

20060808000383460 1/6 \$26.00
Shelby Cnty Judge of Probate, AL
08/08/2006 01:52:44PM FILED/CERT

20060804000988210 1/6
Bk: LR200613 Pg:4150
Jefferson County, Alabama
I certify this instrument filed on:
08/04/2006 02:41:37 PM XFRL
Judge of Probate- Mark Gaines

ASSIGNMENT OF RENTS AND LEASES

The following terms shall have the meanings set forth below, as used in this instrument:

Lender: **Renasant Bank**
Lender's Notice Address: **3535 Grandview Parkway**
Birmingham, Alabama 35242
Loan Amount: **\$2,000,000.00**
Mortgage: **The Mortgage and Security Agreement executed by**
Owner in favor of Lender this date to further secure
the Obligation (defined below).
Owner: **Overton Village Condos, LLC and Leverage, LLC,**
individually and collectively
Owner's Notice Address: **2204 Lakeshore Drive, Suite 305**
Birmingham, Alabama 35209

1. **BY THIS ASSIGNMENT**, the Owner, for value received, hereby assigns to the Lender all of Owner's right, title, privileges and interest which Owner has and may have in the leases, operating agreements, management agreements, concession agreements, licenses, and all similar agreements, now existing or hereafter made and affecting the real property and the improvements and equipment thereon described in Exhibit A attached hereto and incorporated herein by reference (collectively referred to as the "Property"), together with all extensions, renewals, modifications or replacements of said leases and agreements, and together with any and all guarantees of the obligations of the lessees and other obligors thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. All said leases and all other said agreements described in this Paragraph 1, together with any and all guarantees, modifications, extensions and renewals thereof, are hereinafter collectively and severally referred to as the "Lease".

2. **OWNER'S PURPOSE** in making this assignment is to relinquish, convey, and assign to Lender its right to collect and enjoy the rents, royalties, issues, profits, income and other benefits at any time accruing by virtue of the Lease (hereinafter called "Rents and Profits") as additional security for the outstanding indebtedness to Lender in connection with a loan (the "Loan") as evidenced by the note and guaranty identified and described in the Mortgage in favor of Lender (herein individually and collectively called the "Obligation") dated on or about this same date, in the aggregate original principal sum equal to the Loan Amount, and as additional security for the Owner's obligations under the Mortgage executed to better secure the Obligation; and to furnish security for the performance of Owner's obligations contained herein, and in the Obligation, and in all of the other documents executed by Owner in connection with the making or closing of the Loan. The Obligation, the Mortgage, and the other documents executed in connection with the making or closing of the Loan are sometimes referred to for convenience as the "Loan Documents".

3. **THE PARTIES INTEND** that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Lender the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on Owner's Obligation, as well as all other sums payable under the Loan Documents. However, Lender hereby grants to Owner a license to collect, subject to the provisions set forth below and in the Loan Documents, the Rents and Profits as they respectively become due and to enforce the Lease, so long as

there is no default by Owner in performance of the terms, covenants or provisions of the Obligation, the Loan Documents or this Assignment. Nothing contained herein, nor any collection of Rents and Profits by Lender or by a receiver, shall be construed to make Lender a "mortgagee-in-possession" of the Property so long as Lender has not itself entered into actual possession of the Property.

4. **UPON THE OCCURRENCE OF ANY DEFAULT** under the terms and conditions of this Assignment or any of the Loan Documents, this Assignment shall constitute a direction to and full authority to any and all obligors under the Lease and any guarantor of the Lease to pay all Rents and Profits to Lender without proof of the default relied upon. Owner hereby irrevocably authorizes any and all obligors under the Lease and any guarantor to rely upon and comply with any notice or demand by Lender for the payment to Lender of any Rents and Profits due or to become due. Any and all obligors under the Lease and any guarantor shall have no right or duty to inquire whether a default has actually occurred and Owner shall have no claim against any obligor under the Lease or any guarantor for any Rents and Profits paid by such obligor Lessee or such guarantor to Lender pursuant to Lender's demand or notice.

5. **OWNER WARRANTIES:**

- (a) that no default exists on the part of Owner under any Lease;
- (b) that no rent or other payment has been or will be collected under any Lease more than one month in advance;
- (c) that neither the Lease nor any interest therein has been previously or will be assigned or pledged by Owner;
- (d) that no concession has been or will be granted to any Lessee in the form of a waiver, release, reduction, discount or other alteration of rent or other payment due or to become due.

All of the foregoing warranties shall be deemed to be reaffirmed on and as of the time of each Lease executed by Owner on the Property.

6. Owner agrees that nothing herein shall be construed to impose any liability or obligation on Lender under or with respect to the Lease. Owner does not delegate or assign to Lender, and Lender does not accept or assume any of the duties, obligations, or liabilities of Owner as provided in the Lease. Despite the present and absolute assignment by Owner to Lender of the Lease, Lender will not be required to perform any of the agreements or conditions contained in the Lease and nothing in this Agreement will impose any obligation upon Lender (including any liability under any covenant of quiet enjoyment as provided in the Lease). Owner retains and will perform all duties, obligations, and liabilities of Owner as provided in the Lease, provided that Lender, in the sole and absolute option of Lender may cure any default as provided in the Lease on behalf of Owner, and Owner will reimburse Lender on demand for all amounts paid and expended by Lender to cure the defaults of Owner as provided in the Lease.

7. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Loan Documents. Failure of the Lender to avail itself of any terms, covenants or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

8. Notwithstanding any future modification of the terms of the Loan Documents, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of Lender in accordance with the terms of this Assignment.

9. This Assignment shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto (including without limitation, in the case of Lender, any third parties now or hereafter acquiring any interest in the Obligation or any part thereof, whether by virtue of assignment, participation or otherwise). The words "Owner", "Lender", "obligor under the Lease", and "guarantor", wherever used herein, shall include the persons and entities named herein or in the Lease or any guaranty and designated as such and their respective heirs, legal representatives, successors, and assigns, provided that any action taken by the named Lender or any successor designated as such by an instrument recorded in the appropriate office of the County in which the Property is located referring to this Assignment shall be sufficient for all purposes notwithstanding that Lender may have theretofore assigned or participated any interest in the Obligation to a third party. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

10. Any change, amendment, modification, abridgement, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of Lender.

11. Upon payment to Lender of the full amount of all indebtedness and obligations secured hereby and by the Loan Documents, as evidenced by a recorded satisfaction or release of the Mortgage, Note, and guarantees, this Assignment shall be void and of no further effect.

12. All notices given hereunder shall be given in the manner set forth in the Mortgage.

13. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

14. This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama.

15. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, OWNER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENTS, OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. OWNER AGREES THAT LENDER MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF OWNER IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN OWNER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, this document has been executed by the undersigned under seal as
of the 3rd day of August, 2006

“OWNER”

OVERTON VILLAGE CONDOS, LLC

By: Leverage, LLC

Its: Manager

By: Marc Perlman

Name: Marc Perlman

Its: Manager

LEVERAGE, LLC

By: Marc Perlman

Name: Marc Perlman

Its: Manager

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Marc Perlman whose name as the manager of Leverage, LLC, an Alabama limited liability company which is the manager of Overton Village Condos, 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 the instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company as manager of said limited liability company.

Given under my hand this 3rd day of August, 2006.

Jennifer L. Luma
Notary Public
My Commission Expires: 10-2-08

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Marc Perlman whose name as the manager of Leverage, 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 the instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 3rd day of August, 2006.

Jennifer L. Luma
Notary Public
My Commission Expires: 10-2-08

EXHIBIT A


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PARCEL I:

Lots 2, 3, 4, 5, 6 and 7, Block 2, according to the Survey of Glass's Third Addition to New Merkle, as recorded in Map Book 29, Page 35, in the Probate Office of Jefferson County, Alabama.

PARCEL II:

Lots 33 and 34, in Block 1, according to the Survey of Glass's Third Addition to New Merkle, as recorded in Map Book 29, Page 35, in the Probate Office of Jefferson County, Alabama.

PARCEL III:

Lots 33 and 34, in Block 2, according to the Survey of Glass's Third Addition to New Merkle, as recorded in Map Book 29, Page 35, in the Probate Office of Jefferson County, Alabama.

PARCEL IV:

Lot 35, in Block 2, according to the Survey of Glass's Third Addition to New Merkle, as recorded in Map Book 29, Page 35, in the Probate Office of Jefferson County, Alabama.

PARCEL V: (2nd Avenue South)

Lot 6, 7, and 8 and the East One-Half of Lot 10, Block 480, according to the present plan and survey of the City of Birmingham as made by the Elyton Land Company.

This survey has never been filed for record and is not available for recordation.

Situated in Jefferson County, Alabama.

PARCEL VI: (Bessemer Road)

Lot 5, 6, and 7, Block 1, according to the survey of Central Park Highlands, recorded in Map Book 13, Page 18, in the Probate Office of Jefferson County, Alabama.

PARCEL VII: (Center Point Road)

A portion of Lots 13 and 14, in Block 2 of Stardust Manor, as recorded in Map Book 57, Page 25, in the Office of the Judge of Probate of Jefferson County, Alabama; particularly described as follows:

Begin at the Southwesterly corner of said Lot 13 and run thence Northerly along the Westerly line thereof for a distance of 40.11 feet to a point; thence 11 degrees 13 minutes right and run Northeasterly along the Westerly line of said Lots 13 and 14 for a distance of 160.74 feet, more or less, to a point on the South line of the "U-Haul Co. Tract" as described in Real Volume 1449, Page 50; thence turn 91 degrees 55 minutes 34 seconds right and run Southeasterly along a line that is parallel to the Southerly line of said Lot 13 for a distance of 201.03 feet to a point on the Westerly right of way line of the new Alabama Highway No. 75; thence turn 87 degrees 19 minutes 26 seconds right and run Southwesterly along said right of way line for a distance of 77.74 feet to the P.C. (point of curve) of a curve to the left having a radius of 5849.58 feet; thence continue Southwesterly along said right of way line and along the arc of said curve for a distance of 122.26 feet to a point on the Southerly line of said Lot 13; thence turn right,

with an interior angle to tangent of 86 degrees 07 minutes 35 seconds and run Northwesterly along said Southerly line of Lot 13 for a distance of 197.12 feet to the Point of Beginning.

Situated in Jefferson County, Alabama

PARCEL VIII: (Alabaster)

A part of Lots 22, 23, and a part of the North half of Lot 21, of Block 3 of the Nickerson-Scott Survey as recorded in Map Book 3, Page 34 in the Probate Office of Shelby County, Alabama, more particularly described as follows: From the Northeast Corner of Lot 23 run Westerly along the North boundary line of said Lot 23 for 18.15 feet for the point of beginning of the land herein described; thence continue Westerly along the North boundary line of Lot 23 for 120.1 feet, more or less, to a point on the East right of way of U.S. 31 Highway; thence turn an angle of 84 degrees 29 minutes to the left and run Southwesterly along the East right of way line of said U.S. 31 Highway for 131.47 feet, more or less, to the point of intersection of the East right of way line of U.S. 31 Highway and the South boundary line of the North half of Lot 21 of Block 3 of said Nickerson-Scott Survey; thence turn an angle of 90 degrees 33 minutes to the left and run Easterly along the South boundary line of the North half of Lot 21 for 123.73 feet; thence turn an angle of 91 degrees 08 minutes to the left and run Northeasterly 141.89 feet, more or less, to the Point of Beginning

Situated in Shelby County, Alabama.

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Fee - \$17.00

Total of Fees and Taxes-\$17.00
AMYG