



20070122000033030 1/9 \$35.00  
Shelby Cnty Judge of Probate, AL  
01/22/2007 01:15:50PM FILED/CERT

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Stites & Harbison, PLLC  
400 West Market Street  
Suite 1800  
Louisville, Kentucky 40202  
Attention: Barry A. Hines, Esq.  
Amy J. Burnette, Esq.  
Ronald G. Steen, Jr.

Space Above This Line for Recorder's Use

CW Loan No. 06-4457/9364  
Homewood Suites – Birmingham, Alabama

### ASSIGNMENT OF LEASES AND RENTS

from

HEMOCOURT HOSPITALITY-BIRMINGHAM 1, LLC,  
a South Carolina limited liability company,  
HEMOCOURT HOSPITALITY-BIRMINGHAM 2, LLC,  
a South Carolina limited liability company, and  
PHREG-BIRMINGHAM, LLC,  
a South Carolina limited liability company  
(collectively, as Assignor)

to

COUNTRYWIDE COMMERCIAL REAL ESTATE FINANCE, INC.  
(as Assignee)

Property: 215 Inverness Center Drive  
Birmingham, Alabama



## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (as amended, modified and in effect from time to time, this "Assignment") is made as of January 19, 2007, by HOMECOURT HOSPITALITY-BIRMINGHAM 1, LLC, a South Carolina limited liability company, HOMECOURT HOSPITALITY-BIRMINGHAM 2, LLC, a South Carolina limited liability company, and PHREG-BIRMINGHAM, LLC, a South Carolina limited liability company (individually and collectively, "Assignor") in favor of COUNTRYWIDE COMMERCIAL REAL ESTATE FINANCE, INC., a California corporation (together with its successors and assigns, "Assignee").

### RECITALS

A. Pursuant to that certain Loan Agreement dated as of the date hereof by and between Assignor and Assignee (as amended, modified and supplemented and in effect from time to time, the "Loan Agreement"), Assignee is making the Loan to Assignor which is evidenced by the Note and secured by, among other things, the Mortgage on Assignor's interest in the real property described on Exhibit A attached hereto and the Property.

B. Assignor intends by the execution and delivery of this Assignment to further secure the payment and performance of the Loan Obligations (as such term is defined in the Mortgage).

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Certain Defined Terms. For all purposes of this Assignment, all capitalized terms shall have the meaning ascribed thereto in the Loan Agreement unless defined herein, and:

"Leases" means all leases and other agreements or arrangements affecting the use or occupancy of all or any portion of the Property now in effect or hereafter entered into (including, without limitation, all lettings, subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Property), together with any guarantees, supplements, amendments, modifications, extensions and renewals of the same, and all additional remainders, reversions, and other rights and estates appurtenant thereto.

"Rents" means, with respect to the Property, all rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent or otherwise), receipts, issues, income, royalties, profits, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent, any award made hereafter to Assignor in any court proceeding involving any tenant, lessee, licensee or concessionaire under any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other payments, rights and benefits of whatever nature from time to time due under any of the Leases, including, without limitation, (i) rights to payment earned under the Leases for space in the Improvements for the operation of ongoing businesses, such as restaurants, news stands,



barber shops, beauty shops and pharmacies, and (ii) all other income, consideration, issues, accounts, profits or benefits of any nature arising from the ownership, possession, use or operation of the Property, including, without limitation, all revenues, receipts, income, receivables and accounts relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, banquet rooms, food and beverage facilities, recreational facilities, spas, vending machines, telephone and television systems, guest laundry, and the provision or sale of other goods and services, as well as all room rents, accounts, accounts receivable and hotel receivables and all other payments and rights to payment of any nature whatsoever made for or with respect to hotel room occupancy by any person, which includes any payment or monies received or to be received in whole or in part, whether actual or deemed to be, for the sale of services or products in connection with such occupancy, advance registration fees by hotel guests, tour or junket proceeds or deposits, deposits for convention and/or party reservations, and other benefits, and all rights to payment with respect to conference facilities, dining or bar facilities, recreational facilities or other facilities in any way connected with the Property, all rights to payment from any consumer credit charge card organization or entity including, without limitation, payments arising from the use of the American Express Card, Discover Card, the Visa Card, the Carte Blanche Card, the MasterCard or any other credit card, including those now existing or hereafter created, substitutions therefor, and proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received from the sale, exchange, transfer, collection or other disposition or substitution thereof, and any other items of revenue, receipts or other income as identified in the most recent edition of the Uniform System of Accounts for Hotels, as adopted by the American Hotel and Motel Association.

2. Assignment of Leases and Rents. Assignor hereby absolutely and unconditionally assigns to Assignee all of Assignor's right, title and interest in all current and future Leases and Rents, it being intended that this Assignment constitute a present, absolute assignment and not an assignment for additional security only. This Section 2 presently gives Assignee the right to collect Rents and to apply Rents in partial payment of the Loan Obligations in accordance with the Loan Agreement. Assignor intends that the Rents and Leases be absolutely assigned and no longer be, during the term of this Assignment, property of Assignor or Assignor's estate, as defined by 11 U.S.C. §541. If any law exists requiring Assignee to take actual possession of the Property (or some action equivalent to taking possession of the Property, such as securing the appointment of a receiver) for Assignee to "perfect" or "activate" the rights and remedies of Assignee as provided in this Section 2, Assignor waives the benefit of such law. Such assignment to Assignee shall not be construed to bind Assignee to perform of any covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Assignee, and notwithstanding this Assignment, Assignor shall remain liable for any obligations undertaken by Assignor pursuant to any Lease. Subject to the terms of this Section 2 and the Loan Agreement, Assignee grants to Assignor a license, revocable as hereinafter provided, to operate and manage the Property and to collect and use the Rents. If an Event of Default occurs (except, for any Event of Default described in Section 8.1(f) of the Loan Agreement, for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license granted to Assignor herein may, at Assignee's election, be revoked by Assignee, and Assignee shall immediately be entitled to possession of all Rents collected thereafter (including Rents past due and unpaid) whether or not Assignee enters upon or takes control of the Property. Any Rents collected by Assignor from and after the date on which an Event of Default occurred and is continuing shall be held by Assignor in trust for



Assignee. Assignor hereby grants and assigns to Assignee the right, at Assignee's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court appointed receiver to collect Rents with or without taking the actual possession of the Property or any equivalent action. Assignee may apply any Rents collected after the license granted herein is revoked in Assignee's sole and absolute discretion to pay the Loan Obligations in such order and in such manner as Assignee shall elect in Assignee's discretion.

3. Remedies. At any time after the occurrence and during the continuance of an Event of Default, Assignee, without waiving such Event of Default, at its option, upon notice and without regard to the adequacy of the security for the Loan Obligations, either in person or by agent, upon bringing any action or proceeding, by a receiver appointed by a court, or otherwise, may take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem proper. Assignee shall immediately be entitled to possession of all security deposits held with respect to the Property, whether or not Assignee enters upon or takes control of the Property and regardless of where any such security deposits are deposited or located. Assignee, either with or without taking possession of the Property in its own name, may demand, sue for or otherwise collect and receive all Rents, including Rents past due and unpaid, and apply such Rents to pay any one or more of the following in such order and amounts as Assignee may elect in its sole and absolute discretion: (a) all costs and expenses incurred, and advances made, by Assignee or Deed of Trust Trustee, as the case may be, to enforce this Assignment or the other Loan Documents, protect the Lien and security afforded thereby, or preserve the Property, including, without limitation, all expenses of managing the Property, including, without limitation, the salaries, fees and wages of any managing agent and such other employees as Assignee may deem necessary and all expenses of operating and maintaining the Property, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for insurance and the cost of alterations, renovations, repairs or replacements, and all costs and expenses incident to taking and retaining possession of the Property or enforcing any of Assignee's rights and remedies hereunder; and (b) the Loan Obligations, together with all costs, expenses and attorneys' fees in connection with any of the foregoing. Neither Assignee's exercise of the option granted to Assignee in this Section 3 nor the collection or application of Rents as herein provided shall be considered a waiver of any Event of Default. Assignor agrees that the exercise by Assignee of one or more of its rights and remedies under this Assignment shall in no way be deemed or construed to make Assignee a mortgagee-in-possession.

4. Notices. All notices, demands, consents, requests or other communications that are permitted or required to be given by Assignor or Assignee to the other shall be in writing and given in the manner specified in the Loan Agreement.

5. Binding Obligations. The provisions and covenants of this Assignment shall run with the Property, shall be binding upon Assignor, its successors and assigns, and shall inure to the benefit of Assignee, its successors and assigns.

6. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties hereto and are not a part of this Assignment.



7. Severability. If any term or provision of this Assignment or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforceable to the maximum extent permitted by law.

8. Assignor's Obligations Absolute. Except as set forth to the contrary herein or in the other Loan Documents, all sums payable by Assignor hereunder shall be paid without notice, demand, counterclaim (other than mandatory counterclaims), setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Except as expressly provided herein, Assignor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Assignor.

9. Amendments. This Assignment cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, executed by Assignor and Assignee.

10. Exhibits. The information set forth on the cover, heading and recitals hereof, and the Exhibit attached hereto, are hereby incorporated herein as a part of this Assignment with the same effect as if set forth in the body hereof.

11. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Assignor under this Assignment.

12. Termination. When the Mortgage has been fully reconveyed or released by Assignee, that reconveyance or release shall operate as a release and discharge of this Assignment and as a reassignment of all future Leases and all Rents with respect to the Property to the Person or Persons legally entitled thereto, unless such reconveyance or release expressly provides to the contrary.

13. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the state in which the Property is located.

14. Exculpation. This Assignment is and shall be subject to the exculpation provisions of Section 17 of the Note.

15. Further Assurances. Assignor agrees that to further evidence and reflect the assignment granted herein, Assignor shall execute, acknowledge and deliver to Assignee such additional documents, instruments and agreements, in form and substance satisfactory to Assignee, as may hereafter be reasonably requested by Assignee, and Assignor shall record such thereof, all at Assignor's expense.

[Signature on the following page]



IN WITNESS WHEREOF, this Assignment of Leases and Rents has been duly executed and delivered as of the day and year first above written.

**ASSIGNOR:**

HEMOCOURT HOSPITALITY-BIRMINGHAM  
1, LLC, a South Carolina limited liability company

By: HEMOCOURT HOSPITALITY, LLC, a  
South Carolina limited liability company, its  
Manager

By: James W. Turner  
James W. Turner, Sole Member

STATE OF Florida )  
COUNTY OF Indian River )

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that James W. Turner, whose name as Sole Member of HEMOCOURT HOSPITALITY, LLC, a South Carolina limited liability company, in its capacity as Manager of HEMOCOURT HOSPITALITY-BIRMINGHAM 1, LLC, a South Carolina limited liability company, and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance, he executed the same voluntarily and with full authority for and as the act of said limited liability company, on the day same bears date.

GIVEN under my hand and seal on this the 11 day of January, 2007.

[Signature]  
Notary Public  
My Commission Expires: 7-9-09

[SEAL]



HOMECOURT HOSPITALITY-BIRMINGHAM  
2, LLC, a South Carolina limited liability company

By: HOMECOURT HOSPITALITY, LLC, a  
South Carolina limited liability company, its  
Manager

By: James W. Turner  
James W. Turner, Sole Member

STATE OF FLORIDA )  
COUNTY OF Indian River )

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that James W. Turner, whose name as Sole Member of HOMECOURT HOSPITALITY, LLC, a South Carolina limited liability company, in its capacity as Manager of HOMECOURT HOSPITALITY-BIRMINGHAM 2, LLC, a South Carolina limited liability company, and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance, he executed the same voluntarily and with full authority for and as the act of said limited liability company, on the day same bears date.

GIVEN under my hand and seal on this the 11 day of January, 2007.

[Signature]  
Notary Public  
My Commission Expires: 7-9-09

[SEAL]





PHREG-BIRMINGHAM, LLC, a South Carolina  
limited liability company

By: HOMECOURT HOSPITALITY, LLC, a  
South Carolina limited liability company, its  
Manager

By: James W. Turner  
James W. Turner, Sole Member

STATE OF Florida )  
COUNTY OF Indian River )

I, the undersigned authority, a Notary Public in and for said County and State, hereby  
certify that James W. Turner, whose name as Sole Member of HOMECOURT HOSPITALITY,  
LLC, a South Carolina limited liability company, in its capacity as Manager of PHREG-  
BIRMINGHAM, LLC, a South Carolina limited liability company, and who is known to me,  
acknowledged before me on this date that, being informed of the contents of the conveyance, he  
executed the same voluntarily and with full authority for and as the act of said limited liability  
company, on the day same bears date.

GIVEN under my hand and seal on this the 11 day of January, 2007.


[SEAL]



[Signature]  
Notary Public  
My Commission Expires: 7-9-09



Exhibit A

  
20070122000033030 9/9 \$35.00  
Shelby Cnty Judge of Probate, AL  
01/22/2007 01:15:50PM FILED/CERT

**DESCRIPTION OF PROPERTY**

A parcel of land situated in the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  and the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West, said point also being on the West boundary line of Lot 1, of Dewberry's Subdivision as recorded in Map Book 9, page 11, in the Office of the Judge of Probate, Shelby County, Alabama; thence run North  $00^{\circ}01'03''$  West along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  line and said West lot line for a distance of 150.00 feet to the Point of Beginning; thence leaving said  $\frac{1}{4}$  -  $\frac{1}{4}$  line and said West lot line run South  $89^{\circ}58'57''$  West for a distance of 368.00 feet; thence run North  $68^{\circ}11'03''$  West for a distance of 175.55 feet to the Southeasterly right of way of Inverness Center Drive (ROW varies); said point also being the point of curvature of a curve to the left, having a radius of 375.00 feet, a central angle of  $14^{\circ}31'16''$  a chord length of 94.79 feet and a chord bearing of North  $19^{\circ}54'23''$  East; thence continue along the arc of said curve and along said right of way for a distance of 95.04 feet to the Point of Tangency of said curve; thence run North  $12^{\circ}38'45''$  East along said right of way for a distance of 78.22 feet; thence run North  $03^{\circ}50'26''$  East along said right of way for a distance of 96.13 feet; to the point of curvature of a curve to the right, having a radius of 361.25 feet, a central angle of  $24^{\circ}42'04''$  a chord length of 154.54 feet and a chord bearing of North  $16^{\circ}11'28''$  East; thence continue along the arc of said curve and along said right of way for a distance of 155.74 feet; thence leaving said right of way run South  $73^{\circ}17'13''$  East for a distance of 258.79 feet; thence run South  $80^{\circ}00'58''$  East for a distance of 187.24 feet to the West line of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West, said point also being on the West line of Lot 1, of Dewberry's Subdivision as recorded in Map Book 9, page 11 in the Office of the Judge of Probate, Shelby County, Alabama; thence run South  $00^{\circ}01'03''$  West along said  $\frac{1}{4}$  -  $\frac{1}{4}$  line and said West lot line for a distance of 368.01 feet to the Point of Beginning.

Together with those rights granted in the Access Road Construction and Easement Agreement and Drainage Easement Agreement recorded in Instrument 20030618000380510, in the Probate Office of Shelby County, Alabama.