

1457

**AGREEMENT AND INDEMNITY**  
**(Replacement of Contractor)**

20030502000269590 Pg 1/4 20.00  
Shelby Cnty Judge of Probate, AL  
05/02/2003 08:07:00 FILED/CERTIFIED

THIS AGREEMENT AND INDEMNITY (the "Agreement") is made to be effective as of the 28<sup>th</sup> day of March, 2003, by **ROBERT B. FRANKLIN AND AMANDA M. FRANKLIN, MARRIED** (collectively, the "Borrowers" and individually, a "Borrower") in favor of **REGIONS MORTGAGE, INC.** (the "Lender").

**RECITALS**

1. Borrowers previously executed and entered into that certain construction contract with previous contractor (the "Previous Construction Contract") dated **AUGUST 27, 2002**, by and between Borrowers, as "Owner," and **BUILD AMERICA HOMES, LLC**, as "Contractor" (the "Previous Contractor") providing for the construction of certain improvements on the property legally described on Exhibit "A" attached hereto and by this reference made a part hereof, which property has a street address of **156 HIGHWAY 99, SHELBY, ALABAMA 35143** (the "Property").

2. Lender has made a loan to Borrowers in the original principal amount of **\$134,200.00** (the "Loan"), the proceeds of which are or shall be disbursed by Lender for the construction of the improvements contemplated by the Previous Construction Contract, and such disbursements are being or shall be made pursuant to the terms and conditions of that certain construction loan agreement dated **AUGUST 27, 2002** by and between Borrowers and Lender (the "Loan Agreement").

3. The Loan is evidenced by that certain Promissory Note in the original principal amount of **\$134,200.00**, dated **AUGUST 27, 2002**, executed by Borrowers to the order of Lender (the "Note"). The Note is secured by that certain Deed of Trust, Mortgage or Security Deed of even date therewith encumbering the Property and recorded 200210170005071660 of the Real property Records of **SHELBY County, ALABAMA** (the "Mortgage") (the "Note, the Mortgage, the Loan Agreement and all other instruments executed in connection therewith or to further evidence and/or secure the Loan are collectively referred to herein as the "Loan Documents").

4. The Mortgage is a first priority lien on the Property.

5. Borrowers have found it necessary and desirable to terminate the Previous Contractor and the Previous Construction Contract, and have requested Lender's consent in connection therewith.

6. Borrowers have executed a certain construction contract with new contractor (the "New Construction Contract") dated \_\_\_\_\_, by and between Borrowers, as "Owner", and **BILLY THOMAS REMODELING**, as "Contractor" (the "New Contractor") which provides for the completion of the construction of the improvements on the Property contemplated by the Previous Construction Contract, and Borrowers have requested Lender's consent to the New Construction Contract and the New Contractor.

7. Lender is requiring the execution and delivery of this Agreement from Borrowers to Lender as one of the conditions to Lender's consent to the New Contractor and New Construction Contract and the termination of the Previous Contractor and the Previous Construction Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrowers agree for the benefit of Lender as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference.

2. Termination. Borrowers represent and warrant to Lender as follows:

(a) Borrowers have properly terminated the Previous Construction Contract in accordance with all requirements and procedures required under applicable law;

(b) Except as indicated on Schedule 1 attached hereto, if applicable, the Previous Contractor, all subcontractors, sub-subcontractors, laborers, materialmen, mechanics, suppliers and other persons performing work at the Property (the Previous Contractor, all subcontractors, sub-subcontractors, laborers, materialmen, mechanics, suppliers and other persons performing work at the Property are collectively referred to herein as the "Lienors") have been paid in full for all work or services performed or materials delivered by such parties, there are no outstanding claims by any Lienor or any other party against the Property or against the Previous Contractor relating to the Property, Borrowers have obtained releases and/or waivers of liens from each Lienor and no Lienor or any other party has filed a lien or is entitled to a lien on the Property;

(c) the Previous Contractor and all other Lienors have delivered any and all affidavits required or desirable under applicable law in connection with the termination of the Previous Construction Contract and Previous Contractor and/or any corresponding interruption of construction of the improvements, including without limitation, those necessary or desirable to ensure the continued first lien priority of the Mortgage; and

(d) all notices required or desirable to be filed and/or delivered under applicable law in connection with the termination of the Previous Construction Contract and Previous Contractor and/or any corresponding interruption of construction of the improvements, including without limitation, those necessary or desirable to ensure the continued first lien priority of the Mortgage, have been filed in all necessary or appropriate filing offices and/or delivered to all appropriate or necessary parties, and any and all periods of time specified under applicable law for the effectiveness of such notices have expired.

3. New Construction Contract. Borrowers represent and warrant to Lender as follows:

(a) the New Contractor has agreed to complete construction of the improvements in accordance with the terms of the New Construction contract, a true, correct and complete copy of which is attached hereto as Exhibit "B", and the New Construction Contract has not been assigned, modified, supplemented or amended in any way. The New Construction Contract constitutes the entire agreement between Borrowers and the new Contractor and there are no other agreements between Borrowers and the New Contractor concerning the construction of the improvements;

(b) the New Construction contract is valid and in full force and effect, and neither Borrowers nor the New Contractor is in default thereunder. The New Contractor has no defense, setoff or counterclaim against Borrowers arising out of the new construction Contract or otherwise in connection with the improvements or the Property, and no event has occurred and no condition exists, which, with the giving of notice or the passage of time, or both, will constitute a default under the New Construction Contract;

(c) the plans and specifications for the improvements previously delivered to Lender have not been modified, supplemented or amended in any way, and the New Contractor has agreed pursuant to the terms of the New Construction Contract to complete construction of the improvements in strict accordance with such plans and specifications;



(d) all building permits and any and all other applicable governmental approvals in connection with the construction of the improvements have not been modified, supplemented or amended in any way, and are valid and in full force and effect;

(e) this Agreement has been executed, acknowledged and delivered by Borrowers to Lender before any labor has been performed or any material has been delivered by or on behalf of the New Contractor for the construction of the improvements;

(f) construction of the improvements will be completed on or prior to the completion date set forth in the Loan Agreement; and

(g) all notices required or desirable to be filed and/or delivered under applicable law in connection with the execution of the New Construction Contract and/or the recommencement of construction of the improvements, including without limitation, those necessary or desirable to ensure the continued first lien priority of the Mortgage, have been filed in all necessary or appropriate filing offices and/or delivered to all appropriate or necessary parties.

4. Release. Each Borrower hereby releases and forever discharges Lender, its affiliates and each of their respective officer, directors, counsel, employees, agents, successors and assigns (collectively, the "Releasees") from all causes of action, losses, damages, claims, rights, and controversies, know or unknown, which Borrower had, now has, or may hereafter acquire which relate to, are based on arise out of, or are in any way connected with any acts of any Releasee occurring on or prior to the execution of this Agreement and relating in any manner to the Previous Construction Contract, the Previous Contractor, the New Construction Contract, the New Contractor, the Loan Documents, the disbursement of Loan proceeds, or the Property or the construction of the improvement thereon. This is a general release of all possible claims and causes of action of every kind and character related to the above-described subject matter and is to be interpreted liberally to effectuate maximum protection of the Releasees.

5. Indemnity. At all times, whether prior to or after completion of construction and both before and after the repayment of the Loan, each Borrower hereby jointly and severally agrees that they shall at their sole cost and expense indemnify, defend , exonerate, protect and save harmless each Releasee against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgment, suits, proceedings, costs, disbursements, or expenses of any kind or nature whatsoever, including, without limitation, reasonable attorneys' and experts' fees and disbursements, which may at any time be imposed upon, incurred by or asserted or awarded against any Releasee and arising from or out of:

(a) the violation of any applicable mechanics' or construction lien law with respect to the Previous Construction Contract or the Previous Contractor, the termination thereof, any interruption of construction and re-commencement of construction, the New Construction Contract or New Contractor, the Property or the construction of the improvements thereon, whether occurring on or before the date hereof or which may occur in the future; and

(b) Any breach of warranty or representation made by Borrowers under or pursuant to this Agreement.

6. No Third Party Beneficiaries. Neither this Agreement nor the Loan Documents creates in favor of the Previous Contractor, the New Contractor or the other Lienors any right or claims against Lender hereunder or under the Loan Documents. Without limiting the generality of the foregoing, (a) all

conditions of the obligation of Lender to make advances of Loan proceeds under the Loan Documents are imposed solely and exclusively for the benefit of Lender and neither the Previous Contractor, the New Contractor nor the other Lienors shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof, and neither the Previous Contractor, the New Contractor nor the other Lienors shall, under any circumstances, be deemed to be a beneficiary of such conditions and (b) Lender's obligation to make advances of Loan proceeds under the Loan Documents is solely for the benefit of Borrowers and no other person, including without limitation, the Previous Contractor, the New Contractor and the other Lienors, shall be deemed to be a beneficiary of such obligation or entitled to require any advance of Loan proceeds.

7. Miscellaneous.

(a) Borrowers hereby ratify and reaffirm the Loan Documents as well as all security interests and liens granted therein securing the Loan. By entering into this Agreement, Borrowers have no intention whatsoever to extinguish or discharge the Loan Documents or to effect any novation thereof.

(b) this Agreement shall be binding upon and inure to the benefit of Borrowers and Lender and their respective heirs, successors, assigns and legal representatives; provided however, the prohibitions against transfers by Borrowers as contained in the Mortgage and other Loan Documents remain in full force and effect and are not and shall not be deemed to be modified, supplemented or amended in any respect.

(c) this Agreement shall be governed by the laws of the state in which the property is located.

 3/28/03  
ROBERT B. FRANKLIN Date

 3/28/03  
AMANDA M. FRANKLIN Date