

C: BILLY SMYER  
MARK ELGIN  
BOB MCLEAN  
SORRELL CHEN  
BEVERLY BURGIN  
CATHY NAZEER  
LYNN WEBB  
JOHN HAGEFSTRATION

ORIG: FILE

This instrument prepared by:  
John E. Hagefstration, Jr.  
Bradley Arant Rose & White LLP  
2001 Park Place, Suite 1400  
Birmingham, Alabama 35203-2736

STATE OF ALABAMA )  
COUNTY OF SHELBY )

### AMENDMENT TO PURCHASE MONEY MORTGAGE

THIS AMENDMENT TO PURCHASE MONEY MORTGAGE (this "Amendment") is made and entered into as of the 28<sup>TH</sup> day of January, 2002 by and between **STONEGATE FARMS, LLC**, an Alabama limited liability company ("Mortgagor"), and **S. W. SMYER, JR., INGRID FRANCES SMYER-DUBROW**, and **HARALD L. SMYER** (collectively, "Mortgagee").

### RECITALS:

A. Mortgagor executed in favor of Mortgagee that certain Purchase Money Mortgage dated January 26, 2001, which is recorded in the Office of the Judge of Probate of Shelby County, Alabama, as Instrument. No. 2001-02968 (the "Mortgage"). The Mortgage encumbers the following described real property:

Lot 1, according to the survey of Stonegate Realty Subdivision, as recorded in Map Book 27, Page 133, in the Office of the Judge of Probate of Shelby County, Alabama (the "Property").

B. Mortgagor has requested that the provisions of the Mortgage relating to the release of lots or parcels of the Property be amended in certain respects, and Mortgagee has agreed to do so upon the terms and conditions set forth herein.

C. Capitalized terms used herein but not defined shall have the meanings given to them in the Mortgage.

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor and Mortgagee hereby agree that the provisions of Section 6.14 of the Mortgage are hereby amended to incorporate the following additional provisions:

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SHELBY COUNTY JUDGE OF PROBATE  
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1. If Mortgagor (or an affiliate of Mortgagor) desires to construct a "speculative" home for resale on a lot within the Property, Mortgagee agrees to either:

(i) if the lender providing construction financing to Mortgagor (the "Construction Lender") will not permit a second priority lien on the lot, to release such lot from the Mortgage upon receipt of a fee equal to \$10,500 per gross acre of the Property to be released, which fee shall be applied to the unpaid principal balance of the Note as provided in the Mortgage, and the remaining portion of the Release Fee (\$6,000.00 per gross acre released), plus, to the extent applicable, the required Phase II Escrow Fund (as defined in the Third Amendment to Commercial Sales Agreement) payment (or \$2,350.00 per gross acre released), shall be unsecured, but payable to Mortgagee upon the sale of the house; or

(ii) if the Construction Lender will permit a second priority lien to exist on such lot, then Mortgagee agrees that the lien of the Mortgage shall be junior and subordinate to the Construction Lender's first mortgage, which may secure any amount up the full amount of the construction loan for such home, provided Mortgagee receives payment of the fee described in clause (i), and the remaining portion of the Release Fee (\$6,000.00 per gross acre released), plus, to the extent applicable, the required Phase II Escrow Fund payment (or \$2,350.00 per gross acre released), shall be secured by the Mortgage, but not payable to Mortgagee until the house is sold.

2. Mortgagor shall have not more than two (2) lots released from the Mortgage under the provisions of this Amendment at any one time.

3. Except as amended hereby, the Mortgage is unchanged and the same is hereby ratified and affirmed by Mortgagor and Mortgagee.

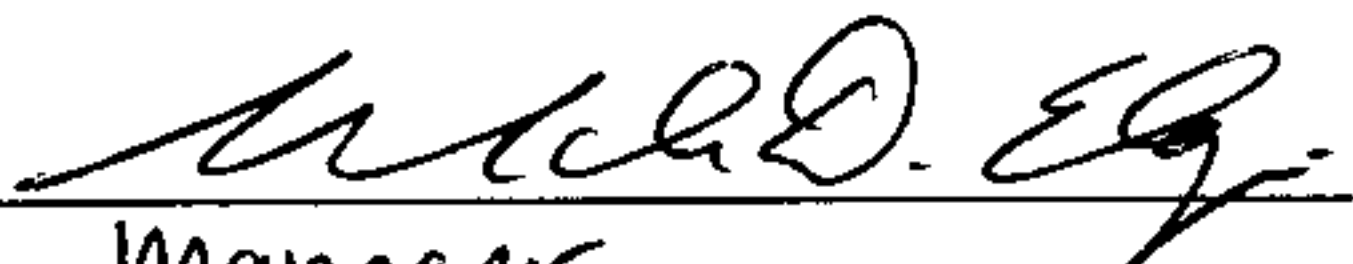
*[Signatures on following page.]*

**IN WITNESS WHEREOF**, the undersigned have executed this Amendment on or as of the date first above written.


**MORTGAGOR:**


**STONEGATE FARMS, LLC,**  
an Alabama limited liability company


By: **STONEGATE PROJECTS (ALABAMA),**  
**LLC**, an Alabama limited liability company,  
Its Sole Member

By:   
Its: Manager

**MORTGAGEE:**

  
S. W. Smyer, Jr.

  
Ingrid Frances Smyer-Dubrow,  
by S. W. Smyer, Jr., as attorney-in-fact  
under Durable Power of Attorney  
dated September 8, 2000

  
Harald L. Smyer,  
by S. W. Smyer, Jr., as attorney-in-fact  
under Durable Power of Attorney  
dated September 8, 2000

STATE OF ALABAMA                    )  
  :  
SHELBY COUNTY                        )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Mark D. Elgin, whose name as Manager of Stonegate Projects (Alabama), LLC, an Alabama limited liability company, as the Sole Member of Stonegate Farms, LLC, an Alabama limited liability company, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company in its capacity as the Sole Member of Stonegate Farms, LLC.

Given under my hand and official seal this 22<sup>nd</sup> day of January, 2002.

Angela H. Chapman  
Notary Public

[NOTARIAL SEAL]

My commission expires: Notary Public, Alabama State at Large  
My Commission Expires March 6, 2004

STATE OF ALABAMA                    )  
  :  
JEFFERSON COUNTY                    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that S. W. Smyer, Jr., 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 said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 28<sup>TH</sup> day of January, 2002.

R. Keller Colvin  
Notary Public

[NOTARIAL SEAL]

My commission expires: Dec 16, 2005



STATE OF ALABAMA

)

JEFFERSON COUNTY

)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that S. W. Smyer, Jr., as attorney-in-fact for Ingrid Frances Smyer-Dubrow under Durable Power of Attorney dated September 8, 2000, 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 said instrument, he, as such attorney-in-fact, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 28<sup>TH</sup> day of January, 2002.



Notary Public

[NOTARIAL SEAL]

My Commission Expires: Dec 16, 2003

STATE OF ALABAMA

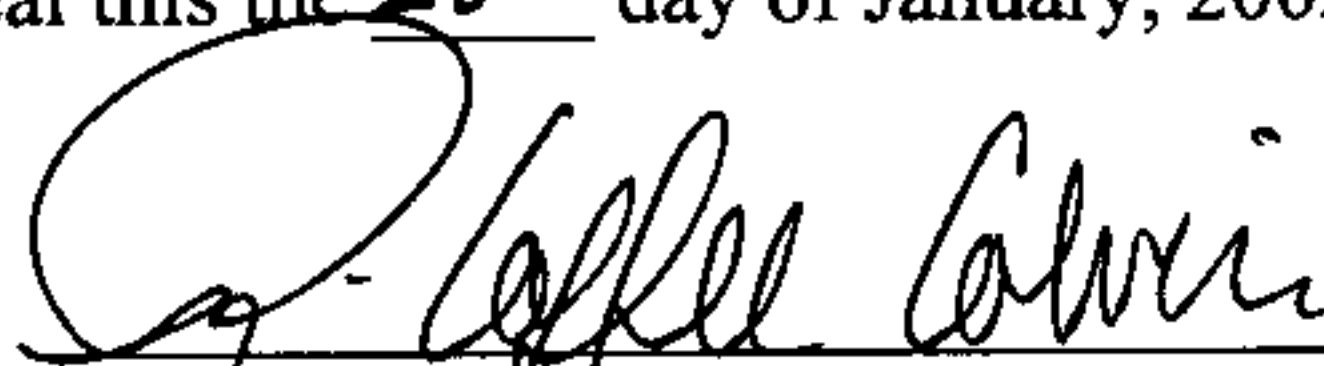
)

JEFFERSON COUNTY

)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that S. W. Smyer, Jr., as attorney-in-fact for Harald L. Smyer under Durable Power of Attorney dated September 9, 2000, 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 said instrument, he, as such attorney-in-fact, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 28<sup>TH</sup> day of January, 2002.



Notary Public

[NOTARIAL SEAL]

My Commission Expires Dec 16, 2003

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