

WHITESTONE TOWNHOMES PHASE 2 RESUR OF  
MB20 PG126

In consideration of the covenants herein contained, James Cole Jr., (hereinafter called "Owner") and Rudolph Real Estate, Inc. (hereinafter called "Agent"), agree as follows:

1. EMPLOYMENT: The Owner employs the Agent exclusively to lease, rent, operate and manage the real property located at , 617 3rd St NE Alabaster AL 35007, in accordance with the terms of this agreement for a period of one year from the date hereof and for annual periods thereafter unless on or before thirty days prior to the expiration of this agreement or any such renewal period, either party notifies the other in writing of his intention to terminate this agreement. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and interpreted in accordance with, the laws of the State of Alabama. The Agent and Owner agree that neither of them may assign or delegate their respective rights, duties, or obligations under this Agreement, without the prior written authorization of the other party. This agreement is to be interpreted without regard to the draftsman. The terms and intent of this Agreement shall be interpreted and construed on the express assumption that all parties participated in its drafting. Should any term, condition, or provision of this agreement be declared invalid or unenforceable, the balance of this Agreement shall remain in full force and effect and shall stand as if the unenforceable provision(s) does not exist.

2. AGENT'S AUTHORITY, DUTIES AND POWERS: The Owner gives to the agent the following authority, duties and powers and agrees to assume the expenses incurred in the performance of the following:

a. Rents: To collect and deposit all receipts for the Owner in an account in a national or state financial institution, separate from Agent's personal accounts.

b. Deposits: To collect and deposit all Security Deposits and Earnest Money Deposits in an account as above. To hold such funds in trust for Owner and Tenant and to pay said funds in accordance with the terms of the lease or sale agreement that caused them to be deposited.

c. Leasing: To lease the property; Agent is granted an exclusive right to lease this property during the term hereof; to advertise the property for rent at Owner's expense and to display "For Rent" signs; to verify prospective tenants' employment and credit references; to negotiate renewals or cancellations of leases; to terminate leases; to sign and serve such notices as Agent deems necessary.

d. Repairs: To cause to be made and to supervise repairs and alterations to said premises and to purchase supplies and to pay all bills therefor. After the property is leased, the Agent agrees to secure the prior approval of the Owner for all expenditures in excess of \$200.00. for any one item, except for monthly or recurring charges previously approved by the Owner, or in the event that the Owner is not reasonably available for consultation or if, in the opinion of Agent, such repairs are necessary to protect the property from damage or loss, or if the health, safety, and welfare of the tenants is at risk.

e. Service Contracts: To make contracts as may be necessary for garbage removal, pest control or other services Agent may deem necessary, the Owner to continue to be liable for such obligations which may extend beyond the termination date of this agreement.

f. Statements: To render monthly and annual detailed statements of receipts and expenses.



g. Payments to Owner: To remit to the Owner on or about the fifteenth of each month any funds remaining from rents received after paying necessary disbursements. In the event that disbursements exceed receipts, Owner will immediately remit such excess to Agent.

h. Litigation: To enter into litigation on behalf of Owner as Agent determines to be in Owner's best interest, to hire legal counsel, and to offer and accept settlements of disputes.

### 3. OWNER'S OBLIGATIONS;

a. Financial Responsibility: To be personally responsible for the payment of any expenses or other obligation incurred by Agent in the proper exercise of his authority and duties hereunder; to be personally responsible for the payment to Agent of the amount of excess of expenditures over receipts. Owner hereby grants to Agent a lien against said property to insure the repayment to Agent of said excess and any other amounts that may be due hereunder. In the event that any or all of such an excess remains unpaid to Agent one month after Agent has delivered to Owner a statement showing the amount of the excess, Owner will incur a service charge equal to one and one-half percent of the amount of the excess unpaid each month.

b. Agent's Liability: Owner agrees to fully indemnify and hold harmless Agent and all of its agents and employees from and against all claims, damages, losses, and expenses, including attorney's fees actually incurred, arising out of, resulting from, or directly or indirectly connected with the performance of Agent's work and services performed under this agreement, including, but not limited to, the Agent's rental or management of the herein described property, and from any liability for any alleged injury, damage, or loss suffered by any tenant, applicant, or other person whatsoever. Owner agrees to carry, at his own expense, necessary public liability insurance in an amount not less than \$300,000, which policy shall be so written as to protect Agent in the same manner and to the same extent they protect Owner and will name Agent as an additional insured.. The Agent also shall not be liable for any error of judgment or from mistakes of fact or law, or for anything which it may do or refrain from doing, except in the case of willful misconduct or gross negligence. The Owner also agrees to hold the Agent harmless for damages to said property by the tenants which may exceed the amount of any security deposits and which damages are determined by Agent to be uncollectible.

c. Agent's Fees: During the term of this Agreement, its extension or renewal, Owner shall recognize Agent as the Broker in any negotiation relating to the property, or any part thereof, and in the event of the consummation of any sale or lease thereof, Owner shall pay to Agent a commission as follows: one half of one month's rent each time a new tenant executes a lease; ten percent (10.0%) of rent, pet fees, late fees for rent received after the 15<sup>th</sup> of the month, and any other item of income received by or for Owner at the time the income is received; for the sale of the property to someone who occupies the property during the term of this agreement or its extension or during the term of an extension or renewal of a lease that was active during the term of this agreement: six percent (6.0%) of the sales price. Agent will be entitled to these fees so long as the property is occupied by someone who occupied the property during the term of this agreement or during the term of the lease's extension or renewal even if this agreement has been terminated. It is agreed that any lease/purchase agreement negotiated by any party during the term of this agreement or its extension is subject to this agreement and will obligate Owner to the commissions herein agreed.

d. Smoke Detectors: To insure that there is installed on each floor of the house an operable smoke detector. Owner understands that Alabama law and/or regulations of the State Fire Marshall may operate to place an extreme liability on the Owner in the event that a person or property is damaged in a fire and regulations concerning fire detectors have not been followed.



e. Habitability: Owner warrants that the premises are habitable and that they are in compliance with all state and local ordinances relating to rental property.

4. WORKERS COMPENSATION INSURANCE: Insurance requires that any contractors, and/or sub-contractors who work on any property we manage, be covered by Workers Compensation. If an individual contractor is not required by law to carry insurance, our insurance company regulations have insisted that small contractors be covered by our company. In that case, Owner understands that any such charge will be added to the appropriate invoice and, therefore, becomes part of the expenditures billed to such Owner.

5. NOTICE: All written notices to the Owner may be addressed and mailed to the Owner at \_\_\_\_\_ and mailed to the Agent at #1 Office Park Circle, Suite 100, Birmingham, Alabama, 35223.

6. BINDING AGREEMENT: This agreement shall be binding upon and will inure to the benefit of the parties hereto, their representatives, successors, heirs or assigns. The Agent and Owner agree that neither of them may assign or delegate their respective rights, duties, or obligations under this agreement, without the prior written authorization of the other party.

7. DISCRIMINATION: It is illegal to discriminate in the sale or lease of real estate because of race, religion, sex, handicaps, national origin or familial status.

8. OWNER'S WARRANTY: The Owner warrants that he is the owner of the property described herein or that he has the authority to execute this agreement.

9. ATTORNEY'S FEES: If, within 30 days or such longer period as may be agreed upon by the Agent and Owner in writing, the parties cannot resolve any dispute, claim or controversy arising from or relating to the agreement, or any dispute, claim, or controversy arising from or relating to the validity of this Agreement or these arbitration provisions, or any future claim, dispute, or controversy arising between them, then the Agent and Owner agree and consent to resolve all such disputes, claims or controversies through binding arbitration in accordance with the National Rules for the Resolution of Commercial Disputes of the American Arbitration Association (and, to the extent not inconsistent, the rules of The Federal Arbitration Act) in effect at the time the demand for arbitration is made. One arbitrator shall be used and shall be chosen by mutual agreement of the parties. If, within 30 days after one party notifies the other of an arbitrable dispute, no arbitrator has been chosen, an arbitrator shall be chosen by AAA pursuant to the applicable National Rules. The arbitrator shall coordinate and limit as appropriate all prearbitrable discovery, which shall include document production, information request, and depositions. No later than 30 days prior to the hearing, or at such other time as the arbitrator may direct, the parties may file dispositive motions, including motions for summary judgement, in accordance with the arbitrator's guidelines and procedures for motion practice. Following the arbitration hearing, the arbitrator shall issue a written decision and, if necessary, an award, stating the reasons therefor. In issuing his decision, the arbitrator shall apply the substantive law (and the law of remedies) of the State of Alabama, or the federal law (if applicable) that would be applied by a federal court sitting in Alabama. The Federal Rules of Evidence shall apply to the arbitration proceedings. The arbitrator's decision and award, if any, shall be exclusive, final, and binding on the parties, their respective heirs, executors,



administrators, successors, agents, assigns, attorneys, and all other persons or entities in privity with the parties. The award, if any, shall be enforced pursuant to The Federal Arbitration Act, according to the procedure outlined in 9 U.S.C Section 13. The Agent and Owner understand that by agreeing to these arbitration provisions, they are agreeing to substitute one legitimate dispute resolution for (arbitration) for another (litigation, **and both parties are hereby knowingly and voluntarily waiving their respective rights to have their disputes resolved in court, including their respective rights to trial by jury.** Each party shall pay its own attorney's fees and expenses incurred in connection with the arbitration proceedings; all other expenses of arbitration shall be equally divided between the parties, provided, however, that the arbitrator shall have the authority to assess any of the foregoing costs against any party acting in bad faith. Should either party bring any legal action (other than arbitration) against the other with respect to any claim required to be arbitrated under this agreement, then the other party shall be entitled to recover from such party all damages, cost, expenses, and attorney's fees incurred as a result of such action.

10. RECORDING: It is agreed that this agreement may be recorded in the public records.

11. FACSIMILE SIGNATURE: It is agreed that a signature on this agreement received by either party by facsimile shall be as binding as an original signature.

12. PAYING EXPENSES: Agent agrees to be responsible for paying bills for property taxers, property insurance, termite bond renewals, fire dues, annual garbage/trash fees, etc. after Owner has directed him to make such payments in writing.

13. CONDITION OF PROPERTY: Owner will deliver property to Agent prior to the first lease in a condition to include clean carpets, clean appliances, gutters cleaned, yard cut, bushes trimmed, and painted surfaces in good condition. Should the property be delivered not in this condition, Agent is directed to make repairs at Owner's expense to bring it to that condition.

14. WHOLE AGREEMENT: This agreement expresses the whole and entire agreement between the Owner and Agent with reference to Agent's responsibilities in connection with the management of the described property and this agreement may not be changed or modified in any way other than by in writing.

IN WITNESS WHEREOF, the parties hereto have affixed or caused to be affixed their respective signatures this 21<sup>st</sup> day of April, 2006.

Jean C. Cobb, Owner

Connie Cobb, Owner

\_\_\_\_ Social Security Number

RUDULPH REAL ESTATE, INC.

John R. Rudolph  
By its President

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Shelby Cnty Judge of Probate, AL  
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