

20070321000129020 1/6 \$27.00
Shelby Cnty Judge of Probate, AL
03/21/2007 12:06:27PM FILED/CERT

This Instrument Prepared By
and When Recorded Return to:

Claude McCain Moncus, Esq.
CORLEY MONCUS, P.C.
400 Shades Creek Parkway
Suite 100
Birmingham, Alabama 35209
(205) 879-5959

20070315000414370 1/6
Bk: LR200704 Pg:22855
Jefferson County, Alabama
I certify this instrument filed on:
03/15/2007 11:04:38 AM MTG
Judge of Probate- Alan L. King

AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT

THIS AGREEMENT, is made and entered into this 14th day of March, 2007, between **H & V PROPERTIES, LLC**, an Alabama Limited Liability Company (hereinafter referred to as "Borrower") and **FIRST COMMERCIAL BANK**, a State Bank (hereinafter referred to as "Lender").

RECITALS

WHEREAS, Borrower is justly indebted to Lender pursuant to a loan in the principal amount of One Million Six Hundred Thirty Five Thousand and No/100 Dollars (\$1,635,000.00) (the "Loan"), as evidenced by a Promissory Note dated February 13, 2001, payable to Lender in installments with interest thereon (hereinafter referred to as the "Note"). The Note is further evidenced and secured by a certain Mortgage and Security Agreement dated February 13, 2001 and recorded at Inst. # 2001-05274 in the Office of the Judge of Probate of Shelby County, Alabama (the "Mortgage"); and

WHEREAS, Borrower has executed and delivered to Lender simultaneously herewith an Amended and Restated Promissory Note in the amount of \$3,100,000.00 (the "Amended and Restated Promissory Note"), and the Mortgage as referred to above is given to secure the additional advance of \$1,465,000.00 as evidenced in the Amended and Restated Promissory Note; and

WHEREAS, Borrower and Lender wish to include in the definition of Premises the land and improvements located in Jefferson County, Alabama, and more particularly described on Exhibit "B" attached hereto and made a part hereof.

WHEREAS, the Mortgage is a valid and enforceable lien upon the Premises; and

WHEREAS, Borrower and Lender are desirous of amending said Mortgage to secure the additional indebtedness from Borrower to Lender.

NOW THEREFORE, in consideration of the premises, covenants and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. The Mortgage is hereby amended to increase the indebtedness due Lender in the amount of One Million Four Hundred Sixty Five Thousand and No/100 Dollars (\$1,465,000.00). Any reference to indebtedness or Loan shall mean the sum of Three Million One Hundred Thousand and No/100 Dollars (\$3,100,000.00).

2. Premises shall include all the land and improvements described on the attached Exhibits "A" and "B" and made a part hereof.

3. The following terms and conditions are hereby added to the Mortgage to be referenced as Article IV, to be read as a part of the Mortgage and become incorporated therein:

"Article IV.

4.01. Lender and Borrower are parties to that certain ISDA Master Agreement of even date herewith, the Schedule to the Master Agreement attached thereto and one or more Confirmations issued in connection therewith (collectively, the "Master Agreement"), under the terms of which Lender and Borrower have entered into one or more of the following types of transactions: interest rate swap, cap, floor, collar or option.

4.02. Borrower hereby agrees that all of its obligations under the Master Agreement shall be part of the "Secured Indebtedness," as that term is defined in the Mortgage.

4.03. Borrower agrees that the Property shall be security for the payment and performance of all of the Borrower's obligations under the Master Agreement, and that the grant of the lien contained in the Mortgage is intended to be the grant of a lien against the Property to secure all of the Obligations, including the obligations of Borrower under the Master Agreement.

4.04 Borrower hereby agrees that (i) the occurrence of an Event of Default under the Mortgage shall constitute an Event of Default (as that term is defined in the Master Agreement) under the Master Agreement, and (ii) the occurrence of an Event of Default under The Master Agreement shall constitute the occurrence of an Event of Default under the Mortgage, and Lender shall thereafter have all rights and remedies following the occurrence of an Event of Default under both the Mortgage and the Master Agreement."

4. From and after the date hereof, any references to the Loan or Indebtedness due Lender contained in the Loan Documents or in any other instrument or document shall be deemed to refer to such instrument as amended hereby.

5. Borrower hereby (a) ratifies and confirms the lien, conveyance and grant contained in and created by the Mortgage, as the same is modified and extended in the Mortgage, and (b) agrees that nothing contained in this Agreement is intended to or shall impair the lien, conveyance and grant of the Mortgage as the same is modified.

6. Except as amended and modified, the Mortgage is hereby confirmed.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

BORROWER:

H & V PROPERTIES, LLC, an Alabama
Limited Liability Company

By:  [SEAL]

Owen Vickers
Its Authorized Manager


LENDER:

FIRST COMMERCIAL BANK, a State Bank

By:  [SEAL]

John A. Marks, Jr.
Its Senior Vice President

STATE OF ALABAMA)
JEFFERSON COUNTY)


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I, the undersigned, a notary public in and for said County and State, hereby certify that Owen Vickers, whose name as Authorized Manager of **H & V PROPERTIES, LLC**, an Alabama Limited Liability Company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, he as such Authorized Manager and with full authority being informed of the contents of said instrument, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this 14th day of March, 2007.



NOTARY PUBLIC - Claude M. Moncus
My Commission Expires: 12/28/07

[NOTARIAL SEAL]

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said County and State, hereby certify that John A. Marks, Jr., whose name as Senior Vice President of **FIRST COMMERCIAL BANK**, a State Bank, is signed to the foregoing document 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 bank.

Given under my hand and seal this 14th day of March, 2007.



NOTARY PUBLIC - Claude M. Moncus
My Commission Expires: 12/28/07

[NOTARIAL SEAL]

EXHIBIT A

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PARCEL I:

Lot 2-A, according to Resurvey No. 1 of Hunter & Associates Addition to Riverchase, as recorded in Map Book 27, Page 141, in the Probate Office of Shelby County, Alabama.

PARCEL II:

A non-exclusive easement, to be used in common with others, for vehicular and pedestrian ingress and egress, roadway and right-of-way purposes as described in that certain Ingress and Egress Easement recorded in the Office of the Judge of Probate of Shelby County, Alabama as recorded in Instrument # 1994-20501.

PARCEL III:

Together with rights which constitute an interest in real estate obtained under that certain Amended and Restated Declaration of Protective Covenants of Hunter & Associates Addition to Riverchase as recorded in Instrument # 1997-19316.



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EXHIBIT B

A tract of land situated in Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 13, Township 19 South, Range 3 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of Section 13; thence North along the East line of said Section, 661.45 feet; thence 90 degrees 00 minutes 00 seconds left, leaving said section line 539.64 feet; thence 90 degrees 00 minutes 00 seconds right 1154.53 feet; thence 90 degrees 00 minutes 00 seconds left, 180.86 feet to the point of beginning; thence 24 degrees 55 minutes 44 seconds left, 270.79 feet to a point, said point being on the Easterly right of way of Data Drive and a curve to the left, said curve having a central angle of 11 degrees 25 minutes 00 seconds and a radius of 411.97 feet; thence 90 degrees 00 minutes 00 seconds right tangent to said curve and along said right of way and arc of said curve 82.09 feet; thence tangent to said curve and along said right of way 17.95 feet to a curve to the right, said curve having a central angle of 89 degrees 17 minutes 54 seconds and a radius of 50.00 feet; thence along said right of way and arc of said curve 77.93 feet to a point, said point being on the right of way of Lorna Road; thence tangent to said curve and along said right of way 205.39 feet; thence 90 degrees 00 minutes 00 seconds right leaving said right of way 205.62 feet to the point of beginning.

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Fee - \$17.00

Mortgage Tax - \$197.50
Total of Fees and Taxes - \$2214.50
TINSLEY