

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("**Assignment**") is made as of the 15th day of September, 2005, by RIVER PLACE, L.L.C., an Alabama limited liability company ("**Borrower**"), as assignor, to GMAC COMMERCIAL MORTGAGE BANK, a Utah Industrial Bank (together with its successors and assigns, "**Lender**"), as assignee.

BACKGROUND

Borrower and Lender are entering into a certain Loan Agreement of even date herewith ("**Loan Agreement**") pursuant to which Lender will make a loan ("**Loan**") to Borrower in the maximum principal amount of \$11,700,000.00. The Loan also will be evidenced by Borrower's promissory note to Lender of even date herewith ("**Note**") and will be secured by, among other things, a mortgage, deed of trust, deed to secure debt or similar security instrument made by Borrower to Lender also of even date herewith ("**Security Instrument**") which encumbers the property described on Exhibit A hereto ("**Property**"). As a condition to making the Loan, Lender requires that Borrower assign to Lender all rents, leases and other profits arising out of the Property.

NOW, THEREFORE, in consideration of the Loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Borrower agrees as follows:

ARTICLE 1 ASSIGNMENT

1.01 Defined Terms. Capitalized terms used in this Assignment and not specifically defined in this Assignment have the meaning provided in the Loan Agreement.

1.02 Assignment; Property Assigned. Borrower hereby irrevocably, absolutely and unconditionally assigns, sets over and transfers to Lender all of Borrower's right, title and interest in and to (but none of Borrower's obligations under) all current and future Leases and Rents arising with respect to the Property, all proceeds or streams of payment arising from the sale or other disposition of all or any of the Leases or Rents, and the right to receive and apply the Rents to the payment of the Debt and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties or with respect to the Rents (collectively, "**Assigned Property**").

1.03 Termination of Assignment. Upon payment in full of the Debt and release or discharge of the Security Instrument of record, this Assignment, and all of Lender's right, title and interest in the Assigned Property, shall automatically terminate.

1.04 Present Assignment; License to Collect. Borrower intends this Assignment to be a present, unconditional, absolute and executed assignment of the Assigned Property and not an assignment for security only. Nevertheless, subject to the terms of this Assignment, Lender hereby grants to Borrower a revocable license (a) to manage the leasing activities of the Property as contemplated by the Loan Agreement and (b) to collect and receive the Rents in trust for Lender and to apply the Rents to discharge all current amounts due on the Debt and to pay the

current costs of managing, operating and maintaining the Property. So long as no Event of Default exists, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear, and released from, Lender's rights with respect to Rents under this Assignment. From and after the occurrence of an Event of Default, and without the necessity of notice or prior demand by Lender or Lender's entering upon and taking and maintaining control of the Property (whether directly or through a receiver), the license granted hereunder to Borrower shall terminate automatically, and Lender shall be entitled to receive and collect the Rents as they become due and payable and exercise all of Borrower's rights or the rights of lessor under the Leases and with respect to the Rents.

1.05 Notices to Tenants. At any time on or after Lender's demand for the Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Property instructing them to pay all Rents to Lender. Borrower agrees that each tenant may rely on Lender's notice without inquiring further as to Lender's right to receive the Rents and that no tenant shall be liable to Borrower for any amounts which are actually paid to Lender in response to such a notice. Borrower shall not interfere with, and shall cooperate with, Lender's collection of the Rents. Nothing in this Section 1.05 shall be deemed to limit in any way Lender's rights pursuant to the Lockbox Agreement.

1.06 Borrower Bankruptcy. If a petition under the Bankruptcy Code is filed by or against Borrower, and Borrower determines to exercise its rights under the Bankruptcy Code to reject any Lease, Borrower shall give Lender written notice not less than ten (10) days prior to the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender has the right to serve Borrower within such ten-day period a notice stating (a) that Lender demands that Borrower assume the Lease and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (b) that Lender agrees to cure Borrower's default under the Lease or provide adequate assurance of future performance under the Lease. If Lender so notifies Borrower, Borrower shall not seek to reject the Lease and shall assume and assign such Lease to Lender within thirty (30) days after Lender's notice is given.

ARTICLE 2

DEFAULT AND REMEDIES

2.01 Events of Default. The occurrence of an "Event of Default" as that term is defined under the Loan Agreement shall constitute an "**Event of Default**" with respect to Borrower under this Assignment.

2.02 Remedies. Following an Event of Default (which has not been waived in writing by Lender), Lender, without notice or consent from Borrower, shall be entitled to exercise all rights and remedies as have been provided to Lender hereunder, under the other Loan Documents, by law or in equity. Such rights and remedies are cumulative and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default shall not be deemed a waiver of such right as remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Borrower in any instance will not entitle Borrower to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance without notice or demand (except where expressly

required by this Assignment to be given). Lender may release other security for the Loan, may release any party liable for the Loan, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Loan, in each case without prejudice to its rights under this Assignment and without such action being deemed an accord and satisfaction or a reinstatement of the Loan. Lender will not be deemed as a consequence of its delay or failure to act, or any forbearances granted, to have waived or be estopped from exercising any of its rights or remedies.

ARTICLE 3

LIMITATIONS ON LENDER LIABILITY

3.01 No Mortgagee in Possession. Neither the granting of this Assignment to Lender, nor Lender's exercise of any rights or remedies under this Assignment, shall be construed to make Lender a "mortgagee in possession" of the Property in the absence of Lender itself taking actual possession of the Property.

3.02 No Obligation for Lease Performance or Property Condition. Lender's acceptance of this Assignment shall not at any time obligate Lender to take any action with respect to the Leases, including, without limitation, the performance of any obligation to be performed on the part of Borrower under any of the Leases, which shall remain exclusively with Borrower. Without limiting the foregoing, this Assignment shall not operate to place on Lender any obligation or liability for: (a) the control, care, management or repair of the Property; (b) for carrying out any of the terms and conditions of the Leases; (c) any waste committed on the Property by tenants or any other parties; (c) any dangerous or defective condition of the Property (including, without limitation, the presence of any Hazardous Materials as defined in the Environmental Indemnity); or (d) any negligence in the management, upkeep, repair or control of the Property resulting in injury or death to any tenant or any other party or any loss of personal property. Borrower, for itself and any party claiming under or through Borrower, hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

3.03 Accountability for Rents Received. Lender shall be obligated to account only for Rents actually collected or received by Lender, and Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease the Property after an Event of Default.

ARTICLE 4

MISCELLANEOUS PROVISIONS

4.01 Incorporation from Loan Agreement. All provisions Articles 17 and 18, inclusive, of the Loan Agreement are incorporated into this Assignment by this reference, as if fully reproduced and stated herein. Notwithstanding any contrary provision of the Loan Agreement, except as set forth in Section 1.05 hereof with respect to the Lockbox Agreement, if the terms of this Assignment are in conflict with any of the other Loan Documents, the terms of this Assignment shall control.

4.02 Further Assurances. Borrower, at Borrower's expense, agrees to take such further actions and execute such further documents as Lender reasonably may request to carry out the intent of this Assignment or to establish and protect the rights and remedies created or intended to be created in favor of Lender hereunder. Borrower agrees to pay all filing, registration or recording fees or taxes, and all expenses incident to the preparation, execution, acknowledgement or filing/recording of this Assignment or any such instrument of further assurance, except where prohibited by law so to do.

4.03 No Third Party Beneficiary. Notwithstanding any provision of this Assignment to the contrary, this Assignment is not intended by the parties to create, and shall not create, benefits on behalf of any tenant or other occupant of the Property or anyone claiming rights through any tenant or other occupant of the Property.

4.04 No Agency or Partnership. Nothing contained in this Assignment shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower.

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20050916000483020 5/8 \$32.00
Shelby Cnty Judge of Probate, AL
09/16/2005 03:14:10PM FILED/CERT


IN WITNESS WHEREOF, the undersigned hereby signs, seals and delivers this Security Instrument.

Borrower

RIVER PLACE, L.L.C.,
an Alabama limited partnership

By: ENGEL PROPERTIES, L.L.C.,
an Alabama limited liability company,
its Manager

By: ENGEL REALTY COMPANY,
INC., an Alabama corporation,
its Manager

By: 
William A. Butler
Executive Vice President



20050916000483020 6/8 \$32.00
Shelby Cnty Judge of Probate, AL
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ACKNOWLEDGEMENT

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that William A. Butler, whose name as Executive Vice President of Engel Realty Company, Inc., an Alabama Corporation, the Manager of Engel Engel Properties, L.L.C., an Alabama limited liability company, the Manager of RIVER PLACE, L.L.C., an Alabama limited partnership, 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 the instrument, he as such Officer and with full authority, executed the same for and as the act of said corporation in its aforesaid capacity.

Given under my hand and official seal this 14th day of September, 2005.

[NOTARIAL SEAL]

Lee Mitchell
NOTARY PUBLIC
My Commission
Expires: 9/29/05




EXHIBIT A

20050916000483020 7/8 \$32.00
Shelby Cnty Judge of Probate, AL
09/16/2005 03:14:10PM FILED/CERT

(Legal Description)

A tract of land situated in the Northwest $\frac{1}{4}$ of Section 3, Township 19 South, Range 2 West, Shelby County, Alabama, said tract being part of Block 2 of Altadena Park, as recorded in Map Book 5, Page 73, part of Lot 1, Butte Woods Ranch Addition to Altadena Valley as recorded in Map Book 5, Page 1, all recorded in the Probate Office of Shelby County, Alabama, said tract of land more particularly described as follows:

Commence at the Southwest corner of the Northeast $\frac{1}{4}$, Northwest $\frac{1}{4}$ of said Section 3, and run thence Easterly along the South line thereof 69.02 feet; thence turn 69 degrees 30 minutes 50 seconds right and run Southeasterly 96.27 feet to the point of beginning, said point being on the Northerly line of Lot 1 of said Altadena Park; thence turn 90 degrees 00 minutes left and run Northeasterly 240.0 feet to the Northern most corner of said Lot 1; thence turn 90 degrees 58 minutes 45 seconds right and run Southeasterly 149.79 feet to the Southeast corner of said Lot 1; thence turn 6 degrees 16 minutes 15 seconds right and run Southeasterly along the Easterly line of Lot 2 of said subdivision 144.94 feet to the most Easterly corner of Lot 2; thence turn 7 degrees 01 minutes 15 seconds right and run Southerly along the Easterly line of Lot 3 of said subdivision for 57.52 feet to a point on last said lot line ; thence turn 106 degrees 56 minutes 15 seconds left and run Northeasterly 128.13 feet; thence turn 84 degrees 50 minutes right and run Southeasterly for 195.0 feet; thence turn 20 degrees 59 minutes 30 seconds left and run Southeasterly for 333.22 feet; thence turn 52 degrees 39 minutes 30 seconds left and run Easterly for 150.0 feet; thence turn 90 degrees left and run Northerly for 600.14 feet; thence turn 41 degrees 00 minutes right and run Northeasterly for 300.00 feet; thence turn 14 degrees 00 minutes left and run Northeasterly for 125.0 feet; thence turn 25 degrees 00 minutes left and run Northerly for 170.0 feet; thence turn 87 degrees 58 minutes 40 seconds right and run Easterly for 137.41 feet to a point on the East line of the Northeast $\frac{1}{4}$ of Northwest $\frac{1}{4}$, Section 3, Township 19 South Range 2 West; thence turn left 90 degrees and run Northerly along said $\frac{1}{4}$ - $\frac{1}{4}$ line for 270 feet, more or less, to the Westerly bank of the Cahaba river; thence run Northerly and Westerly along the Southwest bank of said river 1400 feet; more or less, to the West line of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 3, said point also being on the Easterly line of Lot 1 of said Butte Woods Ranch Addition to Altadena Valley, thence run Northerly along last said $\frac{1}{4}$ - $\frac{1}{4}$ section line and said lot line for 90 feet, more or less, to the Northeasterly corner of said Lot 1; thence turn left and run Westerly along the Northerly line of said Lot 1 for 240 feet, more or less, to the Northwest corner of said Lot 1; thence turn left and run Southwesterly and along the Easterly right-of-way line of Caldwell Mill Road for 425 feet, more or less, to an existing iron rebar set by Laurence D. Weygand; thence turn left 31 degrees 45 minutes and run Southeasterly for 67.96 feet, to an existing iron rebar set by Laurence D. Weygand; thence turn left 31 degrees 45 minutes and run Southeasterly along the new Northeasterly right-of-way line of Old Caldwell Mill Road for 231.58 feet to the beginning of a curve to the right having a radius of 263.05 feet; thence continue Southeasterly and along said right-of-way line and along the arc of said curve 162.13 feet to the end of said curve; thence continue Southeasterly on a course tangent to said curve, and along said right-of-way line 245.3 feet to the point of beginning. Situated in Shelby County, Alabama.

LESS AND EXCEPT:

Part of the Northwest $\frac{1}{4}$ of Section 3, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at an existing crimp iron pin, being the most Westerly corner of Lot 1A, Altadena Park Resurvey, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 5, Page 111, run in a Northwesterly direction, along the Northeast right-of-way line of Old Caldwell Mill Road, for a distance of 245.65 feet to an existing crimp iron pin and being the point of beginning of a curve, said curve being concave in a Southwesterly direction and having a central angle of 35 degrees 18 minutes 51 seconds and a radius of 263.05 feet; thence turn an angle to the left and run in a Northwesterly direction, along the arc of said curve and along the Northeast right-of-way line of said Old Caldwell Mill Road, for a distance of 162.13 feet, to the point of ending of said curve; thence continue in a Northwesterly direction, along a line tangent to the end of said curve, and along the Northeast right-of-way line of said Old Caldwell Mill Road, for a distance of 231.58 feet; thence turn an angle to the right of 31 degrees 45 minutes and run in a Northwesterly direction for a distance of 67.96 feet to a point on the East right-of-way line of Caldwell Mill Road; thence turn an angle to the right of 31 degrees 45 minutes and run in a Northerly direction, along the East right-of-way line of said Caldwell Mill Road, for a distance of 162.68 feet to a point of intersection with a curve, said curve being concave in a Northwesterly direction and having a central angle of 3 degrees 36 minutes 16 seconds and a radius of 2005.22 feet; thence turn an angle to the right (59 degrees 20 minutes 24 seconds to the chord of said curve) and run in a Northeasterly direction, along the arc of said curve, for a distance of 126.15 feet to a point of reverse curve, said latest curve being concave in a Southerly direction and having a central angle of 36 degrees 13 minutes 17 seconds and a radius of 58.97 feet; thence turn an angle to the right and run in a Northeasterly and Easterly direction, along the arc of said curve, for a distance of 37.28 feet to the point of ending of said curve; thence run in an Easterly direction, along a line tangent to the end of said curve, for a distance of 102.25 feet, to the point of beginning; thence turn an angle to the right of 63 degrees 45 minutes 02 seconds and run in a Southeasterly direction for a distance of 55.01 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 91 degrees 51 minutes 45 seconds and run in a Northeasterly direction for a distance of 150.88 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 94 degrees 18 minutes 35 seconds and run in a Northwesterly direction for a distance of 55.20 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 82 degrees 59 minutes 55 seconds and run in a Southwesterly direction for a distance of 144.88 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 90 degrees 49 minutes 45 seconds and run in a Southerly direction for a distance of 6.87 feet, more or less to the point of beginning.

All being situated in Shelby County, Alabama.