

## ASSIGNMENT OF RENTS AND LEASES

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

<b>Lender:</b>	<b>ServisFirst Bank</b>
<b>Lender's Notice Address:</b>	<b>850 Shades Creek Parkway, Suite 200 Birmingham, Alabama 35209</b>
<b>Loan Amount:</b>	<b>\$1,000,000.00</b>
<b>Mortgage:</b>	<b>The Mortgage and Security Agreement executed by Owner in favor of Lender this date to further secure the Note (defined below).</b>
<b>Owner:</b>	<b>J. Steven Mobley</b>
<b>Owner's Notice Address:</b>	<b>c/o Mobley Development 2101 4<sup>th</sup> Avenue south, Suite 200 Birmingham, Alabama 35233</b>

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 described in Exhibit A attached hereto and incorporated herein by reference and the improvements and equipment thereon (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 security for (i) payment of the outstanding indebtedness to Lender in connection with the Loan (as defined in the Mortgage) as evidenced by the Note (as defined in the Mortgage) payable to Lender, in the aggregate original principal sum equal to the Loan Amount, (ii) payment of all Other Indebtedness (as defined in the Mortgage), and (iii) performance of the Owner's obligations under the Mortgage, the other Loan Documents (as defined in the Mortgage) and the Other Indebtedness Instruments (as defined in the Mortgage).

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 the Note, 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 Note, 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.



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4. **UPON THE OCCURRENCE OF ANY DEFAULT** under the terms and conditions of the Note, the Mortgage, this Assignment or any of the other 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 Note 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 Note 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.

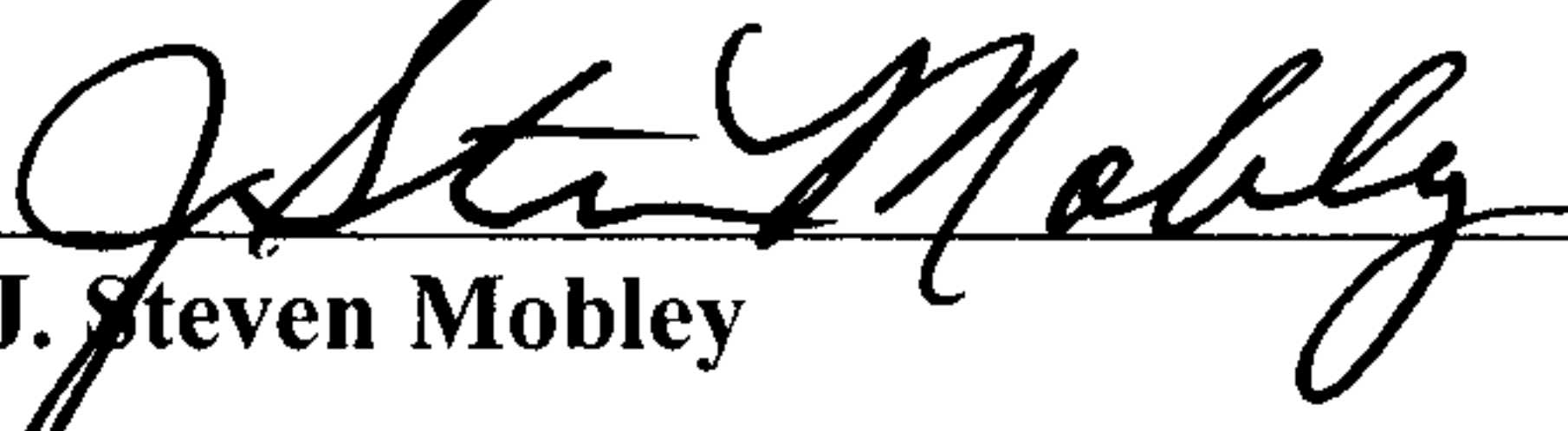
14. This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama.

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.

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IN WITNESS WHEREOF, this document has been executed by the undersigned under seal as of the 15<sup>th</sup> day of November, 2010.

"OWNER"

  
J. Steven Mobley

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that J. Steven Mobley 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 the instrument, he, executed the same voluntarily.

Given under my hand this 15<sup>th</sup> day of November, 2010.

  
Notary Public  
My commission expires: \_\_\_\_\_

MY COMMISSION EXPIRES OCTOBER 2, 2012

**THIS INSTRUMENT PREPARED BY:**

James E. Vann, Esquire  
Sirote & Permutt, P.C.  
2311 Highland Avenue South - 35205  
P.O. Box 55727  
Birmingham, Alabama 35255-5727  
(205) 930-5484



## **EXHIBIT A**

### **Parcel I**

All of Section 28, Township 20 South, Range 2 West, and the North One-Fourth of Section 33, Township 20 South, Range 2 West, and the North One-Half of the NE  $\frac{1}{4}$  of Section 32, Township 20 South, Range 2 West.

Less and Except:

A parcel of land situated in the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 32, Township 20 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at the SE Corner of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 32, Township 20 South, Range 2 West, Shelby County, Alabama, said point being the POINT OF BEGINNING; thence N87°50'30"W, a distance of 918.73'; thence N24°42'20"W, a distance of 161.37' to the point of curve of a non tangent curve to the left having a radius of 530.00, a central angle of 31°01'38" and subtended by a chord which bears N49°46'51"E, a chord distance of 283.51', thence northeasterly along the curve an arc distance of 287.01'; thence N34°16'02"E, a distance of 97.90' to a point of curve to the left having a radius of 630.00', a central angle of 04°47'31" and subtended by a chord which bears N31°52'16"E, a chord distance of 52.67'; thence northeasterly along the curve an arc distance of 52.69'; thence S71°39'04"E, a distance of 239.02'; thence S55°33'18"E, a distance of 743.50'; thence N87°48'53"W, a distance of 154.02' to the POINT OF BEGINNING.

Subject to:

A 15' wide easement as shown on the Final Plat of Lochinvar at Ballantrae, recorded in Map book 32, Page 10 in the Office of the Judge of Probate in Shelby County, Alabama.

### **Parcel II**

A parcel of land situated in Section 33, Township 20 South, Range 2 West, and being more particularly described as follows:

Begin at the Northwest corner of the Southwest  $\frac{1}{4}$  of Northwest  $\frac{1}{4}$  of Section 33, Township 20 South, Range 2 West; thence South 87°34'13" East a distance of 3,000.00 feet; thence South 54°23'13" West a distance of 3,730.91 feet; thence North 0°53'51" East a distance of 983.26 feet; thence North 0°53'17" East a distance of 1316.74 feet to the point of beginning.

### **Parcel III**

A parcel of land situated in Section 29, Township 20 South, Range 2 West, and being more particularly describe as follows:

Begin at the SE corner of Section 29, Township 20 South, Range 2 West and proceed Northerly on the East boundary of Section 29, 4761.79 feet; thence turn South 52°22'25" West a distance of 1060.75; thence turn South 41°25'19" West a distance of 840.19 feet; thence turn South 34°22'38" West a distance of 2074.81 feet; thence turn South 24°11'52" East a distance of 282.99 feet; thence turn South 37°7'24" West a distance of 1611.65 feet; thence turn South 82°37'6" East a distance of 738.93 feet; thence proceed in an Easterly direction for a distance of 2655.99 feet to the point of beginning.

#### **Parcel IV**

A parcel of land situated in Section 21, Township 20 South, Range 2 West, and being more particularly described as follows:

Begin at the NE corner of Section 28, Township 20 South, Range 2 West, and proceed South 89°3'46" West along the Northern boundary of said Section 28 a distance of 1314.30 feet to the point of beginning; thence turn North 2°0'49" East a distance of 2632.34 feet; thence turn North 84°37'27" West a distance of 1284.38 feet; thence turn South 40°24'20" West a distance of 3078.00 feet to a point along the North boundary of Section 28; thence South 82°46'09" East a distance of 602.30 feet; thence in an Easterly direction a distance of 2605.03 feet, more or less, to the point of beginning.


#### **Less and except the following from Parcels I, II, III and IV:**

Subdivision Name:

Lochinvar - Map Book 32, Pages 10 A, B, C  
Haddington Parc I - Map Book 32, Page 12  
Stoneykirk I - Map Book 32, Page 11  
Stoneykirk II - Map Book 32, Page 105  
Weybridge I - Map Book 32, Page 123  
Kilkerran I - Map Book 33, Page 93  
Kilkerran II - Map Book 33, Page 103  
Gleneagles - Map Book 33, Page 114  
Glengerry I - Map Book 33, Page 139  
Kilkerran III - Map Book 34, Page 77  
Stoneykirk III - Map Book 35, Page 11  
Lauchlin I - Map Book 35, Page 10  
Haddington Parc II - Map Book 35, Page 82  
Carnoustie Crest I - Map Book 35, Page 71  
Stoneykirk IV - Map Book 37, Page 16  
Manors - Map Book 36, Page 82  
Lauchlin II - Map Book 38, Page 114  
Stoneykirk V - Map Book 38, Page 136  
Glengerry II - Map Book 38, Page 118  
Caliston I - Map Book 32, Page 104  
Caliston II - Map Book 35, Page 62

Also

Less and except that part sold to the City of Pelham in Inst. No. 20041005000550770 and Inst. No. 2001-17873.

  
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