

AGREEMENT BETWEEN CONTRACTOR AND LENDER

STATE OF ALABAMA

§

§

COUNTY OF SHELBY

§



20171220000453170 1/5 \$27.00
Shelby Cnty Judge of Probate, AL
12/20/2017 11:57:52 AM FILED/CERT

This Agreement is executed by **J. DAVID HOMES, LLC** ("Contractor") on the date hereinbelow recited to and for the benefit of **CADENCE BANK, N.A.** and is as follows:

WILLIAM T. HUDSON AND SPOUSE, TRUDIE E. HUDSON ("Owner") have entered into that "Loan Agreement" dated **December 11, 2017**, with **CADENCE BANK, N.A.** ("Lender") pursuant to which Lender will advance funds to be used to finance the construction of certain residential improvements ("Project") upon the real property ("Premises") described on Exhibit A attached hereto and made a part hereof for all purposes.

Owner has executed a Promissory Note (the "Note") of even date with the Loan Agreement in the principal amount of **\$1,483,350.00** to further evidence Owner's indebtedness to Lender pursuant to the Loan Agreement, and a Mortgage or Deed of Trust ("Security Instrument") of even date therewith to secure Owner's indebtedness ("Loan") to Lender against the property more particularly therein described, which includes, among other items, the Premises and the Project.

Owner and Contractor have entered into a construction contract (the "Contract") wherein the Contractor agrees to construct the Project on the Premises.

Lender further requires Owner to procure this Agreement as a condition to making advances under the Loan Agreement, but for which Lender would not make such advances; Therefore, Contractor hereby stipulates and agrees as follows:

1. All liens, choate or inchoate, statutory or constitutional, existing for the benefit of Contractor against the Project and Premises, are and shall be subordinate to the liens in favor of Lender pursuant to the Security Instrument.

2. Contractor agrees once Contractor has earned a portion of the amounts due it under the Contract (the "Completed Work"), the indebtedness owing by Owner to Contractor for such Completed Work shall be paid to Contractor by Lender making advances under the Loan. The indebtedness created by the Completed Work, together with the liens and security interests granted in the Contract securing the payment thereof (if any) are transferred and assigned by Contractor to Lender and shall become vested in Lender at the times Lender makes advances to Owner (or directly to Contractor) under the Loan to pay Contractor for the Completed Work. To the extent that Lender advances proceeds under the Loan to pay Contractor for indebtedness arising from the Completed Work, less the retainage, if any, such proceeds are advanced at Owner's and Contractor's written request, and Lender shall be subrogated to all rights, security interests and liens held by Contractor, irrespective of whether such liens, security interests, charges or encumbrances are released of record.

3. Contractor agrees to complete the actual construction of the Project free of any and all liens


or rights of liens of mechanic's, materialmen, laborers, in accordance with the agreed upon Plans (defined in the Loan Agreement), and agrees that no materials, fixtures, or any other part of the Project shall be purchased or installed under conditional sales agreements or under any other arrangements wherein the right is reserved or accrues to anyone to remove or to repossess any such items, or to consider them as personal property. In the event that any materials, fixtures, or any other part of the Project shall have been accomplished, purchased, or installed under conditional sales agreements, or under any other arrangement prior to the date hereof, Contractor shall furnish waivers in recordable form deemed sufficient by Lender waiving any rights reserved or accrued to anyone, or shall furnish a bond deemed sufficient by Lender to assure the priority of the Lender's lien upon the residence.

4. Contractor agrees the funds provided by the Loan shall be advanced after construction has commenced and shall be made for Work (as defined in the Loan Agreement) done preceding the date of request. Written application for each advance, in form approved by Lender, shall be filed at least three (3) working days before the date upon which an advance is desired, shall be certified by the Owner and Contractor, and (if required by Lender) approved by Lender's inspector and Lender's account officer, shall specify which subcontractors are being paid out of said advance and in what amounts, and shall contain such information as Lender may request. The amount of each advance under the Loan shall be the amount which Contractor has earned under the Contract, as approved by Lender in accordance with the approved budget or Lender's standard line item draw schedule, less amounts for which sums have been previously advanced, and, if required by Lender, less retainage, and such amount shall be advanced under the Loan on behalf of Owner and shall be delivered directly to Contractor as a progress payment owing to Contractor under the Contract. Lender shall not be required to fund any construction advance if in the good faith opinion of Lender (i) the form or slab survey is not delivered to Lender prior to the date of the request, or if delivered, is not acceptable to Lender in its reasonable discretion, (ii) the Work is not being completed in a timely and good and workmanlike manner, in accordance with the plans and specifications, (iii) Contractor fails to promptly pay for any labor or materials relating to the Work, or (iv) the portion of the Loan then remaining unadvanced will not be sufficient to complete the Work in accordance with the Plans, whereupon no additional advances will be due Owner or Contractor unless and until Owner has deposited with Lender adequate funds to cover the shortfall so that such portion of the Loan then remaining unadvanced is determined by Lender to be sufficient to so complete the Work. Contractor shall utilize all advances made to it by Lender only for the payment of the costs itemized in the "Cost Breakdown", and under no circumstances shall any part of the advances be used by Contractor for any other purpose, including the defrayment of living expenses or the anticipation of profits. Any disbursements by Lender of the Loan proceeds may be disbursed at Lender's election, to Owner or its order, or solely to Contractor, or directly to the persons furnishing labor and/or materials, or any combination of said parties. Lender shall have no obligation to Contractor to advance funds hereunder after Owner has requested Lender in writing to no longer advance funds to Contractor and after Lender has notified Contractor in accordance with applicable law.

5. Contractor will, upon request by Lender after an event of default by Owner (whether such event of default exists with respect to obligations to Lender or Contractor), continue performance under Contractor's agreement with Owner (as currently existing, and as hereafter amended by written consent of Lender), if Lender cures any outstanding defaults under the Contract in favor of Contractor.

6. Contractor agrees not to amend or modify the Contract with Owner, or stipulate to "change orders" thereto in excess of \$5,000.00, without the prior written consent of Lender. All payments made to Contractor by Lender and/or Owner shall be applied first to costs of labor and materials to Contractor prior to use of the proceeds of such payments for any other purpose.

O&G Doc5154E1.Cst.Frm


20171220000453170 2/5 \$27.00
Shelby Cnty Judge of Probate, AL
12/20/2017 11:57:52 AM FILED/CERT

7. Upon written request by Lender, Contractor shall supply Lender with a list of names and contact information of all second and subsequent tier contractors and suppliers, including information with respect to the portion of such contracts completed and sums owed to such contractors and suppliers.

8. Contractor agrees that a foreclosure of Lender's liens shall constitute complete removal of liens in favor of Contractor against the Premises and the Project.

9. Contractor represents and warrants to Lender that no material has been furnished, labor performed, or improvements, erections, or repairs made upon the Premises as of the date hereof (including the destruction or removal of existing improvements upon the Premises, the drilling of test holes or grading); that no material or equipment has been delivered to the Premises; that no Notice of Commencement (if required by applicable law) has been recorded prior to recordation of the Security Instrument; and that no construction contract other than the Contract has been executed for any of the Project contemplated to be constructed on the Premises, all as of the date hereof. Contractor further agrees that no material shall be furnished, labor performed, or improvements, erections, or repairs made until after the Security Instrument has been fully executed by the parties thereto and recorded in the Office of the County Clerk in the county where the Premises is located. Contractor shall make no material amendments or modifications to the Contract or any plans and specifications without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.

10. Contractor agrees to commence construction of the Project within thirty (30) days from the date hereof, and the construction of the Project shall be prosecuted with diligence and continuity, in a good and workmanlike manner, and in accordance with sound building and engineering practices, all applicable governmental requirements and the plans and specs. Contractor agrees to not permit cessation of work for a period in excess of 15 days without the prior written consent of Lender and shall complete construction of the Project on or before the Completion Date (as defined in the Loan Agreement), free and clear of all liens (except those as to which Owner and/or Contractor has furnished a bond or other security acceptable to Lender).

11. Contractor agrees to indemnify and hold harmless Lender from any claims of any artisan, laborer, mechanic, materialman, subcontractor or supplier which may arise as a result of the construction of the improvements and Contractor agrees to pay off and discharge such claims so that no lien will be asserted against said Premises.


12. Contractor covenants, warrants and represents that Contractor has and will comply in all material respects with all federal, state and local laws, regulations and ordinances relating to construction of the Project. Specifically and without limitation Contractor agrees to the following:

A. PROPER PAYMENTS. The right of Owner to make proper payments under its construction contract will be limited by any notice to owner or claims of lien, which may be served by any person supplying labor, or materials to the project.

B. LENDER NOTIFICATION. Prior to modifying such payments, Owner shall furnish Lender a copy of the notices or claims of lien immediately upon receipt of same.

C. LENDER'S RIGHT TO DISBURSE. In the event Lender has not received copies of any notice

O&G Doc5154F1.Cst.Frm


20171220000453170 3/5 \$27.00
Shelby Cnty Judge of Probate, AL
12/20/2017 11:57:52 AM FILED/CERT

to owner or claims of lien at the time of any disbursement under the Loan, Lender may, but shall not be obligated to, disburse as directed by this Agreement without notice to Owner and without responsibility of liability to owner, or any contractor, subcontractor, laborers, or materialmen.

D. RELEASE OF LIEN. No progress payments shall be made to Contractor until all releases of lien have been received by all persons giving any notice to Owner in accordance with applicable State construction lien law. Contractor further acknowledges that Owner agrees to furnish releases or waivers of lien from all persons giving any notice to Owner and from all others that may heretofore and hereafter file a claim of lien against the Premises.

E. CONTRACTOR'S FINAL AFFIDAVIT. Owner or its licensed contractor shall furnish the Lender the Contractor's Final Affidavit as required by any applicable State construction lien law.

F. LENDER'S RIGHT TO MAKE PAYMENTS TO LIENORS. Notwithstanding anything contained in this Agreement to the contrary, Lender shall have the right to make payments directly to lienors as provided in applicable State construction lien law.

G. POST COPY. Owner shall post a certified copy of the recorded Notice of Commencement on the property in accordance with applicable State construction lien law.

H. CONTESTED LIEN. Lender shall have the right to contest any lien filed or to transfer to other security if Owner fails to do so in a timely manner.

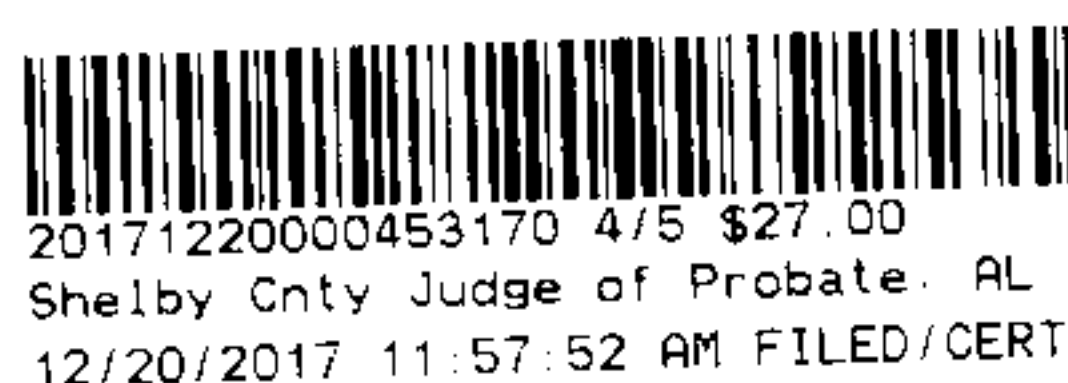
I. TRANSFER OF LIEN. Owner is required, at Lender's request, to satisfy any lien or transfer any lien to other security (cash deposit or transfer bond) within ten (10) days after any lien is recorded.

J. LIABILITY TO THIRD PERSONS. This Agreement shall not be construed to make Lender liable to materialmen, contractors, craftsmen, laborers, or others for goods or services delivered by them in or upon said premises, or for debts or claims accruing to any such parties against Owner or Owner's licensed contractor.

K. COMPLIANCE WITH CONSTRUCTION LIEN LAW. Contractor will comply in all respects whatsoever with the applicable State construction lien law as the same may from time to time exist, and Lender shall not be obligated to disburse any funds to Owner or Contractor if, in the opinion of Lender or its counsel, such disbursements would result in a violation of such law.

L. NOTICE OF COMMENCEMENT (APPLICABLE TO PROPERTY IN FLORIDA ONLY). Contractor acknowledges that Owner shall not cause or allow recordation of any Notice of Commencement prior to recording the Security Instrument of Lender. In the event a Notice of Commencement should be recorded prior to recording of the Security Instrument, Lender shall have the right to cancel the Loan and be reimbursed for any and all advances and its costs and expenses incurred to date. Owner shall post a certified copy of the recorded Notice of Commencement on the Property in accordance with Florida's Construction Lien Law.


13. Contractor stipulates that the Loan as evidenced by the Loan Agreement, the Security Instrument, the Promissory Note, and any other instrument executed by Lender and Owner with respect to the Loan are for the sole benefit of Lender and Owner and that no clause, term or provisions shall inure to



the benefit of Contractor or any other party.

14. By execution hereof, Contractor represents and warrants to Lender that all necessary corporate or organizational approvals and consideration have been satisfied and that the undersigned specifically has the power and authority on behalf of Contractor as Contractor's agent and representative, to execute this document which upon execution by the undersigned representative shall be the binding obligation of Contractor. Upon request of Lender, the undersigned of Contractor shall deliver to Lender such additional underlying written evidence of his/her authority to so act on behalf of Contractor as Lender shall deem necessary. Contractor further covenants, warrants and represents that Contractor shall complete a certification as to entity status, and notify Lender of any change of entity status within 30 days of any such event, including, but not limited to, entity name, structure, tax classification, principals and ownership interest, merger, acquisition, change in Series status, governing jurisdiction, or other event during the term of the Loan.

EXECUTED this 11th day of December, 2017.


20171220000453170 5/5 \$27.00
Shelby Cnty Judge of Probate, AL
12/20/2017 11:57:52 AM FILED/CERT

CONTRACTOR:

**J. DAVID HOMES, LLC, AN ALABAMA
LIMITED LIABILITY COMPANY**

By: 
Name: DAVID BONAMY
Title: PRESIDENT

STATE OF ALABAMA §

COUNTY OF Jefferson §

The foregoing instrument was acknowledged before me this 11th day of December, 2017, by DAVID BONAMY, PRESIDENT of J. DAVID HOMES, LLC, an ALABAMA limited liability company, on behalf of said limited liability company.


NOTARY PUBLIC, STATE OF ALABAMA

AFTER RECORDING RETURN TO:
CADENCE BANK, N.A.
2002 TIMBERLOCH PLACE
6TH FLOOR, SUITE 600
THE WOODLANDS, TEXAS 77380

