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20131213000479660 1/5 \$500.75
Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)
COUNTY OF SHELBY)

**AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT:
OPEN-END WITH FUTURE ADVANCES**

THIS AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT: OPEN-END WITH FUTURE ADVANCES (the "Amendment"), is dated the 22nd day of November, 2013, between **KMG REAL ESTATE HOLDINGS, LLC**, an Alabama limited liability company (the "Borrower" or "Mortgagor"), and **HERITAGE BANK OF THE SOUTH**, a Georgia banking corporation, successor-in-interest to Frontier Bank, an Alabama limited liability company (the "Lender" or "Mortgagee").

RECITALS:

A. On or about August 28, 2009, the Borrower executed in favor of Frontier Bank that certain Mortgage and Security Agreement: Open-End Credit with Future Advances (as amended or modified, the "Mortgage") and recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument #20091022000398850.

B. The Mortgage was assigned to Lender by order of Federal Deposit Insurance Corporation, as set forth in paragraph 7 below.

C. Borrower and Lender have agreed to amend certain terms of the Mortgage as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby specifically acknowledged by Borrower, the Borrower agrees with Lender, and Lender agrees with Borrower, as follows:

1. The loan amount is increased to \$316,500.00 from \$275,000.00.
2. The Borrower and Lender hereby amend the Mortgage to reflect that the Lender or Mortgagee is "Heritage Bank of the South."
3. The reference in the Mortgage to the maturity date is hereby deleted in its entirety.

4. **Continuing Effect.** The Borrower and Lender acknowledge and agree that, as amended by this Amendment and the Mortgage remain in full force and effect.

5. **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

6. **Controlling Law.** This Amendment shall be governed by the laws of the State of Alabama.

7. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AMENDMENT OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS AMENDMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS AMENDMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT EITHER OF THEM MAY FILE A COPY OF THIS AMENDMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AMENDMENT OF THE PARTIES IRREVOCABLY TO WAIVE THEIR RIGHT TO TRIAL BY JURY AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

8. **Assignment.** On or about March 8, 2013, Frontier Bank having become a "failed institution" and its assets having been absorbed by the Federal Deposit Insurance Corporation and/or assigned to other institutions, and by virtue of said occurrence, Mortgagee having become the holder and owner of the Note and Mortgage in question and described hereinabove.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Borrower has caused this Amendment to be properly executed and delivered on the day and year first above written.

BORROWER:

KMG REAL ESTATE HOLDINGS, LLC,
an Alabama limited liability company

By: *Kenneth M. Graves*
Name: *Kenneth M. Graves*
Its: *Member*

STATE OF ALABAMA)

:

SHELBY COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that *Kenneth Graves*, whose name as *President* of KMG Real Estate 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 said instrument, he, as such *President* and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this *22nd* day of *November*, 2013.

Ashley Blair
Notary Public

[NOTARIAL SEAL]

My commission expires: **MY COMMISSION EXP DEC. 13, 2016**

LENDER:

HERITGAGE BANK OF THE SOUTH,
a Georgia banking corporation.

By: [Signature]

Print Name: John C. Suley

Its: V.P.

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that John C. Suley, whose name as V.P. of Heritage Bank of the South, a Georgia 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 22nd day of November, 2013.

[Signature]
Notary Public

[NOTARIAL SEAL]

My commission expires: **MY COMMISSION EXP DEC. 13, 2016**



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EXHIBIT A

Legal Description of Property

PARCEL I:

A portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 25, Township 20 South, Range 3 West, described as follows:

Begin at the SE corner of Lot 2 of Circle Hill Subdivision, as recorded in Map Book 5, page 112, in the Probate Judge's Office of Shelby County, Alabama. (Said SE corner of Lot 2 is also the SE corner of the Lot 2-A of a Re-survey of Circle Hill Subdivision, as recorded in the Probate Office of Shelby County, Alabama.); from said point of beginning run northeasterly along the east side of Lot 2 of said subdivision for 192.00 feet to a point on the Southwest right of way of Shelby County road No. 68; thence turn an angle of $90^{\circ}00'$ to the right and run southeasterly along the said right of way for 35.80 feet to the point of beginning of a tangent curve concave southwesterly and having a radius of 349.73 feet; thence continue southeasterly along the said curved right of way through a central angle of $6^{\circ}58'33''$ for 42.54 feet; thence an angle from the chord of said curve segment of said right of way of $90^{\circ}22'05''$ to the right and run Southwesterly along the West side of a 50 foot wide access easement for 233.78 feet to a point on the North side of a water tank site owned by the City of Alabaster; thence turn an angle of $90^{\circ}00'$ to the right and run Northwesterly along the North side of said tank site for 58.58 feet to a point on the East side of Lot 3-A of Circle Hill Subdivision; thence turn an angle of $85^{\circ}08'38''$ to the right and run Northeasterly along the East side of Lot 3-A for 38.53 feet back to the point of beginning. Situated in the Town of Alabaster, Shelby County, Alabama.

PARCEL II:

Part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 25, Township 20 South, Range 2 West, described as follows:

From the SW corner of said $\frac{1}{4}$ $\frac{1}{4}$ Section, run in an easterly direction along the South line of said $\frac{1}{4}$ $\frac{1}{4}$ Section for a distance of 77.98 feet; thence an angle to the left of $75^{\circ}33'30''$ and run in a northeasterly direction along the East line of Lots 14, 15, 16, 17, & 18, in Block 3, Re-survey of George's Subdivision of Keystone, Sector 3, as recorded in the Probate Office of Shelby County, Alabama, in Map Book 4, page 33 for a distance of 460.0 feet; thence turn an angle to the right of $87^{\circ}45'30''$ and run in a southeasterly direction for a distance of 280.40 feet; thence turn an angle to the left of $73^{\circ}47'$ and run in a northeasterly direction for a distance of 190.03 feet; thence turn an angle to the right of $88^{\circ}16'30''$ and run in a southeasterly direction 78.0 feet to the point of beginning; thence turn an angle to the left of $28^{\circ}37'$ and run in an easterly direction for a distance of 138.06 feet, more or less, to a point on the Northwest right of way line of Hickory Hill Drive; thence turn an angle to the left and run northerly along the West right of way line of Hickory Hill Drive to its intersection with South right of way line of County Highway #68; thence northwesterly along the South right of way line of County Highway #68 to its intersection with East line of a 50 foot easement as condemned by Town of Alabaster in Probate Minutes 32, page 655 in the Probate Office; thence in a southerly direction along the East line of said easement to the North line of Water Tank Lot, as condemned by Town of Alabaster in Probate Minutes 32, page 655 in Probate Office; thence southeasterly along said Water Tank Lot to its Northeast corner; thence southwesterly along the East line of said Water Tank Lot to the point of beginning. Situated in Shelby County, Alabama.

Less and except that portion conveyed to the Alabaster Water Board recorded in Instrument 20041028000596910 in the Probate Office of Shelby County, Alabama.

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