

Tommy E. Hill  
✓ 10 INVERNESS PARKWAY  
SUITE 130  
BHAM, AL 35242

Inst # 1994-17823

STATE OF ALABAMA

COUNTY OF SHELBY

**AGREEMENT AND MORTGAGE**

KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT entered into this 1st day of March, 1994 by and between **TOMMY E. HILL** ("Lender" or "Mortgagee"), an Alabama resident, and **MCCAY HOME BUILDERS, INC.**, an Alabama corporation ("Borrower or Mortgagee"): Mortgagor

RECITALS:

WHEREAS, the parties hereto entered into that certain Letter Agreement dated February 3, 1994, and

WHEREAS, the parties hereto entered into that certain Residential Sales Contract dated February 18, 1994, and

WHEREAS, the parties hereto are desirous of amending said agreements, and

WHEREAS, Borrower is desirous of borrowing Thirty Thousand Dollars & 00/100 (\$30,000.00) from said Lender, and

WHEREAS, Lender is desirous of lending said Thirty Thousand Dollars & 00/100 (\$30,000.00), and

WHEREAS, Steve M. McCay is desirous of individually guaranteeing the obligations of Borrower hereunder.

Now, therefore, in consideration of the premises, the promises, and the covenants herein set forth and the mutual advantages and benefits accruing thereunder and for the stated considerations herein, the parties agree as follows:

**Article One**

**Definitions**

1.1 **Borrower-Mortgagor** shall refer to McCay Home Builders, Inc., an Alabama Corporation.

1.2 **Lender-Mortgagee** shall refer to Tommy E. Hill, an Alabama resident.

1.3 **Guarantor** shall refer to Steve M. McCay, an individual resident of the State of Alabama.

1.4 **Loan** shall refer to the Thirty-Thousand Dollar & 00/100 (\$30,000.00) loan being made hereunder.

Inst # 1994-17823

06/03/1994-17823  
09:31 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
009 HJS 73.50

*BMH*  
*9/9/94*

1.5 Mortgage Note shall refer to that certain Mortgagee Note dated the date hereof in the amount of Thirty Thousand Dollars & 00/100 (\$30,000.00) which this mortgage secures.

1.6 Subject Property which is the security for the Loan and which shall secure said Mortgage Note shall refer to Lot 4, Phase 5 of Greystone, 2808 Shandwick Terrace, Hoover, Alabama. 2033

## Article 2

### General Terms

2.1 It is hereby understood and agreed as follows:

A. The consideration in the said Option to Purchase Letter Agreement and the said Residential Sales Contract is hereby changed to be the Lender's agreement to make said Thirty Thousand & 00/100 Dollar (\$30,000.00) Loan under the terms hereof.

i. It is specifically understood and agreed that in the event of any conflict whether in interpretation or otherwise between either said document and this Agreement, the terms, language, and interpretation thereof for all purposes whatsoever, shall be in accordance with this Agreement.

ii. Said consideration of Ten Thousand Dollars & 00/100 (\$10,000.00) referred to in each of said agreements is hereby returned to Lender.

iii. The Loan of Thirty-Thousand Dollars & 00/100 (\$30,000.00) being made hereunder shall be repayable to Lender in accordance with this Agreement and the Mortgage Note notwithstanding anything in either said agreement or otherwise under any and all circumstances whatsoever.

B. This mortgage may be recorded by Lender at any time after the date hereof and prior to the total payment of said Loan in the sole discretion of Lender.

## Article 3

### Representations of Borrower-Mortgagor

3.1 Borrower hereby represents and warrants:

A. There are no encumbrances on the subject property except that certain mortgage to First Federal Bank of Tuscaloosa, Alabama in the amount of Two Hundred Fifty Thousand Dollars & 00/100 (\$250,000.00).

B. Borrower will not directly or indirectly in any manner whatsoever cause any encumbrances to be place upon the subject property till said Loan is paid in full.

#### Article 4

#### Mortgage

KNOW ALL MEN BY THESE PRESENTS: That whereas McCay Home Builders, Inc. became justly indebted to Tommy E. Hill of Hoover, Alabama, hereinafter called the Mortgagee, in the principal sum of Thirty Thousand & 00/100 Dollars (\$30,000.00) as evidenced by Mortgage Note of even date herewith.

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of said indebtedness and any renewal or extensions of same and any other indebtedness now or hereafter owed by Mortgagors to Mortgagee (except Mortgagor's home shall not secure any such other indebtedness incurred for personal, family, or household purposes) and compliance with all of the stipulations hereinafter contained, the said McCay Home Builders, Inc. (hereinafter called Mortgagors) do hereby grant, bargain, sell and convey unto the said Mortgagee the following described real estate situated in Shelby County, State of Alabama, to wit:

Lot 4, Phase 5, Greystone, Hoover, Alabama  
2808 Shandwick Terrace  
2033

together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in any wise appertaining, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by the Mortgagors in and to all buildings and improvements, storm and screen windows and doors, gas, steam, electric and other heating, lighting, ventilating, air conditioning, refrigerating and cooking apparatus, elevators, plumbing, sprinkling, and other equipment and fixtures attached or appertaining to said premises, all of which (hereinafter designated as the mortgaged property) shall be deemed realty and conveyed by this mortgage.

TO HAVE AND TO HOLD the same and every part thereof unto the Mortgagee, McCay Home Builders, Inc., its successors and assigns forever.

Tommy E. Hill

And for the purpose of further securing the payment of said indebtedness the Mortgagors covenant and agree as follows:

1. That they are lawfully seized in fee and possessed of said mortgaged property and have a good right to convey the same as aforesaid, that they will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that said property is free and clear of all encumbrances, easements and restrictions not herein specifically mentioned.
2. That they will pay all taxes, assessments, or other liens taking priority over this mortgage when imposed legally upon said mortgaged property and should default be made in the payment of same, or any part thereof, said Mortgagee may pay the same.
3. That they will keep the buildings on said premises continuously insured in such amounts, in such manner and in such companies as may be satisfactory to the Mortgagee against loss by fire and such other hazards as Mortgagee may specify, with loss, if any, payable to said Mortgagee, and will deposit with Mortgagee policies for such insurance and will pay premiums therefor as the same become due. Mortgagors shall give immediate notice in writing to Mortgagee of any loss or damages to said premises caused by any casualty. If

*EMM*  
*TH*

Mortgagors fail to keep said property insured as above specified, the Mortgagee may insure said property for its insurable value against loss by fire and other hazards for the benefit of the Mortgagee. the proceeds of such insurance shall be paid by insurer to Mortgagee which is hereby granted full power to settle and compromise claims under all policies and to demand, receive and receipt for all sums becoming due thereunder; said proceeds, if collected, to be credited on the secured by this mortgage, less cost of collecting same, or to be used in repairing or reconstructing the premises as the Mortgagee may elect; all amounts so expended by said Mortgagee for insurance or for the payment of taxes, assessments or any other prior liens shall become a debt due said Mortgagee additional to the indebtedness herein described and at once payable without demand upon or notice to any person, and shall be secured by the lien of this mortgage and shall bear interest at the highest legal rate from date of payment by said Mortgagee and at the election of the Mortgagee and without notice to any person, the Mortgagee may declare the entire indebtedness secured by this mortgage due and payable and this mortgage subject to foreclosure and same may be foreclosed as hereinafter provided.

4. To take good care of the mortgaged property above described and not to commit or permit any waste thereon, and to keep the same repaired and at all time to maintain the same in as good conditions as it now is, reasonable wear and tear alone excepted.
5. That no delay or failure of the Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present default on the part of said Mortgagors, and that the procurement of insurance or payment of taxes by the Mortgagee shall not be taken or deemed as a waiver of the right to declare the maturity of the indebtedness hereby secured by reason of the failure of the Mortgagors to procure such insurance or to pay such taxes, it being agreed that no terms or conditions contained in this mortgage can be waived, altered, or changed except as evidenced in writing signed by the Mortgagors and by the Mortgagee.
6. That they will well and truly pay and discharge any indebtedness hereby secured as it shall become due and payable including the note or notes above described, any renewals or extensions thereof, any other notes or obligations of Mortgagors to Mortgagee whether now or hereafter incurred.
7. That after any default on the part of the Mortgagors, the Mortgagee shall, upon bill filed or other proper legal proceeding being commenced for the foreclosure of this mortgage, be entitled as a matter of right to the appointment by any competent court or tribunal without notice to any party, of a receiver of the rents, issues and profits of said premises, with power to lease and control the said premises and with such other powers as may be deemed necessary, and that a reasonable attorney's fee shall, among other expenses and costs, be fixed, allowed and paid out of such rents, issues and profits or out of the proceeds of the sale of said mortgaged property.
8. That all the covenants and agreements of the Mortgagors herein contained shall extend to and bind their heirs, executors, administrators, successors and assigns, and that such covenants and agreements and all options, rights, privileges and powers herein given, granted or secured to the Mortgagee shall inure to the benefit of the heirs, successors or assigns of the Mortgagee.

*JMM*  
*EH*

9. That the debt hereby secured shall at once become due and payable and this mortgage subject to foreclosure as herein provided at the option of the holder hereof when and if any statement of lien is filed under the statutes of Alabama related to liens of mechanics and materialmen, without regard to the form and contents of such statement and without regard to the existence or non-existence of the debt or any part thereof, or of the lien on which such statement is based.
10. **Transfer of the Property: Assumption.** If all or any part of the mortgaged property or an interest therein is sold or transferred by Mortgagors without Mortgagee's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Mortgagee may, at Mortgagee's option, declare all the sums secured by this Mortgage to be immediately due and payable. Mortgagee shall have waived such option to accelerate if, prior to the sale or transfer, Mortgagee and the person to whom the mortgaged property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Mortgagee and that the interest payable on the sums secured by this Mortgage shall be at such rate as Mortgagee shall request.

If Mortgagee exercises such option to accelerate, Mortgagee shall mail Mortgagors notice of acceleration. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Mortgagors may pay the sums declared due. If Mortgagors fails to pay such sums prior to the expiration of such period Mortgagee may, without further notice or demand on mortgagors, invoke any remedies permitted hereunder.

11. Plural or singular words used herein to designate the undersigned Mortgagors shall be construed to refer to the maker or makers of this mortgage, whether one or more persons or a corporation.

UPON CONDITION, HOWEVER, that if the Mortgagors shall well and truly pay and discharge the indebtedness hereby secured, (which in addition to the principal sum with interest, set forth above shall include payment of taxes and insurance, the satisfaction of prior encumbrances and any other indebtedness owed to the Mortgagee by the Mortgagors before the full payment of this mortgage) as it shall become due and payable and shall in all things do and perform all acts and agreements by them herein agreed to be done according to the tenor and effect hereof, then and in that event only this conveyance shall be and become null and void; but should default be made in the payment of the indebtedness hereby declared or any renewals or extensions thereof or any part thereof or should any interest thereon remain unpaid at maturity, or should default be made in the repayment of any sum expended by said Mortgagee under the authority of any of the provisions of this mortgage or should the interest of said Mortgagee in said property become endangered by reason of the enforcement of any prior lien or encumbrance thereon so as to endanger the debt hereby secured, or should a petition to condemn any part of the mortgaged property be filed by any authority having power of eminent domain, or should any law, either federal or state, be passed imposing or authorizing the imposition of a specific tax upon this mortgage or the debt hereby secured, or permitting or authorizing the deduction of any such tax from the principal or interest secured by this mortgage or by virtue of which any tax or assessment upon the mortgaged premises shall be charged against the owner of this mortgage or should at any time any of the stipulations contained in this mortgage be declared invalid or

*SM*  
*7/8/14*



inoperative by any court of competent jurisdiction or should the Mortgagors fail to do and perform any other act or thing herein required or agreed to be done, then in any of said events the whole of the indebtedness hereby secured, or any portion or part of same may not as said date have been paid, with interest thereon, shall at once become due and payable and this mortgage subject to foreclosure at the option of the Mortgagee, notice of the exercise of such option being hereby expressly waived; and the Mortgagee shall have the right to enter upon and take possession of the property hereby conveyed and after or without taking such possession to sell the same before the county Court House door in Shelby, County, Alabama at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in a said City, and upon the payment of the purchase money the Mortgagee, or owner of the debt and mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagors a good and sufficient deed to the property sold; the Mortgagee shall apply the proceeds of said sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of sale; and fourth, the balance, if any, to be paid over to the said Mortgagors or to whomever then appears of record to be the owner of said property. The Mortgagee may bid and become the purchaser of the mortgaged property at any foreclosure sale thereunder.

#### Article 5

#### Guaranty

Steve M. McCay, individually, hereby guarantees payment and collection of that certain Mortgage Note of even date in the amount of Thirty Thousand & 00/100 Dollars (\$30,000.00) payable to Tommy E. Hill and any and all obligations directly or indirectly of the Maker thereof, McCay Home Builders, Inc., an Alabama corporation.

This guaranty is a continuing guaranty and is to be in full force and effect until revoked by the undersigned in writing. The death of the undersigned shall not terminate his liability hereunder. The undersigned specifically consents to any of the following which shall not effect or change or discharge his obligation as Guarantor hereunder:

1. Any extension of time of payment or performance of any of the obligations in whole or part of the indebtedness.
2. Any change in the terms of the said Mortgage Note.
3. The acceptance by the Holder of any Promissory Note or any security of any kind for said indebtedness, or any renewal or renewals thereof.
4. The surrender, release, exchange or alteration of any collateral or other security held by the maker for the claims hereby guaranteed.

*SM*  
*7/4/10*

## Article 6

### Miscellaneous

6.1 All notices and demands and other communications of any type herein referred to shall be given by either party to the other party whether required by this Assignment or in any way related to this transactions as stated below. All notices shall be in writing and delivered to the person to whom the notice is directed personally or by United States mail as a registered or certified item with return receipt requested. Notices delivered by mail shall be effective when deposited in the Post Office Box in the care and custody of the United States Postal Service and enclosed with affixed address to the following:

McCay Home Builders, Inc.  
#3 Office Park Circle  
Suite 105  
Birmingham, Alabama 35223

Tommy E. Hill  
Tommy E. Hill Professional Association  
10 Inverness Parkway Suite 130  
Birmingham, Alabama 35242

6.2 Any representation herein of either party of this Assignment whether it be performed before or after the time of execution shall be binding upon the party obligated thereto.

6.3 For purposes of determining a time for performance of various obligations under this Agreement, the effective date of this Agreement shall be the date signed hereof.

6.4 This Agreement shall be construed and interpreted in accordance with the laws of the State of Alabama.

6.5 For proper interpretation of words in the singular, all words shall include the plural and the masculine gender shall include all neuter and feminine and vice-versa. The terms "successors", and "legal representative" shall include "heirs", "executors", "administrators".

6.6 This Agreement may not be modified or amended except by an Agreement in writing signed by the parties hereto. The parties may waive any of the conditions contained herein or any of the obligations as required herein, but any such waiver shall be effective only if in writing and signed by the party waiving such condition or obligation.

6.7 Each person executing this Assignment covenants and represents that he is fully authorized to do so.

6.8 Time is of the essence of this Assignment.

6.9 In the event it becomes necessary for either party hereto to file a suit to enforce this Agreement or any provision contained herein, the party prevailing in such action shall be entitled to recover in addition to all other remedies or damages, any reasonable attorneys' fees incurred in such suit.

*JMM*  
*7/2/84*

6.10 That certain Option to Purchase Letter Agreement dated February 3, 1994 and that certain Residential Sales Contract dated February 18, 1994 and that certain Mortgage Note dated March 1, 1994 referred to herein is hereby incorporated herein by reference as though fully set out herein.

6.11 This Agreement contains a total of nine (9) pages inclusive of signature pages.

In WITNESS WHEREOF, the undersigned have hereunto set their hands and seal on this 1st day of March, 1994.

**LENDER - MORTGAGEE**

Tommy E. Hill  
Tommy E. Hill, an individual resident of Alabama

**BORROWER - MORTGAGOR**

Steve M. McCay  
McCay Home Builders, Inc.  
By its President: Steve M. McCay

Steve M. McCay  
Steve M. McCay, individually

**ACKNOWLEDGEMENT**

STATE OF Alabama  
COUNTY OF Shelby

I, Ginger H. Knight, a Notary Public hereby certify that Tommy E. Hill, individually, who is known to me, acknowledges before me on this day that being informed of the contents of said instrument he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 1st day of March, 1994.

Ginger H. Knight  
NOTARY PUBLIC  
My commission expires: 7-21-97



**ACKNOWLEDGEMENT**

STATE OF Alabama  
COUNTY OF Shelby

I, Ginger H. Knight, a Notary Public in and for said county and said state hereby certify that Steve M. McCay whose name is signed to the foregoing instrument in his capacity as President of said corporation and with full authority and who is known to me, acknowledges before me on this day that being informed of the contents of said instrument he executed the same voluntarily on the day the same bears date.

Given under my hand an official seal this 1st day of March, 1994.

Ginger H. Knight

NOTARY PUBLIC

My commission expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: July 21, 1997.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

**ACKNOWLEDGEMENT**

STATE OF Alabama  
COUNTY OF Shelby

I, Ginger H. Knight, a Notary Public hereby certify that Steve M. McCay, individually, who is known to me, acknowledges before me on this day that being informed of the contents of said instrument he executed the same voluntarily on the day the same bears date.

Given under my hand an official seal this 1st day of March, 1994.

Ginger H. Knight

NOTARY PUBLIC

My commission expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: July 21, 1997.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

Inst # 1994-17823

9  
06/03/1994-17823  
09:31 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
009 MJS 73.50