


**ASSIGNMENT AND SUBORDINATION OF MANAGEMENT AGREEMENT**

Loan No. 283707



20021007000489260 Pg 1/10 47.00  
Shelby Cnty Judge of Probate, AL  
10/07/2002 15:37:00 FILED/CERTIFIED

THIS ASSIGNMENT AND SUBORDINATION OF MANAGEMENT AGREEMENT (this "Assignment") is made as of October 4, 2002 by and between **RIVERSIDE PARC, LLC**, an Alabama limited liability company having an address at c/o Equity Resources, Inc., 1950 Stonegate Drive, Suite 250, Birmingham, Alabama 35242 ("Borrower"), and **ER MANAGEMENT, INC.**, an Alabama corporation, having an address at 1950 Stonegate Drive, Suite 250, Birmingham, Alabama 35242 ("Manager"), for the benefit of **COLUMN FINANCIAL, INC.**, a Delaware corporation, having an address at 11 Madison Avenue, 5th Floor, New York, New York 10010, Attn: Taylor Meyer, its successors and assigns ("Lender").

**WITNESSETH:**

WHEREAS, Borrower is the owner of the real property described on Exhibit A annexed hereto (the "Property");

WHEREAS, pursuant to that certain Management Agreement dated as of February 26, 1999 between Borrower and Manager (the "Management Agreement") a true, correct and complete copy of which has been provided to Lender, Manager provides management services relating to the Property for the benefit of Borrower;

WHEREAS, Manager is entitled to certain fees (collectively, the "Management Fee") pursuant to the Management Agreement;

WHEREAS, Lender is the holder of a loan made to Borrower (the "Loan"), which Loan was made pursuant to the terms and conditions of a Loan Agreement dated as of the date hereof between Borrower and Lender (the "Loan Agreement"). The Loan is evidenced by a certain Promissory Note dated as of the date hereof and made by Borrower to Lender, in the original principal amount of \$17,360,000.00 (the "Note"), and secured by, among other things, that certain Mortgage and Security Agreement dated as of the date hereof and given by Borrower encumbering the Property (such instrument is herein referred to as the "Security Instrument" and the Security Instrument, together with the Loan Agreement, the Note and all other documents now or hereafter executed or delivered in connection with the Loan are hereinafter collectively referred to as the "Loan Documents");

WHEREAS, Lender is unwilling to make the Loan on the date hereof unless Borrower, in the manner hereinafter set forth, assigns to Lender as additional security for the repayment of the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Loan Documents on the part of Borrower to be observed and performed, all of Borrower's right, title and interest in and to the Management Agreement; and

WHEREAS, Lender is unwilling to make the Loan unless Borrower and Manager subordinate any lien with respect to the Management Agreement to the lien of the Security Instrument and the payment of all amounts accruing under the Loan Documents in the manner hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender to make the Loan to Borrower, the parties hereto hereby agree as follows:

1. Assignment of Management Agreement. Borrower hereby conditionally transfers, assigns and sets over all of Borrower's right, title and interest in and to the Management Agreement to Lender as additional security for the payment of the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Loan Documents on the part of Borrower to be observed or performed, said transfer and assignment automatically to become a present, unconditional assignment, at Lender's option, upon the occurrence of a default under the Security Instrument beyond any applicable notice and grace period (an "Event of Default"). Borrower does hereby authorize and empower Lender, and its successors and assigns, to enforce the Management Agreement and does hereby direct each and all of the parties thereto to pay or perform all of their obligations under the Management Agreement for the benefit of Lender, its successors and assigns, upon demand for payment or performance thereof by Lender, its successors and assigns, such directive to take effect upon the occurrence and during the continuance of an Event of Default.

2. Borrower's Covenants. Borrower hereby covenants and agrees that Borrower will (a) fulfill and perform each and every term, covenant and provision of the Management Agreement to be fulfilled or performed by Borrower thereunder, (b) give prompt written notice to Lender of any written notice received by Borrower under the Management Agreement, together with a complete copy of any such notice, (c) enforce, short of termination thereof, the performance and observance of each and every term, covenant and provision of the Management Agreement to be performed or observed by Manager, (d) not assign the Management Agreement or its rights and obligations thereunder, except for this Assignment and as may be otherwise permitted under the Loan Agreement and (e) not terminate or amend the Management Agreement without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.

3. No Termination of Management Agreement. Provided that Manager receives all required payments that become due and payable to it under the Management Agreement, subject to the limitations set forth in Paragraph 6, Manager shall not terminate the Management Agreement without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed.

4. Termination of Management Agreement by Lender.

(a) Subject to the provisions of the Loan Document, Lender may terminate the Management Agreement, by notice to Borrower and Manager, effective ten (10) days after delivery of such notice (i) For Cause (as defined below) at any time, (ii) at any time after the occurrence and during the continuance of an Event of Default with respect to any amounts payable by Borrower under the Note, the Security Instrument or the other Loan Documents, (iii) after any change in control of Manager (a "Manager Control Change"). The term "For Cause" shall mean Manager's gross negligence, willful misconduct or fraud or Manager's default beyond the expiration of any applicable notice or grace period in the performance of its obligations under the Management Agreement. The term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Manager, whether through ownership of voting securities, by contract or otherwise.

(b) Upon such termination, Manager and Borrower shall (i) cooperate with any successor manager to ensure an orderly transfer of the management of the Property and shall turn over all books and records, funds, contracts, leases, agreements and equipment, if any, held by Manager relating to the Property and (ii) be entitled only to the payment of any fees earned pursuant to the Management Agreement prior to the termination of the Management Agreement and, notwithstanding any provision to the contrary in the Management Agreement, no monetary penalties or termination fees shall be paid to Manager. In the event of such termination of the Management Agreement, Manager agrees that it shall look solely to Borrower, and not to Lender,



for the payment of any sums due to Manager under the terms of the Management Agreement or any obligations on the part of Borrower under the Management Agreement and, to the extent permitted by law, Manager hereby waives any and all rights to file any lien or encumbrance against the Property relating thereto.

5. Subordination of Management Agreement. The Management Agreement and any and all liens, rights, interests and privileges (whether choate or inchoate and including, without limitation, all mechanic's and materialmen's liens under applicable law) owed, claimed or held by Manager in and to the Property are hereby and shall at all times continue to be subject and unconditionally subordinate in all respects to the lien and security interests created or to be created for the benefit of Lender under, and to the terms, covenants and provisions of the Security Instrument, the Note, and the other Loan Documents, and to any renewals, extensions, modifications, assignments, replacements, or consolidations thereof and the rights, privileges, and powers of Lender thereunder. Notwithstanding the foregoing, provided no Event of Default has occurred and is then continuing hereunder, Manager shall be entitled to receive the Management Fee, provided that any Management Fee in excess of four percent (4%) of gross revenues shall not be paid or collected (a) unless all amounts then payable under the Loan Documents shall have been paid in full and all operating expenses for the Property are paid in full.

6. Acknowledgements, Agreements and Representations. Manager covenants with, and warrants and represents to, Lender, as of the date hereof, that (a) Manager has agreed to act as manager of the Property pursuant to the Management Agreement, (b) the entire agreement between Manager and Borrower with respect to the Property is evidenced by the Management Agreement, (c) the Management Agreement constitutes the valid and binding agreement of Manager, enforceable in accordance with its terms, and Manager has full authority under all state and local laws and regulations, to perform all of its obligations under the Management Agreement, (d) neither Manager nor Borrower is in default in the performance of any of its obligations under the Management Agreement and all payments and fees required to be paid by Borrower to Manager thereunder have been paid to the date hereof, (e) Manager will deliver to Lender simultaneously with delivery to Borrower copies of any notices, demands or reports delivered by Manager under the Management Agreement and (f) immediately upon the occurrence of a Manager Control Change, Manager shall give notice of such change to Lender. Manager does hereby waive any option or right of first refusal to purchase all or any portion of the Property described in the Management Agreement with respect to any acquisition of the Property by Lender (including any nominee or designee of Lender) or any purchaser of the Property at foreclosure or by deed in lieu of foreclosure of the Security Instrument.

7. Inconsistencies with Management Agreement. This Assignment shall supersede, to the extent inconsistent therewith, any provisions of the Management Agreement. Manager has been furnished with a copy of the Security Instrument, the Note and the other Loan Documents and is familiar with the terms thereof and Manager hereby waives any provisions of the Management Agreement to the extent such provisions are inconsistent with the terms and provisions of this Assignment, the Security Instrument, the Note or the other Loan Documents.

8. Modification of Management Agreement. Manager agrees not to enter into any agreement modifying or amending the Management Agreement or increasing Borrower's obligations or reducing Borrower's rights under the Management Agreement or increasing Manager's rights or decreasing Manager's obligations thereunder without Lender's prior written consent and any such modification or amendment without Lender's consent shall not be binding upon Lender.

9. Assignment of Rights to Management Agreement. Manager shall not assign any of its rights or obligations under the Management Agreement without the prior written consent of the Lender.

10. Default by Borrower. So long as this Assignment is in effect, Manager shall notify Lender in writing of any default by Borrower, simultaneously with notice to Borrower under the Management Agreement or, if the Management Agreement shall not require notice to Borrower with respect to such default, promptly after Manager becomes aware thereof, and Lender shall have a cure period of thirty (30) days from the later of the date of receipt of such notice by Lender or the expiration of any cure period granted to Borrower under the Management Agreement with respect to such default, to cure any such default (or if such default is not curable within said 30-day period, such additional time as is required by Lender, provided Lender commences such action as is reasonably necessary to enable Lender to cure said default within such 30-day period and thereafter diligently proceeds to cure such default; provided further that if such default by Borrower is not susceptible to cure by Lender, such default shall be deemed waived by Manager upon Lender taking possession of the Property).

11. Lender's Right to Continue or Terminate Management Agreement. If Lender (including any nominee or designee of Lender) or by any purchaser of the Property at foreclosure or by deed in lieu of foreclosure (a "Purchaser") shall take title to all or any portion of the Property, Manager shall, at the request of Lender or such Purchaser, continue performance, on behalf of Lender or such Purchaser, of all of Manager's obligations under the terms of any Management Agreement with respect to the Property, provided that Lender or such Purchaser shall give Manager notice of such request and Lender or such Purchaser performs or causes to be performed the obligations of the applicable Borrower to Manager under the Management Agreement accruing or arising from and after the effective date of such notice. In addition, if Lender (including any nominee or designee of Lender) or by any Purchaser, shall take title to all or any portion of the Property, the Management Agreement shall be terminable at the option of Lender by written notice to Manager at any time prior to any request by Lender or such Purchaser to continue performance, which request to continue performance refers to this Paragraph 11 and waives the right subsequently to terminate the Management Agreement (except pursuant to Paragraph 13, below).

12. Lender Not Obligated Under Management Agreements. Manager agrees that nothing herein shall impose upon Lender any obligation for payment or performance in favor of Manager, except as, and to the extent, provided under Paragraph 11 if Lender shall request that Manager continue to perform its obligations under the Management Agreement.

13. Subsequent Sale. In the event Lender (including any nominee or designee of Lender) or any Purchaser acquires title to the Property through foreclosure or deed in lieu thereof, requests that Manager continues to perform under Paragraph 11 above and subsequently sells, assigns or transfers the Property to a third party, Lender or such Purchaser may terminate the Management Agreement pursuant to Paragraph 4 above.

14. Lender's Reliance on Representations. Manager has executed this Assignment for the purpose of inducing Lender to advance sums to Borrower under the Loan Agreement and with full knowledge that Lender shall rely upon the representations, warranties and agreements herein contained when making advances to Borrower, and that but for this instrument and the representations, warranties and agreements herein contained, Lender would not take such actions.

15. Delivery of Notices. Upon the request of Lender, Borrower and Manager shall furnish, or cause to be furnished, to Lender copies of all material notices received or given by Manager with respect to any portion of the Property.

16. Indemnification. Lender shall not be obligated to perform or discharge any obligation of Borrower as a result of this Assignment hereby effected, and Borrower agrees to indemnify and hold Lender harmless against any and all liability, loss or damage which Lender may incur by reason of any act (other than acts of Lender not expressly permitted hereunder taken after Lender has taken actual



possession of the Property) under this Assignment. Should Lender incur any such liability, loss or damage by reason of this Assignment, or in defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon (if such amount is not paid immediately upon demand therefor) at the Default Rate (as defined in the Note), shall be payable on demand and shall be included in the indebtedness secured by the Security Instrument. Manager shall protect, indemnify, defend and save Lender harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) ("Claims") imposed upon or incurred by or asserted against Lender by reason of, or in any way related to a breach of any representation or covenant contained herein by Manager. Borrower hereby agrees to protect, defend, indemnify and hold Lender harmless from and against all Claims resulting from any failure of Borrower to perform and observe at the time and in the manner therein provided, each of the covenants, agreements and obligations of Borrower contained in the Management Agreement. Notwithstanding anything herein to the contrary, Borrower shall not be obligated with respect to any Claims arising with respect to matters first arising after Lender or its designee shall have taken title to the Property, whether by foreclosure, deed in lieu of foreclosure or otherwise.

17. Estoppel Certificates. Manager shall, at the request of Lender, execute an estoppel letter stating that the provisions of the Management Agreement have not been modified or amended, and that all fees due and payable to Manager under the Management Agreement have been paid in full.

18. No Joint Venture. Lender and Manager have no obligation to each other with respect to the Security Instrument or the other Loan Documents except as provided herein and Manager shall not be a third party beneficiary with respect to any of Lender's obligations to Borrower set forth in the Loan Documents. The relationship of Lender to Borrower, is one of creditor to a debtor, and Lender is not a joint venturer or partner of Borrower.

19. Binding Nature of Assignment. The provisions of this Assignment shall be binding upon Manager and Borrower and Manager's and Borrower's respective successors and assigns and shall inure to the benefit of Lender and Lender's successors and assigns. The provisions of this Assignment shall survive to the benefit of any party acquiring title to Property by reason of foreclosure, power of sale, deed in lieu of foreclosure or otherwise.

20. Termination of this Assignment. Provided no Event of Default has occurred and at such time as the Loan is paid in full and/or the Security Instrument has been released from the Property of record, this Assignment and all of Lender's right, title and interest hereunder with respect to the Management Agreement shall terminate.

21. Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, or (b) nationally recognized overnight delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed if to Lender at its address set forth on the first page hereof, if to Borrower at its address set forth on the first page hereof, and if to Manager at its address set forth on the first page hereof or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or upon the first attempted delivery on a Business Day; or in the case of overnight delivery service, when delivered or upon the first attempted delivery on a Business Day.

22. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the state in which the Property is located.

23. Modifications. This Assignment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower, Manager or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

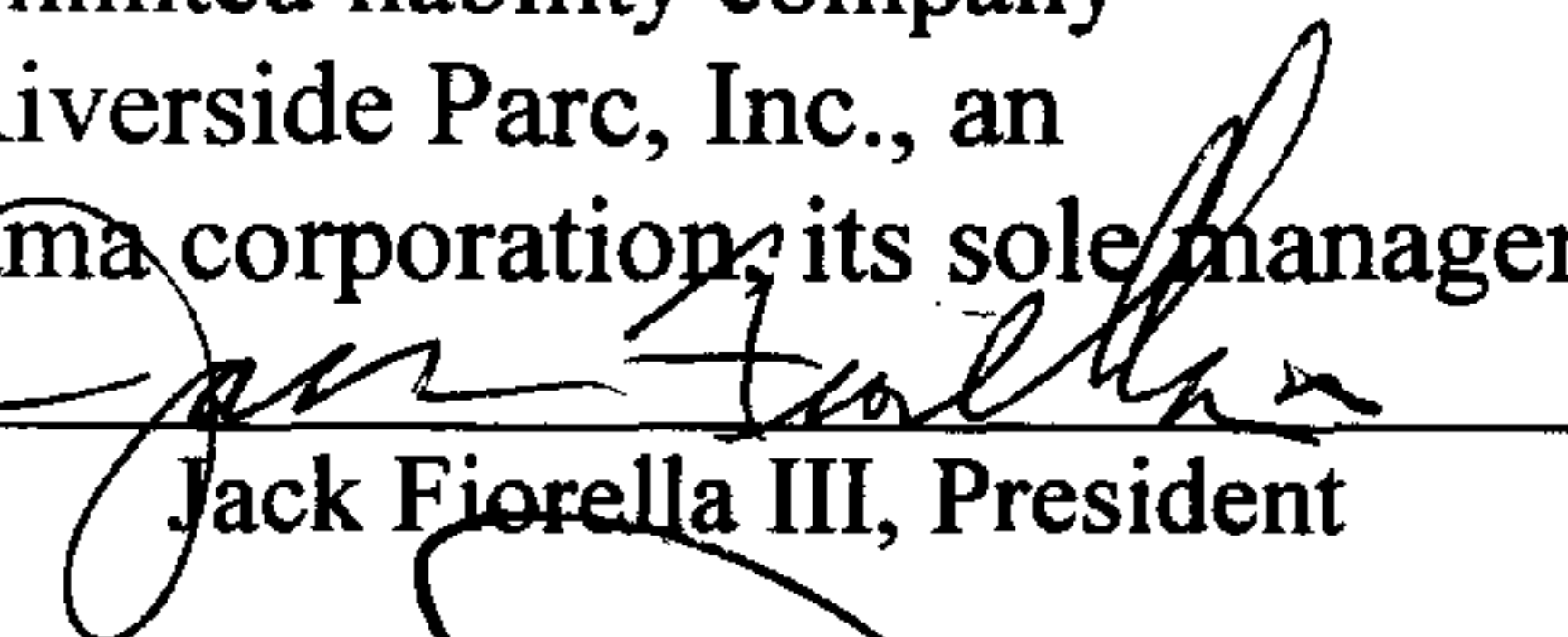
24. Counterparts. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

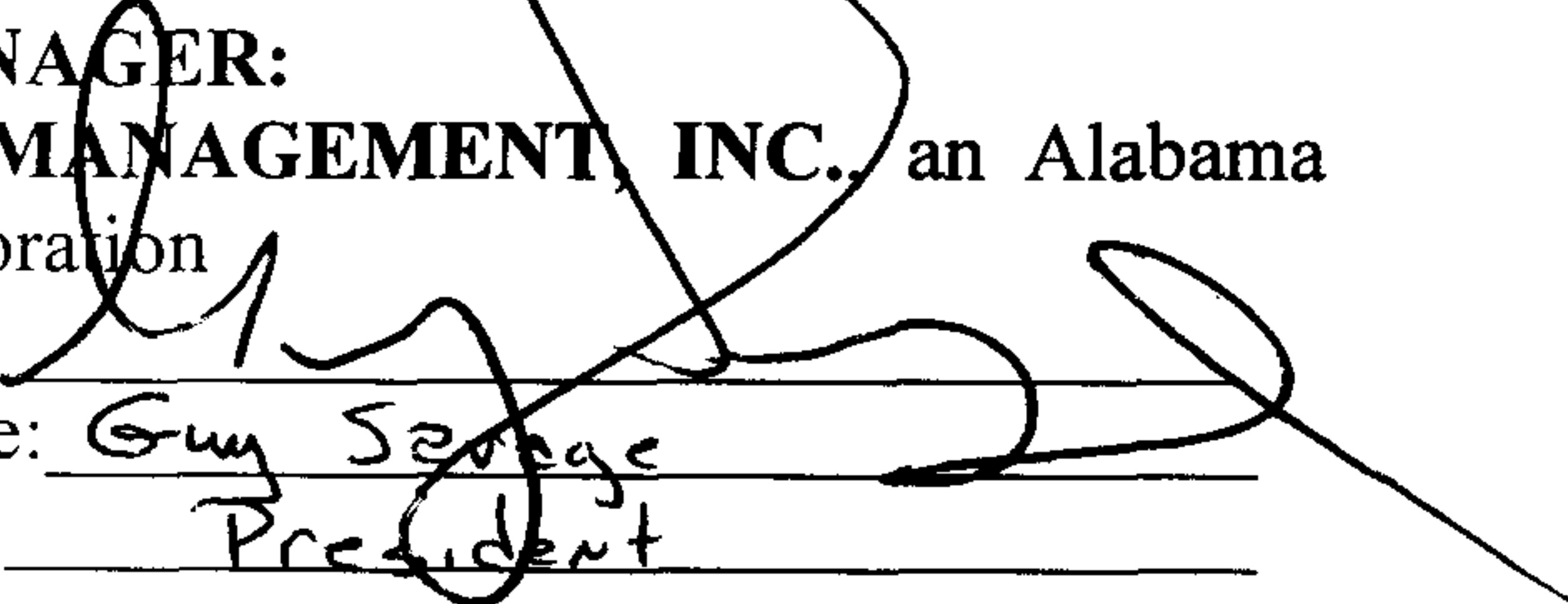
25. Partial Invalidity. In the event any term or provision of this Assignment or the application thereof to any person or circumstance shall, for any reason and to any extent be invalid or unenforceable, the remaining terms and provisions of this Assignment shall not be affected thereby, but rather shall be enforceable to the fullest extent permitted by law.

26. Further Documentation. The parties hereto agree to execute and deliver any and all further documents and instruments reasonably requested by any party hereto or any title insurance company to give effect to the terms and provisions of this Assignment. Manager agrees to execute such further agreements of subordination as may be reasonably determined by Lender to be necessary to establish or confirm the priority in lien and payment of the Security Instrument over the lien of the Management Agreement, which agreements shall be in substantially the same form as this Assignment and contain such matters of estoppel with respect to Manager's receipt of fees as may be true as of the date of such execution and as may be required by Lender.

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**IN WITNESS WHEREOF**, the undersigned have duly executed this Assignment as of the day and year first above written.

**BORROWER:**  
**RIVERSIDE PARC, LLC,**  
an Alabama limited liability company  
By: ERI Riverside Parc, Inc., an  
Alabama corporation, its sole manager  
By:   
Jack Fiorella III, President

**MANAGER:**  
**ER MANAGEMENT, INC.,** an Alabama  
corporation  
By:   
Name: Guy Searge  
Title: President

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jack Fiorella III, whose name as President of ERI Riverside Parc, Inc. acting as the sole manager of Riverside Parc, LLC, 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 corporation, in its capacity as sole manager of Riverside Parc, LLC

Given under my hand and official seal this 7<sup>th</sup> day of October, 2002.

Judi Bruce  
Notary Public  
My Commission Expires June 8, 2004  
Notary Public, Alabama, State at Large  
My Commission Expires June 8, 2004

[SEAL]

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Guy Savage, whose name as President of ER Management, Inc., 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 corporation

Given under my hand and official seal this 4<sup>th</sup> day of October, 2002.

Judi Bruce  
Notary Public  
My Commission Expires June 8, 2004  
Notary Public, Alabama, State at Large  
My Commission Expires June 8, 2004

[SEAL]



## EXHIBIT A

### Riverside Parc

#### PHASE I:

##### PARCEL I:

Lot 15, according to the Map of Cahaba Park South, 1<sup>st</sup> Addition, as recorded in Map Book 153, page 49, in the Probate Office of Jefferson County, Alabama. Lying and being situated in Jefferson County, Alabama.

##### PARCEL II:

Lot B, according to the Map of Cahaba Park South, 1<sup>st</sup> Addition, Resurvey No. 1, as recorded in Map Book 159, page 15, in the Probate Office of Jefferson County, Alabama. Lying and being situated in Jefferson County, Alabama

##### PARCEL III: (Signage Easement)

A non-exclusive easement to construct and maintain signage on a structure not exceeding fourteen feet in height and eight feet in width on the 10' by 10' easement for signage in the Southwestern corner of Lot 13-D, as shown on Resurvey No. 2 of Cahaba Park South, as recorded in Shelby County Map Book 13, page 57 and as shown in Instrument recorded in Real 248, page 62, all in the Probate Office of Shelby County, Alabama. Lying and being situated in Shelby County, Alabama.

#### PHASE II:

##### PARCEL IV:

Lot A, according to the Map of Cahaba Park South, 1<sup>st</sup> Addition, Resurvey No. 1, as recorded in Map Book 159, page 15, in the Probate Office of Jefferson County, Alabama. Lying and being situated in Jefferson County, Alabama.

##### PARCEL V:

A 30.00 foot wide easement for ingress and egress across Parcel I, (also described in Lot 15, according to the plat of Cahaba Park South 1<sup>st</sup> Addition), 15.00 feet each side of the following described centerline, situated in the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 25, Township 18 South, Range 2 West, Jefferson County, Alabama.

Commence at the Southeast corner of the said SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ ; thence West along the South line of said SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  a distance of 350.21 feet to the East right of way line of Cahaba Park Circle said point being the P.C. (point of curve) of a curve to the left having a central angle of 69 degrees 38 minutes 34 seconds and a radius of 195.00 feet; thence turn 90 degrees 00 minutes to the right (angle measured to tangent) and run Northwesterly and along the arc of said curve a distance of 237.02 feet to a point on said right of way of said Cahaba Park Circle, said point being the point of beginning of said centerline of said easement; thence turn 90 degrees 00 minutes to the P.C. (point of curve) of a curve to the right having a central angle of 18 degrees 46 minutes 09 seconds and a radius of 118.77 feet; thence turn 109 degrees 38 minutes 13 seconds to the left (angle measured to tangent) and run Westerly and along the arc of said curve and said centerline of an easement a distance of 38.91 feet to the P.T. (point of tangent); thence continue Westerly and tangent to said curve a distance of 35.13 feet to the P.C. (point of curve) of a curve to the right having a central angle of 30 degrees 22 minutes 29 seconds and a radius of 75.00 feet; thence Northwesterly and along the arc of said centerline a distance of 39.76 feet to the P.T. (point of tangent); thence continue Northwesterly and tangent to said curve a distance of 129.03 feet to a point; thence turn 44 degrees 58 minutes 22 seconds to the left and run Westerly a distance of 43.35 feet to a point on the Westerly line of Lot 15, Cahaba Park South 1<sup>st</sup> Addition and end of said centerline. Lying and being situated in Jefferson County, Alabama.

EXHIBIT A Continued  
Riverside Parc

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Shelby Cnty Judge of Probate, AL  
10/07/2002 15:37:00 FILED/CERTIFIED

OTHER INTERESTS:

PARCEL VI:

The beneficial interest that constitutes an interest in real property as set forth in that certain Agreement dated August 7, 1985, by and among Investment Southeastern, Ltd., Kovach-Eddleman Properties, and 280 Associates, Ltd., as recorded in Real 2748, Page 377, in the Probate Office of Jefferson County, Alabama, and as further recorded in Real 38, page 71, in the Probate Office of Shelby County, Alabama.

PARCEL VII:

The beneficial interest that constitutes an interest in real property as set forth in that certain Reciprocal Easement Agreement dated August 7, 1985, by and among Investment Southeastern, Ltd., Kovach-Eddleman Properties, and 280 Associates, Ltd., as recorded in Real 2748, Page 384, in the Probate Office of Jefferson County, Alabama, and as further recorded in Real 38, page 59, in the Probate Office of Shelby County, Alabama.

State of Alabama - Jefferson County

I certify this instrument filed on:

2002 OCT 07 P.M. 14:18

Recorded and \$ Mtg. Tax

and \$ Deed Tax and Fee Amt.

\$ 27.00 Total \$ 27.00

MICHAEL F. BOLIN, Judge of Probate



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