

PREPARED BY AND RETURN TO:

Mitchell C. Fogel, Esq.
Fogel Law Group
2500 North Military Trail, Suite 200
Boca Raton, FL 33431
File # _____

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11/02/2016 12:03:20 PM
ASSIGN 1/8

ASSIGNMENT OF RENTS AND LEASES

KNOW ALL MEN BY THESE PRESENTS that **Good Choice Inc.**, an Alabama corporation ("Assignor,, and "Borrower,,), in consideration for the sum of ONE DOLLAR (\$1.00) paid by **Fountainhead Commercial Capital LLC**, a Florida limited liability company ("Assignee,, and "Lender,,), hereby conveys, transfers and assigns unto the Assignee, its successors and assigns, all the rights, interest and privileges which the Assignor, as Lessor, has and may have in the leases now existing or hereafter made and affecting the real property described below or any part thereof ("Premises,,), including, but not limited to, the leases set forth below:

SEE **Exhibit "B"** ATTACHED HERETO AND INCORPORATED HEREIN

as said leases may have been, or may from time to time be hereafter, modified, extended and renewed, with all rents, income and profits due and becoming due therefrom. The Assignor will, promptly upon request of the Assignee, execute assignments of any future leases affecting any part of the Premises.

A. This Assignment of Rents and Leases ("Assignment,,) is made as additional security Assignor's performance of all of its obligations including, without limitation, making all payments, under that certain Promissory Note ("Note,,) and that certain Mortgage and Security Agreement ("Mortgage,,), both of even date herewith and executed by Borrower in favor of Assignee in connection with the **Six Hundred Fifty-Eight Thousand Forty and No/100 Dollars (\$658,040.00)** loan ("Loan,,) from Assignee to Borrower, which Mortgage encumbers that certain real property situated in Shelby County, Alabama, as more particularly described on **Exhibit "A"** attached hereto and made a part hereof ("Premises,,), and the acceptance of this Assignment and the collection of rents or the payments under the leases hereby assigned shall not constitute a waiver of any rights of the Assignee under the terms of the Note and the Mortgage.

B. In addition to the Note, this Assignment secures all future advances made by Lender to Borrower whether or not the advances are made pursuant to a commitment.

C. Assignor represents and warrants that:

- a. Assignor is entitled to receive the rents, income and profits (individually and collectively, "Rents,,) free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Assignee in writing.
- b. Assignor has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Assignor.
- c. Assignor has not previously assigned or conveyed the Rents to any other person or entity, by any instrument now in force.
- d. Assignor will not sell, assign, encumber, or otherwise dispose of any of Assignor's rights in the Rents except to Assignor and as provided in this Assignment.

D. It is expressly understood and agreed by the parties hereto that before default occurs under the terms of the Note and Mortgage, Assignor shall have the right to collect said Rents from the

aforementioned leases and to retain, use and enjoy the same, provided, however, that even before default occurs, no rent more than one (1) month in advance shall be collected or accepted without the prior written consent of the Assignee. Anything to the contrary notwithstanding, Assignor hereby assigns to Assignee any award made hereafter to it in any court procedure involving any of the lessees in any litigation, arbitration, bankruptcy, insolvency, or reorganization proceedings in any state or Federal court; and any and all payments made by lessees in lieu of rent.

E. The Assignor, in the event of default in the performance of any of the terms and conditions of the Note and/or the Mortgage, hereby authorizes the Assignee, at its option to enter and take possession of the Premises and to manage and operate the same, to collect all or any Rents accruing therefrom and from said leases, to let or re-let said Premises or any part hereof, to cancel and modify leases, evict tenants, bring or defend any suits in connection with the possession of said Premises in its own name or Assignor's name, make repairs as Assignee deems appropriate, and perform such other acts in connection with the management and operation of the Premises as the Assignee, in its discretion, may deem proper.

F. The receipt by the Assignee of any Rents pursuant to this instrument after the institution of foreclosure proceedings under the Mortgage shall not cure such default nor affect such proceedings or any sale pursuant thereto. Nothing contained in this Assignment and no act done or omitted by the Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by the Assignee of its rights and remedies under the Note and Mortgage or under any other instrument executed or assented to by Assignor incident to the making of the Loan, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Assignee under the terms of the Note and Mortgage or under any other instrument executed or assented to by Assignor incident to the making of the Loan. Furthermore, the collection and application of the Rents to the indebtedness secured by the Mortgage or as otherwise above provided shall not constitute a waiver by Assignee of any default which might at the time of such application or thereafter exist under the Mortgage or Note or such other instruments and the payment of the indebtedness secured by the Mortgage may be accelerated in accordance with its terms, notwithstanding such application.

G. Assignee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Assignor under any of said leases, and the Assignor hereby agrees to indemnify the Assignee for, and to save it harmless from, any and all liability arising from any of said leases or from this Assignment, and this Assignment shall not place responsibility for the control, care, management or repair of the Premises upon the Assignee, or make the Assignee responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death of any tenant, licensee, employee or stranger.

Without limiting the generality of the foregoing, in no event shall the Assignee be liable for the performance or discharge of any obligations expressly assumed by it as provided in this Assignment or an assignment or other transfer by the Assignee of its interests hereunder or in the Premises covered by the Mortgage to any other party. Furthermore, it is agreed that, in the event of any such assumption by the Assignee of the Assignor's obligations, any party, thereafter and by reason of such assumption having a claim against the Assignee, agrees to look solely to the Assignee's interest in the Premises covered by said Mortgage for recovery of any judgment against the Assignee, it being understood that the Assignee shall never be personally liable for any such judgment or for the payment of any monetary obligation to any such party.

Anything to the contrary notwithstanding, Assignor hereby assigns to Assignee any award made hereafter to it in any court procedure involving any of the lessees in any litigation, arbitration, bankruptcy, insolvency, or reorganization proceedings in any state or Federal court; and any and all payments made

by lessees in lieu of rent. Assignor hereby appoints Assignee as its irrevocable attorney-in-fact to appear in any action and/or to collect any such award or payment.

H. The Assignor covenants and represents that said Assignor has full rights and title to assign said leases and the Rents due or to become due thereunder, that the terms of said leases have not been changed since the issuance of that certain Commitment Letter to Assignor dated on or about June 24, 2016, that no other assignment of any interest therein has been made, that there are no existing defaults under the provisions thereof, and that said Assignor will not hereafter cancel, surrender or terminate any of said leases, exercise any option which might lead to such termination or change, alter or modify them or consent to the release of any party liable thereunder or to the assignment of the lessees' interest in them or to sublease by lessee without the prior written consent of the Assignee. Notwithstanding the foregoing sentence, Assignor may cancel, surrender or terminate any lease without having to secure Assignee's approval if Assignor is operating in the ordinary course of business, and if said action is accomplished for the purpose of replacing the tenant with a substitute tenant paying an equal or greater rent, or Assignor takes possession of the Premises to operate its business. Further, Assignor may negotiate and/or renegotiate a lease with any current or prospective tenant without having to secure Assignee's approval of same provided that Assignor's actions do not negatively affect or impact the value of the Premises or the ability of the Assignor to satisfy its obligations under the Note and the Mortgage. Assignor hereby covenants and agrees that the rental rates and lease terms that it negotiates with its tenants shall not deviate from those that are reasonable and customary in the geographic area in which the Premises is located. Assignee reserves the right, at any time during the term of the Note and the Mortgage to inquire of Assignor as to the status and/or content of any of Assignor's leases.

I. All leases hereafter entered into by Assignor with respect to the Premises must substantially conform to the standard lease form previously submitted to and approved by Assignee, and shall be subject to review and approval by Assignee as required in Section H above. Without limitation, all such leases shall be for the remaining term of the Note, shall be with bona fide, arms length tenants and shall not contain any rental or other concessions that negatively affect or impact (i) the value of the Premises, or (ii) Assignor's ability to satisfy its obligations under the Note and the Mortgage, or that, in Assignee's sole and absolute discretion, deviate from those terms and provisions that are reasonable and customary in the geographic area in which the Premises is located. All such leases shall provide that the tenant shall pay, if applicable, its pro rata share of taxes, insurance and other operating expenses and for all utilities consumed on the leased Premises.

J. Assignor hereby authorizes the Assignee to give written notice of this Assignment at any time to any tenant under any lease of any part of the Premises. The Assignor hereby authorizes and directs the tenants named in any leases of the premises described therein or in the Mortgage, upon receipt from the Assignee of written notice to the effect that the Assignee is then the holder of the Note and Mortgage and this Assignment and stating that a default exists under any of the provisions of one or all of such instruments, to pay over to the Assignee all Rents arising or accruing under such leases or from the premises described therein or in the Mortgage and to continue to do so until otherwise notified by the Assignee. Assignor agrees that any such tenant or occupant shall have the right to rely upon any such notice by Assignee without any obligation or right to inquire as to whether any such default actually exists and notwithstanding any notice from or claim of Assignor to the contrary, and that Assignor shall have no right or claim against any such tenant or occupant for any such Rents paid by any such tenant or occupant to Assignee following receipt of such notice.

K. Violation of any of the covenants, representations and provisions contained herein by the Assignor shall be deemed a default under the terms of the Note and Mortgage.

L. Default by the Assignor under any of the terms of the leases assigned herein shall be deemed a default under the terms of the Note and Mortgage upon the expiration of any applicable grace or cure periods as set forth therein. Any expenditures made by the Assignee in curing such a default on the Assignor's behalf, with interest thereon at the highest per annum rate permitted by law for which it is now lawful to contract, shall become part of the debt secured by these presents.

M. The full performance of the Mortgage and the duly recorded satisfaction or full release or reconveyance of the property described therein shall render this Assignment automatically void with respect to the Premises or portion thereof described in any such satisfaction or release.

N. The net proceeds collected by the Assignee under the terms of this Assignment shall be applied first to the costs of collection, then late charges, interest and then to principal, however, such application shall not cure any outstanding default.

O. This Assignment applies to and binds the parties hereto and their respective heirs, administrators, executors, successors and assigns, as well as any subsequent owner of the real estate described herein and any assignee of the Mortgage referred to herein.

P. Notwithstanding any provision herein to the contrary, this Assignment is intended to be an absolute assignment from Assignor to Assignee and not merely a passing of a security interest. The Rents and leases are hereby assigned absolutely by Assignor to Assignee pursuant to the provisions of Alabama statutes, contingent only upon the occurrence of a default.

Q. The terms and conditions of this Assignment and the rights, obligations and duties thereunder shall be construed and enforced in accordance with the laws of the State of Alabama.

R. In the event of foreclosure of the Mortgage by sale or otherwise, Assignee is hereby authorized to sell the lessor's interest in any leases together with the Premises covered by the Mortgage or to assign the same without consideration to the purchaser at any such sale or to any other claimant to title to the Premises by virtue of foreclosure of the Mortgage; and there shall be no liability to account to Assignor for any Rents accruing after the foreclosure of the Mortgage.

S. Assignor hereby agrees to execute and deliver to Assignee such further instruments and documents as, from time to time during the existence of this Assignment, Assignee may reasonably require in order to perfect the interest and rights of Assignee under this Assignment. In case of any conflict between the terms of this instrument and the terms of the Mortgage, the terms of the Mortgage shall prevail. Assignee may, at its election, cause this Assignment to be made a matter of public record in such public offices as Assignee may elect, all costs of filing or recording to be borne by Assignor.

T. If Assignee institutes any suit or action to enforce any of the terms of this Assignment, Assignee shall be entitled to recover such amount as the court may adjudge reasonable as attorneys' fees through all proceedings (pre-trial, trial, appellate, and post-judgment). Whether any court action is involved, and to the extent not prohibited by law, all reasonable expenses Assignee incurs that in Assignee's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Assignee's reasonable attorneys' fees and Assignee's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title

insurance, and fees for the bankruptcy trustee, to the extent permitted by applicable law. Assignor also will pay any court costs, in addition to all other amounts provided by law. Venue for any and all actions and proceeding that arise from this Assignment and/or the Loan shall be Shelby County, Alabama.

U. No remedy or right conferred upon the Assignee by operation of law, by this Assignment, the Note, the Mortgage or by any other instrument executed or assented to by Assignor incident to the making of the Loan is intended to be, nor shall it be, inclusive of any other right or remedy, but each and every such remedy or right shall be cumulative and shall be in addition to every other remedy or right conferred upon Assignor, and each and every such remedy or right may be pursued by assignee in such manner and order, together or separately, and at such times as Assignee may elect.

V. If any term or provision of this Assignment, or the application thereof to any person or circumstance shall, to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provisions of this Assignment shall be valid and in force to the fully extent permitted by law.

W. Whenever, by terms of this Assignment, notice shall or may be given either to Assignor or Assignee, such notice shall be in writing and shall be sent as provided in the Mortgage.

X. The term "leases,, as used herein shall mean any lease relating to any portion of the Premises covered by the Mortgage, if and when any.

Y. Time is of the essence in the performance of this Assignment.

Z. ASSIGNOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN) OR ACTIONS OF OR BY ASSIGNEE OR ASSIGNOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER ENTERING INTO THE SUBJECT TRANSACTION.

AA. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS ASSIGNMENT, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON BORROWER'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF BORROWER, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS ASSIGNMENT.

BB. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL VERSION OF THIS AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES REGARDING THIS AGREEMENT.

31st IN WITNESS WHEREOF, the said Assignor has signed and sealed this instrument as of this day of October, 2016.

WITNESSES:

BORROWER:

Good Choice Inc, an Alabama corporation

Cy N. Riggs
Name: Carey D. Riggs

By: Yien Lin
Yien Lin, President

Cori B. Beasley
Name: Cori B. Beasley

STATE OF ALABAMA)

COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 31st day of October, 2016, by Yien Lin, as President of Good Choice Inc, an Alabama corporation. He/She is personally known to me or has produced a driver's license as identification.

LaShawn
Notary Public -- State of Alabama
My Commission Expires: 12/14/2016

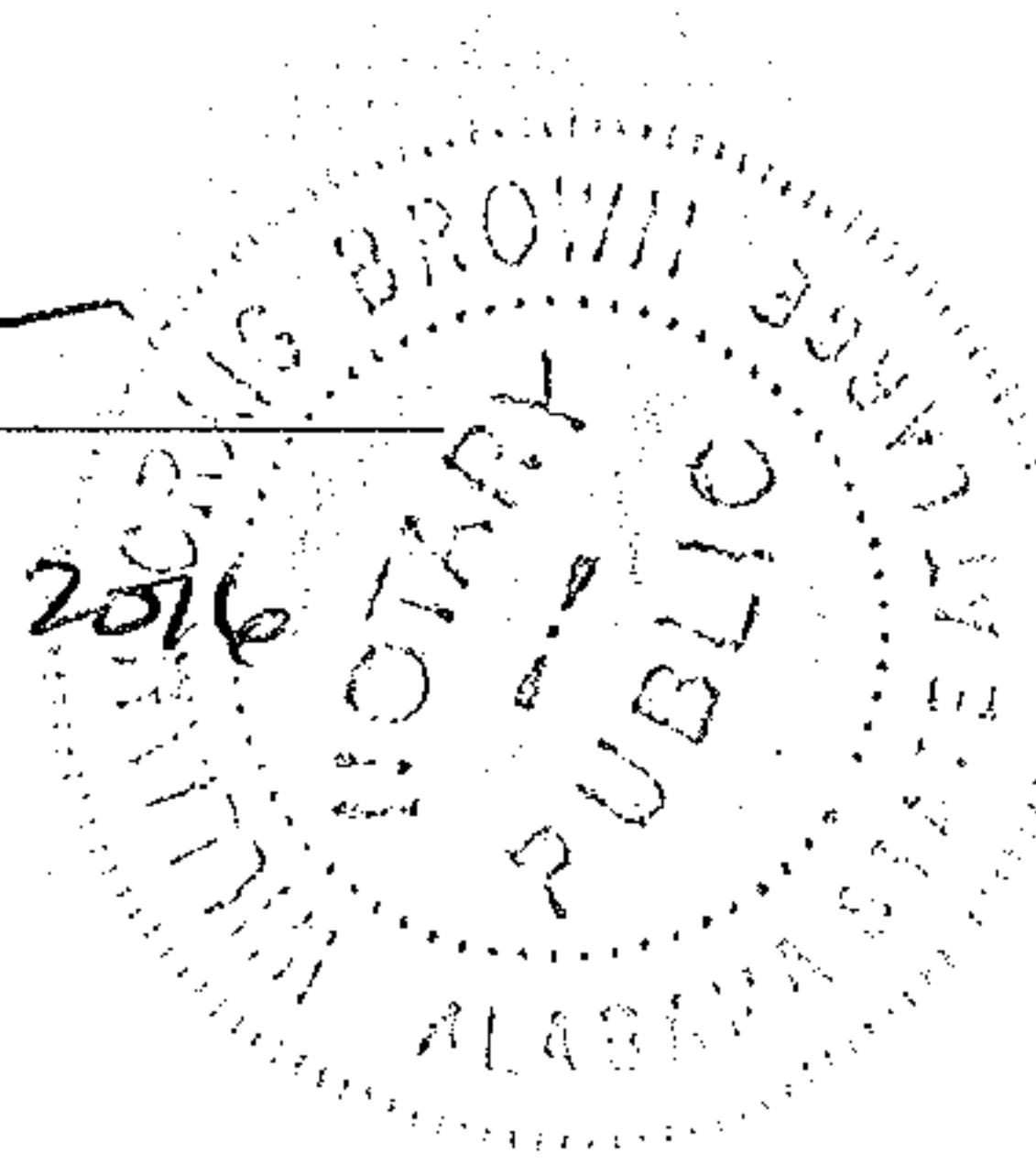


Exhibit "A"

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:

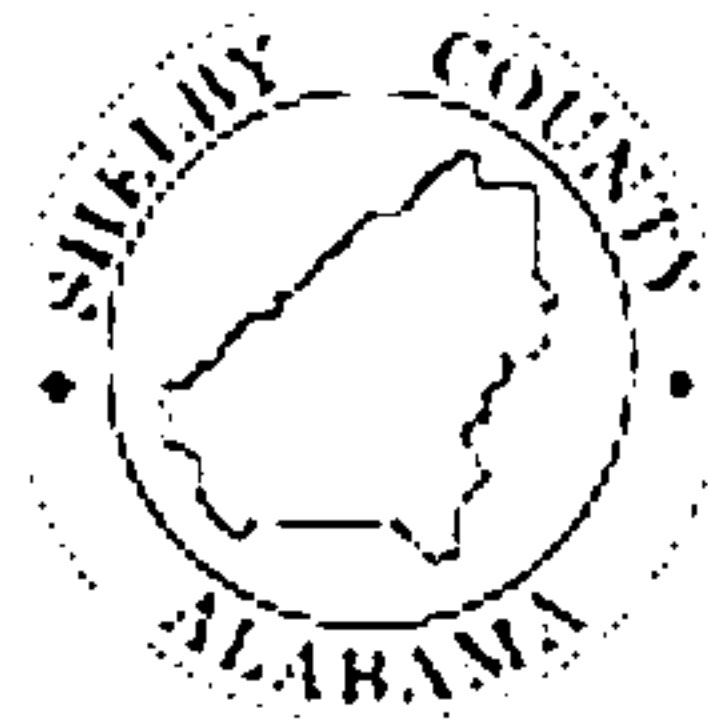
Together with all rights and easements that constitute a beneficial interest in real property as set out in the Reciprocal Easement Agreement with Covenants Conditions and Restrictions as recorded in Instrument #20030701000412990, and amended in Instrument #20030827000569970, in the Office of the Judge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

Exhibit "B"
Leases

Lease by and between Good Choice Inc, an Alabama corporation, as Lessor, and Mt Fuji Japanese Seafood Steakhouse, Inc., as Lessee.



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
11/02/2016 12:03:20 PM
\$36.00 CHARITY
20161102000402460

A handwritten signature in black ink, appearing to read "J. Fuhrmeister", is written over the typed name of the County Clerk.