

**ASSIGNMENT OF AGREEMENTS, PERMITS,
LICENSES AND APPROVALS
(Architectural, Engineering & Construction Contracts)**

THIS ASSIGNMENT OF AGREEMENTS, PERMITS, LICENSES AND APPROVALS ("Assignment") is made as of January 5, 2018, by **RC BIRMINGHAM, LLC**, an Alabama limited liability company ("Landowner"), to **TEXAS CAPITAL BANK, NATIONAL ASSOCIATION** ("Lender").

RECITALS

A. Landowner has executed a Hypothecation Agreement dated January 5, 2018 pledging the 39.99 acres in Hidden Forest Phase 3 and Hidden Forest Phase 4, Montevallo, Shelby County, Alabama (more particularly described in the Deed of Trust executed on even date) ("Property") to Lender as collateral security (together with all rents, issues and profits accruing therefrom) for any and all obligations and liabilities of RAUSCH COLEMAN HOMES, LLC, an Arkansas limited liability company ("Borrower") to Lender whether now existing or thereafter arising, due or to become due, and any extensions or renewal thereof, on any terms and conditions whatsoever and with the same force and effect as if said Property were owned by Borrower.

B. Borrower is justly indebted to Lender for money actually loaned or to be loaned and advanced to Borrower in the sum of TWENTY-FIVE MILLION AND NO/100 DOLLARS (\$25,000,000.00) ("Loan"). The Loan is evidenced by that certain Note of even date herewith in the principal sum of the Loan ("Note"). All the terms, provisions, conditions, covenants, stipulations and agreements contained in the Note are hereby made a part of this Assignment to the same extent and with the same and like force and effect as if they were fully set forth herein. Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Loan Agreement by and between Borrower and Lender of even date herewith ("Loan Agreement").

C. The Note is secured by a Deed of Trust ("Security Instrument") in favor of Lender creating a lien against certain of Landowner's real property more particularly described in the Security Instrument ("Property"), including all improvements constructed or to be constructed therein (collectively "Project") to be constructed thereon and all contract rights relating to the Project.

D. Lender requires as a condition to making the Loan to Borrower evidenced by the Note that Borrower and all Landowners that execute a Hypothecation Agreement assign to Lender all of their right, title and interest in and to:

(i) those certain agreements and contracts between Landowner and any third parties, heretofore or hereafter entered into for the account of Landowner pertaining to any construction, utilities, off-site improvements, services and other matters related to or in connection with the Project and/or the Property, together with any and all existing and future amendments, modifications, supplements, general conditions and addenda thereto (collectively "Contracts");

(ii) all permits, licenses, warranties, indemnities and approvals (including without limitation all building permits and other governmental entitlements and approvals) now or hereafter issued to Landowner or to Landowner's predecessor(s)-in-interest from time to time with respect to the Property and/or the Project, together with any and all existing and future amendments, modifications, supplements and addenda thereto (collectively "Property Rights");

(iii) that professional services contract between Landowner and that architect identified in the attached consent ("Architect"), together with any and all existing and future amendments, modifications, supplements, general conditions and addenda thereto heretofore or hereafter entered into with Architect or prepared by Architect for the account of Landowner pertaining to Architect's architectural services in connection with the Property (collectively "Architect's Contract");

(iv) all surveys, site plans, and plans and specifications for onsite and offsite improvements prepared in connection with the Project, together with any and all existing and future amendments, modifications,

supplements, general conditions and addenda thereto heretofore or hereafter prepared by Architect for the account of Landowner (collectively "Plans and Specifications");

(v) that certain professional services contract between Landowner and that engineer identified in the attached consent ("Engineer"), together with any and all existing and future amendments, modifications, supplements, general conditions and addenda thereto heretofore or hereafter entered into with Engineer or prepared by Engineer for the account of Landowner pertaining to Engineer's engineering and surveying services in connection with the Property (collectively "Engineering Contract");

(vi) all surveys, site plans, and plans and specifications for onsite and offsite improvements prepared in connection with the Project, together with any and all existing and future amendments, modifications, supplements, general conditions and addenda thereto heretofore or hereafter prepared by Engineer for the account of Landowner in connection with the construction of the Project and related improvements on the Property (collectively "Engineering Plans");

(vii) that certain construction contract for the construction of the Project and related improvements entered into between Landowner and that contractor identified in the attached consent ("Contractor"), together with any and all existing and future amendments, modifications, supplements, general conditions and addenda thereto heretofore or hereafter prepared by Contractor for the account of Landowner in connection with the construction of the Project and related improvements on the Property (collectively "Construction Documents").

D. For all purposes herein, the Contracts, Property Rights, Architect's Contract, Plans and Specifications, Engineering Contract, Engineering Plans and Construction Documents collectively shall be referred to as the "Assigned Documents." Landowner is willing to enter into this Assignment to effectuate the foregoing assignment so as to induce Lender to make the Loan to Borrower.

TERMS AND CONDITIONS

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged:

1. Assignment of Assigned Documents.

(a) **Assignment.** Landowner hereby assigns, transfers and conveys to Lender all of Landowner's right, title and interest in and to the Assigned Documents, and hereby creates in favor of Lender a security interest in the Assigned Documents under the Uniform Commercial Code in the state where the Property is located.

(b) **Lender as Attorney-in-Fact for Borrower.** Landowner hereby irrevocably appoints Lender as its attorney in fact with full power of substitution and authority, which appointment is coupled with an interest, to receive, demand, exercise and enforce any and all of Landowner's rights with respect to the Assigned Documents and to perform any and all acts in the name of Landowner or, at the option of Lender, in the name of Lender with the same force and effect as if performed by Landowner in the absence of this Assignment.

2. Purpose of Assignment of Assigned Documents. This Assignment of the Assigned Documents is made for the purposes of securing (a) payment of the principal sum, interest and indebtedness evidenced by the Note, (b) payment of all other sums with interest thereon becoming due and payable to Lender under the provisions of this Assignment or of the Note, the Security Instrument, or the Loan Agreement, and (c) the performance and discharge of each and every obligation, covenant and agreement of Borrower contained herein or in the Note, the Security Instrument, the Loan Agreement or all other documents or instruments executed by Borrower in favor of Lender including all Obligations (as defined in the Loan Agreement).

3. Assignment of Refunds and Amounts Received.

(a) **Assignment.** Borrower hereby assigns, transfers and conveys to Lender absolutely and not as collateral or security for the Note, the Security Instrument, the Loan Agreement and all Obligations, all refunds, rebates and returns of deposits or advance payments, and any and all other sums heretofore or hereafter paid to any third party in connection with the Contracts and the Property Rights, including but not limited to the Architect, the

Engineer and the Contractor pursuant to the Contracts, the Architect's Contract, the Engineering Contract, the Construction Documents or any of the other Assigned Documents.

(b) **Direction to Third Parties.** Landowner hereby irrevocably instructs and directs the Architect, the Engineer, the Contractor and all other third parties who from time to time or at any time possess any funds or consideration paid by Landowner in connection with the Property, the Property Rights, or any of the Assigned Documents to direct the payment of any refund (whether partial or in full), rebate, or return of any sums or property to the order of Lender for Landowner's account.

(c) **Application of Payments Received.** Upon receipt of any funds assigned to Lender in this Section Three, Lender will apply the amounts received against the Note or other obligation owed to Lender by Landowner under the Note, the Security Instrument, the Loan Agreement or any other document or instrument executed by Landowner in connection therewith or any of the Obligations (in such order as Lender may determine in its sole discretion), or if Borrower is not then indebted to Lender and all Obligations have been fully paid and satisfied, Lender will transfer or pay such amounts to Landowner, its successors and assigns.

4. **General Provisions.** This Assignment is made on the following terms, covenants and conditions:

(a) **No Default.** So long as no Event of Default exists under the Loan Agreement, Note and/or Security Instrument Landowner shall have the right to enjoy all of the rights arising out of the Assigned Documents.

(b) **Event of Default.** Upon or at any time after an Event of Default (as defined in the Loan Agreement) has occurred, Lender shall have the right to enforce Landowner's rights and interest with respect to the Assigned Documents. Upon the occurrence of any Event of Default by Landowner, Lender may, without affecting any of Lender's rights and remedies against Landowner under any other instrument, document or agreement, exercise Lender's rights under this Assignment as Landowner's attorney in fact or in any other manner permitted by law. In addition, Lender shall have and possess, without limitation, any and all rights and remedies of a secured party under the Uniform Commercial Code or as otherwise provided by law in the state in which the Property is located.

(c) **Borrower's Representations and Warranties.** Landowner hereby represents and warrants to Lender that:

(i) **No Prior Assignment.** No previous assignment of Landowner's interest in and to or rights under the Assigned Documents has been made;

(ii) **Performance Under the Assigned Documents.** All covenants, agreements and conditions required to be performed or to occur under the Assigned Documents as of the date hereof by Landowner have been performed or occurred.

(iii) **No Modification or Transfer of Assigned Documents.** Landowner agrees not to materially amend, assign, sell, pledge or otherwise transfer or encumber in any manner Borrower's interest in or rights under and to the Assigned Documents without the prior written consent of Lender so long as this Assignment remains in effect.

(iv) **Indemnification of Lender.** Landowner agrees to protect, indemnify, defend and hold Lender free and harmless from and against any and all claims, causes of action, demands, damages, liens, liabilities, losses, costs and expenses (including attorneys' fees) to which Lender may become exposed or which Lender may incur in exercising any of Lender's rights under this Assignment, except where caused by the gross negligence or willful misconduct of Lender. Landowner shall not indemnify Lender from and against claims, causes of action, demands, damages, liens, liabilities, losses, costs and expenses arising as a result of Lender's action or failure to act pursuant to such rights where such action or inaction was the result of Lender's gross negligence or willful misconduct.

(v) **Termination of Assignment.** Upon payment in full of the principal sum, interest and indebtedness secured hereby and by said Note, Security Instrument and Loan Agreement, this Assignment shall become void and of no further force or effect, but the affidavit, certificate, letter or statement of any officer, agent or attorney of Lender showing any part of said principal, interest or indebtedness or Obligation remains



unpaid shall be and constitute conclusive evidence absent a contrary court order of the validity, effectiveness and continuing force of this Assignment, and any third person may, and is hereby authorized to, rely thereon.

(vi) **Binding Obligations Under This Assignment.** This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Lender, to any lender participating in the Note, and to any subsequent holder of said Note, and shall be binding upon Landowner, its successors and assigns.

(vii) **Severability.** If any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(viii) **Governing Law.** This Assignment shall be governed by and construed in accordance with the internal laws of the State of Texas.


(ix) **Attorneys' Fees.** In the event of any dispute arising out of this Assignment or any action or proceeding to enforce the provisions of this Assignment, the prevailing party in such dispute, action or proceeding shall be entitled to recover from the losing party all costs and expenses incurred by the prevailing party in connection therewith, including without limitation court costs and reasonable attorneys' fees and expenses.

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the date first above written.

LANDOWNER:

RC BIRMINGHAM, LLC, an Alabama limited liability company

By: **Rausch Coleman Homes, LLC**, an Arkansas limited liability company, its Sole Member

By: 
David C. Fry
Manager



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Shelby Cnty Judge of Probate, AL
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