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Shelby Cnty Judge of Probate, AL  
06/23/2004 08:45:00 FILED/CERTIFIED

STATE OF ALABAMA                     )  
   :  
COUNTY OF SHELBY                    )

Olmsted Office Building West  
Mixed-Use Maintenance And Operating Agreement

THIS OLMSTED OFFICE BUILDING WEST MIXED/USE MAINTENANCE AND OPERATING AGREEMENT (this "Agreement") is made and entered into as of the 22 day of June, 2004 by MOSS ROCK BUILDING COMPANY, INC., an Alabama corporation ("Developer").

R E C I T A L S:

Developer is the owner of Lots 3-08, 09, 10, 11 and 12, according to the Final Plat for the Private, Mixed-Use, Traditional Neighborhood Development Subdivision of Mt Laurel – Phase 1D which has been recorded in Map Book 32 Pages 61 in the Office of the Judge of Probate of Shelby County, Alabama (individually, a "Lot" and collectively, the "Lots").

Developer has constructed on each of the Lots attached buildings which shall be used for retail or office purposes on the first floor and may be used for either retail or office purposes or residential uses on the second floor (individually, a "Mixed-Use Unit" and collectively, the "Mixed-Use Units").

Developer desires to enter into this Agreement for the benefit of each of the Lots in order to establish a method for maintaining certain common portions of the Mixed-Use Units which will be binding upon the then record owner, whether one or more persons or entities, of fee simple title to each of the Lots and the respective heirs, executors, successors and assigns of any such persons or entities (individually, an "Owner" and collectively, the "Owners").

Each Lot is subject to and encumbered by all of the terms and provisions of (a) the Mt Laurel Declaration of Charter, Easements, Covenants and Restrictions dated September 1, 2000 and recorded as Instrument #2000-35580 in the Office of the Judge of Probate of Shelby County, Alabama, as amended (collectively, the "Declaration"), (b) the Mt Laurel Master Deed Restrictions dated as of September 1, 2000 and recorded as Instrument 2000-35579 in said Probate Office, as amended (collectively, the "Master Deed Restrictions"), and (c) the Mt Laurel Town Center Covenants dated March 27, 2003 and recorded as Instrument #20030327000184510 in said Probate Office, as amended (collectively, the "Town Center Covenants"). Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration, the Master Deed Restrictions or the Town Center Covenants.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and



agreements hereinafter set forth and other good and valuable consideration, Developer does hereby declare and establish that each of the Lots and each Owner thereof shall be subject to the following covenants, agreements, easements and obligations, which covenants, agreements, easements and obligations shall constitute covenants running with the land which shall be binding upon and inure to the benefit of each Owner and the respective heirs, executors, successors and assigns of each Owner:

1. Common Maintenance.

(a) Subject to the terms and provisions of Paragraphs 1(b) and 1(c) below, the costs and expenses of maintaining the following portions of each Mixed-Use Unit (collectively, the "Common Maintenance Expenses") shall be paid for by the Owners of each of the Lots on a prorata basis in accordance with the provisions of Paragraph 2 below:

(i) All costs and expenses of repairing, patching, replacing and re-roofing the roofing, gutters and downspouts on all of the Mixed-Use Units; and

(ii) The costs and expenses of repainting any of the exterior surfaces of all of the Mixed-Use Units including exterior walls, eaves, cornices and gables and all exterior doors, windows and window frames; provided, however, that the foregoing shall not be applicable to any fences along the lot lines of any of the Lots or any decks, porches, walkways or steps attached to any Mixed-Use Unit.

(b) An Owner shall be obligated to pay such Owner's Prorata Share, as hereinafter defined, of the Common Maintenance Expenses only if such Common Maintenance Expenses have been approved on a per capita basis (i.e., each Owner of a Lot having one (1) vote) by at least fifty-one percent (51%) of all of the Owners of the Lots. Common Maintenance Expenses shall not be incurred without the approval of at least fifty-one percent (51%) of all of the Owners of the Lots.

(c) Notwithstanding anything provided in this Agreement to the contrary, the Owner of each Lot shall be solely responsible for repairing or replacing any of the items specified in Paragraph 1(a) above which constitute Common Maintenance Expenses to the extent any Common Maintenance Expenses result from or are occasioned by any negligent or intentional acts of such Owner or such Owner's family members, guests, tenants, agents, employees or invitees.

(d) Except for the Common Maintenance Expenses specified herein and the obligations set forth in Paragraph 5 below, each Owner shall, at such Owner's sole cost and expense, be obligated to maintain all other portions of such Owner's Lot and the Mixed-Use Unit situated thereon in good condition and repair and in accordance with the terms, provisions and requirements of the Declaration, the Master Deed Restrictions and the Town Center Covenants.

2. Obligation to Pay. To the extent any Common Maintenance Expenses are



approved on a per capita basis by at least fifty-one percent (51%) of all of the Owners of the Lots, then (a) the Owner of each Lot shall be required to pay such Owner's Prorata Share, as herein defined, of the total amount of such approved Common Maintenance Expenses and (b) such obligation shall be a binding obligation on all of the Owners even though an Owner may not have approved such Common Maintenance Expenses. For the purposes of this Agreement, the term "Prorata Share" shall mean the percentage obtained by multiplying the gross square footage of the Mixed-Use Unit situated on each Lot by the total aggregate gross square footages of all Mixed-Use Units situated on all of the Lots.

3. Default.

(a) In the event the Owner of any Lot fails to pay such Owner's Prorata Share of Common Maintenance Expenses within ten (10) days following written notice from any of the other Owners, such failure shall constitute a default hereunder in which even any one or more of the other Owners (the "Non-Defaulting Owners") shall have the right to take any and all legal action necessary or required to collect any and all amounts due from such delinquent Owner and such delinquent Owner shall be obligated to pay any and all attorneys' fees, court costs and all other expenses paid or incurred by the Non-Defaulting Owners in enforcing the payment by such delinquent Owner of all amounts due hereunder.

(b) Any and all notices of default required or permitted to be given pursuant to the terms and provisions of this Agreement shall be deemed to have been given upon the deposit of written notice of default in the United States mail, first-class mail, postage prepaid and addressed to such Owner at the address then shown in the Shelby County, Alabama Tax Assessor's Office for the assessment of ad valorem taxes for such Owner's Lot.

(c) The rights and remedies described in this Paragraph 3 shall not be deemed exclusive of any other rights and remedies available at law or in equity to any of the Non-Defaulting Owners as a result of any Owner's failure to pay such Owner's prorata share of the Common Maintenance Expenses.

(d) If, for any reason, the Owners fail to timely and properly undertake the Common Maintenance Expenses in accordance with the terms and provisions set forth above, then the Association shall have the right, at its option (but without any obligation to do so), to exercise all of its rights and remedies set forth in the Declaration and Master Deed Restrictions with respect to the failure of the Owners to properly maintain the Lots.

4. Maintenance of Common Fences. Any fences which are constructed along the common property line of any two (2) Lots shall constitute a Common Fence and shall be maintained by the Owners of the Lots adjoining such Common Fence as provided by the terms and provisions of Section 2.05(d) of the Declaration.



5. Assessments. The Owner of each Lot upon which a Mixed-Use Unit is constructed is also obligated to pay Assessments to the Association under the Town Center Covenants, which Assessments are subject to change from time to time.

6. Approval of Uses. As provided in the Town Center Covenants, each Owner of a Lot must obtain the written approval of Developer of any commercial, retail or offices uses contemplated for any of the Mixed-Use Units.

7. Miscellaneous.

(a) Captions and headings contained in this Agreement are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Agreement. Whenever appropriate in this Agreement, personal pronouns shall be deemed to include all other genders and the singular shall be deemed to include the plural and vice versa.

(b) All of the terms and provisions contained in this Agreement constitute covenants running with the land which shall be binding upon, inure to the benefit of and be enforceable by all Owners and the respective heirs, executors, personal representatives, successors and assigns of each of the Owners. Any grantee accepting a deed to any of the Lots will automatically become a party to and bound by all of the terms and provisions of this Agreement from and after the date of such conveyance.

(c) If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be affected thereby and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(d) Nothing contained in this Agreement and no action by the Owners will be deemed or construed by the Owners or by any third party to create the relationship of principal and agent, or a partnership or a joint venture or any association between or among any of the Owners.

(e) This Agreement will be construed in accordance with the internal laws of the State of Alabama.

(f) This Agreement and any provision contained herein may be terminated, extended, modified or amended only with the express written consent of both (i) all Owners of all of the Lots and (ii) Developer.

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

MOSS ROCK BUILDING COMPANY, INC., an Alabama corporation

By: John O. Freeman, Jr.  
Its: V.P. and General Mgr.

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STATE OF ALABAMA     )  
                                     :  
SHELBY COUNTY         )

I, the undersigned, a notary public in and for said county in said state, hereby certify that John O. Freeman, Jr., whose name as VP GM of MOSS ROCK BUILDING COMPANY, INC., an Alabama corporation, 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 the 22 day of June, 2004.

Debbie M. Pender  
Notary Public  
9/21/06  
My commission expires:

[NOTARIAL SEAL]

This instrument prepared by and  
upon recording should be returned to:

Stephen R. Monk, Esq.  
Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203  
(205) 521-8429