

STORM SEWER DRAINAGE EASEMENT AGREEMENT

THIS STORM SEWER DRAINAGE EASEMENT AGREEMENT (the "Agreement") made this 7th day of December, 2006, by and between **BALMORAL DEVELOPMENT, INC.**, an Alabama corporation, and **MARK E. OSBORN**, an individual (hereinafter collectively, "Grantor"), and **AUM PROPERTIES, L.L.C.**, an Alabama limited liability company (hereinafter "Grantee" and together with Grantor, the "Declarants").

RECITALS

WHEREAS, by Statutory Warranty Deed dated of even date herewith (the "Deed"), Grantee purchased from Grantor, and Grantor conveyed unto Grantee, certain real estate situated in Shelby County, Alabama as described in Exhibit "A" attached hereto ("Parcel 1"), and

WHEREAS, Grantee intends to develop Parcel 1 and construct a hotel thereon, and

WHEREAS, Grantor owns a certain parcel of property described in Exhibit "B" attached hereto ("Parcel 2"; Parcel 2, together with Parcel 1, are sometimes collectively referred to herein as the "Parcels") which is adjacent to and contiguous with Parcel 1, and

WHEREAS, Grantor and Grantee have determined that it is necessary and appropriate to create, grant and reserve certain easements and rights with respect to storm sewer drainage facilities for the benefit of Parcel 1, over and across a portion of Parcel 2 as more particularly depicted in Map Book 37, Page 137, in the Probate Office of Shelby County, for the use and benefit of the owners of such parcels, their respective successors and assigns (all of which persons are hereafter referred to as the "Owners").

AGREEMENT

NOW, THEREFORE, Grantor and Grantee hereby declare that the Parcels, and the various parcels now and hereafter constituting parts thereof, shall be benefitted and burdened by the following easements and rights:

1. **STORM SEWER DRAINAGE EASEMENTS.** Grantor does hereby grant, convey, bargain and sell to Grantee, its successors and assigns, for the benefit of Parcel 1, an indefeasible and perpetual non exclusive storm sewer drainage easement, with the right to maintain, inspect, operate, protect, replace and repair storm sewer drainage facilities, over, under, through, across, along and upon that certain parcel of real property being fifteen feet (15') in width and more particularly depicted on that certain Final Plat of Balmoral Phase II and recorded in Map Book 37, Page 137, in the Probate Office of Shelby County, Alabama attached hereto as Exhibit "C" (the "Easement Property"), together with a construction easement, with the right to inspect, construct, install, and connect the storm drainage pipeline currently existing on the Easement Property, to the storm drainage pipeline for Parcel 1 (the "Pipeline Construction"). Grantee herein covenants and agrees that said Pipeline Construction must be completed, at Grantee's sole expense, not later than ninety (90) days after the execution of this Agreement, at

which time said construction easement will expire. Grantor reserves the right to use the Easement Property for purposes not inconsistent with the rights herein granted. Grantor further grants, conveys, bargains and sells to Grantee the right to empty the water that leaves Parcel 2 within the storm sewer drainage facilities, onto that certain property designated as Lot 6 in Map Book 37, Page 137, in the Probate Office of Shelby County, and into the storm water detention facility located thereon.

2. **MAINTENANCE OF EASEMENT AREAS.** Except with regard to the Pipeline Construction and to the extent that such areas might be operated and maintained by public authorities or utilities or that such operation and maintenance are otherwise provided in this Agreement, the Owners will share equally in expenses related to the operation and maintenance of the storm drainage pipeline and facilities located within the Easement Property.

3. **LEGAL EFFECT.** Each of the easements and rights created by this Agreement shall run with the land and shall be appurtenant to the Parcel to which it relates and shall not be transferred, assigned or encumbered except as an appurtenance to such Parcel. Each covenant contained in this Agreement (i) constitutes a covenant running with the land, (ii) binds every Owner now having or hereafter acquiring an interest in any Parcel, and such Owner's successors, assigns and mortgagees, and (iii) will inure to the benefit of each Owner and each Owner's successors, assigns, and mortgagees. Upon conveyance of all or any part of any Parcel, the grantee, by accepting such conveyance, will thereby become a party to and be bound by this Agreement.

4. **NO DEDICATION.** Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any part of any Parcel to the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to the private use of the Owners. This Agreement is intended to benefit the Owners, their assigns and mortgagees. Notwithstanding the foregoing, to the extent the City of Alabaster (the "City") or Shelby County (the "County") desires to take over the operation and maintenance of the drainage pipeline and facilities within the Easement Property, the Owners shall fully cooperate with each other in order to assist and permit the City or County in the dedication of the Easement Property.

5. **AMENDMENT.** This Agreement may be amended only by an instrument in writing duly executed by all Owners who are affected by the terms of such amendment. No amendment shall be affected by any course of conduct or dealing among the Owners or by custom or practice.

6. **SEVERABILITY.** The provisions of this Agreement are severable, and in the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

7. **GOVERNING LAW.** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

8. **TIME OF THE ESSENCE.** Time is of the essence in this Agreement.

9. **EFFECT OF BREACH.** Breach of any of the covenants contained in this Agreement shall not defeat or render invalid title to a Parcel or the lien of any mortgage or deed of trust made in good faith or for value as to any portion of any of the Parcels, but all of the foregoing easements and covenants shall be binding and effective against any Owner, including any Owner whose title is acquired by foreclosure, deed in lieu of foreclosure or otherwise. Except as otherwise provided herein, if either Owner breaches any provision herein (the "Defaulting Owner"), then the other Owner may in its sole discretion, upon thirty (30) days prior written notice to the Defaulting Owner, proceed to cure the breach or institute proceedings against the Defaulting Owner. In the event that an Owner shall institute any proceedings against the other Owner for a breach hereunder, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant in connection with such action or proceeding and any appeals therefrom, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first above written.

BALMORAL DEVELOPMENT, INC.,
an Alabama corporation

By: [Signature]
Name: James A. Jackson
Its: President

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that James A. Jackson, whose name as President of Balmoral Development, 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/she, as such representative 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 4th day of December, 2006.

[Signature]
Notary Public

AFFIX SEAL

My commission expires: 2-6-2010

Mark E. Osborn

MARK E. OSBORN



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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Mark Osborn whose name 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/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 4th day of December, 2006.

J. Michelle M.

Notary Public

AFFIX SEAL

My commission expires: 11/1/07

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A

AUM PROPERTIES, L.L.C.,
an Alabama limited liability company

By: Hina R. Patel
Name: Hina R. Patel
Its: Managing Member

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Hina R. Patel, whose name as Managing Member of AUM Properties, L.L.C., 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 said instrument, he/she, as such representative and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 4th day of December, 2006.

R. Gail Davis
Notary Public

AFFIX SEAL

My commission expires: 2-6-2010

CONSENT TO SUBORDINATION

The Undersigned hereby consents to the terms and conditions of the foregoing Storm Sewer Drainage Easement Agreement (the Easement) and hereby acknowledges and agrees that the Mortgage by and between Balmoral Development, Inc., as Mortgagor and Shelby Land Partners, LLC, as Mortgagee, dated January 1, 2006, filed for record February 3, 2006 and recorded in Instrument #20060203000057180, is subordinate to the terms and conditions of the Easement.

SHELBY LAND PARTNERS, LLC,
an Alabama limited liability company

By: James A. Jackson

Name: James A. Jackson

Its: Manager

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County in said State hereby certify that, James A. Jackson whose name as Manager of Shelby Land Partners, LLC., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the contents of the instrument, he/she, as such Manager and with full authority, executed the same voluntarily for on the day the same bears date.

Given under my hand and official seal, this the 4th day of December, 2006.

R. Gail Davis
Notary Public

AFFIX SEAL

My commission expires: 2-6-2010




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EXHIBIT A

(Legal Description)

Lot 1, according to the Final Plat of Balmoral Phase II, as recorded in Map Book 37, Page 137,
in the Probate Office of Shelby County, Alabama.

EXHIBIT B



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(Legal Description)

Lot 2, according to the Final Plat of Balmoral Phase II, as recorded in Map Book 37, Page 137,
in the Probate Office of Shelby County, Alabama.

EXHIBIT C

(see attached Map Book 37, Page 137)


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