



20150225000058340 1/9 \$38.00
Shelby Cnty Judge of Probate, AL
02/25/2015 08:00:08 AM FILED/CERT

INTERCREDITOR AGREEMENT

THIS AGREEMENT is effective as of February 9, 2015 (hereinafter the "Agreement") and is by **Florence Heidel** (hereinafter "Subordinate Creditor") and **ALIAN BANK, a division of USAMERIBANK** (hereinafter "Lender").

WHEREAS, HARRIS DOYLE HOMES, INC., an Alabama corporation is indebted to Subordinate Creditor as evidenced by a Promissory Note dated June 5, 2014, in the amount of \$1,000,000.00 (the "Subordinate Creditor Loan"), and such indebtedness is secured in part by a Real Estate Mortgage, Assignment of Rents and Leases, and Security Agreement ("Subordinate Creditor Mortgage") from KEENELAND, LLC, an Alabama limited liability company (hereinafter "Borrower"), recorded as Instrument No. 20141107000351910 in the Probate Office of Shelby County, Alabama, re-recorded in Book LR201417, Page 18960, in the Probate Office of Jefferson County, Alabama, and corrected by Instrument No. 20141211000390460 in the Probate Office of Shelby County, Alabama. The property described in the Subordinate Creditor Mortgage is hereafter referred to as the "Subordinate Creditor Property".

WHEREAS Borrower has requested to enter into a financing arrangement with Lender (hereinafter the "Lender Loan"), and Lender has agreed to make the Lender Loan provided, among other things, that Borrower gives and grants to Lender a mortgage and security interest (as provided for in the Mortgage, Assignment of Rents and Leases, and Security Agreement prepared, executed and delivered to Lender in connection herewith, hereinafter referred to as the "Lender Mortgage") in all of the Borrower's now owned or hereafter acquired real and personal property located at the property described on Exhibit "A" attached hereto. The property described in the Lender Mortgage is hereafter referred to as the "Lender Property".

WHEREAS the parties hereto desire an understanding that the Lender Loan and the Lender Mortgage is superior to the Subordinate Creditor Loan and the Subordinate Creditor Mortgage, and that the Subordinate Creditor Loan and the Subordinate Creditor Mortgage is fully subordinate to the Lender Loan and the Lender Mortgage.

NOW THEREFORE in consideration of Lender making the Lender Loan to Borrower, \$10.00, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Lender and Subordinate Creditor agree as follows:

1. Lien Priority: From and after the date hereof: (a) Lender's mortgage and security interest in the Lender Property, shall have priority over Subordinate Creditor's mortgage and security interest therein; and (b) Subordinate Creditor's mortgage and security interest in the Lender Property shall be and at all times remain, subject, inferior, and subordinate to Lender's mortgage and security interest therein.

The priorities of the mortgage and security interests established, altered, or specified hereinabove shall be applicable, irrespective of the time or order of attachment, perfection, or recordation thereof, the method of perfection, the time or order of filing of the mortgages and financing statements or taking of possession, or the giving of or failure to give notice; provided, however, that the subordinations and relative priorities set forth herein are expressly conditioned upon the due and proper perfection, recordation, and the nonavoidability by a bankruptcy trustee, of any

mortgage interest which have been accorded priority pursuant hereto; and provided, further, however, that if any mortgage or security interest to which any other interest has been subordinated pursuant hereto is not now perfected or recorded, or hereafter ceases to be perfected or recorded, or is avoidable by a bankruptcy trustee for any reason, then, the subordination specified herein with respect to such interests shall, to the extent not perfected, recorded, or avoidable, as the case may be, not be effective.

The relative priorities of any interests which are not established, altered, or specified herein shall exist and continue in accordance with the applicable provisions of law.

2. **Debt Subordination:** In addition to the foregoing, Subordinate Creditor does hereby subordinate the payment of any and all debts, indebtedness, obligations and liabilities which is owed by the Borrower to Subordinate Creditor (all hereinafter referred to as "Secondary Obligations") to the payment of any and all debts, obligations, and liabilities of the Borrower to Lender whether absolute or contingent, due or to become due, now existing or hereafter arising (all hereinafter referred to as "Primary Obligations") and Subordinate Creditor agree not to ask, demand, sue for, take or receive payment of or security for all or any part of said Secondary Obligations until and unless all and every part of said Primary Obligations shall have been fully paid and discharged, provided however until the occurrence of a default in connection with the Primary Obligations, Subordinate Creditor shall be entitled to continue to receive from Borrower the normal and regularly scheduled payments due on the Secondary Obligations.

Upon any distribution of the assets of the Borrower by reason of reorganization, liquidation, dissolution, bankruptcy, receivership or assignment for the benefit of creditors, Lender shall be entitled to receive payment in full of said Primary Obligations prior to the payment of all or any part of said Secondary Obligations, and to enable Lender to assert and enforce its rights hereunder in any such proceeding or upon the happening of any such event Subordinate Creditor hereby irrevocably authorizes and empowers Lender to make and present on Subordinate Creditor's behalf such proofs of claim against the Borrower on account of all or any of said Secondary Obligations as Lender may deem advisable and to receive and collect any and all dividends or other payments made thereon and to apply the same on account of said Primary Obligations. Subordinate Creditor, upon Lender's request, will execute and deliver to Lender such instruments as may be required by Lender to present and enforce any and all such claims and to effect collection of any and all dividends or other payments which may be made at any time on account of said Secondary Obligations.

3. **Contesting Liens or Security Interest:** Neither Lender nor Subordinate Creditor shall contest the validity, perfection, priority or enforceability of any lien granted to the other.

4. **Modification of Loans or Advances:** Lender or Subordinate Creditor at any time and from time to time, may enter into such agreement or agreements with Borrower as it may deem proper, extending the time of payment of, or renewing or otherwise altering the terms of all or any of the Borrower's obligations or debts to Lender and/or Subordinate Creditor or affecting the security or property underlying any or all of such obligations or debt, or may exchange, sell, release, surrender or otherwise deal with any such security or property, without in any way impairing or affecting this agreement thereby.

5. **Credit Investigations:** Neither Lender nor Subordinate Creditor, nor any of their respective

directors, officers, agents or employees shall be responsible to the other or to any other person, firm or corporation, for Borrower's solvency, financial condition or ability to repay the Borrower's obligations to Lender or Subordinate Creditor, or for any statements of Borrower, oral or written, or for the validity, sufficiency or enforceability of the Borrower's obligations to Lender or Subordinate Creditor, or any liens or security interest granted by Borrower to Lender or Subordinate Creditor in connection therewith. Lender and Subordinate Creditor have each entered into their respective financing agreements with Borrower based upon their own independent investigation and make no warranty or representation to the other nor do they rely upon any representation of the other with respect to matters identified or referred to in this paragraph. Neither Lender nor Subordinate Creditor nor any of their respective directors, officers, agents or employees shall be responsible to the other or to any other person, firm or corporation for the furnishing or sharing of any statements of, or credit, financial or other materials or data receive from Borrower.

6. Waiver of Marshalling: Subordinate Creditor and Lender waive all rights as to marshalling as to the Subordinate Creditor Property, the Lender Property and any other property Lender or Subordinate Creditor now hold or hereafter hold a security or mortgage interest in.

7. No Borrowing by Subordinate Creditor from Borrower: Subordinate Creditor further agrees that without Lender's prior written consent Subordinate Creditor will not borrow any monies from the Borrower either directly or indirectly.

8. Notation of Original Notes: Subordinate Creditor warrants that it is the holder of the original promissory notes evidencing the Subordinate Creditor Loan and will cause the original promissory notes evidencing the Subordinate Creditor Loan and/or the Secondary Obligations to be endorsed with the following:

"This note and payment hereof is subject to and governed by the terms of a certain Intercreditor Agreement by and among maker, holder and ALIANT BANK, a division of USAMERIBANK pursuant to which holder has agreed to subordinate payment of this note to the full and final payment of all obligations now or hereafter owing by maker to ALIANT BANK, a division of USAMERIBANK."

9. Duration: This Agreement shall remain in full force and effect until (i) all obligations of Borrower to Subordinate Creditor on the one hand, or Lender, on the other hand, have been paid and satisfied in full and Subordinate Creditor, on the one hand, or Lender on the other hand, have terminated their financing statements with Borrower or (ii) upon the mutual agreement in writing of all parties hereto, whichever is the first to occur.

10. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS THEREOF, Subordinate Creditor and Lender have executed this Agreement effective as of the date first above written.

SUBORDINATE CREDITOR:

Florence Heidel L.S.

LENDER

ALiant BANK, a division of USAMERIBANK

By: _____
Print Name Danl Spear
Title: SVP

BORROWERS' ACCEPTANCE

Borrower hereby acknowledges receipt of, notice of, consents to, and agrees to be bound by the terms and provisions of the within and foregoing Intercreditor Agreement as they relate to the relative rights and priorities of Subordinate Creditor and Lender; provided, however, that nothing in the foregoing Intercreditor Agreement shall amend, modify, change or supersede the respective terms of the documentation and agreements between Borrower and Subordinate Creditor or Lender.

BORROWER:

KEENELAND, LLC, an Alabama limited liability company

BY _____
Print Name J. Brooks Harris
Title: Member

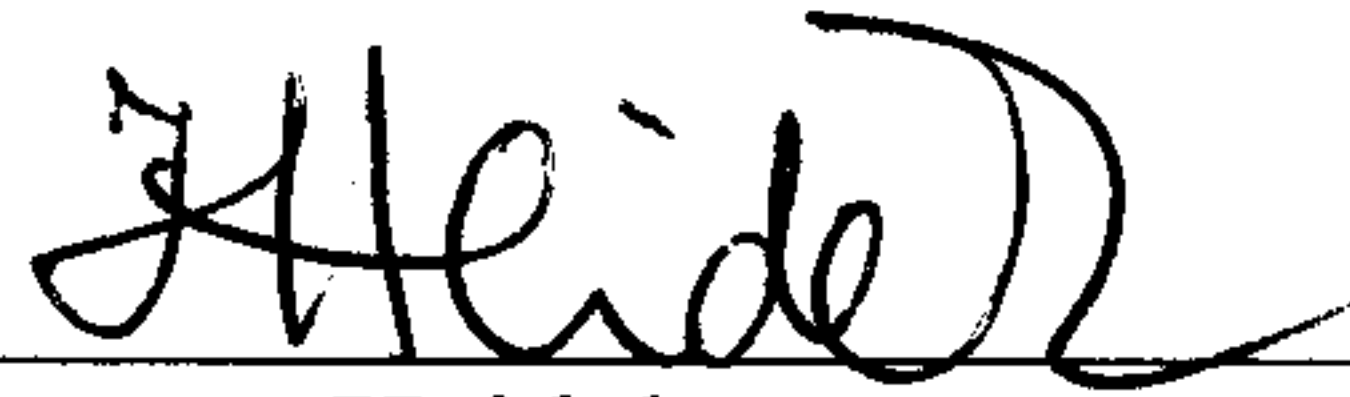
BY _____
Print Name Russell G. Doyle
Title: Member



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IN WITNESS THEREOF, Subordinate Creditor and Lender have executed this Agreement effective as of the date first above written.

SUBORDINATE CREDITOR:

 L.S.
Florence Heidel

LENDER

ALiant BANK, a division of USAMERIBANK

By: _____
Print Name
Title:

BORROWERS' ACCEPTANCE

Borrower hereby acknowledges receipt of, notice of, consents to, and agrees to be bound by the terms and provisions of the within and foregoing Intercreditor Agreement as they relate to the relative rights and priorities of Subordinate Creditor and Lender; provided, however, that nothing in the foregoing Intercreditor Agreement shall amend, modify, change or supersede the respective terms of the documentation and agreements between Borrower and Subordinate Creditor or Lender.

BORROWER:

KEENELAND, LLC, an Alabama limited liability company

BY
Print Name J. Brooks Harris
Title: Member

BY
Print Name Russell G. Doyle
Title: Member

STATE OF ALABAMA
COUNTY OF JEFFERSON

ACKNOWLEDGEMENT OF SUBORDINATE CREDITOR

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Florence Heidel, 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 this instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this _____ day of February, 2015.

Notary Public

My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

ACKNOWLEDGMENT OF LENDER

I, the undersigned Notary Public in and for said County in said State, hereby certify that Daryl Spears whose name as Senior Vice President of **ALiant BANK, a division of USAMERIBANK** 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 instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 9th day of February, 2015.



Notary Public

My Commission Expires: 1/18/19

THIS INSTRUMENT PREPARED BY:

Colin House
ENGEL HAIRSTON, & JOHANSON, P.C.
P.O. Box 11405,
Birmingham, Alabama, 35202
(205)328-4600

STATE OF ALABAMA
COUNTY OF JEFFERSON

ACKNOWLEDGEMENT OF SUBORDINATE CREDITOR

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Florence Heidel, 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 this instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 4 day of February, 2015.

CAROL ELAINE YARBROUGH
NOTARY PUBLIC - STATE OF ALABAMA
COMMISSION # FF113982
EXPIRES 4/17/2018
BONDED THRU 1-888-NOTARY1

Carol Elaine Yarbrough
CAROL ELAINE YARBROUGH
Notary Public
My Commission Expires: 4/17/18

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

ACKNOWLEDGMENT OF LENDER

I, the undersigned Notary Public in and for said County in said State, hereby certify that _____ whose name as _____ of **ALiant BANK, a division of USAMERIBANK** 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 instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this ____ day of February, 2015.

Notary Public
My Commission Expires: _____

THIS INSTRUMENT PREPARED BY:

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ENGEL HAIRSTON, & JOHANSON, P.C.
P.O. Box 11405,
Birmingham, Alabama, 35202
(205)328-4600

EXHIBIT "A"

A parcel of land lying in the Northeast 1/4 of the Northwest 1/4 and the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 19 South, Range 3 West and being a portion of Lots 1 and 2 according to the Survey of Valley Dale Estates as recorded in Map Book 4, page 90 in the Probate Office of Shelby County, Alabama, being more particularly described as follows:

BEGIN at the Southeast Corner of the NE 1/4 of the NW 1/4 of Section 36, Township 19 South, Range 3 West, Shelby County, Alabama, said point also lying on the North line of Lot 10 of Valley Dale Estates as recorded in Map Book 4, page 90, in the Office of the Judge of Probate, Shelby County, Alabama; thence North 89°56'12" West along the North line of Lot 10 for a distance of 573.47 feet to a point; thence South 30°07'33" West leaving Lot 10 and along the Southeast line of Lot 1 and the Northwest line of Lots 9 through 3 of Valley Dale Estates a distance of 838.36 feet to a point, said point lying on the Northeast line of Lot 2 of Valley Dale Estates and on the Northeast line of Lot 16 of Hayesbury Commercial Park Phase I as recorded in Map Book 30, page 71, in the Office of the Judge of Probate, Shelby County, Alabama; thence North 57°51'43" West, along the Northeast line of Lot 16 Hayesbury Commercial Park Phase I a distance of 115.21 feet to a point; thence South 30°46'02" West along the Northwest line of Lot 16 Hayesbury Commercial Park Phase I a distance of 125.11 feet to a point, said point being the common lot corner of Lots 16, 15 and 19 of Hayesbury Commercial Park Phase I; thence North 53°50'04" West along the Northeastern Lot line of Lot 19 Hayesbury Commercial Park Phase I a distance of 65.00 feet to a point; thence North 89°50'04" West along the Northern line of Lot 19 and the Northern right of way of Indian Lake Way as shown on Hayesbury Commercial Park Phase I for a distance of 106.78 feet to a point; thence North 0°03'09" West, along the Eastern right of way of Indian Lake Way for a distance of 116.84 feet to a point; thence North 89°16'00" East, leaving said right of way and along the Southern line of a Cellular Tower Site for a distance of 70.28 feet to a point; thence North 0°03'08" West, along the Eastern line of a Cellular Tower Site for a distance of 47.30 feet to a point lying on the Northeastern line of Lot 2 of Valley Dale Estates and the Southeastern line of Lot 1 of Valley Dale Estates; thence North 57°51'43" West, along the common lot line of Lots 1 & 2 for a distance of 84.47 feet to the common lot corner of Lots 1 and 2, said point also lying on the Eastern right of way of Indian Lake Way; thence North 0°33'57" West, along the Western lot line of Lot 1 and along the Eastern right of way of Indian Lake Way for a distance of 130.65 feet to a point; thence North 28°59'43" East, leaving Lot 1 and said right of way for a distance of 79.18 feet to a point; thence North 30°56'12" East for a distance of 210.00 feet to a point; thence North 31°42'54" East for a distance of 75.34 feet to a point; thence North 37°48'38" East for a distance of 82.04 feet to a point; thence North 45°06'10" East for a distance of 82.04 feet to a point; thence North 52°21'29" East for a distance of 81.38 feet to a point; thence North 55°38'42" East for a distance of 210.00 feet to a point; thence North 56°32'00" East for a distance of 76.94 feet to a point; thence North 63°29'55" East for a distance of 77.49 feet to a point; thence North 64°22'24" East for a distance of 350.00 feet to a point; thence North 39°06'03" East for a distance of 77.41 feet to a point; thence North 76°38'27" East for a distance of 141.79 feet to a point; thence South 49°53'00" East for a distance of 145.97 feet to a point; thence North 89°30'27" East for a distance of 53.17 feet to a point; thence

South $0^{\circ}29'33''$ East for a distance of 405.97 feet to a point, said point lying on a curve to the left, having a radius of 30.00 feet and an internal angle of $74^{\circ}46'27''$, the chord of which bears South $37^{\circ}52'46''$ East for a distance of 36.43 feet; thence along the arc of said curve for a distance of 39.15 feet to a point of tangency; thence South $75^{\circ}16'00''$ East for a distance of 22.34 feet to a point; thence South $89^{\circ}50'48''$ West for a distance of 62.54 feet to the POINT OF BEGINNING.

