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Shelby Cnty Judge of Probate, AL
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This instrument prepared by:
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One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

Cross Reference:
Instr. 2007021000048080
Instr. 2008032000125240

STATE OF ALABAMA)
:
COUNTY OF SHELBY)

AMENDED AND RESTATED ASSIGNMENT OF RENTS AND LEASES

THIS AMENDED AND RESTATED ASSIGNMENT OF RENTS AND LEASES (the "Assignment") made as of the 30th day of December, 2008, by **WATERSTONE DEVELOPMENT LLC**, an Alabama limited liability company (the "Borrower"), to **FRONTIER BANK**, a Georgia banking corporation (the "Lender"). *This Amended and Restated Assignment of Rents and Leases amends and restates that certain Assignment of Rents and Leases dated January 23, 2007, recorded with the Shelby County Judge of Probate at Instrument Number 20070201000048080 and Assignment of Rents and Leases dated March 21, 2008, recorded with the Shelby County Judge of Probate at Instrument Number 2008032000125240.*

RECITALS:

This Assignment is made as additional security for the payment of indebtedness due or to become due from time to time by the Borrower, to Lender in the principal amount of up to **FOUR MILLION EIGHT HUNDRED SIXTY-SIX THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$4,866,800)** (the "Loan"), with interest thereon as evidenced by those certain Consolidated, Amended and Restated Promissory Note of even date herewith in said amount (as amended, modified, or restated the "Note") executed and delivered by Borrower to Lender, and as additional security for the full and faithful performance by Borrower of all the terms and conditions of the Note, all obligations pursuant to the Loan Documents, as defined in the Note and a certain Amended and Restated Mortgage and Security Agreement of even date herewith (the "Mortgage") executed and delivered by Borrower or for the benefit of Lender with respect to the property described in Exhibit A in order to secure the payment of the Note, and all other obligations pursuant to documents now or hereafter executed by Borrower in connection with the Loan. The Borrower will benefit from the Loan. The Borrower has executed this Assignment to secure the Loan and Note.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and as an inducement to the Lender to make the Loan to Borrower does hereby sell, assign, transfer and set over unto Lender, its successors and assigns, all of Borrower's interest in and to all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use

or occupancy of, any part of the property described in Exhibit A attached hereto, and the improvements now or hereafter located thereon, including, without limitation, all the rents, issues, and profits now due and which may hereafter become due under or by virtue of said leases and agreements.

Borrower agrees that this Assignment shall cover all future leases, whether written or verbal, or any letting of, or any agreement for the use or occupancy of, any part of said property.

Borrower further agrees that it will not assign the rent or any part of the rent of said property, nor collect rents under any leases or other agreements relating to use of any part of the property, for a period further in advance than one (1) month without the written consent of the Lender, nor do any other act whereby the lien of the Mortgage or this Assignment may, in the reasonable opinion of the Lender, be impaired in value or quality.

Borrower agrees that it has not and will not enter into any lease except as expressly permitted by the Loan Agreement.

Borrower further agrees that this Assignment is to remain in full force and effect until such time as the Note and all other obligations secured hereby are paid in full.

Although it is the intention of the parties that this instrument be a present assignment, it is expressly understood and agreed by Borrower and Lender that said Borrower reserves, and is entitled to collect, said rents, income and profits upon, but not more than one (1) month in advance of, their accrual under the aforesaid leases, and to retain, use and enjoy the same unless and until the occurrence of an Event of Default pursuant to (and as defined in) the Note or the Mortgage, or until the violation of any term, condition or agreement of this Assignment which is not cured within thirty (30) days of written notice of such violation from Lender to Borrower which shall be given and deemed received when sent in the manner set forth in the Mortgage, each of which shall constitute an "Event of Default" hereunder. Upon an Event of Default, Borrower's privilege to collect the rents shall automatically terminate.

Borrower does hereby authorize and empower Lender to collect directly from the lessees, upon demand, after any Event of Default hereunder, all of the rents, issues and profits now due or which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of said property, and to take such action, legal or equitable, as may be deemed necessary to enforce payment of such rents, issues and profits. Borrower hereby authorizes and directs the lessees under leases to pay to Lender all rents and other sums as the same become due, upon notice from Lender that an Event of Default has occurred hereunder. Any lessee making such payment to Lender shall be under no obligation to inquire into or determine the actual existence of any Event of Default claimed by Lender.

Any amount received or collected by Lender by virtue of this Assignment shall be applied for the following purposes, but not necessarily in the order named, priority and application of such funds being within the sole discretion of Lender:

1. to the payment of all necessary expenses for the operation, protection and preservation of the property, including the usual and customary fees for management services;

2. to the payment of taxes and assessments levied and assessed against the property as said taxes and assessments become due and payable;
3. to the payment of premiums due and payable on any insurance policy related to the property;
4. to the payment of installments of principal and interest on the Note as and when they become due and payable pursuant to the terms of the Note whether by acceleration or otherwise;
5. to the payment of any other sums secured hereby, including amounts due under the Mortgage and Loan Agreement, and
6. the balance remaining after payment of the above shall be paid to the then owner of record of said property.

Borrower hereby agrees to indemnify Lender for, and to save it harmless from, any and all liability, loss or damage which Lender might incur under said leases or by virtue of this Assignment, as a result of any act, or failure to act, prior to Lender becoming a mortgagee in possession and prior to foreclosure, and from any and all claims and demands whatsoever which may be asserted against Lender thereunder or hereunder, and, without limiting the generality of the foregoing, covenants that this Assignment shall not operate (prior to Lender becoming a mortgagee in possession and prior to foreclosure) to place responsibility for the control, care, management or repair of said property upon Lender, nor the carrying out of any of the terms and conditions of said leases; nor shall it operate (prior to Lender becoming a mortgagee in possession and prior to foreclosure) to make Lender responsible or liable for any waste committed on the property by the tenants or any other party, or for any negligence in the management, upkeep, repair or control of said property resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger or other person.

The terms "Note" and "Mortgage" shall refer to such instruments as they may hereafter be amended by Borrower and Lender. This Assignment shall be binding upon the Borrower, its successors and assigns and subsequent owners of the property, or any part thereof, and shall inure to the benefit of Lender, its successors and assigns and any holder of the Note.

BORROWER WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THIS ASSIGNMENT AND ANY OTHER LOAN DOCUMENTS. BORROWER CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER OR LENDER'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF THE JURY TRIAL PROVISION. BORROWER ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO MAKE THE LOAN SECURED HEREBY IN PART BY THE PROVISIONS OF THIS WAIVER.

IN WITNESS WHEREOF, the Borrower has caused these presents to be executed by its Managing Members as of the day and year first above written.

MORTGAGOR:

WATERSTONE DEVELOPMENT LLC,
an Alabama limited liability company

By: Tobi Gilkey
Tobi Gilkey
Its Member/Manager

STATE OF ALABAMA)
:
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Tobi Gilkey, whose name as Member/Manager of Waterstone Development LLC, an Alabama 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 said instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.


Given under my hand and official seal this 30th day of December, 2008.

Shirley D. Dugan
Notary Public

[NOTARIAL SEAL]

My commission expires: Aug 1, 2010
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
BONDED THRU NOTARY PUBLIC UNDERWRITERS

EXHIBIT A
LEGAL DESCRIPTION


20090102000000930 5/6 \$27.00
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PARCEL I:

The following described property situated in Shelby County, Alabama, to-wit:

Commence at the NW corner of the SW 1/4 of the NE 1/4 of Section 6, Township 22 South, Range 2 West; thence turn Eastwardly along the North line for a distance of 853.88 feet for the point of beginning; thence continue along last described course for a distance of 271.30 feet; thence turn an angle to the right of 84°42'14" for a distance of 1347.12 feet to the South line of said 1/4 1/4; thence turn an angle to the right of 95°27'20" along said South line for a distance of 277.50 feet; thence turn an angle to the right of 84°48'15" for a distance of 1345.81 feet to the point of beginning.

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

PARCEL II:

A parcel of land situated in the SW 1/4 of the NE 1/4 of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the NE corner of the SE 1/4 of the NE 1/4 of said Section 6; thence North 87°20'08" West a distance of 1319.15 feet to the Point of Beginning; thence South 01°39'30" East a distance of 742.37 feet; thence North 87°12'15" West a distance of 275.23 feet; thence North 01°17'04" West a distance of 741.39 feet; thence South 87°20'08" East a distance of 270.33 feet to the Point of Beginning.

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

PARCEL III:

A parcel of land situated in the SE 1/4 of the NE 1/4 of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at the NE corner of the SE 1/4 of the NE 1/4 of said Section 6; thence North 87°20'08" West a distance of 1319.15 feet; thence South 01°39'30" East a distance of 742.37 feet; thence South 01°58'59" East a distance of 586.36 feet; thence South 87°38'13" East a distance of 1216.85 feet; thence North 01°49'04" West a distance of 150.00 feet; thence South 87°38'13" East a distance of 100.00 feet; thence North 01°43'22" West a distance of 201.27 feet; thence North 01°48'38" West a distance of 166.11 feet; thence North 01°42'08" West a distance of 804.26 feet to the Point of Beginning.

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

PARCEL IV:

Part of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

From an existing 3 inch open top iron pipe found to be the most Southerly corner of Lot 4, the round table, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 7, page 38, and looking in a Northerly direction along the West line of said Lot 4 at the NW corner of said Lot 4, turn an angle to the left of $85^{\circ}54'13''$ and run in a Westerly direction for a distance of 1316.72 feet to a point on the North right of way line of Shelby County Highway No. 22 (being 40 feet from the center of said road) and being marked by an existing iron rebar set by Weygand and being the point of beginning; thence run in a Westerly direction along the North right of way line of said Shelby County Highway No. 22 for a distance of 279.01 feet to an existing iron rebar set by Wheeler; thence turn an angle to the right of $85^{\circ}30'27''$ and run in a Northerly direction for a distance of 585.62 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of $94^{\circ}26'12''$ and run in an Easterly direction for a distance of 275.19 feet to an existing iron rebar set by Weygand and being 1.6 feet West of an existing fence; thence turn an angle to the right of $85^{\circ}11'36''$ and run in a Southerly direction for a distance of 586.20 feet, more or less, to the Point of Beginning.

LESS AND EXCEPT:

A parcel of land located in the South $1/2$ of the NE $1/4$ of Section 6, Township 22 South, Range 2 West, being more particularly described as follows:

Commence at the NW corner of the SW $1/4$ of the NE $1/4$ of Section 6, Township 22 South, Range 2 West; thence in an Easterly direction along the North line of said $1/4 - 1/4$ section a distance of 853.88 feet to the Northeast corner of Lot 2 of Heavenly Family Subdivision as recorded in Map Book 29, page 90, in the Office of the Judge of Probate in Shelby County, Alabama; thence a deflection angle right from the last described course of $86^{\circ}07'59''$ in a Southerly direction along the Easterly lines of Lots 1 and 2 of said Heavenly Family Subdivision a distance of 1325.98 feet to a point on the North right of way line of Shelby County Highway Number 22; thence an angle to the right from the last described course of $94^{\circ}03'23''$ in an Easterly direction and along said right of way line a distance of 278.19 feet; thence an angle to the right from the last described course of $85^{\circ}30'21''$ in a Northerly direction a distance of 372.26 feet; thence an interior angle to the left from the last described course of $89^{\circ}33'44''$ in an Easterly direction a distance of 5.35 feet to the Point of Beginning; thence an exterior angle to the right from the last described course of $90^{\circ}00'00''$ in a Northerly direction a distance of 90.45 feet; thence an interior angle to the left from the last described course of $105^{\circ}06'44''$ in a Northeasterly direction a distance of 190.34 feet; thence an interior angle to the left from the last described course of $90^{\circ}00'00''$ in a Southeasterly direction a distance of 47.65 feet to the beginning of a curve to the left having a radius of 50.00 feet and a central angle of $35^{\circ}55'38''$; thence in a Southeasterly direction along said curve and tangent to last described course an arc distance of 31.35 feet; thence an interior angle to the left from the chord of last described curve of $107^{\circ}57'49''$ in a Southwesterly direction a distance of 142.98 feet; thence an interior angle to the left from the last described course of $109^{\circ}43'26''$ in a Northwesterly direction a distance of 130.39 feet to the Point of Beginning.

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