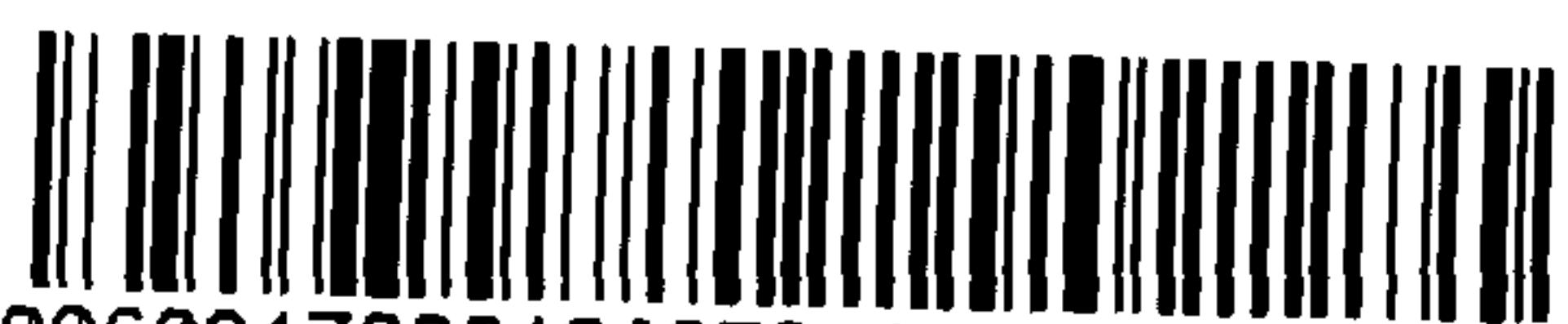


*This instrument prepared by:*  
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20060317000124870 1/4 \$20.00  
Shelby Cnty Judge of Probate, AL  
03/17/2006 11:35:15AM FILED/CERT

## **FIRST AMENDMENT TO ASSIGNMENT OF LEASES AND RENTS**

**THIS FIRST AMENDMENT TO ASSIGNMENT OF LEASES AND RENTS** (this "Amendment") is made and entered into on or as March 10, 2006, by and between **E. R. DEVELOPMENT, INC.**, an Alabama corporation ("Assignor"), and **FIRST COMMERCIAL BANK**, an Alabama banking corporation ("Assignee").

### **R E C I T A L S:**

A. Pursuant to the terms of that certain Development and Construction Loan Agreement dated March 25, 2004 by and between Assignor and Assignee, Assignor executed (i) that certain Promissory Note dated March 25, 2004 in favor of Assignee in the maximum principal amount of \$2,200,000.00 (the "Development Note"), and (ii) that certain Master Note dated March 25, 2004 in favor of Assignee in the maximum principal amount of \$1,250,000.00 (the "Construction Note" and together with the Development Note, the "Notes") the proceeds of which were utilized to fund (i) the acquisition by Assignor of certain real property located in Shelby County, Alabama known as Weatherly subdivision (the "Subdivision") and (ii) the development of a portion of the Subdivision.

B. As security for the Notes, Assignor executed in favor of Assignee that certain Assignment of Leases and Rents (the "Assignment of Rents") recorded in the Probate Office of Shelby County, Alabama (the "Probate Office") as Instrument 20040325000153400.

C. Subsequent to the recording of the Assignment of Rents, Assignee has executed in favor of Assignor a Partial Release dated January 12, 2006 (the "Partial Release"), to discharge certain property described therein from the lien and operation of the Mortgage and Security Agreement recorded in the Probate Office as Instrument #20040325000153390, which Partial Release was recorded in the Probate Office of Shelby County, Alabama (the "Probate Office") as Instrument #20060126000042720.

D. At Assignor's request, Assignee has agreed to increase, consolidate, amend and restate the Development Note and the Construction Note pursuant to a certain Consolidated, Amended and Restated Promissory Note of even date herewith in the maximum principal amount of \$4,400,000.00 (the "Amended and Restated Note") executed by Assignor in favor of Assignee.

E. Assignor and Assignee desire to amend the Assignment of Rents so that the Assignment of Rents will continue to secure the Notes, as consolidated, amended and restated by the Amended and Restated Note.



**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Assignment of Rents is amended as follows:

1. The first full paragraph on page 2 of the Assignment of Rents is hereby amended and restated in its entirety to read as follows:

“FOR THE PURPOSE of securing the payment of the indebtedness evidenced by that certain Consolidated, Amended and Restated Promissory Note dated March 10, 2006 in the principal amount of Four Million Four Hundred Thousand Dollars (\$4,400,000.00) made by Assignor, payable to the order of Assignee, and presently held by Assignee (“Note”), including any extensions, modifications, and renewals thereof and any supplemental note or notes increasing such indebtedness, as well as the payment, observance, performance, and discharge of all other obligations, covenants, conditions, and warranties contained in the (a) Amended and Restated Development Loan Agreement (the “Loan Agreement”) dated March 10, 2006, and (b) that certain Mortgage and Security Agreement made by Assignor, dated March 25, 2004, as amended by that certain First Amendment to Mortgage and Security Agreement dated March 10, 2006, recorded in the Probate Office of Shelby County, Alabama, and in any extensions, modifications, supplements, and other consolidation thereof, encumbering the Premises and securing the Notes and supplemental notes, if any.”

2. The “Premises”, as defined in the Assignment of Rents, shall from and after the date of the Partial Release, exclude the property released in the Partial Release.

3. Subject to this Amendment, all terms, conditions and provisions of the Assignment of Rents shall remain in full force and effect, and the same are hereby ratified and affirmed in all respects by the Assignor.

**[The Remainder of this Page is Intentionally Blank]**

IN WITNESS WHEREOF, this Amendment has been duly executed on behalf of Assignor and Assignee by their respective duly authorized officers on or as of the day and year first above written.

ASSIGNOR:

E.R. DEVELOPMENT, INC.

By: [Signature]  
Its: PRESIDENT

ASSIGNEE:

FIRST COMMERCIAL BANK

By: [Signature]  
Its: Senior Vice President

STATE OF ALABAMA

)

:

JEFFERSON COUNTY

)

I, the undersigned, a notary public in and for said county in said state, hereby certify that JACK FIORELLA, III, whose name as PRESIDENT of E.R. DEVELOPMENT, INC., 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 for and as the act of said corporation.

Given under my hand and official seal this 10<sup>th</sup> day of MARCH, 2006.

[Signature]  
Notary Public

[NOTARIAL SEAL]

My commission expires Notary Public, Alabama, State at Large  
My Commission Expires June 3, 2008



STATE OF ALABAMA

JEFFERSON COUNTY

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I, the undersigned, a notary public in and for said county in said state, hereby certify that John A. Marks, whose name as Senior Vice President of First Commercial Bank, a national banking association, 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 for and as the act of said association.

Given under my hand and official seal this 10th day of March, 2006.

[NOTARIAL SEAL]

George C. Cox  
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Aug 5, 2009  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

My commission expires: \_\_\_\_\_