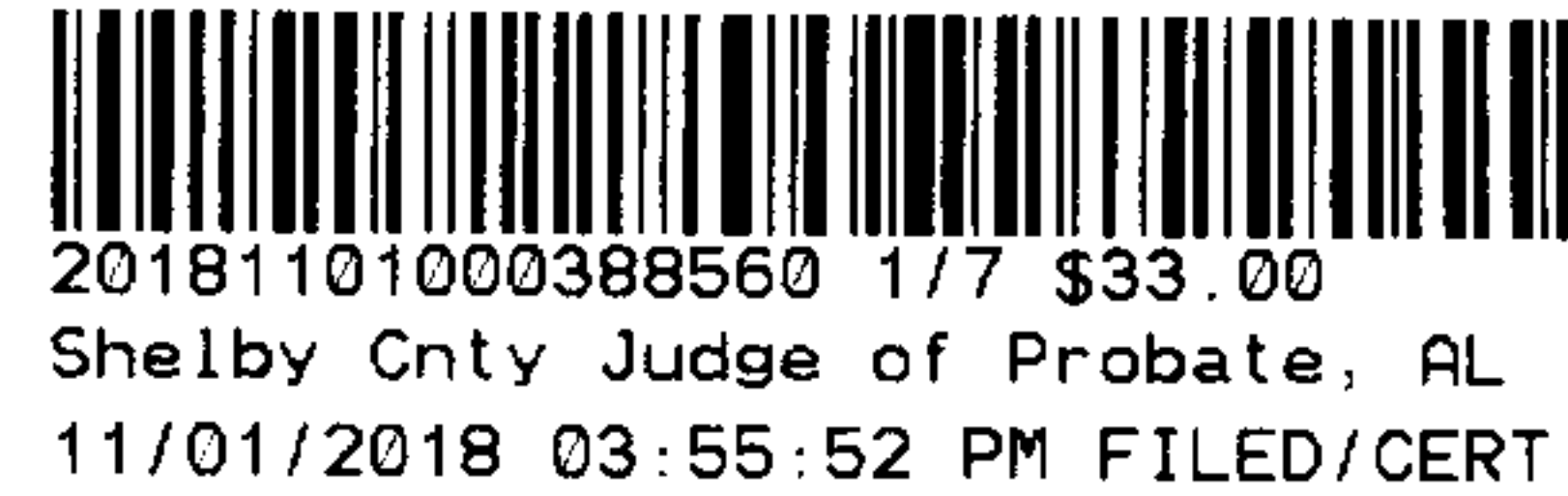


**THIS INSTRUMENT PREPARED BY:**

Paul H. Greenwood  
BALCH & BINGHAM LLP  
1901 Sixth Avenue North, Suite 1500  
Birmingham, Alabama 35203



**ASSIGNMENT OF RENTS AND LEASES  
(ALABAMA)**

**STATE OF ALABAMA** )

**COUNTY OF SHELBY** )

**THIS ASSIGNMENT OF RENTS AND LEASES** (this “Assignment”), made this 1<sup>ST</sup> day of November, 2018, is given by **EDWIN B. LUMPKIN, JR.**, an unmarried man, whose address is 100 Metro Parkway, Pelham, Alabama 35124 (“Borrower”), to **CB&S BANK, INC.**, an Alabama banking corporation, whose address is 2807 Greystone Commercial Blvd., Suite 44, Birmingham, Alabama 35242 (“Bank”).

**WHEREAS**, Borrower is justly indebted to Bank on a loan (the “Loan”) in the principal sum of TWO MILLION FIFTY THOUSAND AND NO/100 DOLLARS (\$2,050,000.00), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note dated contemporaneously herewith, payable to Bank with interest thereon (the “Note”), on demand or as otherwise provided in the Note;

**WHEREAS**, Borrower may hereafter become indebted to Bank or to a subsequent holder of this Assignment on loans or otherwise (Bank and any subsequent holder of this Assignment being referred to herein as “Lender”);

**WHEREAS**, to secure the Loan and the Note, (i) Borrower has executed a certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated contemporaneously herewith, granting to Bank the real property described on **Exhibit A** (the “Property”) under the terms stated therein (the “Mortgage”), and (ii) Borrower and Bank have executed a certain Loan Agreement dated contemporaneously herewith (the “Loan Agreement”) (the Note, the Mortgage, the Loan Agreement and any other documents evidencing, securing or given in connection with the Loan are referred to herein collectively as the “Loan Documents”); and

**WHEREAS**, Borrower desires to further secure (a) the principal amount of the Note with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Note and (b) any and all other additional indebtedness of Borrower to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise, including all obligations incurred by Borrower



under any agreement between Borrower and Lender or any affiliate of Lender, whether now existing or hereafter entered into, which provides for an interest rate currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign currency exchange transaction, cross currency rate swap, currency option, any combination of, or option with respect to, any of the foregoing or similar transactions, for the purpose of hedging Borrower's exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (each, a "**Hedge Agreement**") (herein "**Other Indebtedness**").

**NOW, THEREFORE**, Borrower, in consideration of Lender's making the Loan to Borrower, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to reasonable attorneys' fees, and any and all Other Indebtedness as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Loan Documents, and as may be set forth in instruments evidencing or securing Other Indebtedness (the "**Other Indebtedness Instruments**") does hereby sell, assign and transfer unto Lender all leases, subleases and lease guaranties of or relating to all or part of the Property, whether now existing or hereafter created or arising, including without limitation those certain leases, if any, specifically described on an exhibit to this Assignment, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to Lender, and Borrower does hereby appoint irrevocably Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Property as hereinafter provided), to rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and after an Event of Default, to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Property pursuant to the provisions hereinafter set forth.

Borrower represents and agrees that no rent (other than security deposits) has been or will be paid by any person in possession of any portion of the Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by Borrower. Borrower agrees not to setoff or apply any rents or rights to rents of the Property against claims of any tenant of the Property. Borrower agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Property.

Nothing herein contained shall be construed as constituting Lender as "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender pursuant to the



provisions hereinafter contained or contained in any of the other Loan Documents. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Borrower further agrees to execute and deliver, immediately upon the request of Lender, all such further assurances and assignments of subleases, lease guaranties and agreements in the Premises as Lender shall from time to time reasonably require.

It is the intention of the parties that this Assignment shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Borrower shall have the right to collect the rents so long as there exists no Event of Default hereunder, and provided further, that Borrower's right to collect such rents shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Lender.

Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Property, and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements; provided, however, that Borrower shall not indemnify Lender against matters caused by Lender's gross negligence or willful misconduct. Should Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Lender in connection with any one or more of said leases, subleases or agreements (other than with respect to matters caused by Lender's own gross negligence or willful misconduct), Borrower agrees to reimburse Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by Borrower, all such costs, expenses and attorneys' fees shall be secured by this Assignment and the Mortgage.

The occurrence of any Event of Default under the Loan Agreement or any of the other Loan Documents shall be an "**Event of Default**" under this Assignment. Upon the occurrence of and during the continuance of an Event of Default, then, in addition to the other rights and remedies set forth in this Assignment and in the Loan Documents, Lender shall have the right to demand and collect directly from tenants rents accruing from leases and subleases of the Property.

If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Property, and if and to the extent permitted by law, Lender or its agents may enter and take and maintain possession of all the Property, together with all the documents, books, records, papers and accounts of Borrower or then owner of the Property relating thereto, and may exclude Borrower and its agents and employees wholly therefrom.



Upon every such entering upon or taking of possession following the occurrence of and during the continuance of an Event of Default, Lender, as attorney-in-fact or agent of Borrower, or in its own name as Lender and under the powers herein granted, may hold, store, use, operate, manage and control the Property (or any portion thereof selected by Lender) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Property (or any portion thereof selected by Lender) insured; (iii) manage and operate the Property (or any portion thereof selected by Lender) and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Assignment or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be to its best advantage; and Lender may collect and receive all the income, revenues, rents, issues and profits of the Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Assignment as Lender may determine to pay, (ee) other proper charges upon the Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the moneys so received by Lender, first to the payment of accrued interest under the Note; second to the payment of any tax deposits required under the Mortgage or other Loan Documents; third to the payment of any other sums required to be paid by Borrower under this Assignment or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, to Borrower, its successors or assigns, as their rights may appear, except as otherwise may be required by applicable law.

Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Property to Borrower, or to whomsoever shall be entitled to possession of the Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

Borrower does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to Lender upon receipt of demand from said Lender to pay the same.

No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or



shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Assignment, any of the other Loan Documents, or the Other Indebtedness Instruments to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

No right, power, or remedy conferred upon or reserved to Lender by this Assignment is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, any of the other Loan Documents, the Other Indebtedness Instruments or now or hereafter existing at law or in equity or by statute.

Wherever in this Assignment one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Assignment by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, Borrower shall not be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of Lender.

Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

Wherever reference is made herein to this Assignment, the Note, the Loan Documents, or the Other Indebtedness Instruments, such reference shall include all renewals, extensions, modifications and refinancings thereof.

This Assignment is given under the seal of all parties hereto, and it is intended that this Assignment is and shall constitute and have the effect of a sealed instrument according to law.

**LENDER AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT, THE NOTE, ALL OTHER DOCUMENTS EXECUTED IN CONNECTION WITH THIS ASSIGNMENT OR GIVEN TO EVIDENCE OR SECURE THE LOAN, OR ANY COURSE OF CONDUCT, COURSE OF DEALING OR STATEMENTS RELATED THERETO (WHETHER VERBAL OR WRITTEN)**

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

*[Signature page follows]*

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed, sealed and effective as of the day and year first above written.

**BORROWER:**

Edwin B. Lumpkin Jr.  
EDWIN B. LUMPKIN, JR.

Executed on October 30, 2018

STATE OF Alabama

COUNTY OF Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Edwin B. Lumpkin, Jr.**, 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 such instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 30 day of OCTOBER, 2018.

[Signature]  
Notary Public

[NOTARIAL SEAL]

My Commission Expires April 20, 2020  
Notary Public, Alabama State At Large  
My Commission Expires April 20, 2020

Assignment of Rents and Leases

Signature Page



20181101000388560 6/7 \$33.00  
Shelby Cnty Judge of Probate, AL  
11/01/2018 03:55:52 PM FILED/CERT


## **EXHIBIT A**

### **Description of the Property**

Lot 2-AA, according to the Resurvey of Lot 2-A, 2-B and 2-C of a Resurvey of Lot 2, The Narrows Commercial Subdivision, Sector 2, as recorded in Map Book 37, page 28, in the Probate Office of Shelby County, Alabama.

Together with rights obtained, which constitute an interest in real estates under that certain Reciprocal Easement Agreement by Equine Partners, LLC dated February 23, 2001 and recorded in Instrument 2001-06368, in the Probate Office of Shelby County, Alabama.

Together with non-exclusive easement to use the Common Areas as more particularly described in The Narrows Commercial Declaration of Covenants, Conditions and Restrictions recorded as Instrument 2000-17137 and First Amendment thereto recorded in Instrument 2000-41911, in the Probate Office of Shelby County, Alabama.

  
20181101000388560 7/7 \$33.00  
Shelby Cnty Judge of Probate, AL  
11/01/2018 03:55:52 PM FILED/CERT

### **Assignment of Rents and Leases**