



20090306000083150 1/7 \$30.00
Shelby Cnty Judge of Probate, AL
03/06/2009 02:11:08PM FILED/CERT

This instrument prepared by
and upon recording return to:

James L. Webb
Bradley Arant Boult Cummings LLP
One Federal Place
1819 5th Avenue North
Birmingham, AL 35203
205-521-8808

STATE OF ALABAMA)

SHELBY COUNTY)

FIRST MORTGAGE MODIFICATION AGREEMENT

(Cross Ref: Instrument Number 20070601000256570)

THIS FIRST MORTGAGE MODIFICATION AGREEMENT (this "Agreement") is made and entered into as of this 6th day of March, 2009, by **GDG Investments, LLC**, a Delaware limited liability company (the "Mortgagor"), whose address for notice purposes is 1880 Southpark Drive, Birmingham, AL 35244 in favor of **Regions Bank**, an Alabama state banking corporation (the "Mortgagee"), whose address is P.O. Box 11007, Birmingham, Alabama 35288, Attention: Commercial Real Estate Loan Department.

Recitals

A. Mortgagor previously obtained financing in the principal amount of \$1,900,000, as evidenced by a credit agreement dated May 31, 2007, by and between Mortgagor and Mortgagee (the "Credit Agreement").

B. The Credit Agreement is secured by that certain Mortgage, Security Agreement and Assignment of Rents and Leases dated as of May 31, 2007, made by Mortgagor in favor of Mortgagee, and recorded as Instrument Number 20070601000256570, in the Office of the Judge of Probate of Shelby County, Alabama (the "Mortgage"). Capitalized terms used herein and not defined shall have the meaning assigned to them in the Mortgage.

C. The Mortgagor is the owner of the real property located in Shelby County, Alabama, which is legally described on Exhibit A attached to the Mortgage and attached hereto.

D. The Mortgagor and Mortgagee have agreed that the terms of the Mortgage be amended as described herein, and that the Mortgage, as amended hereby, shall secure the Note (as defined herein). The Mortgagor acknowledges that the execution of this Agreement confers a real and substantial benefit upon Mortgagor and further acknowledges that it is supported by good and valuable consideration.

Agreement

NOW, THEREFORE, in consideration of the sum of Ten and No/100ths Dollars (\$10.00), the recitals hereinabove set forth which are an integral part of this Agreement and not mere recitals thereto, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound agree as follows:

1. Recitals. The foregoing recitals are true and correct.
2. Recital A on the first page of the Mortgage is hereby deleted in its entirety and replaced with the following:
 - A. The Mortgagor is, or hereafter shall be, justly indebted to the Mortgagee in the principal sum of \$1,875,000, as evidenced by a promissory note dated March 6, 2009, which note bears interest as provided therein (as the same may be amended, restated, renewed and supplemented from time to time, the "Note").
3. All references to "Credit Agreement" in the Mortgage shall be deleted and replaced with "Note."
4. Paragraph (2) on the first page of the Mortgage is hereby deleted in its entirety and replaced with the following:
 - (2) all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee of every kind and description whatsoever (including under any Hedge Agreement as defined in the hereafter defined Loan Agreement), arising directly between the Mortgagor and the Mortgagee or acquired outright, as a participation or as collateral security from another by the Mortgagee, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, and any and all extensions, renewals and modifications of any of the same; and
5. Paragraph 1 on the fourth page of the Mortgage is hereby deleted in its entirety and replaced with the following:
 1. Future Advance Mortgage. This mortgage is a future advance mortgage and the \$1,875,000 debt evidenced by the Note is to be advanced by the Mortgagee to the Mortgagor in accordance with the terms of a loan agreement dated March 6, 2009, entered into by and between the Mortgagor and the Mortgagee (as the same may be amended, restated, renewed and supplemented from time to time, the "Loan Agreement").

6. All references to "Credit Document(s)" in the Mortgage shall be deleted and replaced with "Loan Document(s)."

7. No Novation. It is the intent of the parties hereto that the transaction contemplated hereby shall not be a novation of the loan previously made by the Mortgagee to the Mortgagor and will not affect the lien priority of the Mortgage.

8. Ratification. The Mortgagor ratifies and confirms the lien and security interests of the Mortgage upon and in any and all property, real, personal or mixed, tangible or intangible, now or hereafter encumbered by the Mortgage and grants to the Mortgagee the benefit of a lien upon and security interest in all such property as security for the indebtedness evidenced by the Note.

9. Acknowledgment of Mortgagor. The Mortgagor acknowledges by the execution hereof that Mortgagor has no actions, defenses, demands and/or claims of set-off or deduction whatsoever, against (i) the Mortgagee, (ii) the indebtedness evidenced by the Note and owed to the Mortgagee, or (iii) the Mortgage. Furthermore, the Mortgagor acknowledges that, to its knowledge, as of the date hereof, the Mortgagee has in no way defaulted or performed any act or omission under the Note, the Mortgage or the Loan Documents or any other agreements between the Mortgagor and the Mortgagee which would give rise to any action or actions, cause or causes of action, suits, debts, sums of money, damages, claims, costs, expenses and/or demands whatsoever, in law or in equity or otherwise, by the Mortgagor against the Mortgagee.

10. Indemnification. The Mortgagor indemnifies and agrees to defend and hold the Mortgagee harmless against any and all mortgage tax and other recording taxes, if any, imposed on the Mortgagee by virtue of its execution of this Agreement or its ownership of the Note or the Mortgage, including any and all penalties, interest and attorneys' fees incurred by the Mortgagee in connection therewith, and the Mortgagor agrees to pay any and all such taxes due hereunder within fifteen (15) days after receipt by Mortgagor of notice thereof. In the event of a failure by the Mortgagor to pay such taxes upon demand and should the Mortgagee elect to pay the same, the same shall be deemed an event of default by the Mortgagor, and all such charges shall be secured by the lien of the Mortgage and shall bear interest at the default rate provided in the Note from the date of advance by the Mortgagee until paid by the Mortgagor. The provisions of this paragraph shall survive repayment of the Note and the satisfaction of the Mortgage so long as a claim may be asserted by the State of Alabama or any of its agencies.

11. Binding Effect; Governing Law. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement shall be governed under the laws of the State of Alabama.

12. Ratification. Except as expressly modified hereby, the terms and conditions of the Mortgage and the Loan Documents (as defined in the Loan Agreement) shall remain in full force and effect and are hereby ratified and confirmed.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Mortgagor and Mortgagee have each caused this instrument to be executed by its respective duly authorized representative, as of the date first written above.

GDG INVESTMENTS, LLC

By: *Richard A. Brooks*
Name: Richard A. Brooks
Title: Managing Member

REGIONS BANK

By: _____
Name: Joe Medori
Title: Vice President

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Richard A. Brooks, as managing member of GDG Investments, LLC, a Delaware limited liability company, 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 said instrument, he, as such managing member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 10th day of February, 2009.

Quanice C. Parrish
Notary Public

AFFIX SEAL

My commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 3, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS

IN WITNESS WHEREOF, Mortgagor and Mortgagee have each caused this instrument to be executed by its respective duly authorized representative, as of the date first written above.

GDG INVESTMENTS, LLC

By: _____
Name: Richard A. Brooks
Title: Managing Member

REGIONS BANK

By: _____
Name: Gregory A. King
Title: Senior Vice President

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Richard A. Brooks, as managing member of GDG Investments, LLC, a Delaware limited liability company, 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 said instrument, he, as such managing member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this ____ day of February, 2009.

Notary Public

AFFIX SEAL

My commission expires: _____

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Gregory A. King, whose name as Senior Vice President of Regions Bank, a state banking corporation, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this the 11th day of February, 2009.

Kathryn Jones Hallmark
Notary Public

AFFIX SEAL

MY COMMISSION EXPIRES MAY 27, 2012

My commission expires: _____

EXHIBIT A

Lot 5A, according to a Resurvey of Lots 5, 6, 7 and 8 of Southpark, as recorded in Map Book 23, Page 119, in the Probate Office of Shelby County, Alabama.