, Newnan Thomas, Silverlake and Colorado Springs are hereinafter referred to collectively as the "**Other Borrowers**" and together with Borrower, the "**Borrowers**" (subject to the Recital regarding Peachland below)), as evidenced and secured by, among other things, (a) that certain Amended and Restated Loan Agreement dated March 2, 2010 (the "**Original AR Loan Agreement**"), as amended by that certain First Amendment to Amended and Restated Loan Agreement and Other Loan Documents dated April 28, 2011 (the "**First Amendment**"), that certain Second Amendment to Amended and Restated Loan Agreement and Other Loan Documents dated October 31, 2011 (the "**Second Amendment**") and that certain Third Amendment to Amended and Restated Loan Agreement and Other Loan Documents dated May 31, 2013 (the "**Third Amendment**"; the Original AR Loan Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment, is referred to herein as the "**Existing AR Loan**"),

Agreement”), and (b) that certain Second Amended and Restated Promissory Note dated October 31, 2011 (the “Existing Note”).

WHEREAS, the Peachland Mortgage was released, and Peachland is no longer one of the “Borrowers”.

WHEREAS, the Existing Loan is secured by, among other things, (a) that certain Mortgage, Security Agreement and Fixture Filing made by Borrower in favor of Citizens 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 “Original Mortgage”), as modified by (i) that certain Modification of Mortgage, Security Agreement and Fixture Filing dated March 2, 2010 and filed for record on March 9, 2010 and recorded with the Office of the Judge of Probate for Shelby County, Alabama as Document No. 20100309000068360 (the “First Mortgage Modification”) and (ii) that certain Second Modification of Mortgage, Security Agreement and Fixture Filing and Assignment of Leases and Rents dated October 31, 2011 and filed for record on November 3, 2011 and recorded with the Office of the Judge of Probate for Shelby County, Alabama as Document No. 20111103000330270 (the “Second Mortgage/ALR Modification”; the Original Mortgage, as amended by the First Mortgage Modification and the Second Mortgage/ALR Modification, is referred to herein as the “Existing Mortgage”), and (b) that certain Assignment of Leases and Rents 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. 20091005000376770 (the “Original Assignment of Leases”), as modified by (i) that certain Modification of Assignment of Leases and Rents dated March 2, 2010 and filed for record on March 9, 2010 and recorded with the Office of the Judge of Probate for Shelby County, Alabama as Document No. 20100309000068370 (the “First ALR Modification”) and (ii) the Second Mortgage/ALR Modification; the Original Assignment of Leases, as amended by the First ALR Modification and the Second Mortgage/ALR Modification, is referred to herein as the “Existing Assignment of Leases”); which Existing Mortgage and Existing Assignment of Leases cover the real property described in Exhibit A attached hereto and made a part hereof (the “Land”).

WHEREAS, the Existing Mortgage is cross-collateralized and cross-defaulted with the Colorado Springs Mortgage (as defined in the “Loan Agreement” (as defined below)), the Silverlake Mortgage (as defined in the Loan Agreement), the San Pedro Mortgage (as defined in the Loan Agreement), the Tacoma James Mortgage (as defined in the Loan Agreement), the Rose Creek Mortgage (as defined in the Loan Agreement), the Rosewood Mortgage (as defined in the Loan Agreement), the Bent Tree Mortgage (as defined in the Loan Agreement) and the Newnan Thomas Mortgage (as defined in the Loan Agreement), and Borrower and the Other Borrowers are Affiliates (as defined in the Loan Agreement).

WHEREAS, Borrowers and Citizens have agreed to amend and restate (a) the Existing AR Loan Agreement in its entirety as that certain Second Amended and Restated Loan and Security Agreement dated as of even date herewith (the “Loan Agreement”) and (b) the Existing Note in its entirety as that certain Third Amended and Restated Promissory Note dated as of even date herewith (the “Note”), and in connection therewith, Borrower and Citizens have

agreed to modify certain provisions of the Existing Mortgage and the Existing Assignment of Leases 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, for and in consideration of the covenant and agreements hereinafter set forth, and also in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration in hand paid to Lenders by Borrower, the parties hereto agree as follows:

1. **Incorporation of Recitals.** 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. **Global Amendment.** The terms "Mortgage" and "Assignment of Leases" as used in the Loan Documents shall mean the Existing Mortgage and the Existing Assignment of Leases, each as amended by this Modification Agreement, respectively.

3. **Amendments to Existing Mortgage and Existing Assignment of Leases.**

a. The term "Lender" as set forth in the Existing Mortgage and in the Existing Assignment of Leases shall be modified to mean Citizens Bank, National Association formerly known as RBS Citizens, N.A. d/b/a Charter One, a national banking association, in its capacity as Agent for itself and the other Lenders under the Loan Agreement, as beneficiary and lender.

b. The term "Loan" as set forth in the Existing Mortgage and in the Existing Assignment of Leases shall be modified to mean a loan in the principal amount of \$56,383,599.92.

c. The term "Loan Agreement" as set forth in the Existing Mortgage and in the Existing Assignment of Leases shall be modified to mean that certain Second Amended and Restated Loan and Security Agreement dated as of even date herewith.

d. The term "Note" as set forth in the Existing Mortgage and in the Existing Assignment of Leases shall be modified to mean that certain Third Amended and Restated Promissory Note dated as of even date herewith in the principal amount of \$56,383,599.92, and any note or notes issued in substitution or exchange therefor.

4. **Agreements Continue; Ratification.** 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 Existing Mortgage or the Existing Assignment of Leases. 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 Existing Mortgage and Existing Assignment of Leases, as so changed or modified, are hereby ratified and confirmed and shall remain in full force and effect and shall be binding upon all parties thereto.

Borrower hereby affirms that all of its representations and warranties set forth in the Existing Mortgage and the Existing Assignment of Leases are, in all material respects, true, correct and complete as of the date of this Modification Agreement, except as expressly modified by this Modification Agreement.

5. **No Waiver.** Notwithstanding anything contained in this Modification Agreement or any of the other Loan Documents to the contrary or any prior act of Citizens or any procedure established by Citizens with regard to the Loan, Borrower acknowledges and agrees that Citizens has not heretofore waived any of its rights or remedies under the Loan Documents nor has Citizens waived any of the duties or obligations of Borrower thereunder. No waiver by Agent 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 Agent unless waived in writing.

6. **Governing Law.** 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 AGENT 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.

7. **Miscellaneous.**

a. 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.

b. The terms, covenants and conditions of the Existing Mortgage and the Existing Assignment of Leases shall remain unchanged and unmodified, except as

expressly set forth in this Modification Agreement, and the terms, covenants and conditions of the Existing Mortgage and the Existing Assignment of Leases, as so modified, are hereby ratified and confirmed.

c. 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.

d. 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.

e. 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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

BORROWER:

IA BIRMINGHAM SOUTHGATE, L.L.C.
formerly known as Inland American Birmingham
Southgate, L.L.C., a Delaware limited liability
company

By: IA MAC Corporation, a Delaware
corporation, its sole member

By: _____
Name: _____
Title: _____
Jack Potts
Treasurer

Address of Borrower:
2809 Butterfield Road, Suite 360
Oak Brook, Illinois 60523

CITIZENS/AGENT:

CITIZENS BANK, NATIONAL ASSOCIATION
formerly known as RBS Citizens, N.A. d/b/a Charter
One, a national banking association

By: _____
Name: _____
Title: _____

Address of Agent:
71 S. Wacker Drive, IH2915
Chicago, Illinois 60606



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ACKNOWLEDGEMENT

STATE OF ILLINOIS)
COUNTY OF McParg)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that JACK POTTS, whose name as Treasurer of IA MAC Corporation, a Delaware corporation, the sole member of IA 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 Treasurer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 24 day of September, 2014.





Notary Public
My Commission Expires: 3-3-16

[Acknowledgement on behalf of Borrower]

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

BORROWER:

IA BIRMINGHAM SOUTHGATE, L.L.C.
formerly known as Inland American Birmingham
Southgate, L.L.C., a Delaware limited liability
company

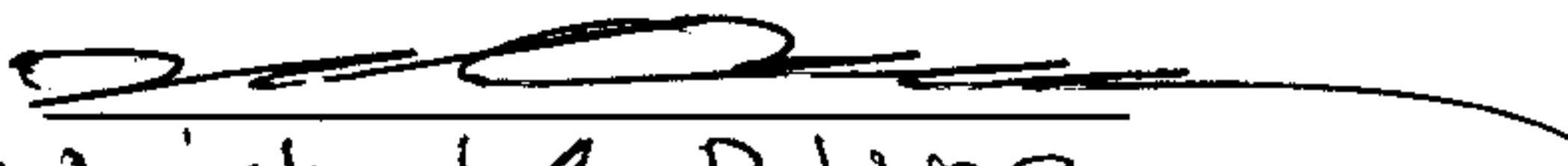
By: IA MAC Corporation, a Delaware
corporation, its sole member

By: _____
Name: _____
Title: _____


Address of Borrower:
2809 Butterfield Road, Suite 360
Oak Brook, Illinois 60523

CITIZENS/AGENT:

CITIZENS BANK, NATIONAL ASSOCIATION
formerly known as RBS Citizens, N.A. d/b/a Charter
One, a national banking association

By: 
Name: Michael A. Blaine
Title: Vice President

Address of Agent:
71 S. Wacker Drive, IH2915
Chicago, Illinois 60606


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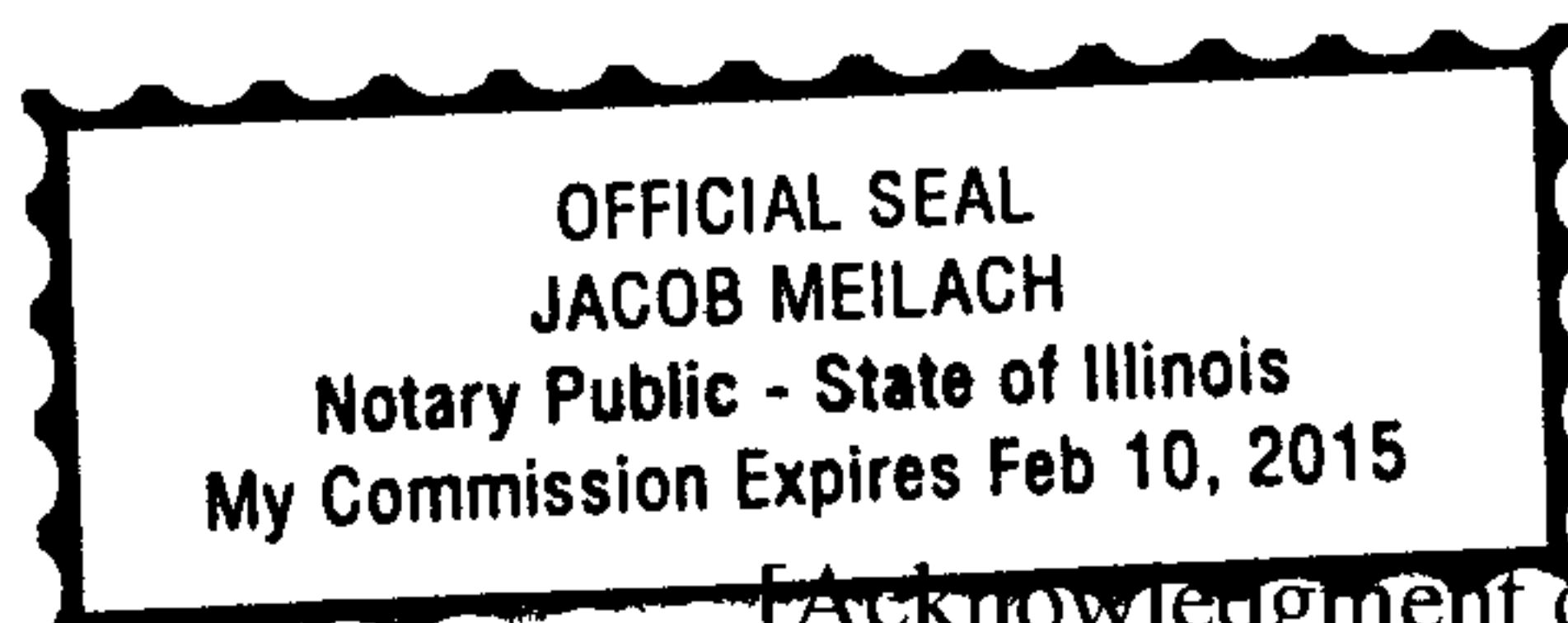
ACKNOWLEDGEMENT

STATE OF IL)
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Michael Browne, whose name as VP of CITIZENS BANK, NATIONAL ASSOCIATION formerly known as 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, she/he, as such VP and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 24th day of Sept, 2014.

[NOTARIAL SEAL]



Notary Public

My Commission Expires: 2/10/15

[Acknowledgment on behalf of Agent]



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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.


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