

This instrument prepared by:

J. Keith Windle

✓ Bradley Arant Rose & White LLP

One Federal Place

1819 Fifth Avenue North

Birmingham, Alabama 35203-2104

STATE OF ALABAMA

)

:

COUNTY OF SHELBY

)

THIRD AMENDMENT TO ACCOMMODATION MORTGAGE AND SECURITY AGREEMENT

THIS THIRD AMENDMENT TO ACCOMMODATION MORTGAGE AND SECURITY AGREEMENT (this "Amendment") is made and entered into as of the 5th day of April, 2005, by and between **CALDWELL MILL, LLP**, an Alabama registered limited liability partnership ("Mortgagor"), and **FIRST COMMERCIAL BANK**, an Alabama banking corporation ("Mortgagee").

RECITALS:

A. Pursuant to that certain Master Construction Loan Agreement (the "Loan Agreement") dated January 16, 2002, between Mortgagee and Gibson & Anderson Construction, Inc., an Alabama corporation (the "Borrower"), Mortgagee agreed to make available to Borrower a construction loan line of credit (the "Loan") in the amount of \$2,500,000.00 to be used to fund the cost of constructing houses on lots located in the Caldwell Crossings subdivision in Shelby County, Alabama.

B. The Loan is evidenced by a Master Note (the "Note") dated January 16, 2002 in the original maximum principal amount of \$2,500,000.00, executed by Borrower in favor of Mortgagee. Borrower and Mortgagee entered into that certain Note Modification Agreement dated as of January 15, 2003 (the "First Note Modification") pursuant to which the maximum principal balance of the Note was increased by Two Hundred Fifty Thousand Dollars (\$250,000.00) to Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00). Simultaneously with the execution of the First Note Modification, Borrower and Lender entered into that certain First Amendment to First Master Construction Loan Agreement dated as of January 15, 2003, pursuant to which the Loan Agreement was modified to reflect such increase in the Note, among other things. The Loan Agreement was subsequently further amended by (i) that certain Second Amendment to Master Construction Loan Agreement dated as of June 19, 2003 and (ii) that certain Third Amendment to Master Construction Loan Agreement dated as of January 5, 2005. The Note was subsequently further amended by that certain Second Note Modification Agreement dated as of January 5, 2005.

C. As security for the Note, Mortgagor executed in favor of Mortgagee that certain Accommodation Mortgage and Security Agreement (the "Mortgage") dated January 16, 2002 and recorded in the Probate Office of Shelby County, Alabama as Instrument #2002-03467.

D. The Mortgage was amended by (i) that certain First Amendment to Mortgage and Security Agreement dated as of January 15, 2003 and recorded in the Probate Office as Instrument #20030124000044080, (the "First Mortgage Amendment"), pursuant to which twenty-one (21) lots were made subject to the Mortgage and (ii) that certain Second Amendment to Accommodation Mortgage and Security Agreement dated as of June 19, 2003 and "Second Mortgage Amendment") pursuant to which thirty-three (33) additional lots were made subject to the Mortgage.

E. Borrower desires to utilize proceeds of the Loan to construct houses on twenty-three (23) additional lots (the "Additional Lots") located in Phase II of Caldwell Crossings subdivision.

F. Mortgagee holds a first mortgage on the Additional Lots, among other property, pursuant to that certain Mortgage and Security Agreement dated March 29, 2002, executed by Mortgagor in favor of Mortgagee and recorded as Instrument #2002-14866 in the Probate Office of Shelby County, Alabama, as amended by that certain First Amendment to Mortgage and Security Agreement dated December 30, 2002, executed by Mortgagor and Mortgagee and recorded as Instrument #20021230000653000 in the Probate Office, as further amended by that certain Second Amendment to Mortgage and Security Agreement dated April 30, 2003, executed by Mortgagor and Mortgagee and recorded as Instrument #20030508000285620 in the Probate Office (as so amended, the "First Mortgage").

G. Mortgagor and Mortgagee desire to amend the Mortgage so that the Additional Lots will be included as property subject to the Mortgage and, as a result, the Mortgage, as so amended, will provide Mortgagee with a second priority mortgage on the Additional Lots as collateral for the Loan.

H. Mortgagor has requested Mortgagee to modify certain terms of the Mortgage and Mortgagee has agreed to such modifications on the terms set forth herein.

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 following real property is hereby added to Schedule A to the Mortgage, and accordingly, the Real Estate, as defined in the Mortgage, shall hereafter include such property:

Lots 302, 303, 308, 314, 319, 323, 335, 336, 339, 340, 344, 345, 346, 349, 350, 351, 371, 377, 382, 385, 386, 392 and 398, according to the survey of Caldwell Crossings, Third Sector, as recorded in Map Book 33, Page 154, in the Probate Court of Shelby County, Alabama.

2. The following permitted encumbrances are hereby added to Schedule B of the Mortgage solely with respect to the lots described in Section 1 of this Amendment:

a. Taxes for the year 2005 and subsequent years.

- b. Right-of-way granted to Shelby County recorded in Volume 233, Page 700, Volume 216, Page 29 and Volume 282, Page 115.
- c. Right-of-way granted to Alabama Power Company recorded in Real Volume 142, Page 148.
- d. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto and release of damages as recorded in Instrument No. 2000-14348 and Instrument No. 2000-43395.
- e. Right-of-way granted to the City of Hoover recorded in Instrument No. 2000-40742, Instrument No. 2000-40741 and Instrument No. 2000-25988.
- f. Easement(s), building line and restrictions as shown on recorded map.
- g. Restrictions and covenants appearing of record in Instrument No. 2002-02381, Instrument No. 2002-32073 and Instrument No 1004-5776.

3. The Mortgage, as amended hereby, shall remain subordinate in all respects to the First Mortgage as the First Mortgage has been amended as provided in the Recitals to this Amendment.

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

[The remainder of this page is intentionally left blank.]

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: [Signature]

Name: B. J. HARRIS

Its: President

MORTGAGEE:

FIRST COMMERCIAL BANK

By: [Signature]

Name: Fred Lindsey

Its: Sr. Vice President

STATE OF ALABAMA)
:
COUNTY OF Shelby)

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 2nd day of May, 2005.

Alecia H. Ray
Notary Public

My Commission expires: 3/19/08

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 19, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
:
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Fred Lindsey, 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 9th day of May, 2005.

Laura J. Knight
Notary Public

My Commission expires: 3/6/2007

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Mar 6, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS