

This instrument prepared by:  
J. Keith Windle  
Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203-2104

STATE OF ALABAMA )  
:  
COUNTY OF SHELBY )

**FIRST AMENDMENT TO ACCOMMODATION MORTGAGE  
AND SECURITY AGREEMENT**

**THIS FIRST AMENDMENT TO ACCOMMODATION MORTGAGE AND SECURITY AGREEMENT** (this "Amendment") is made and entered into as of the 15<sup>th</sup> day of January, 2003, by and between **CALDWELL MILL, LLP**, an Alabama registered limited liability partnership ("Mortgagor"), and **FIRST COMMERCIAL BANK**, an Alabama banking corporation ("Mortgagee").

**RECITALS:**

A. Pursuant to that certain Master Construction Loan Agreement (the "Loan Agreement") dated January 16, 2002, Mortgagee agreed to make available to Gibson & Anderson Construction, Inc., an Alabama corporation (the "Borrower") a construction loan line of credit in the amount of \$2,500,000.00 (the "Loan") to be used to fund the cost of constructing houses on 44 lots located in Phase I of the Caldwell Crossings subdivision in Shelby County, Alabama.

B. The Loan is evidenced by a Master Note (the "Note") dated January 16, 2002, executed by Borrower in favor of Mortgagee along with individual Project Notes, as defined in the Loan Agreement, executed from time to time by Borrower in favor of Mortgagee. Borrower and Mortgagee are entering into that certain Note Modification Agreement of even date herewith (the "Note Modification") pursuant to which the maximum principal balance of the Note is being increased by Two Hundred Fifty Thousand Dollars (\$250,000.00) to Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00).

C. As security for the Note and each Project Note, Mortgagor executed in favor of Mortgagee that certain Accommodation Mortgage and Security Agreement (the "Mortgage") dated January 16, 2002 and recorded in the Probate Office of Shelby County, Alabama as Instrument #2002-03467.

D. Borrower desires to utilize proceeds of the Loan to construct houses on twenty-one (21) additional lots (the "Additional Lots") located in Phase II of Caldwell Crossings subdivision.

E. Mortgagee holds a first mortgage on the Additional Lots, among other property, pursuant to that certain Mortgage and Security Agreement dated March 29, 2002, executed by Mortgagor in favor of Mortgagee and recorded as Instrument #2002-14866 in the Probate Office of Shelby County, Alabama, as amended by that certain First Amendment to Mortgage and Security Agreement dated December 30, 2002, executed by Mortgagor and Mortgagee and recorded in said Probate Office (as so amended, the "First Mortgage").

F. Mortgagor and Mortgagee desire to amend the Mortgage so that the Additional Lots will be included as property subject to the Mortgage and, as a result, the Mortgage, as so amended, will provide Mortgagee with a second priority mortgage on the Additional Lots as collateral for the Loan.

G. Mortgagor has requested Mortgagee to modify certain terms of the Mortgage and Mortgagee has agreed to such modifications on the terms set forth herein.

NOW, THEREFORE, for and in consideration of the recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor and Mortgagee do hereby agree as follows:

1. The "Secured Indebtedness" and the "Note", each as defined in the Mortgage, shall hereafter include the Note, as modified and amended by the Note Modification. Accordingly, the principal indebtedness secured by the Mortgage is hereby increased to Two Million Seven Hundred Fifty Thousand and Dollars (\$2,750,000.00).

2. Section (1) of the Mortgage is hereby deleted in its entirety and the following is substituted in lieu thereof:

“(1) Mortgagor's Warranties of Title and Related Matters. Mortgagor covenants, represents and warrants to Mortgagee with respect to the Mortgaged Property that Mortgagor is lawfully seized in fee and possessed of the Mortgaged Property and has a good right to convey the same as aforesaid, that Mortgagor will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that the Mortgaged Property is free and clear of all encumbrances, easements and restrictions, except the Permitted Encumbrances. Mortgagee hereby agrees that this Mortgage shall be further subject and subordinate to any mortgage (a "Subsequent Mortgage") covering all or a portion of the Mortgaged Property which is given by Mortgagor to secure indebtedness utilized to refinance the indebtedness secured by that certain Mortgage and Security Agreement dated December 14, 2000, executed by Mortgagor in favor of Mortgagee and recorded as Instrument #2000-43397 in the Office of the Judge of Probate of Shelby County, Alabama (the "Phase I First Mortgage") or that certain Mortgage and Security Agreement dated March 29, 2002, executed by Mortgagor in favor of Mortgagee and recorded as Instrument #2002-14866 in the Office of the Judge of Probate of Shelby County, Alabama (the "Phase II, Sector I First Mortgage", and together with the Phase I First Mortgage, the



“First Mortgages”) if the Subsequent Mortgage expressly provides for the release from the lien of the Subsequent Mortgage of each subdivided lot with respect to which the holder of the Subsequent Mortgage has received a \$49,500 principal reduction of the indebtedness secured by the Subsequent Mortgage (i.e. this Mortgage shall be subordinate to the Subsequent Mortgage only if the Subsequent Mortgage contains a \$49,500 lot release provision applicable to each lot comprising the Mortgaged Property).”

3. Section 37(d) of the Mortgage is hereby deleted in its entirety and the following is substituted in lieu thereof:

“(d) Foreclosure Sale. Upon the occurrence of an Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of a description of the property to be sold and the time, place and terms of each such sale, together with a description of the property to be sold, by publication in a newspaper published in the county or counties wherein the Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's main or front courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. Any foreclosure sale hereunder shall consist only of a sale or sales of individual lots (i) with respect to which loan proceeds have been advanced by Mortgagee under the Note (or any Project Note) to fund construction of a house by Borrower on such lot or lots, or (ii) to which an Event of Default is otherwise attributable. The power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Secured Indebtedness shall have been paid in full.

4. Section (37)(l) of the Mortgage is hereby deleted in its entirety and the following is substituted in lieu thereof:

“(l) Credit to First Mortgage Indebtedness. Provided that no Event of Default has occurred and is continuing under the First Mortgages, upon conducting any foreclosure sale of a lot comprising the Mortgaged Property under the terms of this Mortgage, Mortgagee shall credit \$49,500 of the proceeds from such sale to the indebtedness of Mortgagor which is secured by the First Mortgages encumbering the lot being sold in such foreclosure sale; provided, however, that nothing contained in this Mortgage shall limit,

restrict or otherwise affect the rights and remedies available to Mortgagee under the First Mortgages.”

5. Section (50)(l) is hereby amended such that, with respect to the Additional Lots, the amount that must be paid to Mortgagee as a condition to Mortgagee’s obligation to release a particular Additional lot from the lien of the Mortgage shall be the principal amount borrowed from Mortgagee by Borrower under the Note (or applicable Project Note) with respect to such lot, plus all accrued but unpaid interest thereon, plus \$49,500 per lot (\$49,500 of which shall be applied to the indebtedness of Mortgagor which is secured by the First Mortgage).

6. The following real property is hereby added to Schedule A to the Mortgage, and accordingly, the Real Estate, as defined in the Mortgage, shall hereafter include such property:

“Lots 1, 2, 3, 8, 9, 13, 17, 18, 22, 23, 24, 28, 29, 30, 182, 183, 184, 188, 189, 190 and 193, according to the Survey of Phase I Caldwell Crossings, 2<sup>nd</sup> Sector, Map Book 30, Page 116, in the Probate Office of Shelby County, Alabama.”

7. The following permitted encumbrances are hereby added to Schedule B of the Mortgage solely with respect to the lots described in Section 3 of this Amendment:

- a. Taxes for the year 2003 and subsequent years.
- b. Right-of-way granted to Shelby County recorded in Volume 233, Page 700, Volume 216, Page 29 and Volume 282, Page 115.
- c. Right-of-way granted to Alabama Power Company recorded in Real Volume 142, Page 148.
- d. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto and release of damages as recorded in Instrument No. 2000-14348 and Instrument No. 2000-43395.
- e. Right-of-way granted to the City of Hoover recorded in Instrument No. 2000-40742, Instrument No. 2000-40741 and Instrument No. 2000-25988.
- f. Easement(s), building line and restrictions as shown on recorded map.
- g. Restrictions and covenants appearing of record in Instrument No. 2002-02381, Instrument No. 2002-0711000320730 and Instrument No 2002-1209000613570.

8. Mortgagor and Mortgagee agree that all other terms of the Mortgage shall remain in full force and effect.

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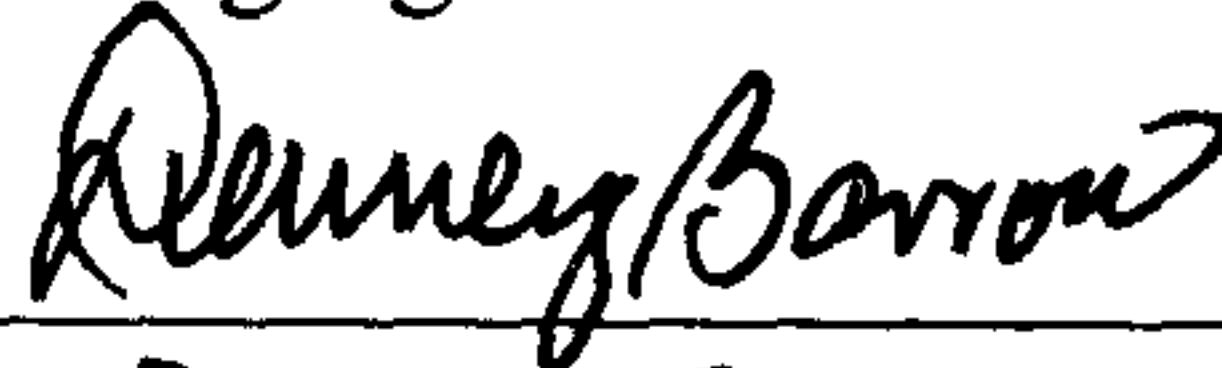
**IN WITNESS WHEREOF**, the parties have caused this Amendment to be executed by their respective duly authorize partners or officers, as applicable, as of day and year first above written.

**MORTGAGOR:**

**CALDWELL MILL, LLP**

By: Harbar Construction Company, Inc.

Its: Managing Partner

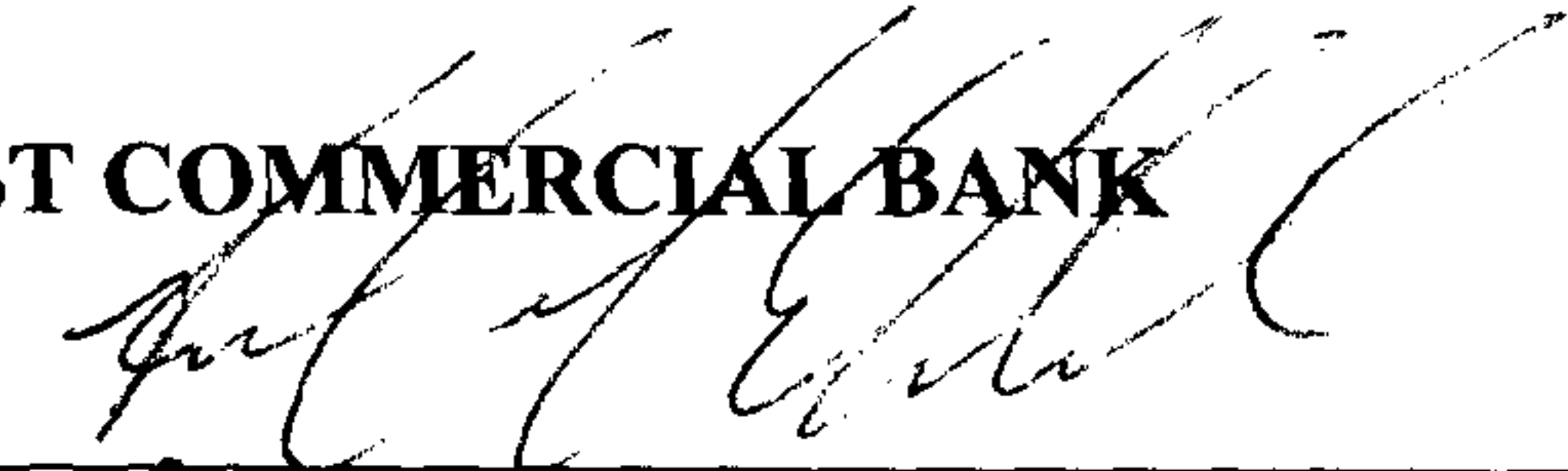
By: 

Name: Denney Bagrow

Its: vice president

**MORTGAGEE:**

**FIRST COMMERCIAL BANK**

By: 

Name: Paul M. Schaback

Its: First vice President



