

STATE OF ALABAMA

COUNTY OF SHELBY

SPACE ABOVE LINE FOR  
RECORDER'S USE

**AMENDMENT AGREEMENT NO. 1 TO MORTGAGE**

Dated as of October 13, 2008

**HEATHERWOOD HOLDINGS, LLC**, an Alabama limited liability company (the "**Borrower**"), and **JONATHAN L. KIMERLING**, an individual resident of the state of Alabama (the "**Lender**"), agree as follows:

1. **Preliminary Statements.** The Borrower has executed that certain Mortgage dated as of August 1, 2006, in favor of the Lender, as recorded as Instrument No. 20060905000436360 in the office of the Judge of Probate of Shelby County, Alabama (the "**Mortgage**") securing a loan facility made available to Borrower by Lender in the original principal amount of \$1,514,765.00. The Borrower has requested that the Lender increase the amount of the loan facility to \$3,122,491.66. The Lender and the Borrower have agreed to amend the Mortgage in the manner set forth in this Amendment Agreement No. 1 to Mortgage (this "**Amendment**") effective as of the date hereof, unless otherwise indicated.

2. **Definitions.** The term "Mortgage" as used herein shall mean the Mortgage as hereby amended and modified. Unless the context otherwise requires, all capitalized terms used herein without definition shall have the definitions provided therefor in the Mortgage.

3. **Amendments.** Subject to the conditions hereof, the Mortgage is amended by increasing the loan amount set forth in first "Whereas" paragraph of the Mortgage from \$1,514,765.00 to \$3,122,491.66.

4. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be an original and taken together shall constitute one and the same document. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. The failure of any party hereto to execute this Amendment or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

5. **Waiver.** Borrower hereby (i) acknowledges that there is no default on the part of Lender under the Mortgage, (ii) acknowledges that there are no offsets or defenses to payment of the obligations of the Borrower under the Mortgage, and (iii) waives any defense, claim or counterclaim of the Borrower regarding the obligations of the Lender under the Mortgage.

6. **Entire Agreement.** This Amendment sets forth the entire understanding and agreement of the parties hereto in relation to the subject matter hereof and supersedes any prior negotiations and agreements among the parties relative to such subject matter.

7. **Force and Effect of Amendment.** Except as specifically amended, modified or supplemented as set forth in this Amendment, the Mortgage remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

"Borrower:"

**HEATHERWOOD HOLDINGS, LLC**

By: William A. Ochsenhirt, III

Name: William A. Ochsenhirt, III

Title: Vice President

"Lender:"

Jonathan L. Kimerling  
Jonathan L. Kimerling

STATE OF ALABAMA     )  
                                  :  
Jefferson COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that William A. Ochsenhirt, III whose name as Vice President of HEATHERWOOD HOLDINGS, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand and seal, this 13<sup>th</sup> day of October, 2006

[ NOTARIAL SEAL ]

Patricia D. Johnston  
Notary Public

My Commission Expires 2/10/10

STATE OF ALABAMA     )  
                                     :  
Jefferson COUNTY     )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Jonathan L. Kimerling, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal, this 13<sup>th</sup> day of October, 2007

[ NOTARIAL SEAL ]

Patricia D. Johnston  
Notary Public

My Commission Expires 2/10/10