



20151001000343060 1/6 \$29.00
Shelby Cnty Judge of Probate, AL
10/01/2015 08:59:44 AM FILED/CERT

This instrument prepared by:
David R. Kinman, Esq.
Butler Snow LLP
One Federal Place
1819 Fifth Avenue North, Suite 1000
Birmingham, Alabama 35203
(205) 297-2200

STATE OF ALABAMA)

COUNTY OF SHELBY)

COUNTY OF ELMORE)

Recording Fee 24.00
TOTAL 24.00

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES OF RENTS (this “Assignment”) is dated and is effective as of September 21, 2015, by the **2012 FRANKIE C. MITCHELL IRREVOCABLE TRUST**, dated as of December 28, 2012, and formed under the laws of the State of Alabama (the “Borrower”), with an address of 2220 Finley Boulevard, Birmingham, Alabama, 35234, in favor of **NATIONAL BANK OF COMMERCE**, a national banking association, with an address of 813 Shades Creek Parkway, Suite 100, Birmingham, Alabama 35209 (together with its successors or assigns, the “Bank”).

RECITALS:

This Assignment is made as additional security for the payment of (i) a term loan in the original principal amount of One Million Four Hundred Eighty-Nine Thousand and No/100 Dollars (\$1,489,000.00) and (ii) an additional term loan in the original principal amount of Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00) (as amended, renewed, extended, increased, decreased, modified, restated or refinanced, collectively, the “Loan”), as evidenced by, among other things, certain Promissory Notes of even date herewith executed and delivered by Borrower to Bank in said aggregate amount (as extended, restated renewed, modified or amended, collectively the “Note”), and as additional security for the full and faithful performance by Borrower of all the terms, covenants and conditions of that certain Loan Agreement of even date herewith by and between Borrower and Bank (as may be amended, the “Loan Agreement”; capitalized terms used and not otherwise defined herein shall have the meaning ascribed in the Loan Agreement), and all other Loan Documents evidencing or securing the Loan, together with any supplements or amendments thereto.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and as an inducement to Bank to make the Loan to Borrower, Borrower does hereby sell, assign, transfer and set over

Ref: Land Title Co of Al.
600 20th St. N
B'ham Al. 35203

unto Bank, its successors and assigns, all of Borrower's interest in and to all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the real property and improvements located in Jefferson County, Alabama, and Elmore County, Alabama, as more particularly described in Exhibit "A" attached hereto and incorporated herein (the "**Land**"), together with all the rents, issues, and profits now due and which may hereafter become due under or by virtue of said leases (all leases and agreements, if any, presently existing or hereafter made, and all rents, issues, profits and other sums from time to time accruing or paid or payable thereunder, collectively the "**Leases**").

Borrower agrees to duly operate and maintain the Land and perform all requirements on its part to keep the Leases in full force and effect.

Borrower agrees that this Assignment shall cover all future Leases, whether written or verbal.

Borrower further agrees that it will not, without the prior express written consent of Bank, (a) assign or encumber, or permit the assignment or encumbrance of, the Leases (or any amounts accruing or paid or payable thereunder), (b) collect rents or other sums under any Leases for a period further in advance than the current month, other than security deposits, if any, (c) agree to any waiver of any material provision, term, condition, covenant or requirement of any Lease, modify, amend or terminate, or permit the modification, amendment or termination of any Lease, exercise any remedy under any Lease, or release any party primarily or secondarily liable under any Lease or allow any right against any party primarily or secondarily liable to be impaired by any action or inaction of Borrower, or (d) do any other act or omit to take any action which could result in the lien of the mortgage executed and delivered in favor of Bank or this Assignment being impaired.

Borrower further agrees that this Assignment may be enforced by Bank and shall remain in full force and effect so long as the Loan Obligations or other obligations secured hereby remain unpaid or unperformed.

It is the intention of the parties that this Assignment be a present and absolute assignment of the Leases and all rents and other sums thereunder; however, it is expressly understood and agreed by Borrower and Bank that Borrower reserves, and is entitled to collect, the monthly rents as they accrue, but not prior to their accrual, under the Leases, and to retain, use and enjoy the same unless and until the occurrence of an Event of Default pursuant to the Loan Obligations, the mortgage executed and delivered in favor of Bank, the Loan Agreement, or the Loan Documents, or until the violation of any term, condition or agreement of this Assignment, each of which shall constitute an "Event of Default" hereunder. Upon an Event of Default, Borrower's privilege to collect the rents and other sums shall automatically terminate.

Borrower does hereby authorize and empower Bank to collect directly from the lessees under the Leases, upon demand, but only after any Event of Default hereunder, all of the rents, issues and profits now due or which may hereafter become due under or by virtue of any of the Leases, and to take such action, legal or equitable, as may be deemed necessary to enforce payment of such rents, issues and profits. Borrower hereby authorizes and directs the lessees

under the Leases to pay to Bank all rents and other sums as the same become due, which authorization and directions shall become effective without further action by Borrower upon notice from Bank that an Event of Default has occurred hereunder. Any lessee making such payment to Bank shall be under no obligation to inquire into or determine the actual existence of any Event of Default claimed by Bank.

Any amount received or collected by Bank by virtue of this Assignment shall be applied in accordance with the Loan Agreement.

Borrower hereby agrees to indemnify Bank for, and to hold Bank harmless from, any and all liability, loss or damage which Bank might incur under the Leases or by virtue of this Assignment, as a result of any act, or failure to act, prior to foreclosure, and from any and all claims and demands whatsoever which may be asserted against Bank thereunder or hereunder, and, without limiting the generality of the foregoing, covenants that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Land upon Bank, nor the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Bank responsible or liable for any waste committed on the Land by the lessees or any other party, or for any negligence in the management, upkeep, repair or control of the Land resulting in loss or injury or death to any lessee, licensee, invitee, employee, stranger or other person.

This Assignment shall be governed by and interpreted, construed and enforced according to the laws of the State of Alabama. The parties submit to personal jurisdiction in the courts of Jefferson County in the State of Alabama for the enforcement of any and all obligations under the Loan Documents, or arising out of or related to the transactions contemplated thereby.

This Assignment shall be binding upon Borrower, its successors and assigns and subsequent owners of the Land, or any part thereof, and shall inure to the benefit of Bank, its successors and assigns and any holder of the Loan Obligations.

EACH PARTY HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE LOAN DOCUMENTS OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF BANK AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT BANK MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF BANK TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT

MODIFIED HEREIN) BETWEEN BORROWER AND BANK SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. INDEMNITORS CONSENT THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER SHALL BE BROUGHT IN THE CIRCUIT COURT OF THE STATE OF ALABAMA, JEFFERSON COUNTY, ALABAMA OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND ASSENT AND SUBMIT TO THE PERSONAL JURISDICTION OF ANY SUCH COURT IN ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT.


[SIGNATURE ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the undersigned has caused this agreement to be duly executed and delivered as of the date and year first above written.

BORROWER:

**2012 FRANKIE C. MITCHELL
IRREVOCABLE TRUST**, dated as of December
28, 2012, and formed under the laws of the State of
Alabama

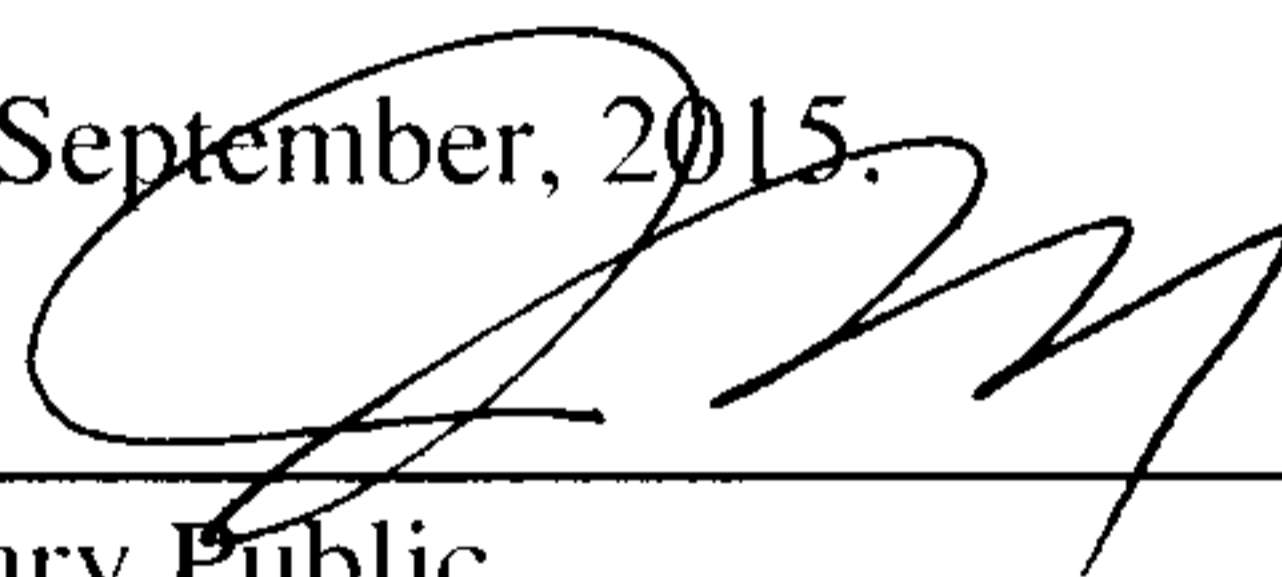
By: 
Robert L. Mitchell
Its: Trustee

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Jeffrey L Ingram, a Notary Public in and for said County, in said State, hereby certify that Robert L. Mitchell, whose name as the Trustee of the **2012 FRANKIE C. MITCHELL IRREVOCABLE TRUST**, dated as of December 28, 2012, and formed under the laws of the State of Alabama, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said agreement, he, as such Trustee and with full authority, executed the same voluntarily for and as the act of said trust on the day the same bears date.

Given under my hand this the 18 day of September, 2015.


Notary Public

[AFFIX SEAL]

My commission expires: 11/10/15

EXHIBIT A**LEGAL DESCRIPTION****Parcel I:**

Lot #9 in Block L of that land comprising The Ridge, Phase III located in the East 1/2 of Section 12 and the North 1/2 of Section 13, Township 20 North and Range 21 East, Elmore County, Alabama, also located in the SW 1/4 of Section 7 and the NW 1/4 of Section 18, Township 20 North, Range 22 East, Elmore County, Alabama and more particularly described on the map or plat as recorded in the Office of the Judge of Probate of Elmore County, Alabama in Plat/Map Book 16 at Pages 70, 71, 72 with date of recorded of November 3,2006 at 4:10 p.m.

Parcel II:

Lot #8 of Block L of that land comprising The Ridge, Phase III located in the East 1/2 of Section 12 and the North 1/2 of Section 13, Township 20 North and Range 21 East, Elmore County, Alabama, also located in the SW 1/4 of Section 7 and the NW 1/4 of Section 18, Township 20 North and Range 22 East, Elmore County, Alabama and more particularly described on the map or plat as recorded in the Office of the Judge of Probate of Elmore County, Alabama in Plat/Map Book 16 at Pages 70, 71, 72 with date of recording of November 3, 2006 at 4:10 pm.

Parcel III:

Lot 3, according to the Survey of Bridgelake Addition to Riverchase, as recorded in Map Book 13, page 25, in the Probate Office of Shelby County, Alabama.



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