

Mortgage filing privilege taxes have been previously paid on indebtedness in the amount of \$4,180,000 in connection with that certain Accommodation Mortgage dated December 6, 1999 recorded with the Judge of Probate of Shelby County, Alabama in Instrument # 1999/50198, as amended by that certain First Amendment to Mortgage dated July 14, 2000 recorded with the Judge of Probate of Shelby County, Alabama in Instrument # 2000/26364, as amended by that certain Second Amendment to Mortgage dated April 11, 2002 recorded with the Judge of Probate of Shelby County, Alabama in Instrument # 20020509000218410; as amended by that certain Third Amendment to Mortgage dated February 7, 2003 recorded with the Judge of Probate of Shelby County, Alabama in Instrument # 20030319000165760; and as amended by that certain Fourth Amendment to Mortgage dated April 18, 2003 as recorded with the Judge of Probate of Shelby County, Alabama in Instrument # 20030512000295730. No additional mortgage filing privilege taxes are due in connection with the recording of this instrument.

STATE OF ALABAMA)
COUNTY OF SHELBY)

FIFTH AMENDMENT TO MORTGAGE

THIS FIFTH AMENDMENT TO MORTGAGE ("this Amendment") dated as of December 4, 2003 (the "Effective Date") is entered into by **WATERFORD, L.L.C.**, an Alabama limited liability company, and **SHELBY SPRINGS STOCK FARMS, INC.**, an Alabama limited liability company (collectively, the "Mortgagor"), and **NATIONAL BANK OF COMMERCE OF BIRMINGHAM**, a national banking association (the "Lender").

Recitals

A. The Mortgagor has heretofore executed a certain Accommodation Mortgage dated December 6, 1999 and recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument # 1999/50198 in favor of the Lender (the "Mortgage"), as amended by that certain First Amendment to Mortgage dated July 14, 2000 recorded with the Judge of Probate of Shelby County, Alabama as Instrument # 2000/26364, as amended by that certain Second Amendment to Mortgage dated April 11, 2002 recorded with the Judge of Probate of Shelby County, Alabama as Instrument # 20020509000218410, as amended by that certain Third Amendment to Mortgage dated February 7, 2003 recorded with the Judge of Probate of Shelby County, Alabama as Instrument # 20030319000165760, as amended by that certain Fourth Amendment to Mortgage dated April 18, 2003 recorded with the Judge of Probate of Shelby County, Alabama as Instrument # 20030512000295730.

B. The Mortgage secures (among other things) (i) a certain loan made by the Lender to Waterford, L.L.C. (the "Borrower") in the maximum principal amount of \$2,628,400 (the "Original Loan"), which Original Loan is evidenced by that certain Amended and Restated Master Note - Commercial Loans dated January 31, 2002 executed by the Borrower in favor of the Lender in said maximum principal amount, (ii) two additional loans made by the Lender to the Borrower, each in the principal amount of \$240,000 (the "2002 Loans"), which 2002 Loans are evidenced by those certain Master Note - Commercial Loans dated April 11, 2002 in said principal amounts, (iii) one additional loan made by the Lender to the Borrower in the principal amount of \$240,000

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(the "February 2003 Loan"), which 2003 Loan is evidenced by that certain Master Note - Commercial Loans dated February 7, 2003 in said principal amount, and (iv) three (3) additional loans made by the Lender to the Borrower, each in the principal amount of \$240,000 (the "April 2003 Loans").

C. The Mortgagor has requested the Lender to extend certain additional indebtedness to the Borrower (collectively with the Existing Loan, the 2002 Loans, the February 2003 Loan and the April 2003 Loans, the "Loan"), which the Lender has agreed to do, upon the condition that, among other things, the Mortgagor execute this Amendment in order to reflect that the Mortgage shall secure the repayment of the Loan.

Agreement

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth in this Amendment, effective as of the Effective Date, the Mortgagor and the Lender hereby agree as follows:

1. Capitalized terms used in this Amendment and not otherwise defined herein have the respective meanings attributed thereto in the Mortgage.
2. From and after the Effective Date, the second paragraph on page 1 of the Mortgage shall be, and it is hereby, replaced in its entirety with the following:

WHEREAS, Waterford, L.L.C. is justly indebted to the Mortgagee in the amounts of (a) Two Million Six Hundred Twenty-Eight Thousand Four Hundred and No/100 Dollars (\$2,628,400.00) as evidenced by that certain Amended and Restated Master Note - Commercial Loans dated January 31, 2002 which bears interest as provided therein, (b) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (for townhomes) as evidenced by that certain Master Note - Commercial Loans dated April 11, 2002, which bears interest as provided therein, (c) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (for 60' lots) as evidenced by that certain Master Note - Commercial Loans dated April 11, 2002, which bears interest as provided therein, (d) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (Third Sector - Waterford Village) as evidenced by that certain Master Note - Commercial Loans dated February 7, 2003, which bears interest as provided therein, (e) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (Third Sector, Phase I - Waterford Cove) as evidenced by that certain Master Note - Commercial Loans dated April 18, 2003, which bears interest as provided therein, (f) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (Third Sector, Phase II - Waterford Cove) as evidenced by that certain Master Note - Commercial Loans dated April 18, 2003, which bears interest as provided therein, (g) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (Third Sector, Phase III - Waterford Cove) as evidenced by that certain Master Note - Commercial Loans dated April 18, 2003, which bears

interest as provided therein, (h) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (Fourth Sector, Phase I - Waterford Village) as evidenced by that certain Master Note - Commercial Loans dated December 4, 2003, which bears interest as provided therein, (i) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (Fourth Sector, Phase II - Waterford Village) as evidenced by that certain Master Note - Commercial Loans dated December 4, 2003, which bears interest as provided therein, (j) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (Third Sector, Phase IV - Waterford Cove) as evidenced by that certain Master Note - Commercial Loans dated December 4, 2003, which bears interest as provided therein, and (k) Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (Third Sector, Phase V - Waterford Cove) as evidenced by that certain Master Note - Commercial Loans dated December 4, 2003, which bears interest as provided therein.

3. Exhibit B of the Mortgage is hereby amended by replacing the list of Credit Documents contained therein with the list of Credit Documents set forth in Revised Exhibit B attached hereto and made a part hereof.

4. In order to induce the Lender to enter into this Amendment, the Mortgagor hereby represents and warrants that all the representations and warranties set forth in the Mortgage and each of the Credit Documents are true and correct as of the date of this Amendment and as of the date of execution hereof; and no event of default under the Mortgage has occurred and is continuing.

5. Except as hereby expressly modified and amended the Mortgage shall remain in full force and effect in accordance with its terms. This Amendment is not intended to be or create, nor shall it be construed as, a novation or an accord and satisfaction of the debts secured by the Mortgage.

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment or caused this Amendment to be executed in its name and on its behalf by its duly authorized officer or member, as the case may be, all as of the Effective Date first set forth above.

WATERFORD, L.L.C.

By: 

John G. Reamer, Jr., Its Member

SHELBY SPRINGS STOCK FARMS, INC.

By: 

John G. Reamer, Jr., Its President

**NATIONAL BANK OF COMMERCE OF
BIRMINGHAM**

By: 

C. Houston Gillespy, Its Vice President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John G. Reamer, Jr., whose name as a member of Waterford, L.L.C., an Alabama limited liability company, 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 said instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this 4 day of December, 2003.

Shari Shrove

Notary Public

[AFFIX SEAL]

My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 11, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John G. Reamer, Jr., whose name as President of Shelby Springs Stock Farms, Inc., an Alabama 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 said 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 4 day of December, 2003.

Shari Shrove

Notary Public

[AFFIX SEAL]

My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 11, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that C. Houston Gillespy, whose name as Vice President of National Bank of Commerce of Birmingham, a national banking association, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said national banking association.

Given under my hand and official seal, this 4 day of December, 2003.



Notary Public

[AFFIX SEAL]

My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**
MY COMMISSION EXPIRES: Dec 11, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS

This instrument was prepared by:
Gregory K. Mixon
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2618

REVISED EXHIBIT B

(Revised Schedule of Credit Documents)

The "**Credit Documents**" referred to in this Agreement include the following:

1. Amended and Restated Credit Agreement dated July 14, 2000 executed by the Borrower and the Lender, as amended by that certain First Amendment to Amended and Restated Credit Agreement dated January 31, 2002, as further amended by that certain Second Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated April 11, 2002, as further amended by that certain Third Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated February 7, 2003, as further amended by that certain Fourth Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated April 18, 2003, as further amended by that certain Fifth Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated December 4, 2003.
2. Amended and Restated Master Note (Renewal) dated January 31, 2002 in the principal amount of Two Million Six Hundred Twenty Eight Thousand Four Hundred and No/100 Dollars (\$2,628,400) executed by the Borrower in favor of the Lender.
3. Master Note - Commercial Loans (for townhomes) dated April 11, 2002 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.
4. Master Note - Commercial Loans (for 60' lots) dated April 11, 2002 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.
5. Master Note - Commercial Loans (Third Sector - Waterford Village) dated February 7, 2003 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.
6. Master Note - Commercial Loans (Third Sector, Phase I - Waterford Cove) dated April 18, 2003 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.
7. Master Note - Commercial Loans (Third Sector, Phase II - Waterford Cove) dated April 18, 2003 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.
8. Master Note - Commercial Loans (Third Sector, Phase III - Waterford Cove) dated April 18, 2003 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.

9. Master Note - Commercial Loans (Third Sector, Phase IV - Waterford Cove) dated December 4, 2003 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.

10. Master Note - Commercial Loans (Third Sector, Phase V - Waterford Cove) dated December 4, 2003 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.

11. Master Note - Commercial Loans (Fourth Sector, Phase I - Waterford Village) dated December 4, 2003 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.

12. Master Note - Commercial Loans (Fourth Sector, Phase II - Waterford Village) dated December 4, 2003 in the principal amount of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) executed by the Borrower in favor of the Lender.

13. Accommodation Mortgage dated December 6, 1999 executed by the Borrower in favor of the Lender, as amended by that certain First Amendment thereto dated July 14, 2000, as further amended by that certain Second Amendment thereto dated April 11, 2002, as further amended by that certain Third Amendment thereto dated February 7, 2003, as further amended by that certain Fourth Amendment thereto dated April 18, 2003, as further amended by that certain Fifth Amendment thereto dated December 4, 2003.

14. Environmental Indemnity Agreement dated July 14, 2000 executed by the Borrower, Shelby Springs Stock Farms, Inc. and John G. Reamer, Jr. in favor of the Lender, as amended by that certain First Amendment to Amended and Restated Credit Agreement dated January 31, 2002, as further amended by that certain Second Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated April 11, 2002, as further amended by that certain Third Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated February 7, 2003, as further amended by that certain Fourth Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated April 18, 2003, as further amended by that certain Fifth Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated December 4, 2003.

15. Amended and Restated Guaranty Agreement dated July 14, 2000 executed by John G. Reamer, Jr. in favor of the Lender, as amended by that certain First Amendment to Amended and Restated Credit Agreement dated January 31, 2002, as further amended by that certain Second Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated April 11, 2002, as further amended by that certain Third Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated February 7, 2003, as further amended by that certain Fourth Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated April 18, 2003, as further amended by that certain Fifth Amendment to Amended and Restated Credit Agreement and Other Credit Documents dated December 4, 2003.