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This Instrument Prepared  
By and Return To:  
Clayton C. Purdom, Esq.  
6410 Poplar Avenue, Suite 1000  
Memphis, TN 38119  
(901) 522-9000  
N/A  
(MS Bar #102434)

**FIRST MODIFICATION TO THE THIRD AMENDED AND RESTATED  
DEVELOPMENT AND CONSTRUCTION LOAN AGREEMENT**  
(KWI – Oaks LOC)

**Borrower:**

Kemmons Wilson, Inc.  
8700 Trail Lake Drive West  
Suite 300  
Memphis, TN 38125  
Telephone Number: (901) 346-8800  
N/A

**Lender:**

First Tennessee Bank National Association  
7640 Poplar Avenue  
Suite 217  
Germantown, TN 38138  
Telephone Number: (901) 759-7759  
N/A

**Legal Description or Indexing Instructions:**

BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1  
SOUTH, RANGE 6 WEST, DESOTO COUNTY, MISSISSIPPI

**FIRST MODIFICATION TO THE THIRD AMENDED AND RESTATED  
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This First Modification to the Third Amended and Restated Development and Construction Loan Agreement (this "**Agreement**") is made and entered into as of the 15th day of December, 2009, by and between FIRST TENNESSEE BANK NATIONAL ASSOCIATION, a national banking association having its principal place of business in Memphis, Tennessee (the "**Bank**"); and KEMMONS WILSON, INC., a Tennessee corporation having its principal place of business in Memphis, Tennessee (the "**Borrower**").

**WITNESSETH:**

WHEREAS, the Borrower is indebted to the Bank in connection with a revolving line of credit acquisition, development and construction loan in the maximum principal amount of \$28,701,544.00 (the "**Loan**") evidenced by that certain Eighth Amended and Restated Revolving Line of Credit Promissory Note dated of even date herewith (the "**New Note**"); and

WHEREAS, the terms and conditions of the Loan are set forth in that certain Second Amended and Restated Development and Construction Loan Agreement dated June 30, 2005 (as modified, amended and/or restated the "**Loan Agreement**", and collectively with the New Note and the any other documents evidencing, securing relating to the Loan, all as modified, amended and/or restated, collectively, the "**Loan Documents**"); and

WHEREAS, the termination date of the New Note is January 15, 2010 and the Loan Documents must be modified to reflect that new termination date.

NOW, THEREFORE, in consideration of the premises, the financial accommodations afforded to the Borrower, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed, and the Loan Documents are hereby modified, as follows:

1. **Recitals.** The recitals set forth above are adopted herein as true and correct statements of fact. All defined terms not defined herein shall have the meanings assigned to such terms in the Loan Agreement.
2. **Loan Documents.** The definition of Note as defined and used in the Loan Documents is hereby amended to mean the New Note and any reference in the Loan Documents to the Note shall hereafter mean the New Note.
3. **Termination Date.** The Termination Date or maturity date as set forth in the Loan Documents is hereby modified to mean January 15, 2010.
4. **Deed of Trust.** This Agreement specifically modifies the deed of trust recorded in Book 2481, Page 27 in the Chancery Clerk's Office of DeSoto County, Mississippi, which

creates a lien on the real property described in Exhibit "A" attached hereto and incorporated herein by reference.

5. **Ratification.** All other terms, covenants and conditions contained in the Loan Documents are hereby ratified and shall continue in full force and effect, except as expressly modified hereby. Nothing in this Agreement shall adversely affect, invalidate, impair, or release any covenant, condition, agreement, or stipulation contained in the Loan Documents.
6. **Counterpart Execution.** This Agreement may be executed in multiple or separate counterparts, each of which shall constitute an original, and together all of such counterparts shall constitute a single binding instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the date first above written.

**[SIGNATURE AND ACKNOWLEDGMENT PAGE FOLLOWS]**

**EXHIBIT "A"****PROPERTY DESCRIPTION (OLIVE BRANCH, MS)**

Lot 1, Phase 1, Parkview Heights P.D. in Section 33, Township 1 South, Range 6 West, City of Olive Branch, DeSoto County, Mississippi as shown by plat appearing of record in Plat Book 98, Page 7, in the office of the Chancery Clerk of DeSoto County, Mississippi, and being more particularly described by metes and bounds as follows:

A PORTION OF THE PARKVIEW HEIGHTS, LLC PROPERTY lying in the northeast quarter of Section 33, Township 1 South, Range 6 West and described in Book 513, Page 100 in the DeSoto County Chancery Office and being more particularly described by metes and bounds as follows:

Commencing at the northeast corner of Section 33, Township 1 South, Range 6 West in Olive Branch, DeSoto County, Mississippi, thence  $S01^{\circ}01'24''E$ , and with the east line of said Section 33, a distance of 1,659.65 feet to a point; thence  $N89^{\circ}57'52''W$ , and with the south line of Center City Drive (84-foot R\W), a distance of 373.03 feet to the northwest corner of Lot 1, City Center Commercial Subdivision, Phase 1 and the true POINT OF BEGINNING; thence  $S00^{\circ}08'32''W$ , and with the west line of said Lot 1, a distance of 266.47 feet to an iron pin (set) in the north line of the Olive Branch Public Library property; thence  $S89^{\circ}39'14''W$ , and with the north line of the library property, a distance of 96.46 feet to an iron pin (set) at the northwest corner of the library; thence  $S00^{\circ}11'53''E$ , and with the west line of the library property, a distance of 210.74 feet to an iron pin (found) in the north line of the Olive Branch Park; thence  $S89^{\circ}38'11''W$ , and with the north line of the park, a distance of 1,755.37 feet to an iron pin (set); thence  $N00^{\circ}19'09''W$ , and with the east line of the Paul Green property (513-98) a distance of 412.92 feet to an iron pin (found); thence  $N48^{\circ}23'56''W$ , and with a northeast line of the Green property, a distance of 155.43 feet to an iron pin (found); thence  $N89^{\circ}58'10''W$ , and with the north line of the Green property, a distance of 311.65 feet to an iron pin (found) in an east line of the park property; thence  $N00^{\circ}16'23''W$ , and with the east line of the park and the east line of Morell Subdivision, a distance of 233.18 feet to an iron pin (set); thence  $N55^{\circ}32'59''E$  a distance of 583.62 feet to a point in the southwest line of City Center Drive; thence with said southwest line and along a curve to the left having a radius of 1,367.00 feet an arc distance of 1,320.30 feet (chord= $S62^{\circ}17'43''E$ -1,269.57 feet) to a point of tangency; thence  $S89^{\circ}57'52''E$ , and with the south line of City Center Road, a distance of 677.74 feet to the POINT OP BEGINNING and containing 29.204 acres.

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**SIGNATURE AND ACKNOWLEDGMENT PAGE**

FIRST TENNESSEE BANK NATIONAL  
ASSOCIATION

By: Stephen R. Drumm

Name: Stephen R. Drumm

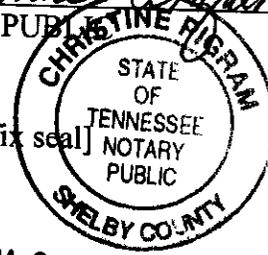
Title: Vice President

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared Stephen Drumm, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, under oath, acknowledged (herself)himself to be the Vice President of FIRST TENNESSEE BANK NATIONAL ASSOCIATION, the within named bargainer, a national banking association, and that (she)he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by personally signing the name of the corporation by (herself)himself as such officer.

WITNESS my hand and official seal at office this 23rd day of December, 2009.

Christine Fierman  
NOTARY PUBLIC



[affix seal]

My Comm. Exp. 11-7-2012

My commission expires:  
11/7/2012

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**SIGNATURE AND ACKNOWLEDGMENT PAGE**

KEMMONS WILSON, INC., a Tennessee corporation

By: W. Lato

Name: William Batt

Title: Sr Vice President

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the state and county aforesaid, personally appeared William Batt, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged (herself)himself to be the SVP of KEMMONS WILSON, INC., the within named bargainor, a Tennessee corporation, and that (she)he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by personally signing the name of the corporation by (herself)himself as such officer.

WITNESS my hand and official seal at office this 23rd day of December, 2009.

Kathy Worthington  
NOTARY PUBLIC

My commission expires:

My Commission Expires April 4, 2012

[affix seal]

