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Shelby Cnty Judge of Probate,AL
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This instrument prepared by:
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STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

**FOURTH AMENDMENT TO MORTGAGE
AND SECURITY AGREEMENT**

THIS FOURTH AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT (this “Amendment”) is made and entered into as of the 20th day of November, 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 “Initial Phase II Notes”), the proceeds of which were utilized to acquire certain real property to be developed as Phase IV, Second Sector of Caldwell Crossings subdivision.

C. As security for the Initial 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.

D. Mortgagor subsequently executed that certain Promissory Note dated December 30, 2002 in the amount of \$1,620,000.00 (the “Third Sector Acquisition Note”), the proceeds of which were utilized to acquire certain real property to be developed as the Third Sector of Caldwell Crossings subdivision (the “Third Sector Mortgaged Property”). The Third Sector Mortgaged Property is described on **Exhibit A** attached hereto.

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 Third Sector Acquisition Note was included as indebtedness secured by the Mortgage.

F. Mortgagor executed that certain Promissory Note dated April 30, 2003 in favor of Mortgagee in the maximum principal amount of \$5,500,000.00 (the "Phase IV, Second Sector Development Note") the proceeds of which were 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. Mortgagor executed that certain Revolving Note dated April 30, 2003 in favor of Mortgagee credit in the principal amount of up to \$800,000.00 (the "Revolving Note", and together with the Initial Sector II Development Note and the Revolving Note, the "Existing Notes") the proceeds of which are used to fund additional project costs relating to the development of Caldwell Crossings subdivision.

H. 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 Section Development Note and the Revolving Note were included as indebtedness secured by the Mortgage.

I. Mortgagor and Mortgagee entered into that certain Third Amendment to Mortgage and Security Agreement dated as of July 29, 2003, and recorded as Instrument #20030811000526340 in the Probate Office pursuant to which lot release amounts for certain lots were established and revised.

J. At Mortgagor's request, Mortgagee has agreed to make an additional loan to Mortgagor in the maximum principal amount of up to \$4,500,000.00 (the "Third Sector Development Loan") to be used to (i) pay off the balance of the Third Sector Acquisition Note and (ii) fund the development of the Third Sector of Caldwell Crossings subdivision.

K. The Third Sector Development Loan will be evidenced by a Promissory Note of even date herewith in the maximum principal amount of \$4,500,000.00 (the "Third Sector Development Note") executed by Mortgagor in favor of Mortgagee.

L. Mortgagor and Mortgagee desire to amend the Mortgage so that the Mortgage will secure the Third Sector Development 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 Third Sector Development Note and any and all renewals, extensions, modifications, substitutes or increases of the Third Sector Development, or any part thereof.

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

3. Solely with respect to the Third 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) \$57,500.00. Except as specifically set forth herein, Section 51 of the Mortgage shall remain unmodified.

4. The occurrence of an Event of Default under the Third Sector Development 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.

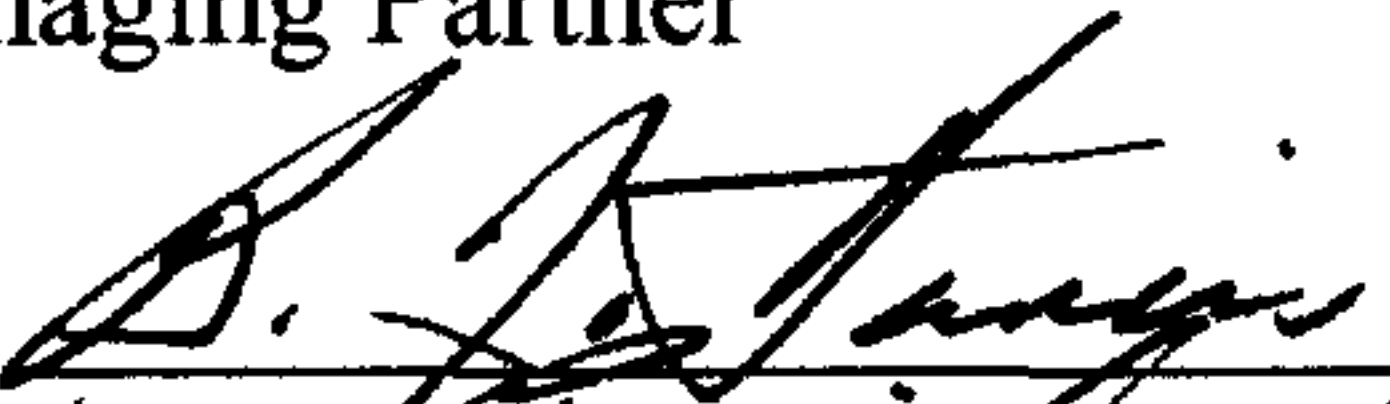

6. Mortgagor and Mortgagee agree that all other terms of the Mortgage shall remain in full force and effect.

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:

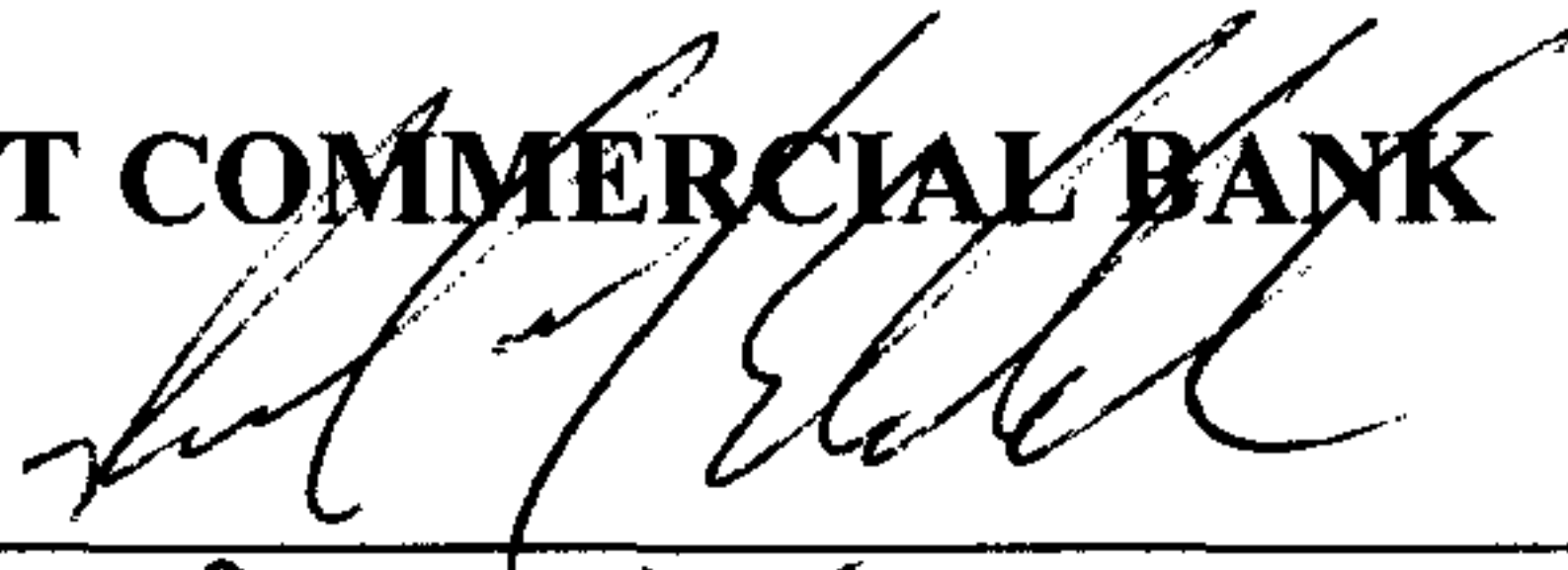
CALDWELL MILL, LLP

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

By: 
Its: 

MORTGAGEE:

FIRST COMMERCIAL BANK

By: 
Name: Paul M. Schabacker
Its: Senior Vice President

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 20th day of November 2003.

Arthur W. Russo
Notary Public

[NOTARY SEAL]

My Commission expires: 1-4-2006

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Paul Schnabacker, whose name as Sr. 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 20th day of November 2003.

Arthur W. Russo
Notary Public

[NOTARY SEAL]

My Commission expires: 1-4-2006

EXHIBIT A

Third Sector Mortgaged Property:

Part of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, both of Section 3, Township 19 South, Range 2 West of the Huntsville Principal Meridian, Shelby County, Alabama, being more particularly described as follows:

Beginning at an existing 3" capped iron pipe being the locally accepted southeast corner of said SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 3, run in a northerly direction along the east line of said $\frac{1}{4}$ - $\frac{1}{4}$ section and along the west line of the Amended Map of Wyngate First Sector, as recorded in Shelby County in the Office of the Judge of Probate in Map Book 11, Page 13, for a distance of 1308.59 feet to an existing 3" capped iron pipe being the locally accepted northeast corner of said SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 3; thence turn an angle to the left of $88^{\circ}16'15''$ and run in a westerly direction along the south line of the Amended Map of Wilmington Place, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 30, Page 23, for a distance of 861.64 feet to an existing iron rebar; thence turn an angle to the left of $33^{\circ}31'04''$ and run in a southwesterly direction for a distance of 608.19 feet to an existing #5 iron rebar set by Paragon Engineering; thence turn an angle to the left of $11^{\circ}16'55''$ and run in a southwesterly direction for a distance of 1400.55 feet to an existing #5 Paragon iron rebar; thence turn an angle to the left of $135^{\circ}39'14''$ and run in an easterly direction for a distance of 1072.28 feet to an existing #5 iron rebar being the locally accepted southeast corner of the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 3; thence turn an angle to the right of $0^{\circ}11'07''$ and run in an easterly direction along the south line of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 3 for a distance of 1329.75 feet, more or less, to the point of beginning.