

DEBT SUBORDINATION AGREEMENT

THIS AGREEMENT is made and entered into this 31st day of October 1994, between William W. McDonald and Tommy Davis ("collectively, the Creditor"), William W. McDonald ("Lender") and Builder's Group, Inc. ("Borrower").

R E C I T A L S

A. Borrower desires to obtain a loan, extension of credit or other financial accommodations from Lender; and

B. Lender is unwilling to provide financial accommodations to Borrower unless Creditor and Borrower enter into this Agreement with Lender.

C. Creditor and Borrower are willing to enter into this Agreement in order to induce Lender to provide such financial accommodations to Borrower.

AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions.

(a) "Junior Debt" means all loans, advances, liabilities, debit balances, covenants and duties at any time owed by Borrower to Creditor, whether direct or indirect, absolute or contingent, secured or unsecured, due or to become due, now existing or hereafter arising, and whether created directly or acquired indirectly by assignment, pledge, purchase or otherwise, together with all interest, fees, charges, expenses and attorney's fees for which Borrower is now or hereafter becomes liable to pay to Creditor under any agreement or by law, including but not limited to, that certain Master Note of Borrower to Creditor in the principal amount of \$3,000,000.00 dated on or about October 31, 1994.

(b) "Loan Agreement" means that certain Loan Agreement between Lender and Borrower dated as of October 31, 1994, relating to loans in an aggregate amount not to exceed \$2,000,000.00 made or to be made by Lender to Borrower.

(c) "Loans" means any advances of funds pursuant to the Loan Agreement by Lender.

(d) "Superior Debt" means all loans, advances, liabilities, debit balances, covenants and duties at any time owed by Borrower to Lender, whether direct or indirect, absolute or

01/17/1995-01343
01:36 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
28.50
009 MCD

contingent, secured or unsecured, due or to become due, now existing or hereafter arising, including, without limitation, the Loans and any debt, liability or obligation owing from Borrower to others which Lender may have obtained by assignment, pledge, purchase or otherwise, together with all interest, fees, charges, expenses and attorney's fees for which Borrower is now or hereafter becomes liable to pay to Lender under any agreement or by law.

Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to them in the Loan Agreement.

2. Subordination. Creditor hereby postpones and subordinates to the extent and in the manner provided in this Agreement, all of the Junior Debt to the payment of all of the Superior Debt. If Borrower issues or has issued any instrument or document evidencing the Junior Debt, each such instrument and document shall bear a conspicuous legend that it is subordinated to the Superior Debt. Borrower's and Creditor's books shall be marked to evidence the subordination of all of the Junior Debt to Lender. Lender is authorized to examine such books from time to time and to make any notations required by this Agreement.

3. Negative Covenants. Until all of the Superior Debt has been fully and finally paid: (a) Borrower shall not, without the consent of the Lender, directly or indirectly, make any payment on account of or grant a security interest in, mortgage, pledge, assign or transfer any properties to secure or satisfy all or any part of the Junior Debt; (b) Creditor shall not demand or accept from Borrower or any other person any such payment or collateral nor shall Creditor release, exchange, extend the time of payment of, compromise, set off or otherwise discharge or enforce any part of the Junior Debt; (c) Creditor shall not hereafter give any subordination in respect of the Junior Debt, convert any or all of the Junior Debt to capital stock or other securities of Borrower, or transfer or assign any of the Junior Debt to any person other than Lender; (d) Borrower will not hereafter issue any instrument, security or other writing evidencing any part of the Junior Debt, and Creditor will not receive any such writing, except upon the prior written approval of Lender or at the request of and in the manner requested by Lender; (e) Creditor will not commence or join with any other creditors of Borrower in commencing any bankruptcy, reorganization, receivership or insolvency proceeding against Borrower; and (f) neither Borrower nor Creditor otherwise shall take or permit any action prejudicial to or inconsistent with Lender's priority position over Creditor that is created by this Agreement.

4. Permitted Payments.

(a) Permitted Payments. Notwithstanding the provisions of Section 3 hereof, for so long as no event of default has occurred

or exists under any instrument or agreement evidencing or securing the Superior Debt, the following payments on the Junior Debt, and no other, may be received and retained by Creditor: any payments of accrued interest or principal authorized by Lender and distributions in amounts substantially equal to the increase in Creditor's income tax liability attributable to Borrower's status as an S corporation under the Internal Revenue Code of 1986, as amended.

(b) Permitted Encumbrances. Lender agrees that Borrower may grant Creditor a security interest with funds advanced in accordance with the provisions of Article II of that certain Loan Agreement entered by and between Borrower and Creditor effective October 31, 1994.

5. Turnover of Prohibited Transfers. If any payment on account of or any collateral for any part of the Junior Debt is received by Creditor other than as permitted in Section 4 hereof, such payment or collateral shall be delivered forthwith by Creditor to Lender for application to the Superior Debt, in the form received except for the addition of any endorsement or assignment necessary to effect a transfer of all rights therein to Lender. Lender is irrevocably authorized to supply any required endorsement or assignment which may have been omitted. Until so delivered, any such payment or collateral shall be held by Creditor in trust for Lender and shall not be commingled with other funds or property of Creditor. Nothing in this Section 5 shall be construed to permit Borrower to grant, or Creditor to accept, any collateral security with respect to the Junior Debt.

6. Authority to Act for Creditor. For so long as any of the Superior Debt shall remain unpaid, Lender shall have the right to act as Creditor's attorney-in-fact for the purposes specified herein, and Creditor hereby irrevocably appoints Lender its true and lawful attorney, with full power of substitution, in the name of Creditor or in the name of Lender, for the use and benefit of Lender, without notice to Creditor or any of its representatives, successors or assigns, to perform the following acts, at Lender's option, at any meeting of creditors of Borrower or in connection with any case or proceeding, whether voluntary or involuntary, for the distribution, division or application of the assets of Borrower or the proceeds thereof, regardless of whether such case or proceeding is for the liquidation, dissolution, winding up of affairs, reorganization or arrangement of Borrower, or for the composition of the creditors of Borrower, in bankruptcy or in connection with a receivership, or under an assignment for the benefit of creditors of Borrower or otherwise:

(a) To enforce claims comprising the Junior Debt, either in its own name or in the name of Creditor, by proof of debt, proof of claim, suit or otherwise.

(b) To collect any assets of Borrower distributed, divided or applied by way of dividend or payment, or any securities issued, on account of the Junior Debt and to apply the same, or the proceeds of any realization upon the same that Lender in its discretion elects to effect, to the Superior Debt until all of the Superior Debt (including, without limitation, all interest accruing on the Superior Debt after the commencement of any bankruptcy case) has been paid in full, rendering any surplus to Creditor if and to the extent permitted by law;

(c) To vote claims comprising the Junior Debt to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension; and

(d) To take generally any action in connection with any such meeting, case or proceeding that Creditor would be authorized to take but for this Agreement.

In no event shall Lender be liable to Creditor for any failure to prove the Junior Debt, to exercise any right with respect thereto or to collect any sums payable thereon.

7. Waivers. Borrower and Creditor each hereby waives any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement in any action brought therefor by Lender. To the fullest extent permitted by law, Borrower and Creditor each hereby further waives: presentment, demand, protest, notice of protest, notice of default or dishonor, notice of payment or nonpayment and any and all other notices and demands of any kind in connection with all negotiable instruments evidencing all or any portion of the Superior Debt or the Junior Debt to which Borrower or Creditor may be a party; notice of the acceptance of this Agreement by Lender; notice of any loans made, extensions granted or other action taken in reliance hereon; and all other demands and notices of every kind in connection with this Agreement, the Superior Debt or the Junior Debt. Creditor assents to any release, renewal, extension, compromise or postponement of the time of payment to the Superior Debt, to any substitution, exchange or release of collateral therefor, and to the addition or release of any person primarily or secondarily liable thereon.

8. Validity of Junior Debt. The provisions of this Agreement subordinating the Junior Debt are solely for the purpose of defining the relative rights of Lender and Creditor and shall not impair, as between Creditor and Borrower, the obligation of Borrower, which is unconditional and absolute, to pay the Junior Debt in accordance with its terms, nor shall any such provision prevent Creditor from exercising all remedies otherwise permitted by applicable law or under any instrument or agreement evidencing the Junior Debt upon default thereunder, subject to the rights of Lender hereunder to receive cash, property or securities otherwise

payable or deliverable to Creditor until the Superior Debt is paid in full.

9. Indulgences Not Waivers. Neither the failure nor any delay on the part of Lender to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel, nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then only to the extent specifically stated in such writing.

10. Subrogation. Creditor also agrees that, regardless of whether the Superior Debt is secured or unsecured, the Lender shall be subrogated to Creditor with respect to Creditor's claims against the Borrower and Creditor's rights, liens and security interests, if any, in any of Borrower's assets and the proceeds thereof until all of the Superior Debt shall have been fully paid and satisfied and all financing and credit arrangements related thereto between the Borrower and the Lender have been terminated.

11. Instrument Legend. Any instrument evidencing any of the Subordinated Debt, or any portion thereof, will, on the date hereof or promptly hereafter, be inscribed with a legend conspicuously indicating that payment thereof is subordinated to the claims of Lender, pursuant to the terms of this Subordination Agreement. Any instrument evidencing any of the Subordinated Debt, or any portion thereof, which is hereafter executed by the Borrower, will, on the date thereof, be inscribed with the aforesaid legend.

12. Creditor's Waivers. All of the Superior Debt shall be deemed to have been made or incurred in reliance upon this Subordination Agreement, and Creditor expressly waives all notice of the acceptance by the Lender of the subordination and other provisions of this Subordination Agreement and all other notices whatsoever, and the Creditor expressly waives reliance by the Lender upon the subordination and other agreements as herein provided. Creditor agrees that Lender has made no warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the Superior Debt, or the collectibility of the Superior Debt, that Lender shall be entitled to manage and supervise its loans to and credit arrangements with the Borrower in accordance with its usual practices, modified time to time as it deems appropriate under the circumstances, without regard to the existence of any rights that Creditor may now or hereafter have in or to any of the assets of the Borrower and that Lender shall have no liability to Creditor for, and it waives any claim which it may now or hereafter have against Lender arising out of any and all actions which Lender, in

good faith, takes or omits to take, including, without limitation, actions with respect to the creation, perfection or continuation of liens or security interests in any "Collateral" (as defined or described in the Loan Agreement), actions with respect to the occurrence of any Event of Default (as defined or used in the Loan Agreement), actions with respect to the foreclosure upon, sale of, release of, depreciation of or failure to realize upon, any collateral and actions with respect to the collection of any claim for all or any part of the Superior Debt from any account debtor, guarantor or any other party with respect to the Loan Agreement or to the collection of the Superior Debt or the valuation, use, protection or release of any Collateral.

13. Priority on Distribution. In the event of any distribution of the assets or readjustment of the obligations and indebtedness of the Borrower, whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of all or any of the Subordinated Debt, or the application of the assets of the Borrower to the payment or liquidation thereof, Lender shall be entitled to receive payment in full of any and all of the Superior Debt then owing prior to the payment of all or any part of the Junior Debt, and in order to enable Lender to enforce its rights hereunder in any such action or proceeding, Lender is hereby irrevocably authorized and empowered in its discretion to make and present for and on behalf of itself such proofs of claims against the Borrower on account of the Subordinated Debt as Lender may deem expedient or proper and to vote such proofs of claims in any such proceeding and to receive and collect any and all dividends or other payments or disbursements made thereon in whatever form the same may be paid or issued (the "Subordinated Distribution") and to apply the same on account of any of the Superior Debt.

14. Default. If any representation or warranty in this Agreement or in any instrument evidencing or securing the Superior Debt proves to have been materially false when made, or, in the event of a breach by either the Borrower or Creditor in the performance of any of the terms of this Agreement or any instrument or agreement evidencing or securing the Superior Debt, all of the Superior Debt shall, at the option of Lender, become immediately due and payable without presentment, demand, protest, or notice of any kind, notwithstanding any time or credit otherwise allowed. At any time Creditor fails to comply with any provision of this Agreement that is applicable to Creditor, Lender may demand specific performance of this Agreement, whether or not Borrower has complied with this Agreement, and may exercise any other remedy available at law or equity.

15. Notices. All notices, requests, demands and other communications required or permitted under this Agreement or by law shall be in writing and shall be deemed to have been duly given,

made and received only when delivered against receipt or when deposited in the United States mails, certified or registered mail, return receipt requested, postage prepaid, addressed as set forth below;

(a) If to Lender:

Mr. William W. McDonald
One Office Park Circle
Suite 300
Birmingham, AL 35223

(b) If to Creditor:

Mr. William W. McDonald
One Office Park Circle
Suite 300
Birmingham, AL 35223

Mr. Tommy Davis

(c) If to Borrower:

Builder's Group, Inc.
One Office Park Circle
Suite 300
Birmingham, AL 35223
Attention: Mr. Tommy Maddox

Any addressee may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

16. Lender's Duties Limited. The rights granted to Lender in this Agreement are solely for its protection, and nothing herein contained imposes on Lender any duties with respect to any property either of Borrower or of Creditor heretofore or hereafter received by Lender beyond reasonable care in the custody and preservation of such property while in Lender's possession. Lender has no duty to preserve rights against prior parties on any instrument or chattel paper received from Borrower or Creditor as collateral security for the Superior Debt or any portion thereof.

17. Authority. Borrower and Creditor represent and warrant that they have authority to enter into this Agreement and that the persons signing for each party are authorized and directed to do so.

18. Entire Agreement. This Agreement constitutes and expresses the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions whether express or implied, oral or written. Neither

this Agreement nor any portion or provision hereof may be changed, waived or amended, orally or in any manner other than by an agreement in writing signed by Lender, Borrower and Creditor.

19. Additional Documentation. Borrower and Creditor shall execute and deliver to Lender such further instruments and shall take such further action as Lender may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement.

20. Expenses. Borrower and Creditor agree to pay Lender on demand all expenses of every kind, including reasonable attorney's fees, that Lender may incur in enforcing any of its rights under this Agreement.

21. Successors and Assigns. This Agreement shall inure to the benefit of Lender, its successors and assigns, and shall be binding upon both Borrower and Creditor and their respective heirs, personal representatives, successors and assigns.

22. Defects Waived. This Agreement is effective notwithstanding any defect in the validity or enforceability of any instrument or document evidencing the Superior Debt.

23. Governing Law. The validity, construction and enforcement of this Agreement shall be governed by the laws of the State of Alabama.

24. Severability. The provisions of this Agreement are independent of and separable from each other. If any provision hereof shall for any reason be held invalid or unenforceable, it is the intent of the parties that such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof, and that this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered as of the date and year first above written.


LENDER:



William W. McDonald

BORROWER:

BUILDER'S GROUP, INC.

By: 
Its: _____

CREDITOR:


William W. McDonald


Tommy Davis

Inst # 1995-01343

09/17/1995-01343
01:36 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 MCD 28.50