

**NOTE TO PROBATE JUDGE:** This Agreement is being recorded as additional security for the Obligations described in a Mortgage of even date herewith between the Borrower and the Lender, which Mortgage is being filed for record concurrently with the recording of this Agreement.

STATE OF ALABAMA

SHELBY COUNTY

THIS INSTRUMENT WAS PREPARED BY:  
ALABAMA HOUSING FINANCE AUTHORITY  
2000 INTERSTATE PARK DRIVE, SUITE 408  
MONTGOMERY, ALABAMA 36109

### **ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS, made and entered on September 18, 2009, by Cobblestone Creek, Ltd., an Alabama limited partnership (hereinafter referred to as "Borrower"), to Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, acting solely in its capacity as Administrator of the State of Alabama's HOME Investment Partnerships Program (hereinafter referred to as "Lender");

### **WITNESSETH:**

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower as hereinafter set forth, Borrower does hereby absolutely, presently, and irrevocably assign, grant, transfer, and convey to Lender, its successors and assigns, all of Borrower's right, title and interest in, to, and under all leases and rental agreements, whether written or oral, now or hereafter affecting all or any part of the Premises, as hereinafter defined, and any agreement for the use or occupancy of all or any part of said Premises which may have been made heretofore or which may be made hereafter, including any and all extensions, renewals, and modifications of such leases, rental agreements, and agreements for the use or occupancy of all or any part of the Premises and guaranties of the performance or obligations of any tenants thereunder, and all other arrangements of any sort resulting in the payment of money to Borrower or in Borrower's becoming entitled to the payment of money for the use of the Premises or any part thereof whether such user or occupier is tenant, invitee, or licensee (said leases, agreements, and other arrangements are hereinafter referred to collectively as the "Leases" and individually as a "Lease", and said tenants, invitees, and licensees are hereinafter referred to collectively as "Tenants" and individually as "Tenant", as the context requires), which Leases cover portions of certain property located in Shelby County, Alabama, more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference (the term "Premises", wherever used herein, shall mean the property described in Exhibit "A" and all improvements now or hereafter situated thereon); together with all of Borrower's right, title, and interest in and to all income, rents, issues, and profits and all tenants' security and other similar deposits derived with respect to the Leases and with respect to the Premises, including, without limitation, all additional rents, payments in lieu of rent, expense contributions, and other similar such payments (hereinafter referred to as the "Income"), it being the intention of the parties hereto to establish an absolute transfer and assignment of all of the Leases and the Income to Lender.

TO HAVE AND TO HOLD unto Lender, its successors and assigns forever, subject to and upon the terms and conditions hereinafter set forth.

This Assignment is made for the purpose of securing (a) the full and prompt payment when due, whether by acceleration or otherwise, with such interest as may accrue thereon, of that certain Promissory Note of even date herewith, made by Borrower to the order of Lender in the principal face amount of ONE MILLION EIGHT HUNDRED FORTY THOUSAND FOUR HUNDRED NINETY AND NO/100 DOLLARS (\$1,840,490.00) (hereinafter referred to as the "Note"), together with any renewals,



modifications, consolidations, extensions, and substitutions thereof, (b) the full and prompt payment and performance of any and all obligations, covenants, and conditions of Borrower under that certain Mortgage and Security Agreement of even date herewith, made by Borrower to Lender (hereinafter referred to as the "Mortgage"), and (c) the full and prompt payment and performance of any and all obligations, covenants, and conditions of Borrower under any and all other instruments now or hereafter evidencing, securing, or otherwise relating to the indebtedness evidenced by the Note (the Note, the Mortgage, and said other instruments are hereinafter referred to collectively as the "Loan Documents").

## ARTICLE 1

### REPRESENTATIONS, WARRANTIES, AND COVENANTS

**1.01 Representations and Warranties of Borrower.** Borrower hereby represents, warrants, and agrees as follows:

(a) Borrower is the sole holder of the landlord's interest under the Leases, is entitled to receive the Income from the Leases and from the Premises, and has the full right to sell, assign, transfer, and set over the same and to grant to and confer upon Lender the rights, interests, powers, and authorities herein granted and conferred;

(b) Except in connection with the first mortgage (the "First Mortgage") held by Compass Bank ("First Mortgagee"), Borrower has made no pledge or assignment of the Leases or Income, prior to the date hereof, and Borrower shall not, after the date hereof, make or permit any such pledge or assignment;

(c) Borrower has neither done any act nor failed to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Agreement;

(d) The Leases are valid, enforceable, and in full force and effect, and Borrower has delivered to Lender a true, complete, and correct rent roll with respect to the leases as of the date thereof (the "Rent Roll").

(e) All Leases provide for rental to be paid monthly, in advance, and Borrower has not accepted, and shall not, after the date hereof, accept or permit payment of rental or other Income under any of the Leases for more than one (1) month in advance of the due date thereof;

(f) No security deposit has been made by any Tenant under any Lease except as set forth in such Lease and as shown on the Rent Roll;

(g) To the best of Borrower's knowledge, there exists no default or event of default or any state of facts which would or could, with the passage of time or the giving of notice, or both, constitute a default or event of default on the part of Borrower under the terms of any of the Leases and the Rent Roll identifies any tenant who is in default in the payment of rent as of the date of the Rent Roll;

(h) Neither the execution and delivery of this Assignment or any of the Leases, nor the performance of each and every covenant of Borrower under this Assignment and the Leases, nor the satisfaction of each and every condition contained in this Assignment, conflicts with, or constitutes a breach or default under, any agreement, indenture, or other instrument to which Borrower is a party or is subject, or any law, ordinance, administrative regulation, or court decree which is applicable to Borrower; and

(i) No action has been brought or, to the best of Borrower's knowledge, is threatened, which would interfere in any way with the right of Borrower to execute this Assignment and perform all of Borrower's obligations contained in this Assignment and in the Leases.



**1.02 Covenants of Borrower.** Borrower hereby covenants and agrees as follows:

(a) Borrower shall: (i) fulfill, perform, and preserve each and every condition and covenant of landlord or lessor contained in each of the Leases; (ii) give prompt notice to Lender of any claim of default under any of the Leases given by a Tenant to Borrower together with a complete copy of any such notice; (iii) at no cost or expense to Lender, enforce, short of termination, the performance and observance of each and every covenant and condition of the Leases to be performed or observed by the Tenants thereunder; (iv) if so requested by Lender, diligently and in good faith enforce the Leases and all remedies available to Borrower against the Tenants in the event of default under any Leases by any Tenant; (v) if so requested by Lender, appear in and defend any action arising out of, or in any manner connected with, any of the Leases, or the obligations or liabilities of Borrower as the landlord thereunder, or of the Tenant or any guarantors thereunder; and (vi) upon request, provide Lender a pen and ink signed counterpart of each Lease.

(b) Borrower shall not, without the prior written consent of Lender: (i) terminate the term, accept the surrender of, or otherwise cancel any of the Leases except for the Tenant's default or upon expiration of the Lease according to its terms; (ii) waive or release any Tenant from the performance or observance by such Tenant of any obligation or condition of any of the Leases; (iii) permit the prepayment of any rents under any of the Leases or other Income for more than one (1) month prior to the due date thereof; (iv) discount any future accruing rents under the Leases or other Income; or (v) assign its interest in, to, or under the Leases or the Income to any person or entity other than Lender, except assignments in favor of the First Mortgagee to secure financing for the Premises;

(c) Borrower shall take no action that will cause or permit the estate of any Tenant under any of the Leases to merge with the interests of Borrower in the Premises or any portion thereof;

(d) Borrower shall protect, indemnify, and hold Lender harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, attorneys' fees and court costs) imposed upon or incurred by Lender by reason of this Assignment or in exercising, performing, enforcing, or protecting its rights, title, or interests set forth herein, and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under this Assignment;

(e) Borrower shall not do, or fail to do, any act that would constitute a violation of any of the Leases, or commit any act or omission that may create in any Tenant a right to cease or reduce payment of rent or terminate its Lease or otherwise affect or impair the benefits of this Assignment; and

(f) Borrower shall authorize and direct, and does hereby authorize and direct, each and every present and future Tenant of the whole or any part of the Premises to pay all rental to Lender upon receipt of written demand from Lender so to do.

**1.03 Covenants of Lender.** Lender hereby covenants and agrees with Borrower, as follows:

(a) Although this Assignment constitutes a present and current assignment of all Income, so long as there shall exist no default or event of default as defined in Paragraph 2.01 below on the part of Borrower, Lender shall not demand that such Income be paid directly to Lender, and Borrower shall have the right to collect, but not more than one (1 ) month prior to the due date thereof, all such Income from the Property (including, without limitation, all rental payments under the Leases); and

(b) Upon payment in full, as determined solely by Lender, to Lender in good and sufficient funds satisfactory in all respects to Lender of all amounts due under each of the Loan Documents and the satisfaction, as determined solely by Lender, of all terms, covenants, and conditions of each of the Loan Documents, Lender shall cancel this Assignment.



## ARTICLE 2

### DEFAULT

**2.01 Event of Default.** The term "default" or "event of default," wherever used in this Assignment, shall mean any one or more of the following events:

- (a) The occurrence of any default or event of default under any of the Loan Documents;
- (b) The failure by Borrower duly and fully to comply with any covenant, condition, or agreement of this Assignment; or
- (c) The breach of any representation or warranty by Borrower contained in this Assignment.

**2.02 Remedies.** Upon the occurrence of any default or event of default, whether before or after the Note is declared to be due and payable or whether before or after the exercise by Lender of any default remedies contained in any of the Loan Documents, Lender may, at its option, with or without notice or demand of any kind, exercise any or all of the following remedies:

- (a) Declare any part or all of the indebtedness secured by the Loan Documents to be due and payable, whereupon the same shall become immediately due and payable;

(b) As Borrower's attorney-in-fact, coupled with an interest, Lender being hereby so irrevocably designated, (i) collect, receive, sue for, attach, levy, and apply the Income without taking possession of the Premises, (ii) if Lender so elects, control, operate, and manage, at the expense of Borrower, the Premises and exercise and perform all rights and obligations of Borrower under the Leases (including the curing of any or all defaults under the Leases) or such part of the foregoing Premises or Leases as Lender shall elect, and (iii) exercise, enforce, perform, and protect all other right, title, and interest which is granted by Borrower herein or granted in any one or more of the other Loan Documents. More specifically, but without limiting in any way the immediately preceding sentence, Lender shall be entitled in the event of such a default to collect, receive, sue for, attach, levy, and apply all Income as herein authorized and may (A) use such measures as Lender may deem necessary or desirable to enforce the payment of such Income, or, in the event option (ii) above is elected, to secure possession of all or any part of the Premises or Leases, (B) institute, conduct, or defend any legal action in connection with said Loan Documents, Premises, or Leases, as Lender may deem necessary or desirable, (C) from time to time, make any or all repairs, replacements, and alterations to the Premises as Lender may deem necessary or desirable, (D) insure and reinsure the Premises on such terms as Lender shall deem necessary or desirable, (E) lease the Premises or any part or parts thereof in such parcels and for such periods and on such terms as Lender deems desirable, including Leases for terms expiring after the maturity of the indebtedness secured by the Loan Documents, (F) cancel or modify any Lease with or without cause, and/or (G) take whatever measures Lender from time to time deems necessary or desirable to exercise, enforce, perform, or protect Lender's right, title or interest in any or all of the Loan Documents;

- (c) Apply the Income collected pursuant to Paragraph (b) above in whatever order of priority Lender in its sole discretion may elect, against (i) all costs and expenses (including, without limitation, attorneys' fees) incurred in connection with the operation of the Premises, the performance of Borrower's obligations under the Leases, and collection of the Income thereunder, including, without limitation, all expenses for maintenance, repairs, replacements, alterations, special assessments, taxes, and insurance, (ii) all of the costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in the collection of any or all of the indebtedness secured by the Loan Documents, including, without limitation, all costs, expenses, and attorneys' fees incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the indebtedness secured by the Loan Documents, (iii) all other expenses pertaining to any part or all of the Premises or the Leases, (iv)





any or all accrued but unpaid interest on the indebtedness secured by the Loan Documents, and (v) any or all unpaid principal of the indebtedness secured by the Loan Documents.

**2.03 Right to Exercise Remedies.** Lender shall have full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the indebtedness secured by the Loan Documents, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have full right to enter upon, take possession of, use, and operate, all or any portion of the Premises which Lender in its sole discretion deems desirable, to effectuate any or all of the foregoing remedies, and shall be entitled to exercise, enforce, perform, and protect all of the aforesaid rights, titles, and interests available to Lender hereunder, as well as all other rights, titles, and interests available at law or in equity in and to the control, operation, and management of the Premises and Leases. Lender shall not be held responsible for the failure to exercise diligence in taking any action permitted hereunder.

**2.04 Expenses and Liabilities of Lender.** At the expense of Borrower, Lender is hereby given the authority to employ agents, attorneys, and others in exercising, enforcing, performing, or protecting Lender's rights, title, or interests herein. To the extent that the Income is insufficient, Borrower agrees to reimburse Lender for all monies advanced by Lender in so exercising, enforcing, performing, or protecting Lender's rights, titles, or interests herein, together with interest from day to day on all such advances by Lender, at a rate equal to the default interest rate specified in the Note (said interest rate being hereby incorporated herein by this reference). In the event Lender incurs any liability, loss, cost, or damage by reason of this Assignment, or in the defense of any claim or demand arising out of or in connection with this Assignment, the amount of such liability, loss, cost, or damage (including, without limitation, fees in connection with any appeal) shall be added to the indebtedness secured by the Loan Documents, and shall bear interest at the default interest rate specified in the Note from the date incurred until paid, and shall be payable on demand.

### ARTICLE 3

#### GENERAL PROVISIONS

**3.01 No Waiver.** The failure of Lender at any time to avail itself of any of the rights or remedies provided herein or in any of the other Loan Documents shall not be construed to be a waiver of any of such rights or remedies, but Lender shall have full power and authority to exercise, enforce, perform, or protect such rights and remedies at any time or times that it deems fit, subject to the other terms and conditions hereof. To be effective, any waiver of any of the terms, covenants, or conditions hereof must be in writing and shall be valid only to the extent clearly set forth in such writing. This Assignment shall constitute a prior and continuing first lien on all Income. No exercise, enforcement, performance, or protective action taken with respect to any of the rights, titles, and interests assigned or granted herein shall be construed as a cure of any default in any of the Loan Documents.

**3.02 Remedies Cumulative.** By accepting this Assignment, Lender shall in no manner be prejudiced in its right to exercise, enforce, perform, or protect any one or more rights, titles, or interests available to it in any of the Loan Documents or at law or in equity, including, without limitation, its rights to foreclose the lien of the Mortgage or any other right, title, or interest granted to it by the terms of any of the Loan Documents or granted pursuant to applicable law or equity, it being intended that all of such rights, titles, and interests are cumulative and may be exercised, enforced, performed, or protected concurrently with or infrequently of any one or more of such rights, titles, or interests to the extent deemed advisable by Lender in the exercise of its sole discretion from time to time. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the indebtedness evidenced or secured by the Loan Documents shall have been paid in full.



**3.03 Conflict.** In the event of any conflict between the respective assignments of rents and leases contained in the Mortgage and this Assignment, this Assignment shall prevail. Except with respect to any such conflict, both of said assignments of rents and leases shall be enforceable collectively or separately as Lender shall elect from time to time.

**3.04 No Mortgagee in Possession.** In no event do the parties hereto intend that Lender will be, nor shall Lender be, a mortgagee in possession by acceptance of this Assignment or exercise of rights and remedies hereunder.

**3.05 Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns subject to the limitations on the transfer of the Premises contained in Paragraph 1.11 of the Mortgage. Whenever a reference is made in this Assignment to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Lender.

**3.06 Terminology.** All personal pronouns used in this Assignment, whether used in the masculine, feminine, or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of articles are for convenience only and neither limit or amplify the provisions of this Assignment.

**3.07 Severability.** If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**3.08 Applicable Law.** This Assignment shall be interpreted, construed, and enforced according to the laws of the State of Alabama.

**3.09 No Third Party Beneficiaries.** This Assignment is made solely for the benefit of Lender and its assigns. No Tenant, nor any other person, shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

**3.10 No Oral Modifications.** Neither this Assignment, nor any provisions hereof, may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

**3.11 Cross-Default.** An event of default by Borrower under this Assignment shall constitute an event of default under all of the other Loan Documents.

**3.12 Counterparts.** This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Assignment by signing any such counterpart.

**3.13 Further Assurances.** At any time and from time to time, upon request by Lender, Borrower will make, execute, and deliver, or cause to be made, executed, and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve, (a) the obligations of Borrower under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Leases and the Income from the Premises. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record





and/or refile any and all such assignments, mortgages, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

**3.14 Notices.** All notices hereunder shall be given in accordance with Paragraph 3.05 of the Mortgage, which Paragraph is hereby incorporated herein by this reference.

**3.15 Modifications.** Borrower hereby covenants and agrees that Lender may at any time, and from time to time, without notice to or further consent from Borrower, either with or without consideration: surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm, or corporation on its behalf or for its account, securing the indebtedness secured by the Loan Documents; substitute for any collateral so held by it, other collateral of like kind, or of any kind; agree to modifications of the terms of the Note or any of the other Loan Documents; extend or renew the Note or any of the other Loan Documents for any period; grant releases, compromises, and indulgences with respect to the Note or any of the other Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note or any of the other Loan Documents; or take or fail to take any action of any type whatsoever; and no such action which Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the indebtedness evidenced and secured by the Loan Documents or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Assignment in any way, or afford Borrower any recourse against Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the Loan Documents and the Leases, and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations, or modifications thereof.

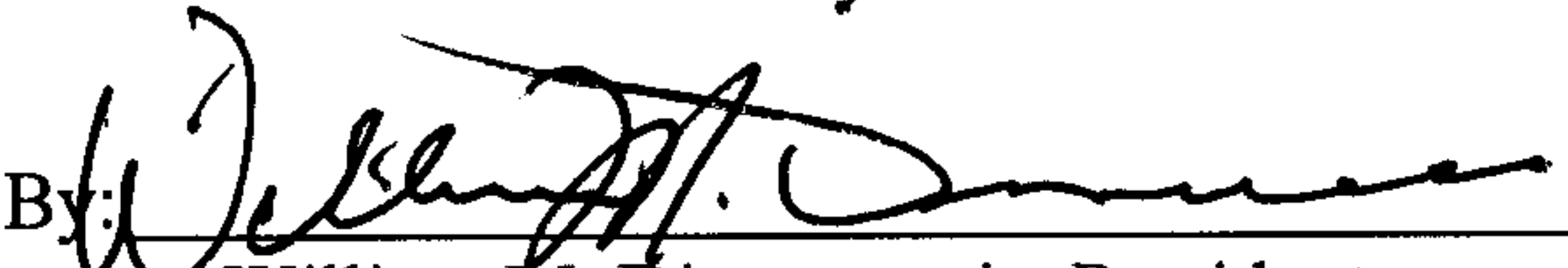
**3.16 First Mortgage.** The rights of Lender under this Assignment are subject and subordinate to the rights of First Mortgagee under the First Mortgage.

*[Remainder of this page intentionally blank.]*

IN WITNESS WHEREOF, Borrower has executed this Assignment under seal, as of the day and year first above written.

COBBLESTONE CREEK, LTD., an Alabama limited partnership

BY: HOUSING INVESTORS, INC., an Alabama corporation, its general partner

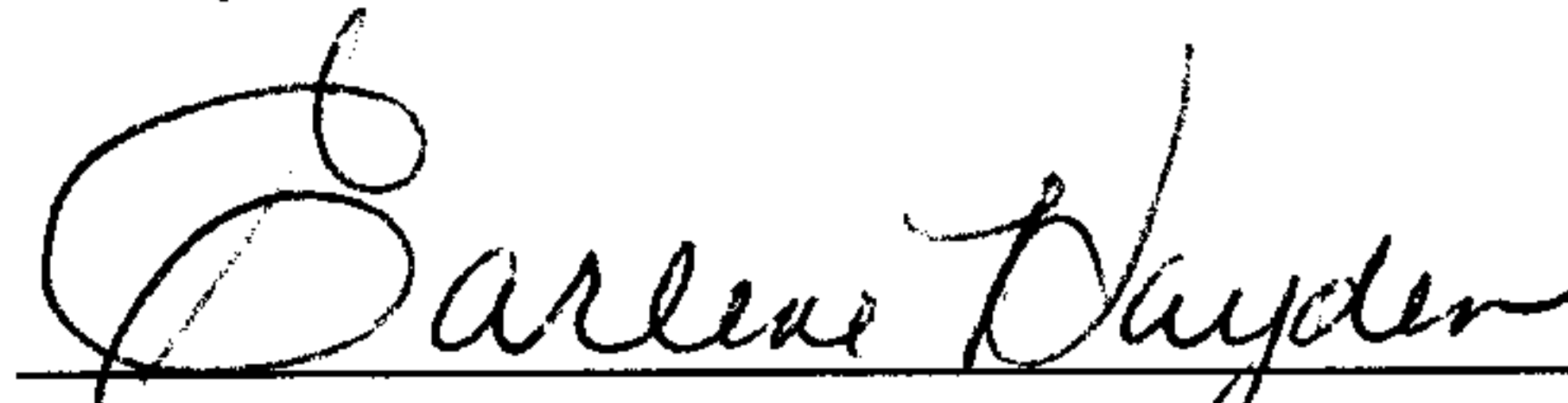
By:   
William M. Dinsmore, its President

STATE OF ALABAMA )

MONTGOMERY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William M. Dinsmore, whose name as President of Housing Investors, Inc., an Alabama corporation, general partner of Cobblestone Creek, Ltd., 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 foregoing instrument, he, acting in his capacity as such President and with full authority, executed the same voluntarily on the date hereof, for and on behalf of said corporation acting in its capacity as general partner of said limited partnership.

Given under my hand and official seal this 18<sup>th</sup> day of September, 2009.



Notary Public

My Commission Expires:

My commission expires May 21, 2011.

[SEAL]





## LIST OF EXHIBITS

1. Exhibit "A" - Legal description of the Land



20090918000358520 9/10 \$38.00  
Shelby Cnty Judge of Probate, AL  
09/18/2009 01:58:19 PM FILED/CERT



## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

Lot 2C of a Resurvey of Lot 2, Old Wooley Estates, a subdivision located in Section 16, Township 22 South, Range 3 West, Shelby County, Alabama, as shown by plat of record in Map Book 33, at Page 48, in the Office of the Judge of Probate of Shelby County, Alabama being the same parcel as shown on the survey of Nathan G. Johnson certified May 6, 2009 and described as follows: Lot 2C of "A Resurvey of Lot 2 of Old Wooley Estates" as recorded in Plat Book 33, Page 48 of the Probate Office, Shelby County, Alabama.

ALONG WITH THE FOLLOWING DESCRIBED EASEMENT FOR OFF-SITE SEWER LINE, TO-WIT:

Commencing at a 5/8 inch rebar at the NW corner of Lot 2C of a Resurvey of Lot 2 Old Wooley Estates on record in Plat Book 33, Page 48 of the Probate Office of Shelby County, Alabama; thence S 89°58'11" E a distance of 766.26 feet to the point of beginning; thence from the point of beginning N 02°27'31" W a distance of 55.46 feet to a point; thence S 87°32'31" W a distance of 20.00 feet to a point; thence S 02°27'31" W a distance of 54.61 feet to a point located on the north boundary line of said Lot 2C; thence N 89°58'11" W a long said property line a distance of 20.02 feet to the point of beginning, and containing 1100.63 square feet, more or less.



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Shelby Cnty Judge of Probate, AL  
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