

This Instrument Prepared By:
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420 North 20th Street
Birmingham, Alabama 35203

STATE OF ALABAMA)
COUNTY OF SHELBY)

**THIRD AMENDMENT TO
MORTGAGE AND SECURITY AGREEMENT**

THIS THIRD AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT
(this "Amendment") is made and entered into as of the 29th day of July, 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 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 is evidenced by a Promissory Note dated April 30, 2003 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 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 is evidenced by a Revolving Note dated April 30, 2003 in the maximum principal amount of \$800,000.00 (the "Revolving Note") executed by Mortgagor in favor of Mortgagee.

J. Mortgagor and Mortgagee entered into that certain Second Amendment to Mortgage and Security Agreement dated as of April 30, 2003, and recorded as Instrument #20030508000285620 in the Probate Office pursuant to which the Phase IV, Second Sector Development Note and the Revolving Note were included as indebtedness secured by the Mortgage in addition to the Existing Notes.

K. At Mortgagor's request, Mortgagee has agreed (i) to modify Section 51(d) of the Mortgage with respect to the lot release amount for lots in the Phase IV, Second Sector Mortgaged Property, (ii) to provide for a lot release amount for lots in the Third Sector Property, and (iii) to permit the exercise of options to purchase lots in the Third Sector Property.

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. 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) \$52,500.00. Except as specifically set forth herein, Section 51 of the Mortgage shall remain unmodified.

2. The Mortgage is modified and amended to add thereto the following as Section 53:

"(53) Partial Release -- Third Sector Property. Mortgagee agrees to release from the lien of this Mortgage any portion of the Third Sector Property which has been subdivided into a separate lot provided that each of the following requirements and conditions are met:

a. With respect to any subdivision created after the date hereof, Mortgagee has approved the size, configuration, location and all other aspects and characteristics of such lot and the impact that the creation thereof has on the remainder of the Mortgaged Property;

b. Such lot has been legally created and the subdivision therefore approved by Mortgagee and all applicable governmental authorities and has been recorded in the Office of the Judge of Probate of Shelby County, Alabama;

c. No Event of Default shall have occurred or be continuing under this Mortgage, the Notes, the Loan Agreement or any of the other Loan Documents; and

d. Such lot has been sold to a bona fide purchaser and Mortgagee receives the greater of (i) the net proceeds payable to Mortgagor as a result thereof and (ii) \$57,500.00 for application to the Secured Indebtedness."

3. The Mortgage is modified and amended to add thereto the following as
Section 54:

"(54) Option Agreements -- Third Sector Property. Notwithstanding anything to the contrary contained in this Mortgage and provided no Event of Default exists hereunder, Mortgagor shall be entitled to convey any separate, subdivided lot comprising a portion of the Third Sector Property to (i) Harbar Construction Company, Inc. ("Harbar") pursuant to the Option Agreement dated December 30, 2002, as amended, by and between Mortgagor and Harbar or (ii) Gibson & Anderson Construction, Inc. ("G&A") pursuant to the Option Agreement dated December 30, 2002, as amended, by and between Mortgagor and G&A, provided that any lot so conveyed shall remain subject to this Mortgage until the provisions of Section 53 of this Mortgage have been satisfied".

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

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

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized 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: [Signature]
Its: Managing Partner

MORTGAGEE:

FIRST COMMERCIAL BANK

By: [Signature]
Name: Paul M. Schabacker
Its: FVP

STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that B.T. 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 July, 2003.

[Signature]
Notary Public
My Commission Expires: 3/19/04

[NOTARY SEAL]

NOTARY PUBLIC
COMMISSION EXPIRES
DATED THIS NOTARY PUBLIC

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Paul Schabacker, whose name as First VP 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 16th day of August, 2003.

Heatra A. Repley
Notary Public

My Commission Expires

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
COMMISSION EXPIRES: Feb 21, 2006
BONDED THRU NOTARY PUBLIC UNDERWRITERS

[NOTARY SEAL]

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.

20030811000526340 Pg 7/7 30.00
Shelby Cnty Judge of Probate, AL
08/11/2003 15:30:00 FILED/CERTIFIED

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.