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Shelby Cnty Judge of Probate, AL
01/04/2012 02:59:36 PM FILED/CERT

Loan No. 69-0016905



20120103000002170 1/7
Bk: LR201210 Pg:741
Jefferson County, Alabama
I certify this instrument filed on:
01/03/2012 02:17:06 PM XFRL
Judge of Probate- Alan L. King

VISTA COMMUNITIES VENTURE, LLC
(Borrower)

to

GENERAL ELECTRIC CAPITAL CORPORATION
(Lender)

ASSIGNMENT OF RENTS AND LEASES

Dated as of December 30, 2011

Property Location: Birmingham,
Jefferson and Shelby Counties, Alabama

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

Andrews Kurth LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201
Attention: Jennifer S. Kukla, Esq.

ASSIGNMENT OF RENTS AND LEASES

This Assignment of Rents and Leases (this "**Agreement**") is executed as of December 30, 2011, by **VISTA COMMUNITIES VENTURE, LLC**, a Delaware limited liability company, whose address for notice is c/o Crowne Partners, 1015 Financial Center, Birmingham, Alabama 35203, Attention: Alan Engel ("**Borrower**"), to **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation, whose address for notice is 14951 Dallas Parkway, Suite 600, Dallas, Texas 75254 ("**Lender**").

AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. **Absolute Assignment.** Borrower unconditionally and absolutely assigns to Lender all of Borrower's right, title and interest in and to: (a) all leases, subleases, occupancy agreements, licenses, usufructs, rental contracts and other agreements now or hereafter existing relating to the use or occupancy of the project located on the real property described in **Exhibit A** hereto (the "**Property**"), together with all guarantees, modifications, extensions and renewals thereof (collectively, the "**Leases**"); and (b) all rents, issues, profits, income and proceeds due or to become due from tenants of the Property, including rentals and all other payments of any kind under the Leases, together with all deposits (including security deposits) of tenants thereunder (collectively, the "**Rents**"). This Agreement is an absolute assignment to Lender and not an assignment as security for the performance of the obligations under the Loan Documents (defined below), or any other indebtedness.

2. **Rights of Lender.** Subject to the provisions of Section 6 below, Lender shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Lender and that all Rents are to be paid directly to Lender, whether or not Lender has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Borrower under the Leases and exercise any and all rights of Borrower therein contained to the full extent of Borrower's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Lender's request, Borrower shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Property. Borrower irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Borrower, to comply with all demands of Lender under this Agreement and to turn over to Lender on demand all Rents which it receives.

3. **No Obligation.** Notwithstanding Lender's rights hereunder, Lender shall not be obligated to perform, and Lender does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Agreement. Lender shall have no responsibility on account of this Agreement for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property, except for actual damages caused solely by the gross negligence or willful misconduct of Lender, its employees or agents. Lender shall have no liability to Borrower for punitive, speculative or consequential damages.

4. **Right to Apply Rents.** Lender shall have the right, but not the obligation, to use and apply any Rents received hereunder in such order and such manner as Lender may determine for:

(a) **Enforcement or Defense.** The payment of costs and expenses of enforcing or defending the terms of this Agreement or the rights of Lender hereunder, and collecting any Rents;

(b) **Loan Payments.** Interest, principal or other amounts payable pursuant to (i) the Loan Agreement of even date between Lender and Borrower (the "**Loan Agreement**"); (ii) the Promissory Note in the stated principal amount of \$32,000,000.00, executed by Borrower, bearing interest and being payable to the order of Lender (the "**Note**"); (iii) the Mortgage, Security Agreement and Fixture Filing, of even date, executed by Borrower for the benefit of Lender and relating to the Property (the "**Mortgage**"); (iv) all other documents and instruments evidencing, governing and securing the loan evidenced by the Note (the "**Loan**"); and (v) any and all modifications, amendments or extensions thereof or replacements or substitutions therefor (the Loan Agreement, the Note, the Mortgage, such other documents and instruments, and such modifications, amendments, extensions, replacements, and substitutions thereof being herein collectively called the "**Loan Documents**"); and

(c) **Operating Expenses.** Payment of costs and expenses of the operation and maintenance of the Property, including rentals and other charges payable by Borrower under any ground lease or other agreement affecting the Property; (ii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property; (iii) insurance premiums; (iv) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents; (v) wages and salaries of employees, commissions of agents and attorneys' fees and expenses; and (vi) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Property.

After the payment of all such costs and expenses and after Lender has established such reserves as it, in its sole discretion, deems necessary for the proper management of the Property, Lender shall apply all remaining Rents received by it to the reduction of the Loan.

5. **No Waiver.** The exercise or nonexercise by Lender of the rights granted in this Agreement or the collection and application of Rents by Lender or its agent shall not be a waiver of any default by Borrower under this Agreement or any other Loan Document. No action or failure to act by Lender with respect to any obligations of Borrower under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Lender's rights and privileges under this Agreement, or discharge, release or modify any of Borrower's duties or obligations hereunder.

6. **Revocable License.** Notwithstanding that this Agreement is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, Lender grants to Borrower a revocable license to collect and receive the Rents, to retain, use and enjoy such Rents and to enforce the Leases. Upon the occurrence of any Event of Default (as defined in the Loan Agreement), such license may be revoked by Lender, without notice to or demand upon Borrower, and Lender immediately shall be entitled to receive and apply all Rents, whether or not Lender enters upon and takes control of the Property. Prior to such revocation, Borrower shall apply any Rents which it receives to the payment of debt service on the Note and other payments due under the Loan Agreement, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property, insurance premiums, operation and maintenance charges relating to the Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose.

7. **Term.** This Agreement shall continue in full force and effect until (a) all amounts due under the Loan Documents are paid in full, and (b) all other obligations of Borrower under the Loan Documents are fully satisfied.

8. **Appointment.** Borrower irrevocably appoints Lender its true and lawful attorney in fact, which appointment is coupled with an interest, to execute any or all of the rights or powers described herein with the same force and effect as if executed by Borrower, and Borrower ratifies and confirms any and all acts done or omitted to be done by Lender, its agents, servants, employees or attorneys in, to or about the Property.

9. **Liability of Lender.** Lender shall not in any way be liable to Borrower for any action or inaction of Lender, its employees or agents under this Agreement, except for any liability cause solely by the gross negligence or willful misconduct of Lender, its employees or agents. Lender shall have no liability to Borrower for punitive, speculative or consequential damages.

10. **Indemnification.** Borrower shall indemnify, defend and hold harmless Lender from and against all liability, loss, damage, cost or expense which it may incur under this Agreement or under any of the Leases, including any claim against Lender by reason of any alleged obligation, undertaking, action, or inaction on its part to perform or discharge any terms, covenants or conditions of the Leases or with respect to Rents, and including attorneys' fees and expenses, including those arising from the joint, concurrent, or comparative negligence of

Lender; however, Borrower shall not be liable under such indemnification to the extent such liability, loss, damage, cost or expense results solely from Lender's gross negligence or willful misconduct. Any amount covered by this indemnity shall be payable on demand, and shall bear interest from the date of demand until the same is paid by Borrower to Lender at a rate equal to the Default Rate (as defined in the Loan Agreement).

11. **Modification.** This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

12. **Successors and Assigns.** This Agreement shall inure to the benefit of Lender and its successors and assigns and shall be binding on Borrower and its successors and assigns.

13. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Alabama.

14. **Conflict.** If any conflict or inconsistency exists between the absolute assignment of the Rents and the Leases in this Agreement and the assignment of the Rents and Leases as security in the Mortgage, the terms of this Agreement shall control.

15. **Counterparts.** This Agreement may be executed and recorded in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

16. **Limitation on Liability.** Borrower's liability hereunder is subject to the limitation on liability provisions of Article 13 of the Loan Agreement.

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Executed as of the date first written above.

VISTA COMMUNITIES VENTURE, LLC,
a Delaware limited liability company

By: CROWNE HOOVER ASSOCIATES,
LIMITED PARTNERSHIP,
a Delaware limited partnership,
its Manager

By: CROWNE HOOVER 150, LLC,
a Delaware limited liability company,
its General Partner

By: Alan D. Levon
Name: Alan D. Levon
Title: Manager

STATE OF Georgia §
§
COUNTY OF Fulton §

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Alan D. Levon, whose name as manager of CROWNE HOOVER 150, LLC, a Delaware limited liability company and General Partner of CROWNE HOOVER ASSOCIATES LIMITED PARTNERSHIP, a Delaware limited partnership and Manager of VISTA COMMUNITIES VENTURE, LLC, a Delaware 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, s/he, as such Manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this 2/26 day of December, 2011.

Darlene Dearing
NOTARY PUBLIC
My Commission Expires: 3/13/2014



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Signature Page

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EXHIBIT A

Legal Description

PARCEL I:

Lot 4-A, according to a Resurvey of Lot 4, Crowne Resurvey of Galleria Woods, First Addition, as recorded in Map Book 32, page 35, in the Probate Office of Jefferson County, Alabama, Bessemer Division.

Together with all rights acquired in Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Birmingham Real 1437, page 570 and Bessemer Real 348, page 878 in the Probate Office of Jefferson County, Alabama and in Book 19, page 633, in the Probate Office of Shelby County, Alabama.

PARCEL II:

Lot 3, Crowne Resurvey of Galleria Woods, First Addition as recorded In Map Book 30, page 77, in the Probate Office of Jefferson County, Alabama, Bessemer Division and recorded in Map Book 21, page 91, In the Probate Office of Shelby County, Alabama; LESS AND EXCEPT, that rectangular parcel measuring 100 feet by 220 feet shown as "Jefferson County San. Pump Sta." on said Crowne Resurvey of Galleria Woods, First Addition.

Together with all rights acquired in Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Birmingham Real 1437, page 570 and Bessemer Real 348, page 878 in the Probate Office of Jefferson County, Alabama and In Book 19, page 633 in the Probate Office of Shelby County, Alabama.

PARCEL III:

Lot 2, Crowne Resurvey of Galleria Woods, recorded in Map Book 178, Page 65 and Bessemer Map Book 29, page 70 in the Probate Office of Jefferson County, Alabama.

Along with the right to use the sanitary sewer easement recorded In Bessemer Real 1025, page 508 In the Probate Office of Jefferson County, Alabama

Together with all rights acquired in Amendment No. 2 to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Birmingham Real 1437, page 570 and Bessemer Real 348, page 878 in the Probate Office of Jefferson County, Alabama and in Book 19, page 633 In the Probate Office of Shelby County, Alabama.

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Fee - \$23.00

Total of Fees and Taxes-\$23.00
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