20060818000404920 1/5 $97.25
Shelby Cnty Judge of Probate, AL
08/18/2006 08:04:04AM FILED/CERT

# HOME EQUITY LINE OF CREDIT MORTGAGE

Mortgagors (last names first):
KINGSBURY, DAVID M , A MARRIED MAN

KINGSBURY, JEANETTE M , HIS WIFE

113 KINGSMILL CT
Mailing Address
ADVANCE, NC 27006-
City State Zip

Mortgagee:
FIRST COMMERCIAL BANK

800 SHADES CREEK PARKWAY

BIRMINGHAM, ALABAMA 35209

THE PROCEEDS OF THIS LOAN HAVE BEEN APPLIED TO THE PURCHASE PRICE OF THE PROPERTY CONVEYED TO THE MORTGAGORS SIMULTANEOUSLY HEREWITH.

THIS MORTGAGE IS SECOND AND SUBORDINATE TO THAT CERTAIN MORTGAGE GIVEN BY DAVID M KINGSBURY AND WIFE, JEANETTE M KINGSBURY IN FAVOR OF HENGAR RAST DATED AUGUST 17, 2006, IN THE AMOUNT OF $264,000.00.

This instrument was prepared by:

FIRST COMMERCIAL BANK

800 SHADES CREEK PARKWAY

BIRMINGHAM, ALABAMA 35209

**Know All Men By These Presents, That whereas** KINGSBURY, DAVID M , A MARRIED MAN (whether one or more, hereinafter called the "Borrower") have become justly indebted to FIRST COMMERCIAL BANK with offices in BIRMINGHAM, Alabama, (together with its successors and assigns, hereinafter called "Mortgagee") pursuant to an open-end line of credit, for an initial advance in the sum of $ _____ and for all FUTURE ADVANCES Mortgagee makes pursuant to the terms and conditions of that certain Home Equity Line of Credit Agreement (the "Agreement"), of even date herewith, entered into by and between the Borrower and Mortgagee, the terms and conditions of which are hereby incorporated by this reference, provided, however, that the maximum unpaid principal indebtedness at any one time shall not exceed **FORTY NINE THOUSAND FIVE HUNDRED DOLLARS AND ZERO** **CENTS** **Dollars ($ 49,500.00 ) (the "Credit Limit").

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of said indebtedness and any and all FUTURE ADVANCES made pursuant to the Agreement and any renewals or extensions thereof and the interest and any other finance charges thereon, and to secure compliance with all the covenants and stipulations hereinafter contained, the undersigned KINGSBURY, DAVID M , A MARRIED MAN KINGSBURY, JEANETTE M , HIS WIFE (whether one or more, hereinafter called "Mortgagors") do hereby grant, bargain, sell and convey unto Mortgagee the following described real property situated in SHELBY County, State of Alabama, viz:

LOT 214, ACCORDING TO THE SURVEY OF LAKEWOOD, PHASE 2, AS RECORDED IN MAP BOOK 35, PAGE 42 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; BEING SITUATED IN SHELBY COUNTY, ALABAMA.

**Source of title:** PRO FORMA TITLE, INC

together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in anywise appertaining, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by Mortgagors in and to all buildings and improvements, storm and screen windows and doors, gas, steam, electric, solar and other heating, lighting, ventilating, air-conditioning, refrigerating and cooking apparatus, elevators, plumbing, sprinkling, smoke, fire, and intrusion detection devices, and other equipment and fixtures now or hereafter attached or appertaining to said premises, all of which shall be deemed to be real property and conveyed by this mortgage, and all of which real property, equipment and fixtures are sometimes hereinafter called the "mortgaged property."

(Complete if applicable) This mortgage is junior and subordinate to that certain mortgage dated August 18, 2006, and recorded at _____ Book _____, at page _____, in the Probate Office of 20060818000404910, County, Alabama.

Mortgagors authorize the holder of any senior mortgage encumbering the mortgaged property to disclose to Mortgagee from time to time the following information: (a) the amount of indebtedness secured by such mortgage; (b) the amount of such indebtedness that is unpaid; (c) whether any amount owed on such indebtedness is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the indebtedness secured thereby; and (e) any other information regarding such mortgage or the indebtedness secured thereby which Mortgagee may request from time to time.

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To Have And To Hold the same and every part thereof unto Mortgagee, its successors and assigns forever.

And for the consideration aforesaid, and as additional security for all of the indebtedness described above (including future advances), Mortgagors hereby assign and transfer to Mortgagee, and grant to Mortgagee a security interest in, all building materials, household appliances, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by Mortgagors, or any of them, located, whether permanently or temporarily, on the mortgaged property, and all building materials, household appliances, equipment, fixtures and fittings now owned or hereafter acquired by Mortgagors, or any of them, located or stored on any other real property, which are or shall be purchased by Mortgagors, or any of them, for the purpose, or with the intention, of making improvements on the mortgaged property or to the premises located on said property. The personal property herein transferred includes, without limitation, all lumber, bricks, building stones, building blocks, sand, cement, roofing materials, paint, doors, windows, storm doors, storm windows, nails, wires and wiring, hardware, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building materials, equipment and appliances of every kind and character used or useful in connection with improvements to real property.

For the purpose of further securing the payment of said indebtedness Mortgagors warrant, covenant and agree with Mortgagee, its successors and assigns, as follows:

1. That they are lawfully seized in fee and possessed of the mortgaged property and have a good right to convey the same as aforesaid, and they will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that the mortgaged property is free and clear of all encumbrances, easements and restrictions not herein specifically mentioned.

2. That they will pay when due all taxes, assessments, or other liens or mortgages taking priority over this mortgage, and should default be made in the payment of the same, or any part thereof, Mortgagee may pay the same (but Mortgagee is not obligated to do so). If the mortgaged property or any part thereof is a unit in a condominium or a planned unit development, Mortgagors will perform all of Mortgagors' obligations under the declaration or covenants creating or covering the condominium or planned unit development, the bylaws and regulations of the condominium or planned unit development, and constituent documents. Should Mortgagors default in any of such obligations, Mortgagee may perform Mortgagors' obligations (but Mortgagee is not obligated to do so).

3. That they will keep the buildings on the mortgaged property continuously insured in such amounts, in such manner and with such companies as may be satisfactory to Mortgagee against loss by fire (including so-called extended coverage), wind and such other hazards (including flood and water damage) as Mortgagee may specify from time to time, with loss, if any, payable to Mortgagee, and will deposit with Mortgagee policies of such insurance or, at Mortgagee's election, certificates thereof, and will pay the premiums therefor as the same become due. Mortgagors shall have the right to provide such insurance through a policy or policies independently obtained and paid for by Mortgagors or through an existing policy. Mortgagee may, for reasonable cause, refuse to accept any policy of insurance obtained by Mortgagors. Mortgagors shall give immediate notice in writing to Mortgagee of any loss or damage to the mortgaged property from any cause whatever. If Mortgagors fail to keep said property insured as above specified, Mortgagee may insure said property (but Mortgagee is not obligated to do so) for its insurable value against loss by fire, wind and other hazards for the benefit of Mortgagors and Mortgagee or for the benefit of Mortgagee alone, at Mortgagee's election. The proceeds of such insurance shall be paid by the insurer to Mortgagee, which is hereby granted full power to settle and compromise claims under all policies, to endorse in the name of Mortgagors any check or draft representing the proceeds of any such insurance, and to demand, receive and give receipt for all sums becoming due thereunder. Said insurance proceeds, if collected, may be credited on the indebtedness secured by this mortgage, less costs of collection, or may be used in repairing or reconstructing the premises on the mortgaged property, at Mortgagee's election. Any application of the insurance proceeds to repairing or reconstructing the premises on the mortgaged property shall not extend or postpone the due date of any installment payments of the indebtedness hereby secured or reduce the amount of such payments.

4. That commencing upon written request by Mortgagee and continuing until the indebtedness secured hereby is paid in full; but subject to any similar obligation of Mortgagors to any senior mortgagee, Mortgagors will pay to Mortgagee concurrently with, and on the due dates of, payments on the indebtedness hereby secured a sum equal to the ground rents, if any, next due on the mortgaged property, plus the premiums that will next become due and payable on policies of fire and other hazard insurance covering the mortgaged property, plus water rents, fire district charges, taxes and assessments next due on the mortgaged property (all as estimated by Mortgagee), less any sums already paid to Mortgagee therefor, plus up to the

maximum cushion allowed under the federal Real Estate Settlement Procedures Act, such sums to be held by Mortgagee in trust, to pay said ground rents, premiums, water rents, fire district charges, taxes and assessments. All payments mentioned in the preceding sentence and the payments to be made on the indebtedness secured hereby shall be added together and the aggregate amount thereof shall be paid by Mortgagors each month or other payment period in a single payment. Any deficiency in the amount of such aggregate monthly or other periodic payments shall constitute a default under this mortgage. Any excess funds accumulated under this paragraph after payment of the items herein mentioned shall be credited in calculating the monthly or other periodic payments of the same nature required hereunder in the subsequent year; but if the actual amount of any such item shall exceed the estimate therefor, Mortgagors shall without demand forthwith make good the deficiency. Failure by Mortgagors to do so before the due date of such item shall be a default hereunder. If the mortgaged property is sold under foreclosure or is otherwise acquired by Mortgagee after default, any remaining balance of the accumulations under this paragraph shall be credited to the principal of the secured indebtedness as of the date of the foreclosure sale or as of the date the property is otherwise acquired.

5. That they will take good care of the mortgaged property and the personal property described above and will not commit or permit any waste thereon or thereof, and that they will keep the same repaired and at all times will maintain the same in as good condition as it now is, reasonable wear and tear alone excepted. If Mortgagors fail to make repairs to the mortgaged property, Mortgagee may make such repairs at Mortgagor's expense (but Mortgagee is not obligated to do so). Mortgagee, its agents and employees, may enter the mortgaged property and any improvements thereon at any reasonable time for the purpose of inspecting or repairing such improvements.

6. That all amounts expended by Mortgagee for insurance or for the payments of taxes or assessments or to discharge liens on the mortgaged property or other obligations of Mortgagors or to make repairs to the mortgaged property or any improvements thereon shall become a debt due Mortgagee, shall be payable at once without demand upon or notice to any person or (at Mortgagee's election) may be deemed to be loans made under the Agreement, shall bear interest at the rate of interest payable on loans under the Agreement, or if the rate specified would be unlawful, at the rate of 8% per annum from the date of payment by Mortgagee, and such debt and the interest thereon shall be secured by this mortgage. Upon failure of Mortgagors to reimburse Mortgagee for all amounts so expended, at the election of Mortgagee and with or without notice to any person, Mortgagee may declare the entire indebtedness secured by this mortgage due and payable and may foreclose this mortgage as hereinafter provided or as provided by law.

7. That no delay or failure of Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present defaults on the part of Mortgagors, and that the procurement of insurance or payment of taxes or other liens or assessments or obligations by Mortgagee shall not be taken or deemed as a waiver of the right to accelerate the maturity of the indebtedness hereby secured by reason of the failure of Mortgagors to procure such insurance or to pay such taxes, liens, assessments or obligations, it being agreed by Mortgagors that no terms or conditions contained in this mortgage can be waived, altered or changed except by a writing signed by Mortgagee.

8. That those Mortgagors who are also Borrowers or guarantors and are thereby obligated to pay the indebtedness hereby secured will well and truly pay and discharge such indebtedness as it shall become due and payable.

9. That if default shall be made in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions of this mortgage, Mortgagee may proceed to collect the rent, income and profits from the mortgaged property, either with or without the appointment of a receiver (to which appointment Mortgagors hereby consent), and Mortgagee may notify the lessees or other payors thereof to make payment directly to Mortgagee. Any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the costs of collecting the same, including any real estate or property management commissions and attorney's fees incurred, shall be credited first to advances made by Mortgagee and the interest thereon, then to interest due on the indebtedness hereby secured, and the remainder, if any, shall be applied toward the payment of the principal sum hereby secured.

10. That they will not cause or permit any other person to be in possession of the mortgaged property to the exclusion of Mortgagors, and they will not sell, transfer, or convey all or any part of the mortgaged property or any interest therein without Mortgagee's prior written consent, excluding only (a) the creation of a lien or encumbrance expressly subordinate to this mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant, or (d) the grant of any leasehold interest of one year or less (including all mandatory or

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optional renewal periods) not containing an option to purchase. Mortgagee may withhold its consent or may condition its consent to any such transfer.

11. That all the covenants and agreements of Mortgagors herein contained shall extend to and bind their respective heirs, executors, administrators, successors and assigns, and that such covenants and agreements and all options, rights, privileges and powers herein given, granted or secured to Mortgagee shall inure to the benefit of the successors and assigns of Mortgagee.

12. That the provisions of this mortgage and the indebtedness secured hereby are severable, and that the invalidity or unenforceability of any provision of this mortgage or of any such debt or debts shall not affect the validity and enforceability of the other provisions of this mortgage or of such debt or debts. The remedies provided to Mortgagee herein are cumulative with the rights and remedies of Mortgagee at law and in equity, and such rights and remedies may be exercised concurrently or consecutively. A carbon or photostatic copy of this mortgage may be filed as a financing statement in any public office.

This mortgage secures an open-end line of credit under which the Borrower may borrow, repay, and reborrow amounts from Mortgagee from time to time up to a maximum aggregate principal amount. The Agreement does not require that the Borrower make any initial draw on or maintain any minimum outstanding loan balance under the line of credit. Therefore, at times there may be no outstanding indebtedness under the Agreement. This mortgage shall become effective immediately upon its execution and delivery, notwithstanding the lack of any initial advance, and shall not be deemed satisfied nor shall title to the mortgaged property be divested from Mortgagee by the payment in full of all the indebtedness at any one time outstanding. This mortgage shall continue in effect until all of the indebtedness has been paid in full, the Agreement has been terminated and Mortgagee shall have no obligation to extend any further credit to the Borrower thereunder, and a duly executed written satisfaction of this mortgage in recordable form has been delivered to Mortgagors or recorded in the probate office in which this mortgage was originally recorded. Mortgagee agrees to execute such an instrument promptly following receipt of the Borrower's written request therefor, provided that all of the secured indebtedness has been paid and all of the other conditions set forth above have been fulfilled. The provisions of this paragraph shall preserve and supplement, and shall not limit, the benefits and protections afforded to Mortgagee by law.

If Borrower fails to pay the secured indebtedness in accordance with the terms of the Agreement, or if any other event occurs that gives Mortgagee the right under the Agreement to demand repayment of the entire outstanding balance of the secured indebtedness in advance of the original term (all such events under the Agreement being incorporated herein by reference), this mortgage shall be subject to foreclosure at the option of Mortgagee, notice of the exercise of such option being hereby expressly waived by Mortgagors, and Mortgagee shall have the right to enter upon and take possession of the mortgaged property and after or without taking such possession to sell the same before the Court House door of the County (or the division thereof) where said property, or any substantial part thereof, is located, at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in a newspaper published in said County, or as otherwise required or permitted by law. Upon the payment of the purchase price, Mortgagee or the auctioneer at the sale is authorized to execute to the purchaser for and in the name of Mortgagors a good and sufficient deed to the property sold. And upon the occurrence of any event described above, Mortgagee also shall have the rights and remedies of a secured party after default by its debtor under the Alabama Uniform Commercial Code, including, without limitation, the right to take possession of any of the property herein transferred which is personal property and to sell the same at one or more public or private sales, at the election of Mortgagee. At Mortgagee's request, Mortgagors agree to assemble such property and to make the same available to Mortgagee at such place as Mortgagee shall reasonably designate. Mortgagors agree that notice of the time and place of any public sale or of the time after which any private sale or other intended disposition of the property, or of any part thereof, will be held shall be sufficient if delivered to Mortgagors or mailed to Mortgagors at the address set forth above or such other address as Mortgagors shall have furnished to Mortgagee in writing for that purpose, not less than ten days before the date of the sale or other intended disposition of said property. Mortgagee shall apply the proceeds of said sale or sales under this mortgage as follows: First, to the expenses of advertising, selling and conveying, including a reasonable attorneys' fee if the original amount financed exceeded $300 (including any attorneys' fees incurred by Mortgagee in any proceeding seeking to enjoin or stay any sale hereunder or in obtaining relief from any stay of the sale and fees incurred in any appeals resulting from the foregoing); second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes, assessments, and other encumbrances, with interest thereon; third, to the payment of the indebtedness hereby secured and interest thereon in such order as Mortgagee may elect, whether such debts shall or shall not have fully matured at the date of said sale; and fourth, the balance, if any, to be paid over to Mortgagors or to whomever then appears of record to be the owner of Mortgagors' interest in said property. Mortgagee may bid and become the purchaser of the mortgaged property at any

foreclosure sale hereunder. Mortgagors hereby waive any requirement that the mortgaged property be sold in separate tracts and agree that Mortgagee may, at its option, sell said property en masse regardless of the number of parcels hereby conveyed.

In Witness Whereof, each of the undersigned has hereunto set his or her signature and seal this 17TH day of AUGUST, 2006.

_____(Seal)
KINGSBURY, DAVID M
A MARRIED MAN

_____(Seal)
KINGSBURY, JEANETTE M
HIS WIFE

_____(Seal)

_____(Seal)

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THE STATE OF ALABAMA,

JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that DAVID M KINGSBURY AND JEANETTE M KINGSBURY whose name S ARE signed to the foregoing conveyance and who ARE known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, HAVE executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 17th day of AUGUST, 2006.

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 1, 2009

(Notarial Seal)

Notary Public

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THE STATE OF ALABAMA,

_____ COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify _____that whose name ___ _____ signed to the foregoing conveyance and who _____ known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, _____ executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

(Notarial Seal)

Notary Public

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Mortgagee certifies that this mortgage secures an open end indebtedness and that residential property is conveyed by this mortgage. The maximum principal indebtedness to be secured by this mortgage at any one time is $ 49,500.00, upon which sum the mortgage tax is paid herewith, as allowed by Code of Alabama, § 40-22-2(1)(b).

FIRST COMMERCIAL BANK
Mortgagee

By _____
WALKER JOHNSON
Its BRANCH MANAGER