



## THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY LENDER AGREEMENT ("Agreement") is dated this 31st day of October, 2016, by and between FOUNTAINHEAD COMMERCIAL CAPITAL, LLC ("Third Party Lender") whose address is 429 S. Keller Road, Suite 300, Orlando, Florida 32810 and GREATER MOBILE DEVELOPMENT CORPORATION ("CDC") whose address is 1141 Montlimar Drive, Suite 2015, Mobile, Alabama 36693

### RECITALS

1. The Third Party Lender and CDC will provide separate loans to the Borrower and Operating Company, if any (collectively "Borrower"), according to the terms in the Authorization for Debenture Guarantee (SBA 504 Loan), as amended ("Authorization"). The Third Party Lender will provide term financing ("Third Party Loan"), and the CDC will provide a loan ("504 Loan") funded by a debenture issued by the CDC and guaranteed by the U.S. Small Business Administration ("SBA"), for purposes of financing the Project described in the Authorization, which involves the acquisition and/or improvement of the real and/or personal property described below, and in Exhibit A attached hereto and incorporated herein by reference ("Project Property"):

SBA Loan #: 88393850-02  
SBA Loan Name: Mt Fuji Japanese Seafood Steakhouse, Inc.  
Borrower: GOOD CHOICE INC  
Operating Company (if any): MT FUJI JAPANESE SEAFOOD STEAKHOUSE, INC.  
Third Party Loan Amount: \$822,550.00  
Term of Third Party Loan: 10 years  
If Real Property -- Project Property Address:  
    Street address: 120 Doug Baker Boulevard  
    City, State, Zip code: Birmingham, AL 35242

Attach Legal description as an exhibit.

If Personal Property: Describe property, including name of manufacturer, name of equipment, and applicable serial number(s) or other identifying numbers for property valued at \$5000 or more. Attach a detailed description as an exhibit.

2. The parties have required the Borrower to grant liens on the Project Property to secure the separate loans advanced by the parties ("Common Collateral"), and the lien of the CDC ("CDC Lien") will be junior and subordinate to the lien of the Third Party Lender ("Third Party Lender Lien"), unless Third Party Lender, CDC and SBA agree otherwise in writing.

TERMS AND CONDITIONS

In consideration of the above, the mutual agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Amount of Third Party Loan. The Third Party Lender represents that the Third Party Loan is fully advanced; does not exceed the amount stated in the Authorization; and, will not exceed the amount allowed by the Authorization, plus reasonable costs of collection, maintenance, and protection of the Third Party Lender Lien. Any amounts owed by Borrower to Lender in excess of the Third Party Lender Lien amount stated in the Authorization cannot be secured by a lien on the Common Collateral unless it is subordinate to the 504 Loan.
2. Subordination of 504 Loan. CDC agrees to make the 504 Loan to the Borrower, subject to SBA's approval, and accept a junior and subordinate lien position in the Common Collateral upon the conditions that Third Party Lender executes this Agreement and disburses the Third Party Loan according to the terms represented to CDC and SBA.
3. Accurate Information. The Third Party Lender warrants and represents that all information provided by the Third Party Lender to CDC, including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Third Party Lender has not withheld any material information. Third Party Lender acknowledges that for purpose of this transaction, CDC is acting on behalf of SBA, an agency in the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by CDC. Third Party Lender further acknowledges that any false statements to CDC can be considered false statements to the federal government under 18 U.S.C. §1001, and may subject the Third Party Lender to criminal penalties, and that CDC and SBA are relying upon the information submitted by the Third Party Lender.
4. Waiver of Provision Not to Encumber Common Collateral. Third Party Lender waives its rights to enforce, as against CDC and SBA, any provisions in its documents that prohibit Borrower from further encumbering the Common Collateral or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral.
5. Compliance with 504 Loan Program Requirements. Third Party Lender agrees that all documents evidencing the Third Party Loan and the Third Party Lender Lien will comply with the 504 Loan Program Requirements as established by SBA, including those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these 504 Loan Program Requirements, Third Party Lender waives any right to enforce such provisions while the 504 Loan has any unpaid balance and agrees that it must act in a commercially reasonable manner with regard to any enforcement action.
  - a. No Open-Ended Features and No Future Advances. The Third Party Loan must not be open-ended. After completion of the Project, the Third Party Lender may not make future advances under the Third Party Loan except for reasonable costs of collection, maintenance, and protection of the Third Party Loan and Third Party Lender



Lien.

b. No Early Call or Demand Provisions. Third Party Lender agrees that documents evidencing the Third Party Loan and the Third Party Lender Lien do not contain an early call feature or any provision which allows Third Party Lender to make demand under the Third Party Lender Loan other than when there is a material default under the terms of its Third Party Loan documents, which shall include, but not be limited to, failure to make timely payments on the Third Party Loan, failure to pay taxes when due or violation of any financial covenants which would cause a prudent lender to believe that the prospect of payment or performance of the Third Party Note is impaired.

c. No Cross-Collateralization. Third Party Lender agrees that the Common Collateral will only secure its Third Party Loan and the Common Collateral is not currently, and will not be used in the future, as security for any other financing provided by Third Party Lender to Borrower that purports to be in a superior position to that of the CDC Lien, unless authorized in writing by CDC and SBA.

d. No Cross-Default. During the term of the 504 Loan, Third Party Lender will not exercise any cross-default, "deem at-risk," or any other provisions in documents evidencing the Third Party Loan or Third Party Lender Lien which allow Third Party Lender to make demand on the Third Party Loan prior to maturity unless the Third Party Loan is in material default.

e. Maturity and Balloon Payments. The Third Party Loan must have a term of at least 7 years (when the 504 loan is for a term of 10 years), or a term of at least 10 years (when the 504 loan is for 20 years). If the Third Party Lender has made more than one loan, then an overall loan maturity must be calculated, taking into account the amounts and maturities of each loan. Any balloon payment for the Third Party Loan must be clearly identified and disclosed to SBA and approved at application or subsequently approved by SBA.

f. Reasonable Interest Rate. The Third Party Loan has a reasonable interest rate which does not and will not exceed the maximum interest rate for Third Party Loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Agreement.

6. Marshaling of Assets. If the Third Party Lender takes additional collateral as security for the Third Party Loan, in the case of liquidation, any proceeds received from such additional collateral, must be applied to the Third Party Lender's Loan prior to the proceeds from the liquidation of the Common Collateral held by the CDC/SBA and the Third Party Lender. If the additional collateral no longer exists at the time of liquidation, or has insufficient value to justify the cost of collection, then the Third Party Lender is not required to liquidate such collateral, provided the Third Party Lender notifies CDC/SBA.

7. Notice of Default under the Third Party Loan. Within thirty (30) days after the expiration of any cure period for any continuing material default of the Third Party Loan or Third Party Lender Lien, Third Party Lender must provide written notice (referencing

SBA's loan number for the 504 Loan) of the default to CDC and SBA. At least sixty 60 days prior to any legal proceedings against or liquidation of the Common Collateral (not including sending a demand letter), Third Party Lender must provide SBA with written notice of its intent to do so.

8. Limitation on Default Interest Rate. Third Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate published by SBA in the Federal Register. SBA will only pay the interest rate on the note in effect before the date of Borrower's default.

9. Subordination to 504 Loan and/or CDC Lien, of Amounts Attributable to Default Provisions.

a. The term "Default Charges" used in this paragraph includes, but is not limited to, prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

b. To the extent the Third Party Lender Lien secures any amounts attributable to Default Charges, which may exist in the Third Party Loan and Third Party Lender Lien, Third Party Lender Lien is and will be subordinate to the 504 Loan and the CDC Lien. This subordination applies only to CDC and SBA and their successors and assigns, and shall not inure to the benefit of Borrower or any guarantor of the Third Party Loan.

c. In the event of default under the Third Party Loan, CDC or SBA may bring the Third Party Loan current or may acquire the Third Party Loan secured by the Third Party Lender Lien. Third Party Lender agrees that in either of these circumstances, the amount to bring the Third Party Loan current or the purchase price of that loan will be net of all amounts attributable to the Default Charges so subordinated to the 504 Loan and the CDC Lien. Third Party Lender further agrees that if it receives from CDC or SBA any amounts attributable to such Default Charges, Third Party Lender holds such funds in trust for SBA and will remit such funds to SBA as soon as possible. In addition, Third Party Lender shall charge as against SBA only the interest rate on the Third Party Loan that was in effect before the date of Borrower's default. Should CDC or SBA not purchase the Third Party Loan but rather bring the Third Party Loan current, Default Charges on the Third Party Loan may remain due and owing from the Borrower.

d. The Third Party Lender agrees:

(1) If the Third Party Lender sells its Note (other than when liquidating the Third Party Loan), then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received a copy of the executed Third Party Lender Agreement.

(2) If the Third Party Loan is in default and the Third Party Lender, as part of its liquidation strategy,



(i) proposes to sell its note, or  
(ii) receives an offer from a third party, then the Third Party Lender must provide CDC/SBA with the option to purchase the note at the same price offered by the potential purchaser, net any Default Charges per paragraph 9(c). SBA will have forty-five (45) days from receipt of the notice from the Third Party Lender to exercise its option to purchase the note. If SBA does not exercise its option and the Third Party Lender sells its note, then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number, and must provide the purchaser with a copy of the executed Third Party Lender Agreement.

e. If the Third Party Lender sells or otherwise transfers its note to a third party, then any Default Charges, including, but not limited to, prepayment penalties, late fees, other Default Charges, and escalated interest after default due under the Third Party Loan must be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

f. If the Third Party Lender loan documents contain a swap component or hedging contract (hereinafter defined as "swap agreement"), all costs associated with this swap agreement, which may be termed swap fees, termination fees, default fees or other related fees, shall be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

10. Liquidation. In the event that either the Third Party Loan or the 504 Loan is declared in default, Third Party Lender and CDC and SBA agree to cooperate in liquidating and/or selling the Common Collateral. Third Party Lender agrees to (a) accept a U.S. Treasury check(s) in connection with any purchase of Third Party Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Third Party Loan; (c) to provide CDC and SBA, at no charge (except for reasonable charges for photocopies) with copies of any appraisals, environmental investigations, or title examinations or searches of the Collateral conducted by or for Third Party Lender; and (d) to provide any other information about Borrower or the Third Party Loan requested by CDC and SBA in writing.

11. Waiver of Right to Indemnification by SBA or CDC. If Third Party Lender's documents contain provisions granting Third Party Lender the right to indemnification by subsequent owners of the Project Property, then Third Party Lender waives its right to enforce such provisions against SBA or CDC in the event SBA or CDC acquires title to the Project Property through foreclosure of the CDC Lien, acceptance of a deed in lieu of foreclosure, or otherwise.

*Paragraph 12 is optional and should be marked if CDC uses Third Party Lender to perform Customer Identification.*

12. ☒ Bank Regulatory Issues. If Third Party Lender is regulated by one of the Federal functional regulators (Comptroller of the Currency, Federal Deposit Insurance Corporation, or National Credit Union Administration), Third Party Lender represents that it is subject to the Joint Final Rule on Customer Identification Programs (CIP) in 31 C.F.R. 103.121 and that it or its agent will perform with respect to the Borrower the specified requirements of its CIP.

13. No Implied Third Party Beneficiaries. To the extent there is a conflict between this Agreement and any provision in any agreement either Party may have with a third party, including but not limited to, Borrower, the terms and conditions in this Agreement shall supersede any such provision. The parties agree that SBA may enforce this agreement as a third party beneficiary, and further agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower and Guarantor(s).

14. Successors and Assigns. This Agreement will inure to the benefit of and bind the respective parties to this Agreement, and their successors and assigns, including any party acquiring the Third Party Loan and Third Party Lender Lien by sale, assignment, or other transfer from Third Party Lender. Third Party Lender agrees that CDC may assign this Agreement to SBA, and waives all rights to contest such assignment.

15. Federal Law. When SBA is the holder of the loan instruments evidencing the 504 Loan and any security for that loan (including but not limited to the CDC Lien on the Common Collateral), this Agreement and all such instruments will be construed in accordance with Federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. The Third Party Lender may not claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.

16. Termination: This document will be released and terminated upon the payment in full of either the Third Party Loan or the 504 loan and all costs related thereto.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

18. Validity of Provisions. In the event that any provision of this Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain valid and enforceable.

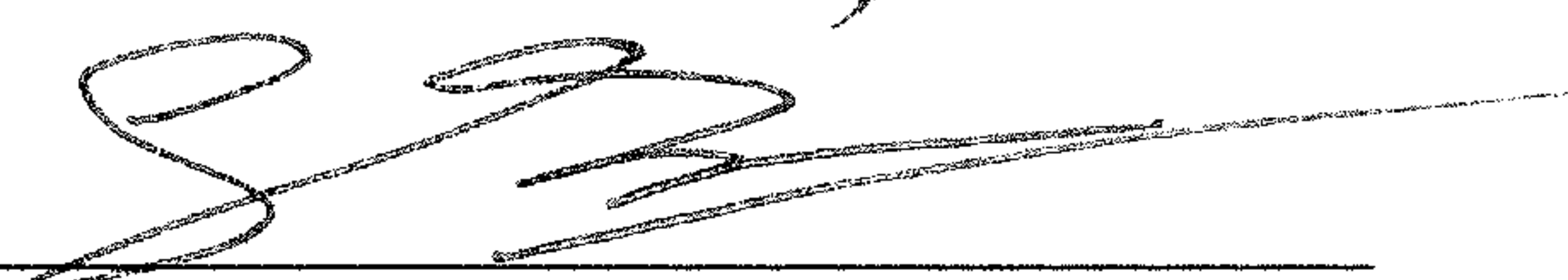
19. Revision of this Agreement. Both Third Party Lender and CDC agree that this Agreement is a standard SBA Form, and, as such, neither party has authority to modify or delete any provision in this Agreement, or add any additional provisions, without prior written authorization from the SBA.



20. Authority to Execute Agreement. The persons signing below certify that they have been duly authorized to execute this Agreement on behalf of their respective party.

**LENDER:**

FOUNTAINHEAD COMMERCIAL CAPITAL, LLC

By:   
Print Name: Christopher G. Harris  
Title: Founder/CEO

**CERTIFIED DEVELOPMENT COMPANY (CDC):**

GREATER MOBILE DEVELOPMENT CORPORATION

By: "see attached"  
Its [Vice] President

**ASSIGNMENT TO SBA**

CDC assigns this Third Party Lender Agreement to SBA.

GREATER MOBILE DEVELOPMENT CORPORATION

By: "see attached" Date: October 31, 2016  
Typed Name: Its [Vice] President  
authorized officer of CDC.

Attest: "see attached"  
Its [Asst] Secretary

[NOTE: ACKNOWLEDGMENTS CONTAINED ON FOLLOWING PAGE.]

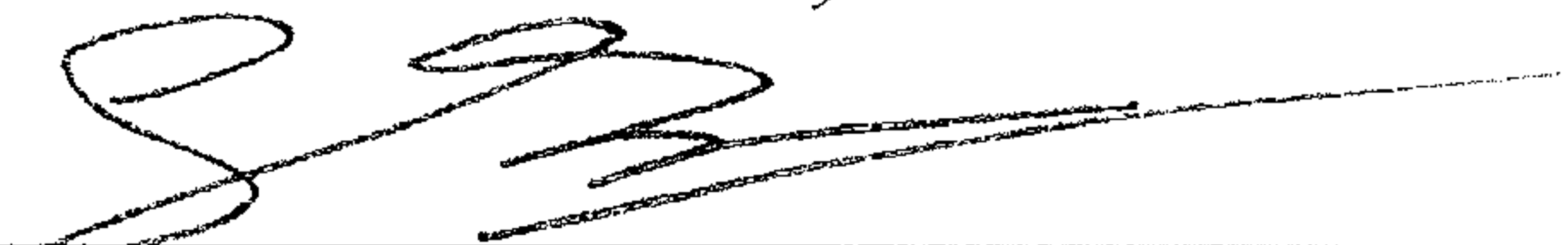
THIS INSTRUMENT PREPARED BY:  
William C. Brown  
ENGEL, HAIRSTON & JOHANSON, P.C.  
109 N. 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Birmingham, Alabama 35203  
(205) 328-4600

[D-8541]

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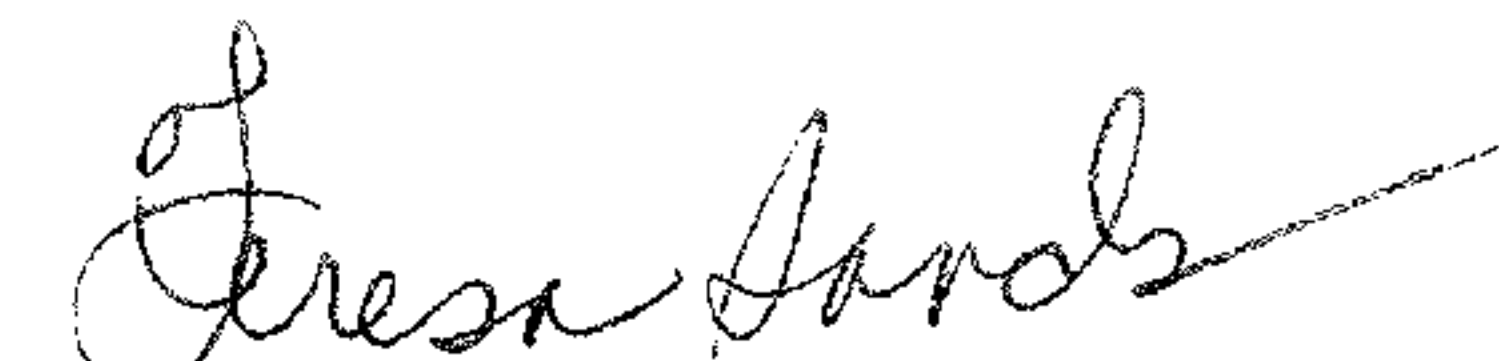
**LENDER:**

FOUNTAINHEAD COMMERCIAL CAPITAL, LLC

By:   
Print Name: Christopher G. Harris  
Title: Founder/CEO

**CERTIFIED DEVELOPMENT COMPANY (CDC):**

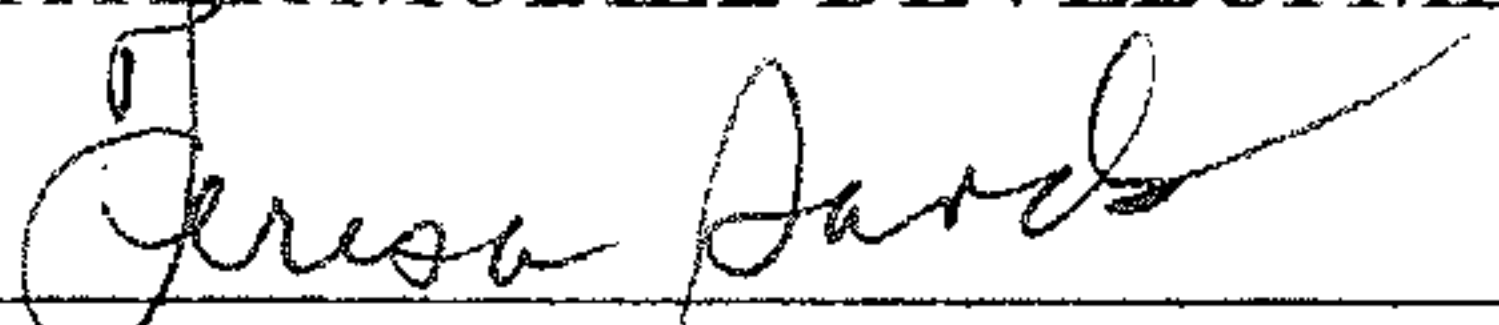
GREATER MOBILE DEVELOPMENT CORPORATION

By:   
Its [Vice] President

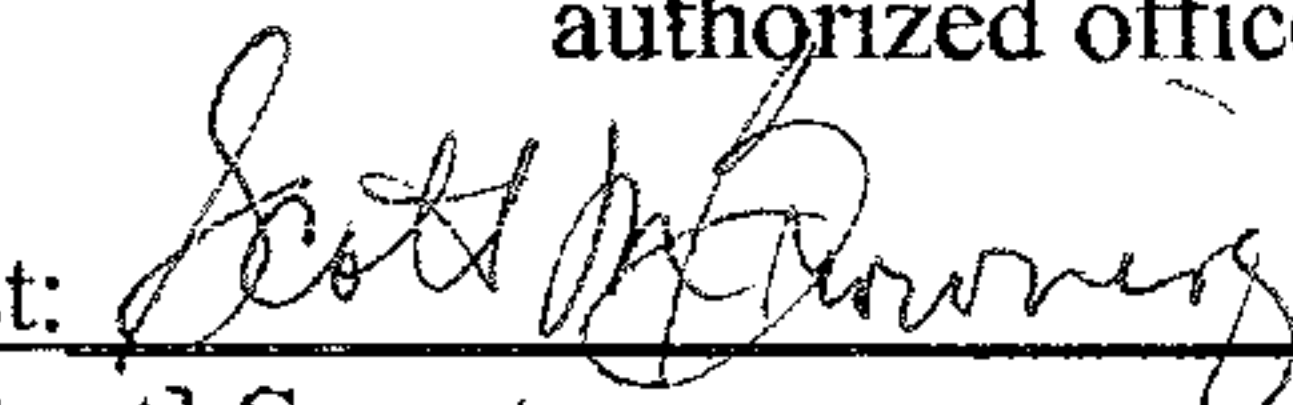
**ASSIGNMENT TO SBA**

CDC assigns this Third Party Lender Agreement to SBA.

GREATER MOBILE DEVELOPMENT CORPORATION

By:   
Typed Name: Its [Vice] President  
authorized officer of CDC.

Date: October 31, 2016

Attest:   
Its [Asst] Secretary

[NOTE: ACKNOWLEDGMENTS CONTAINED ON FOLLOWING PAGE.]

THIS INSTRUMENT PREPARED BY:

William C. Brown  
ENGEL, HAIRSTON & JOHANSON, P.C.  
109 N. 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Birmingham, Alabama 35203  
(205) 328-4600

[D-8541]



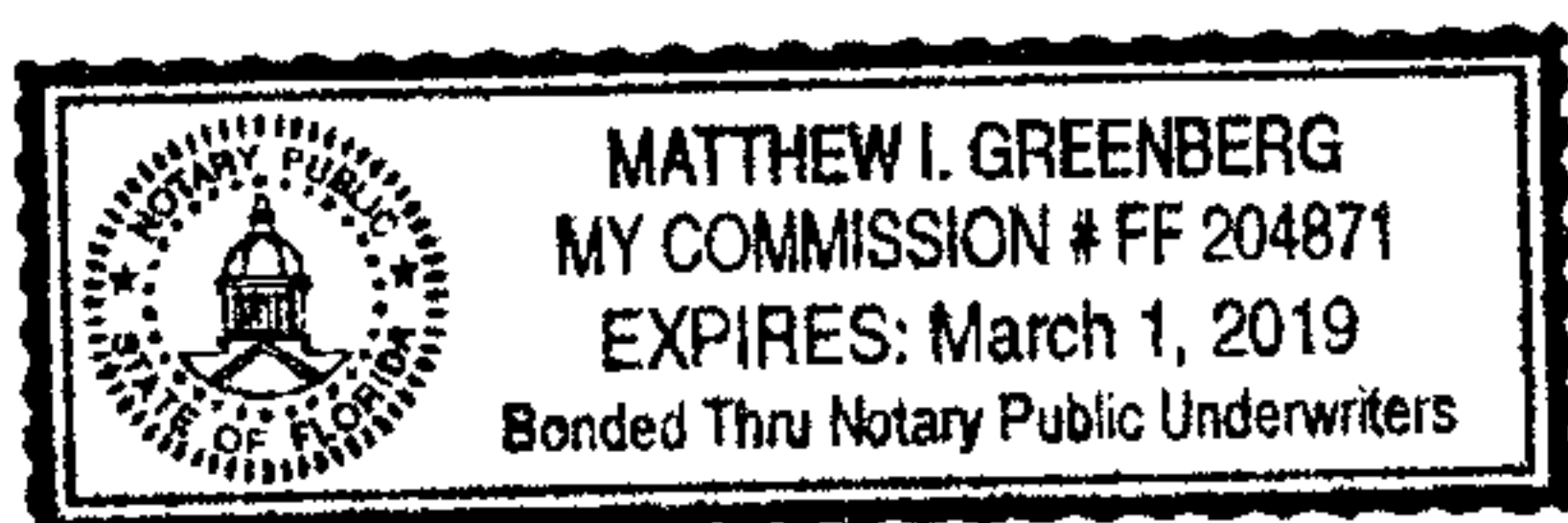
STATE OF FLORIDA

COUNTY

ACKNOWLEDGMENT OF THIRD PARTY LENDER

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Christopher G. Horn, whose name as Founder/CEO of FOUNTAINHEAD COMMERCIAL CAPITAL, LLC, a corporation, 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 said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 1 day of November, 2016.



NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA

MOBILE COUNTY

ACKNOWLEDGMENT OF CDC

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Teresa Sands, whose name as Vice President of GREATER MOBILE DEVELOPMENT CORPORATION, An Alabama non-profit corporation, 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 said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 31 day of <sup>October</sup> ~~November~~, 2016.

NOTARY PUBLIC

My Commission Expires: 12/14/2016

STATE OF ALABAMA

MOBILE COUNTY

ACKNOWLEDGMENT FOR ASSIGNMENT

Teresa Sands  
I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Scott Al. Branning, whose name as Vice President of GREATER MOBILE DEVELOPMENT CORPORATION, an Alabama non-profit corporation, 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 said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 31 day of <sup>October</sup> ~~November~~, 2016.

NOTARY PUBLIC

My Commission Expires: 12/14/2016

**EXHIBIT "A"**

PARCEL I:

Lot 4A, according to the re-subdivision of The Village at Lee Branch, as recorded in Map Book 31, Page 130 A & B, in the Office of the Judge of Probate of Shelby County, Alabama.

PARCEL II:

Together with all rights and easements that constitute a beneficial interest in real property as set out in the Reciprocal Easement Agreement with Covenants Conditions and Restrictions as recorded in Instrument #20030701000412990, and amended in Instrument #20030827000569970, in the Office of the Judge of Probate of Shelby County, Alabama.

PARCEL III:

Together with all rights and easements that constitute a beneficial interest in real property as set out in the Declaration of Covenants, Conditions and Restrictions and Declaration of Easements as recorded in Instrument #20061025000527560, in the Office of the Judge of Probate of Shelby County, Alabama.

SUBJECT TO:

1. Taxes and assessments for the year 2017, constituting a lien but which is not yet due and payable.
2. Right of Way granted to Alabama Power Company as recorded in Deed Book 109, Page 496 and Deed Book 185, Page 132.
3. Rights of others in and to the use of ingress and egress easements as recorded in Deed Book 174, Page 402, as amended by Deed Book 247, Page 645, (as to Parcels I and II), and in Deed Book 314, Page 344, (as to Parcel II).
4. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, as recorded in Deed Book 247, Page 709; Deed Book 259, Page 350, and Deed Book 331, Page 262.
5. Right of Way granted to Alabama Power Company as recorded in Deed Book 109, Page 497.
6. Terms and conditions of that certain temporary construction and slope easement agreement as recorded under Instrument #20021108000557110, and Assumption of Obligations recorded in Instrument #20090417000141510.
7. Easement and right of way granted to Alabama Power Company as recorded under Instrument #20040102000000610, Instrument #20040312000127270 and Instrument #20070517000230790.
8. That certain Reciprocal Easement Agreement between AIG Baker Brookstone, L.L.C. and Lee Branch, L.L.C. as recorded under Instrument #20030701000412990 as amended by Instrument #20030827000569970.
9. Terms and conditions of that certain Consent to Settlement Decree as recorded under Instrument #20030904000589000.
10. Easements, notes, conditions and building lines as shown on recorded map.
11. Restrictions as set out in Instrument #20020729000351020; First Amendment recorded in Instrument #20020826000405690; Second Amendment recorded in Instrument #20040622000339810, and Third Amendment recorded in Instrument #20070306000099750.
12. Right of way granted to BellSouth as recorded in Instrument #20060607000269310. (Parcels I and II)
13. Covenants, conditions, restrictions and Declarations of Easements as set out in Instrument #20061025000527560.
24. Right of way granted to Alabama Power Company as set out in instrument(s) recorded in Instrument #20070517000230790.
15. Any other coal, oil, gas and other mineral and mining right not owned by Mortgagor/Grantor.



Filed and Recorded  
Official Public Records  
Judge James W. Fuhrmeister, Probate Judge,  
County Clerk  
Shelby County, AL  
11/15/2016 08:57:09 AM  
\$42.00 CHERRY  
20161115000419840

*James W. Fuhrmeister*