

This instrument prepared by:

J. Keith Windle

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One Federal Place

1819 Fifth Avenue North

Birmingham, Alabama 35203-2104

STATE OF ALABAMA

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COUNTY OF SHELBY

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SECOND AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT

THIS SECOND AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT (this "Amendment") is made and entered into as of the 30th day of April, 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. Mortgagor executed that certain Promissory Note dated March 29, 2002 in favor of Mortgagee in the maximum principal amount of \$4,162,000.00 (the "Initial Sector II Development Note"), the proceeds of which were utilized to fund the cost of developing Phase I, Phase II and Phase III, Second Sector of Caldwell Crossings subdivision in Shelby County, Alabama.

B. Mortgagor executed that certain Promissory Note dated March 29, 2002 in favor of Mortgagee in the amount of \$1,823,000.00 (the "Phase IV, Second Sector Acquisition Note" and together with the Initial Sector II Development Note, the "Existing Phase II Notes"), the proceeds of which were utilized to acquire certain real property to be developed in the future as Phase IV, Second Sector of Caldwell Crossings subdivision.

C. As security for the Existing Phase II Notes, Mortgagor executed in favor of Mortgagee that certain Mortgage and Security Agreement (the "Mortgage") dated March 29, 2002 and recorded in the Probate Office of Shelby County, Alabama (the "Probate Office") as Instrument #2002-14866. The portion of the Phase II Mortgaged Property, as defined in the Mortgage, which is described on Exhibit A attached hereto is hereinafter referred to as the "Phase IV, Second Sector Mortgaged Property".

D. Mortgagor subsequently executed that certain Promissory Note dated December 30, 2002, (the "Third Sector Acquisition Note" and together with the Existing Phase II Notes, the "Existing Notes"), the proceeds of which were utilized to acquire certain real property to be developed in the future as Third Sector of Caldwell Crossings subdivision (the "Third Sector Property").

E. Mortgagor and Mortgagee entered into that certain First Amendment to Mortgage and Security Agreement dated December 30, 2002 and recorded as Instrument #20021230000653000 in the Probate Office, pursuant to which the Third Sector Property was included as property subject to the Mortgage and the Phase III Acquisition Note was included as indebtedness secured by the Mortgage.

F. At Mortgagor's request, Mortgagee has agreed to make an additional loan to Mortgagor in the maximum principal amount of \$5,500,000.00 (the "Phase IV, Second Sector Development Loan") to be used to (i) pay off the balance of the Phase IV, Second Sector Acquisition Note and (ii) fund the development of Phase IV, Second Sector of Caldwell Crossings subdivision.

G. The Phase IV, Second Sector Development Loan will be evidenced by a Promissory Note of even date herewith in the maximum principal amount of \$5,500,000.00 (the "Phase IV, Second Sector Development Note") executed by Mortgagor in favor of Mortgagee.

H. At Mortgagor's request, Mortgagee has agreed to make available to Mortgagor a revolving line of credit in the principal amount of up to \$800,000.00 (the "Revolving Loan") to be used to fund additional project costs relating to the development of Caldwell Crossings subdivision.

I. The Revolving Loan will be evidenced by a Revolving Note of even date herewith in the maximum principal amount of \$800,000.00 (the "Revolving Note") executed by Mortgagor in favor of Mortgagee.

J. Mortgagor and Mortgagee desire to amend the Mortgage so that the Mortgage will secure the Phase IV, Second Sector Development Note and the Revolving Note in addition to the Existing Notes.

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", as defined in the Mortgage, shall hereafter include the payment and performance of all obligations of the Mortgagor under the Phase IV, Second Sector Development Note, the Revolving Note and any and all renewals, extensions, modifications, substitutes or increases of the Phase IV, Second Sector Development Note or the Revolving Note, or any part thereof.

2. The "Loan Documents" and the "Notes", each as defined in the Mortgage, shall hereafter include the Phase IV, Second Sector Development Note, the Revolving Note and any and all renewals, extensions, modifications, substitutes or increases of the Phase IV, Second Sector Development Note or the Revolving Note, or any part thereof.

3. Solely with respect to the Phase IV, Second Sector Mortgaged Property, Section 51(d) of the Mortgage is hereby modified so that the amount payable to Mortgagee as a condition to the release of any subdivided lot shall be the greater of (i) the net proceeds payable to Mortgagor as a result of the sale of such lot and (ii) \$50,000.00. Except as specifically set forth herein, Section 51 of the Mortgage shall remain unmodified.

4. The occurrence of an Event of Default under the Phase IV, Second Sector Development Note or the Revolving Note shall constitute an Event of Default under the Mortgage.

5. Mortgagor hereby affirms and restates each and every representation contained in the Mortgage as of the date hereof.

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

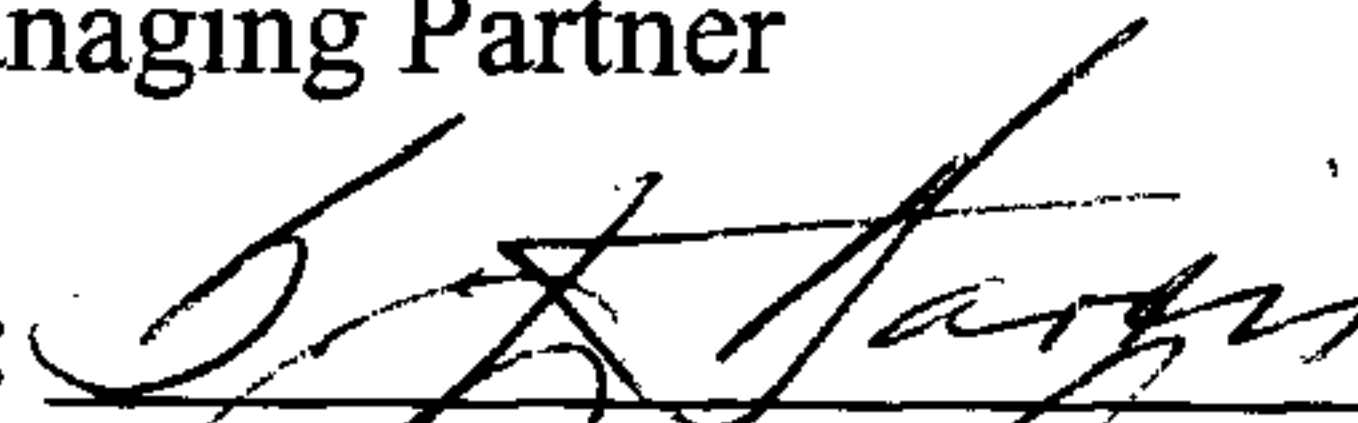
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IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorize partners or officers, as applicable, as of day and year first above written.

MORTGAGOR:


CALDWELL MILL, LLP

By: Harbar Construction Company, Inc.
Its: Managing Partner

By: 
Its: President

MORTGAGEE:

FIRST COMMERCIAL BANK

By: 
Name: Paul M. Schaback
Its: FVP

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that B. J. HARRIS, whose name as President of Harbar Construction Company, Inc., an Alabama corporation, as managing partner of Caldwell Mill, LLP, an Alabama registered limited liability partnership, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation acting in its capacity as such managing partner, for and as the act of said registered limited liability partnership.

Given under my hand and official seal, this the 29th day of April, 2003.

Ray R. Weaver
Notary Public

[NOTARY SEAL]

My Commission expires: 4/17/05

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Paul M. Schabacker, whose name as First Vice President of First Commercial Bank, an Alabama banking corporation, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 29th day of April, 2003.

Ray R. Weaver
Notary Public

[NOTARY SEAL]

My Commission expires: 4/17/05

EXHIBIT A

Phase II Mortgaged Property:

Part of the South $\frac{1}{2}$ of Section 3, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at an existing 3" capped iron pipe being the locally accepted NW corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 3, run in an Easterly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 321.31 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of $108^{\circ}43'17''$ and run in a Southwesterly direction for a distance of 199.30 feet to an existing iron rebar; thence turn an angle to the left of $71^{\circ}44'46''$ and run in a Southeasterly direction for a distance of 92.37 feet to an existing iron rebar; thence turn an angle to the right of $64^{\circ}51'16''$ and run in a Southwesterly direction for a distance of 114.21 feet to an existing iron rebar; thence turn an angle to the left of $81^{\circ}09'46''$ and run in a Southeasterly direction for a distance of 141.63 feet to an existing iron rebar; thence turn an angle to the right of $109^{\circ}31'06''$ and run in a Southwesterly direction for a distance of 54.59 feet to an existing iron rebar; thence turn an angle to the left of $38^{\circ}32'31''$ and run in a Southerly direction for a distance of 126.0 feet to an existing iron rebar; thence turn an angle to the left of $48^{\circ}38'32''$ and run in a Southeasterly direction for a distance of 143.20 feet to an existing iron rebar; thence turn an angle to the left of $35^{\circ}06'54''$ and run in an Easterly direction for a distance of 39.77 feet to an existing iron rebar in the center of a stream; thence follow meandering of the centerline of said stream up said stream to a point where said centerline intersects the accepted South line of the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 3, Township 19 South, Range 2 West and being marked by an existing rebar (being found by turning an angle to the right of $86^{\circ}07'12''$ and run in a Southerly direction for a distance of 634.04 feet to an existing iron rebar from last mentioned course); thence turn an angle to the right of $52^{\circ}14'31''$ and run in a Southwesterly direction for a distance of 608.25 feet to an existing iron rebar; thence turn an angle to the left of $11^{\circ}15'33''$ and run in a Southwesterly direction for a distance of 1400.64 feet to an existing iron rebar; thence turn an angle to the right of $44^{\circ}20'47''$ and run in a Westerly direction for a distance of 249.99 feet to an existing crimp iron pin being the locally accepted Southwest corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 3; thence turn an angle to the right of $0^{\circ}4'53''$ and run in a Westerly direction for a distance of 204.52 feet to an existing iron rebar set by Laurence D. Weygand and being on the Northeast right of way line of Caldwell Mill Road; thence turn an angle to the right of $51^{\circ}51'32''$ and run in a Northwesterly direction along the Northeast right of way line of Caldwell Mill Road for a distance of 218.50 feet to an existing iron rebar set by Laurence D. Weygand and being the point of beginning of a curve, said curve being concave on an Easterly direction and having a central angle of $18^{\circ}43'$ and a radius of 1825.62 feet; thence turn an angle to the right and run in a Northwesterly direction along the arc of said curve and along the Northeast right of way line of said Caldwell Mill Road for a distance of 596.37 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left (90° from tangent) and run in a Southwesterly direction for a distance of 34.45 feet to an existing iron rebar set by Laurence D. Weygand and being on the Northeast right of way line of Caldwell Mill Road and being on a curve, said newest curve being concave in an Easterly direction and having a central angle of $8^{\circ}50'58''$ and a radius of 1860.07 feet; thence turn an angle to the right (90° to tangent) and run in a Northerly direction along the arc of said curve and along the East right of way line of Caldwell Mill Road for a distance of 287.29 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right (90° from tangent)

and run in an Easterly direction for a distance of 30.0 feet to an existing iron rebar set by Laurence D. Weygand and being on the East right of way line of Caldwell Mill Road and being on a curve, said curve being concave in an Easterly direction and having a central angle of $4^{\circ}55'57''$ and a radius of 1830.07 feet; thence turn an angle to the left (90° tangent) and run in a Northerly direction along the arc of said curve and along the East right of way line of Caldwell Mill Road for a distance of 157.55 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right ($60^{\circ}41'25''$ from the chord of last mentioned curve) and run in a Northeasterly direction for a distance of 1164.84 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of $18^{\circ}0'$ and run in a Northeasterly direction for a distance of 520.0 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of $29^{\circ}47'26''$ and run in a Northeasterly direction for a distance of 829.78 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of $49^{\circ}43'11''$ and run in an Easterly direction for a distance of 38.69 feet, more or less, to the point of beginning.

Less and except the following:

Phase Two, Caldwell Crossings, 2nd Sector, as recorded in Map Book 31, Page 31, in the Office of the Judge of Probate of Shelby County, Alabama.

Phase Three, Caldwell Crossings, 2nd Sector, as recorded in Map Book 31, Page 32, in the Office of the Judge of Probate of Shelby County, Alabama.

Phase One, Caldwell Crossings, 2nd Sector, as recorded in Map Book 30, Page 116, in the Office of the Judge of Probate of Shelby County, Alabama.