This Assignment of Leases is for additional security to secure a Promissory Note which is also secured by a Mortgage and Security Agreement recorded concurrently herewith.

This instrument prepared by, and after recordation should be returned to:

Clayton T. Sweeney, Attorney at Law
2700 Highway 280 East, Suite 160
Birmingham, AL 35223

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Shelby Cnty Judge of Probate, AL
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# ASSIGNMENT OF LEASES, RENTS AND PROFITS

This Assignment is made this 13th day of December, 2018, by **EMBASSY HOMES, LLC**, [an Alabama limited liability company,] whose address is 5406 Hwy 280 E. Suite C101, Birmingham, AL 35242 ("Assignor"), to **SERVISFIRST BANK**, an Alabama state banking corporation, whose address is 2500 Woodcrest Place, Birmingham, AL 35209 ("Assignee").

## W I T N E S S E T H:

WHEREAS, Assignor has executed and delivered to Assignee a Promissory Note (hereinafter, together with all amendments thereto and any extensions, renewals, modifications, substitutions and/or increases thereof, called the "Note") in the principal sum of Three Hundred Sixteen Thousand and No/100 Dollars ($316,000.00) of even date herewith and, as security for the payment of the Note, Assignor has executed and delivered to Assignee a Mortgage and Security Agreement (hereinafter, together with all amendments thereto and modifications thereof, called the "Mortgage") of even date herewith covering certain real property located in SHELBY County, State of Alabama, and more particularly described in Exhibit "A" which is attached hereto and incorporated by reference herein, together with all buildings, improvements and other property more particularly described in the Mortgage, and all fixtures, furnishings, machinery, equipment and other tangible property now owned or hereafter acquired by Assignor and located on or used in connection with such real property (all of which real and personal properties are hereinafter called the "Mortgaged Property"). The

CLAYTON T. SWEENEY, ATTORNEY AT LAW

Mortgage and all other agreements now or hereafter evidencing, governing or securing the loan evidenced by the Note are hereinafter collectively called the "Security Instruments" and singularly called a "Security Instrument"; and

WHEREAS, in connection with the loan evidenced by the Note, Assignee has required that Assignor assign to Assignee all of Assignor's right, title and interest in, to and under any and all leases or subleases, whether written or oral (hereinafter collectively referred to as the "Leases" and singularly as a "Lease"), now or hereafter in existence and as amended or supplemented from time to time and covering space in or applicable to the Mortgaged Property, including without limitation the Leases, if any, listed in Exhibit "B", which is attached hereto and incorporated by reference herein, and Assignor desires and intends by this instrument to assign to Assignee all of Assignor's right, title and interest in, to and under the Leases.

NOW THEREFORE, in consideration of the sum of $10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to provide a direct and continuing source of payment of the principal of, and interest on, the Note, all other sums, with interest thereon, becoming due and payable to Assignee under the provisions of the Note and the Security Instruments, and to ensure the performance and observance by Assignor of each and every term, covenant, agreement and condition contained in the Note and in the Security Instruments, Assignor agrees as follows:

1. **GRANTING CLAUSE.** Assignor does hereby sell, assign, transfer and set over unto Assignee, its successors and assigns, all of the right, title and interest of Assignor in, to and under the Leases, together with all rents, earnings, income, profits, benefits, security deposits and advantages arising from the Mortgaged Property or from the Leases and all other sums due or to become due under and pursuant thereto and together with any and all guarantees of or under any of the Leases, and together with all rights, powers, privileges, options and other benefits of Assignor as lessor under the Leases, including without limitation the immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, condemnation awards, insurance proceeds, moneys and security payable or receivable under the Leases or pursuant to any of the provisions thereof whether as rent or otherwise, and whether paid or accruing before or after the filing by or against Assignor of any petition for relief under 11 U.S.C. §101 et. seq.; the right to accept or reject any offer made by any tenant pursuant to its Lease to purchase the Mortgaged Property and any other property subject to the Lease as therein provided and to perform all other necessary or appropriate acts with respect to such purchases as agent and attorney-in-fact for Assignor, and the right to make all waivers and agreements, to give and receive all notices, consents and releases, to take such action upon the happening of a default under any Lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of any Lease or by any law, and to do any and all other things whatsoever which the Assignor is or may become entitled to do under any such Lease. This Assignment is made by

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Assignor to provide a direct and continuing source of payment (currently and in the future) of the indebtedness evidenced by the Note, and this instrument constitutes an absolute, unconditional and presently effective assignment of the rents arising from the Mortgaged Property. Notwithstanding the provisions of this Paragraph 1, so long as there shall exist no default in the performance of any obligation, covenant or agreement herein contained or in the Note, the Leases or any of the Security Instruments, or until Assignee otherwise shall revoke the license granted hereby, Assignee hereby grants to Assignor a license to collect and receive all rents, issues, profits and other sums under and by virtue of any Lease (but only as the same become due under the provisions of such Lease) and Assignor shall apply the funds so collected first to the payment of all sums payable by Assignor to Assignee pursuant to the terms of the Note and to the payment of all other indebtedness secured by any of the Security Instruments, and thereafter, so long as no default under the Note or any of the Security Instruments has occurred, the balance shall be distributed to the account of Assignor. During the continuance of a default under the Note or any of the Security Instruments, the license granted to Assignor herein shall be automatically revoked. It shall not be necessary for Assignee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Assignment.

**2. TERMINATION OF OTHER LIEN AGREEMENTS.** This Assignment shall remain in full force and effect until: (a) the payment in full of all principal, interest (including but not limited to accrued and deferred interest) and premium, if any, on the Note; (b) the payment in full of all other sums, with interest thereon, due and payable to Assignee under the provisions hereof, of the Note and the Security Instruments, and (c) the performance and observance by Assignor of all of the terms, covenants and conditions to be performed or observed by Assignor under the Note and the Security Instruments.

**3. ASSIGNOR'S REPRESENTATIONS AND WARRANTIES.** Assignor represents, warrants, covenants and agrees that: (a) Assignor has good right and authority to make this Assignment; (b) Assignor has not heretofore alienated, assigned, pledged or otherwise disposed of or encumbered the Leases or any of the sums due or to become due thereunder and Assignor has not performed any acts or executed any other instruments which might prevent Assignee from operating under any of the terms and conditions of this Assignment or which would limit Assignee in such operation; (c) Assignor has not accepted or collected rent or any other payments under any Lease in advance of the time when the same shall become due under the terms of said Lease; (d) Exhibit "B" attached hereto is a true, correct and complete list of all Leases existing as of the date hereof and the Schedules to Exhibit "B" are true and correct copies of such Leases with all amendments and modifications thereto; Exhibit "B" may be omitted if there are no leases; (e) Assignor has not executed or granted any amendment or modification whatever of any of the Leases, either orally or in writing, except as has been disclosed in writing to Assignee; (f) there is no default under any of the Leases now existing and no event has occurred and is continuing which, with the lapse of time or the giving of notice or both, would constitute an event of default under

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any of the Leases; (g) Assignor will observe, perform and discharge, duly and punctually, all and singular the obligations, terms, covenants, conditions and warranties of the Note, this Assignment or any of the Security Instruments and any Lease, on the part of the Assignor to be kept, observed and performed; (h) Assignor will enforce the performance of each and every obligation, term, covenant, condition and agreement in said Leases to be performed by any tenant; (i) Assignor will appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with the Leases, or the obligations, duties or liabilities of Assignor or any tenant thereunder and upon request by Assignee will do so in the name and behalf of Assignee, but at the expense of Assignor; (j) Assignor will, upon the request of Assignee, execute and deliver to Assignee such further instruments and do and perform such other acts and things as Assignee may deem reasonably necessary or appropriate to make effective this Assignment and the various covenants of Assignor herein contained and to more effectively vest in and secure to Assignee the sums due or hereafter to become due under the Leases, including, without limitation, the execution of such additional assignments as shall be deemed necessary by Assignee to effectively vest in and secure to Assignee all rents, income and profits from any and all Leases; (k) Assignor will from time to time, upon demand therefore, deliver to Assignee an executed counterpart of each and every Lease then affecting all or any portion of the Mortgaged Property; and (l) in the event any warranty or representation of Assignor herein shall be false, misleading or materially inaccurate or Assignor shall default in the observance or performance of any obligation, term, covenant or condition hereof, then, in each instance at the option of Assignee, the same shall constitute and be deemed to be a default under the Note and the Security Instruments, thereby giving Assignee the absolute right to declare all sums secured thereby and hereby immediately due and payable and to exercise any and all rights and remedies provided thereunder and hereunder as well as such remedies as may be available at law or in equity.

**4. NO OTHER ASSIGNMENTS.** Assignor covenants and agrees that it will not, without in each instance the prior written consent of Assignee: (a) enter into any Lease for a period of more than one year on terms and conditions which have not been approved in advance by Assignee; (b) cancel any Lease nor accept a surrender thereof without the prior written consent of the Assignee; (c) reduce the rent payable under any Lease nor accept payment of any installment of rent in advance of the due date thereof; (d) change, amend, alter or modify any Lease or any of the terms or provisions thereof, nor grant any concession in connection therewith; (e) consent to the release or reduction of the obligations of the tenant under any Lease; (f) assign, pledge, encumber or otherwise transfer any Lease or Assignor's rights thereunder; (g) consent to an assignment of tenant's interest under any Lease or to a subletting thereof, except to the extent any such assignment or subletting is specifically authorized by such Lease; (h) do or permit to be done anything to impair the security of any Lease; or (i) incur any indebtedness for borrowed money or otherwise to the tenant or guarantor of any Lease which may under any circumstances be availed of as an offset against the rent or other payments due thereunder without the prior written consent of the Assignee; and any of the above acts, if done without the consent of Assignee, shall be, at the option of

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Assignee, null and void, and shall constitute a default hereunder and under the Note and other Security Instruments.

**5. AUTHORIZATION OF TENANTS.** Assignor hereby consents to and irrevocably authorizes and directs the tenants under the Leases and any successor to the interest of any of said tenants, upon demand and notice from Assignee of Assignee's right to receive the rents and other amounts under such Leases, to pay to Assignee the rents and other amounts due or to become due under the Leases, and said tenants shall have the right to rely upon such demand and notice from Assignee and shall pay such rents and other amounts to Assignee without any obligation or right to determine the actual existence of any default or event claimed by Assignee as the basis for Assignee's right to receive such rents and other amounts and notwithstanding any notice from or claim of Assignor to the contrary, and Assignor shall have no right to claim against said tenants for any such rents and other amounts so paid by said tenants to Assignee.

**6. EVENTS OF DEFAULT AND REMEDIES.** Upon the occurrence of a default under the Note or any of the Security Instruments, Assignee, at its option, shall have the complete right, power and authority (a) without taking possession, to demand, collect and receive and sue for the rents and other sums payable under the Leases and, after deducting all reasonable costs and expenses of collection (including, without limitation, attorneys' fees) as determined by Assignee, apply the net proceeds thereof to the payment of any indebtedness evidenced by the Note; (b) to declare all sums secured hereby immediately due and payable, and, at its option, exercise any or all of the rights and remedies contained in the Note and in the Security Instruments; and (c) without regard to the adequacy of the security, with or without process of law, personally or by agent or attorney, or by Assignee under the Mortgage, or by a receiver to be appointed by court, then and thereafter to enter upon, take and maintain possession of and operate the Mortgaged Property, or any part thereof, together with all documents, books, records, papers, and accounts relating thereto and exclude Assignor and its agents and servants therefrom and hold, operate, manage and control the Mortgaged Property or any part thereof as fully and to the same extent as Assignor could do if in possession and in such event, without limitation and at the expense of Assignor, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements to the Mortgaged Property, or any part thereof, as Assignee deems judicious, and pay taxes, assessments and prior or proper charges on the Mortgaged Property, or any part thereof, and insure and reinsure the same, and lease the Mortgaged Property, or any part thereof, for such terms and on such terms as Assignee deems desirable, including leases for terms expiring beyond the maturity of the indebtedness secured by the Security Instruments and cancel any Lease or sublease thereof for any cause or on any ground which would entitle Assignor to cancel the same. Assignee may apply rents and other sums payable under the Leases to the payment of any cost or expense incurred hereunder.

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7. **APPLICATION OF RENTS.** After payment of all proper charges and expenses, including the just and reasonable compensation for the services of Assignee, its attorneys, agents, and others employed by Assignee in connection with the operation, management and control of the Mortgaged Property and the conduct of the business thereof, and such further sums as may be sufficient to indemnify Assignee from and against any liability, loss or damage on account of any matter or thing done in good faith in pursuance of the rights and powers of Assignee hereunder, Assignee may, at its option, credit the net amount of income which Assignee may receive by virtue of this Assignment and from the Mortgaged Property to any and all amounts due or owing to Assignee from Assignor under the terms and provisions of the Note and the Security Instruments. In no event will this Assignment reduce the indebtedness evidenced by the Note, or otherwise secured by the Security Instruments, except to the extent, if any, that such rents and other sums payable under the Leases are actually received by Assignee and applied after receipt to such indebtedness. The balance, if any, of such net income shall be released to or upon the order of Assignor. The manner of the application of such net income and the item or items which shall be credited shall be within the sole discretion of Assignee.

8. **LIMITATION ON ASSIGNEE'S OBLIGATIONS.** The acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall neither be deemed nor construed to constitute Assignee a mortgagee in possession nor at any time or in any event to impose any obligation whatsoever upon Assignee to appear in or defend any action or proceeding relating to the Leases or the Mortgaged Property, or to take any action hereunder, or to expend any money or incur any expenses, or perform or discharge any obligation, duty of liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any tenant and not assigned and delivered to Assignee or render Assignee liable in any way for any injury or damage to person or property sustained by any person or entity in, on or about the Mortgaged Property.

9. **NON-WAIVER.** Assignor agrees that the collection of rents and the application thereof as aforesaid or the entry upon and taking of possession of the Mortgaged Property, or any part thereof, by Assignee shall not cure or waive any default, or waive, modify or affect any notice of default under the Note or the Security Instruments, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

10. **RIGHTS OF ASSIGNEE CUMULATIVE.** The rights and remedies of Assignee hereunder are cumulative and not in lieu of, but are in addition to, any rights or remedies which Assignee shall have under the Note, any of the Security Instruments, or at law or in equity, which rights and remedies may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any action taken hereunder. The rights

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and remedies of Assignee may be exercised from time to time and as often as such exercise is deemed expedient, and the failure of Assignee to avail itself of any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof. Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured by the Security Instruments, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefore held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder.

**11. RIGHT TO CONTINUE.** The right of Assignee to collect and receive the rents assigned hereunder or to take possession of the Mortgaged Property, or to exercise any of the rights or powers herein granted to Assignee shall, to the extent not prohibited by law, also extend to the period from and after the filing of any suit to foreclose the lien created under any of the Security Instruments which cover the Mortgaged Property, including any period allowed by law for the redemption of the Mortgaged Property after any foreclosure sale.

**12. ASSIGNEE INDEMNIFIED.** Assignor shall indemnify and hold Assignee harmless of, from and against any and all liability, loss, damage or expense, which Assignee may or might incur under or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on the part of Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases, except any which are the result of the gross negligence or willful misconduct of Assignee. Should Assignee incur any such liability, loss or damage under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the same rate of interest as provided in the Note with respect to the principal indebtedness of Assignor to Assignee, shall be secured by this Assignment and by the Security Instruments, and Assignor shall reimburse Assignee therefore immediately upon demand, and upon failure of Assignor so to do, Assignee may declare all sums secured hereby immediately due and payable.

**13. NOTICES.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

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If to Assignor: EMBASSY HOMES, LLC
Attention: Clark Parker
5406 Hwy 280 E. Suite C101
Birmingham, AL 35242
Telecopy: 205-_____

If to Assignee: SERVISFIRST BANK
2500 Woodcrest Place
Birmingham, AL 35209
Attention: Clark Zinsmeister, Vice President
Telecopy: 205-949-4032

With a copy to: Clayton T. Sweeney, Attorney at Law
2700 Highway 280 East, Suite 160
Birmingham, AL 35223
Telecopy: 205-871-9004

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. "Business Day" shall mean a day upon which commercial banks are not authorized or required by law to close in Alabama.

**14. ASSIGNABILITY OF AGREEMENT.** This Assignment shall be assignable by Assignee and all representations, warranties, covenants, powers and rights herein contained shall be binding upon, and inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

**15. COUNTERPARTS.** This Assignment may be executed, acknowledged and delivered in any number of counterparts and each such counterpart shall constitute an original, but together such counterparts shall constitute only one instrument.

**16. SEVERABILITY.** If any one or more of the provisions of this Assignment, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Assignment and all other applications of any such provision shall not be affected thereby.

**17. ASSIGNOR TO INCLUDE TRANSFEREE OR GRANTEE.** Upon a sale, conveyance, transfer or exchange of all or a part of the Mortgaged Property, the

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term "Assignor" as used herein shall include the transferee or grantee in such transaction. The preceding sentence shall not be deemed to permit any sale, conveyance, transfer or exchange which is prohibited or restricted by the terms of any Security Instrument.

**18. INCORPORATION OF EXHIBITS.** All exhibits attached hereto are by this reference incorporated fully herein. The term this Assignment" shall be deemed to include all such exhibits.

**19. GOVERNING LAW.** This Assignment shall be governed by and construed under the laws of the State of Alabama, except to the extent any law, rule or regulation of the federal government of the United States of America may be applicable, in which case such federal law, rule or regulation shall control.

**20. CONFLICT OF TERMS.** In case of any conflict between the terms of this Assignment and the terms of the Mortgage, the terms of this Assignment shall control.

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**IN WITNESS WHEREOF**, Assignor has executed this Assignment as of the date first above written.

**EMBASSY HOMES, LLC**

By:_____
Clark Parker
Its: Manager

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STATE OF ALABAMA )
COUNTY OF JEFFERSON )

I, Clayton T. Sweeney, a Notary Public in and for said County in said State, hereby certify that Clark Parker, whose name as Manager of **EMBASSY HOMES, LLC**, 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 the instrument, he, in his capacity as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 13th day of December, 2018.

Notary Public

CLAYTON T. SWEENEY
NOTARY
My Comm. Expires
June 2, 2019
PUBLIC
ALABAMA STATE AT LARGE

[NOTARIAL SEAL]

My commission expires: 06/02/2019

# EXHIBIT A

# To

# ASSIGNMENT OF LEASES, RENTS AND PROFITS

Lot 847, according to the Plat of Chelsea Park, Eighth Sector, Phase One, Map Book 39, Page 47, in the Probate Office of Shelby County, Alabama.

Together with the nonexclusive easement to use the Common Areas as more particularly described in Declaration of Easements and Master Protective Covenants of Chelsea Park, a Residential Subdivision, filed for record as Instrument No. 20041014000566950 in the Probate Office of Shelby County, Alabama and Declaration of Covenants, Conditions and Restrictions for Chelsea Park 8th Sector as recorded as Instrument No. 20151230000442860, (which, together with all amendments thereto, are hereinafter collectively referred to as the "Declaration").

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