

THIS INSTRUMENT PREPARED BY AND RETURN TO:  
J. PHILIP JONES, ESQ.  
2620 THOUSAND OAKS BOULEVARD, SUITE 4000  
MEMPHIS, TENNESSEE 38118  
901.260.4424

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- D - DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

1/03/12 3:35:39  
DK T BK 3,385 PG 367  
DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

**MODIFICATION, CONSOLIDATION AND EXTENSION AGREEMENT**  
(Mitchell Corners)

THIS MODIFICATION, CONSOLIDATION AND EXTENSION AGREEMENT ("Agreement") made and entered into as of the 30th day of November, 2011, by and between MAGNA BANK (the "Bank") and MITCHELL CORNERS, LLC, a Mississippi limited liability company (the "Borrower"), and are joined herein by the guarantors whose signatures appear hereinbelow (the "Guarantors").

**RECITALS:**

- A. The Borrower is indebted to the Bank in connection with that certain loan (the "Loan") evidenced by that certain promissory note dated March 3, 2006, in the original principal amount of \$2,500,000 (the "First Note").
- B. The terms and conditions of the Loan are governed by that certain Development Loan Agreement dated March 3, 2006 (as thereafter modified and amended from time to time referred to as the "Loan Agreement").
- C. The Loan is secured by various items of collateral including, without limitation, the real property and improvements thereon described in, and which has not been heretofore released from the lien of, that certain Mississippi Construction Deed of Trust and Fixture Filing, Assignment of Rents, and Security Agreement dated March 3, 2006, appearing of record under Book 2,424, Page 105 in the Chancery Court Clerk's Office of DeSoto County, Mississippi (the "Deed of Trust"). The Deed of Trust encumbers the balance of the real property described in the Deed of Trust (the "Property") which has not heretofore been released from the lien of the Deed of Trust. The Loan is also secured by various other security documents (hereinafter, together with this Agreement, the First Note, the Loan Agreement and any other instruments or documents now or hereafter evidencing, securing or relating to the Loan, collectively referred to as the "Loan Documents").
- D. The Borrower has asked the Bank for an additional loan of \$550,323.34, to reduce the interest rate, and to extend the maturity date of the Loan, to divide the Loan into two (2) loans, and for other accommodations, and the Bank has agreed to the Borrower's requests, subject to the terms and conditions hereinafter set forth, and in that certain commitment letter dated November 1, 2011 (the "Commitment").

NOW, THEREFORE, for good and valuable consideration, including, without limitation, the financial accommodations extended by the Bank to the Borrower, it is hereby agreed by and between the parties hereto as follows:

1. **Recitals; Commitment.** The recitals of fact set forth above are hereby adopted as true and correct recitals of fact as though set forth verbatim in the agreement portion hereof. In addition to all terms hereinafter set forth, the Borrower and Guarantors also agree to comply with all terms and conditions of the Commitment not set forth herein. In the event of any conflict or ambiguity between the Commitment, and any other Loan Document, the document or term most favorable to the Bank, as determined in the Bank's sole discretion, shall control.

2. **Acknowledgement of Existing Debt.** The Borrower hereby acknowledges that as of the date hereof, the outstanding principal balance of the Loan is \$1,461,676.66.

3. **New Loan; Consolidation.** The additional loan amount of \$550,323.34 has been advanced or made available to the Borrower on the date hereof, and has been consolidated with the outstanding principal indebtedness of the Loan to form a single consolidated indebtedness of \$2,012,000.

4. **Division of Loan; New Notes.** The consolidated principal balance of the Loan is hereby divided into two (2) loans, one in the principal amount of \$1,524,500 ("Loan No. 1") to be evidenced by, and paid in accordance with the provisions of, that certain Amended and Restated Development Loan Promissory Note No. 1 of even date herewith ("Note No. 1"), and another loan in the principal amount of \$487,500 ("Loan No. 2") to be evidenced by, and paid in accordance with the provisions of, that certain Amended and Restated Development Loan Promissory Note No. 2 of even date herewith ("Note No. 2").

5. **Amendments to Loan Agreement.** The Loan Agreement is hereby modified, amended and/or supplemented as follows:

a. **Loan; Note.** Any references herein or in the Loan Agreement to the Loan, or to the Note, or to the loan amount, shall henceforth be interpreted to mean both Loan No. 1 and Loan No. 2, as well as Note No. 1 and Note No. 2, and to the aggregate principal balances thereof.

b. **Financial Reporting.** Section 7 of the Loan Agreement is hereby modified to provide that the Borrower shall provide the Bank on an annual basis a certified financial statement consisting of a balance sheet and a profit and loss statement by April 15 of each year, and a copy of its federal income tax return within thirty (30) days of filing each year. Each Guarantor shall provide the Bank with a certified financial statement by April 15 of each year, and a copy of his personal federal income tax return within thirty (30) days of filing each year.

c. **Addresses.** Section 20(f) of the Loan Agreement is hereby modified to substitute the following addresses in the place and stead of the addresses currently in the Loan Agreement:

As to Bank: Magna Bank  
1000 Ridgeway Loop Road, Suite 301  
Memphis, TN 38120  
Attn: Rhett Armistead

With a copy to: J. Philip Jones, Esq.  
2620 Thousand Oaks Boulevard, Suite 4000  
Memphis, TN 38118

As to Borrower and  
Guarantors: Mitchell Corners, LLC  
6075 Poplar Avenue, Suite 407  
Memphis, TN 38119  
Attn: David L. Shores

d. Partial Releases. Section 22 of the Loan Agreement is hereby modified to provide that the release of any lot from the lien of the Deed of Trust shall require approval of the Bank, and a principal payment equal to 100% of the net sale proceeds, with the amount of any net sale proceeds and deductions from the gross sale proceeds being subject to the approval of the Bank.

e. Advances; Budget. Section 4 of the Loan Agreement concerning advances or disbursements and the budget is hereby modified to include in lieu thereof, and where applicable, the terms of the Commitment concerning advances and the project budget.

f. Construction Contracts. Prior to any additional funding under the Loan, the Borrower shall submit to the Bank for approval copies of all construction contracts and bids or estimates for completion of the proposed improvements to the Property in accordance with the approved budget, and the approved plans and specifications.

6. Additional Collateral. As additional collateral for the Loan, Allen Richardson ("Richardson") shall assign to the Bank his rights in that certain promissory note (the "Assigned Note") dated April 18, 2006, in the original principal amount of \$637,000 executed by Maquoketa, GP, a Tennessee general partnership, as well as that certain Real Estate Mortgage of even date with the Assigned Note. All payments of principal on the Assigned Note received by Richardson or the Borrower, or any other person controlled by Richardson or the Borrower, shall be immediately delivered to the Bank to be deposited into a deposit account at the Bank and held as additional collateral for the Loan.

The principal balance under the Assigned Note as of the date hereof is \$550,000. Provided such principal balance of the Assigned Note has not been reduced, and no payments thereon have been received by the Bank for deposit into said deposit account, upon request of the Borrower or Richardson, the Bank agrees to release the Assigned Note and reassign it to Richardson once Loan No. 1 has been paid in full. If all or part of the principal balance under the Assigned Note has been received by the Bank, the Bank will, upon the Borrower's or Richardson's request, release such sums from said deposit

account as long as the remaining combined loan to value ratio for the Loan is maintained at seventy five percent (75%) or less.

7. Extension of Maturity Date. The maturity date of the Loan, as set forth in Note No. 1 and Note No. 2 is hereby extended to July 15, 2013, at which time the outstanding principal balance, plus all accrued and unpaid interest, shall be due and payable in full, unless extended by mutual agreement of the parties.

8. Interest Rate. The interest rate applicable to the Loan, as set forth in Note No. 1 and Note No. 2, is hereby changed to a fixed rate of four percent (4%) per annum.

9. Repayment Schedule. Loan No. 1 and Loan No. 2 shall be repaid in monthly installments of interest only due on the first of each month, as set forth in Note No. 1 and Note No. 2. In addition, the Borrower shall continue to make principal reduction payments of at least \$100,000 in the aggregate for the Loan every six (6) months, commencing January 1 and June 1 of each year, either from the sale of portions of the Property, or payments directly from the Borrower. In the event more than \$100,000 in principal reduction payments in the aggregate is paid in any six (6) month period, any excess shall be applied toward the subsequent six (6) month period(s). Such principal reduction payments shall be applied to Loan No. 1 first, until paid in full, then to Loan No. 2. The Bank acknowledges the receipt of \$4,946.27 to be applied to the aggregate sum due for the six (6) month period ending June 1, 2013.

10. No Impairment of Security, Etc. It is mutually agreed by and between the parties hereto that this Agreement shall become a part of the Loan Documents by reference and that nothing herein contained shall impair the security now held for the Loan, nor shall waive, annul, vary or affect any provision, condition, covenant or agreement contained in the Loan Documents, except as herein amended, nor affect or impair any rights, powers or remedies under the Loan Documents, as hereby amended, or any of them, all of which continue in full force and effect as modified, amended and/or restated, and shall secure all indebtedness and obligations of the Borrower to the Bank, whether now existing or hereafter arising. Furthermore, Bank does hereby reserve all rights and remedies it may have as against all parties who may hereafter become secondarily liable for the repayment of the indebtedness evidenced by the Note, as amended by this Agreement.

11. Reaffirmation of Indebtedness. The Borrower and the Guarantors promise and agree to pay the indebtedness hereafter evidenced by Note No. 1 and Note No. 2 in accordance with the terms thereof, as modified, and agree to perform all of the requirements, conditions and obligations under the terms of the Loan Documents, as hereby modified and amended, said Loan Documents being hereby ratified and affirmed. The Guarantors agree to execute amended and restated guaranties dated as of the date hereof (the "New Guaranties").

12. No Defenses, Counterclaims or Offsets. The terms of the Note, the guaranty agreements, as restated, and the other Loan Documents are hereby ratified, confirmed and made a part hereof. The Borrower and the Guarantors, by execution of this Agreement, acknowledge that they do not have any defenses, counterclaims or offsets whatsoever to the timely payment of the outstanding balance of the Loan and all accrued interest thereon which would preclude or impair Bank's enforcement of the Loan

Documents and enjoyment or realization of all security given to secure the indebtedness evidenced by Note No. 1 and Note No. 2 and the New Guaranties and secured by the Loan Documents. It is the intent of the parties hereto that this Agreement shall not constitute a novation and shall in no way adversely affect any lien priority related to a security interest of the Bank or the Loan Documents.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, except to the extent that the laws of the state where the Property is located controls.

14. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of any assignee and the respective heirs, executors, administrators, successors and assigns of the parties hereto.

15. **Agreement Controlling.** The Borrower and the Guarantors agree that in the event of any inconsistencies between the terms and provisions of this Agreement and the terms and provisions of the other Loan Documents, that the Loan Document most beneficial to the Bank, as determined in the Bank's sole discretion, shall control.

16. **Acknowledgment and Agreement of Guarantors.** The Guarantors join in this Agreement to also expressly acknowledge and agree to the modifications of the Loan Documents contained herein.

17. **Full Force and Effect.** Except for the modifications set forth in this Agreement, the Loan Documents shall remain in full force and effect.

18. **Notice of Final Agreement.** This written Agreement represents the final agreement among the Borrower, the Guarantors and the Bank and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the Borrower and the Bank. There are no unwritten oral agreements among the Borrower, the Guarantors and the Bank.

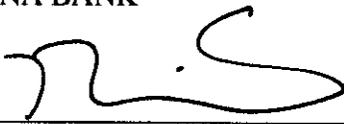
19. **Counterparts and Delivery.** This Agreement may be executed in one or more counterparts and may be delivered by facsimile or electronic mail, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**[SIGNATURE AND ACKNOWLEDGEMENT PAGES FOLLOW]**

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

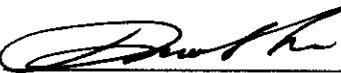
**BANK:**

MAGNA BANK

By:   
Name: Rhett J. Armistead  
Title: Vice President

**BORROWER:**

MITCHELL CORNERS, LLC a Mississippi  
limited liability company

By:   
Name: DAVID L. SHORES  
Title: MANAGING MEMBER

**GUARANTORS:**

Allen Richardson

  
David L. Shores

  
Keith Sheppard

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

**BANK:**  
**MAGNA BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BORROWER:**  
**MITCHELL CORNERS, LLC a Mississippi  
limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GUARANTORS:**



\_\_\_\_\_  
**Allen Richardson**

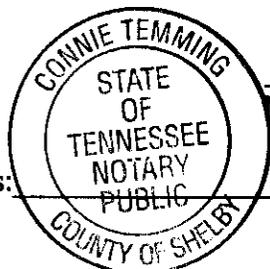
\_\_\_\_\_  
**David L. Shores**

\_\_\_\_\_  
**Keith Sheppard**

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared Rhett Armistead, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged himself to be the vice president of MAGNA BANK, the within named bargainer, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

WITNESS my hand and official seal at office this 9th day of December, 2011.



Connie Temming  
NOTARY PUBLIC

My commission expires:

STATE OF TENNESSEE MY COMM. EXP. AUG. 24, 2013  
COUNTY OF SHELBY

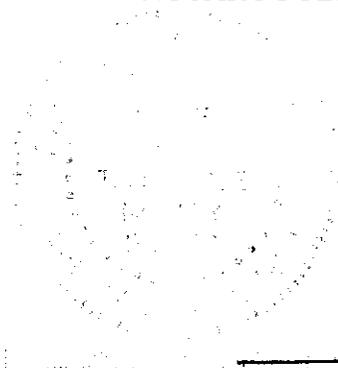
Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared David L. Shores, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged himself to be chief manager of MITCHELL CORNERS, LLC, a Mississippi limited liability company, the within named bargainer, and that he as such chief manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such chief manager.

WITNESS my hand and official seal at office this 2nd day of December, 2011.

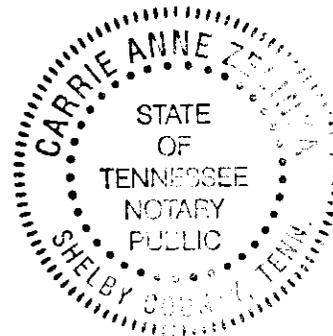
[Signature]  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_



5.24.15



My Commission Expires 5.24.15

5.24.15

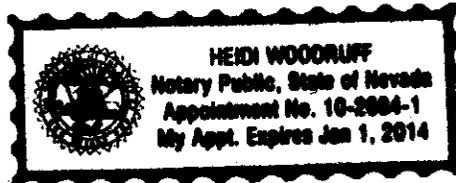
STATE OF NEVADA  
COUNTY OF Clark

Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared Allen Richardson, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged himself to be the within named bargainer, and that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal at office this 30 day of November, 2011.

Heidi Woodruff  
NOTARY PUBLIC

My commission expires:  
Jan 1, 2014



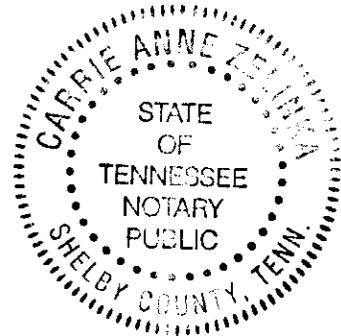
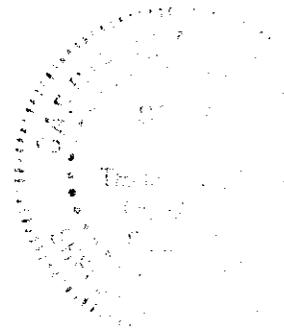
STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared David L. Shores, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged himself to be the within named bargainer, and that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal at office this 2nd day of December November, 2011.

[Signature]  
NOTARY PUBLIC

My commission expires:  
5.24.15



My Commission Expires JUNE 29, 2011

5.24.15

STATE OF ~~TENNESSEE~~ Mississippi  
COUNTY OF ~~SHELBY~~ DeSoto

Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared Keith Sheppard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged himself to be the within named bargainer, and that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal at office this 5<sup>th</sup> day of December, 2011.

Michelle M. Dowdy  
NOTARY PUBLIC

My commission expires:  
7/31/2015

