

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)

FIRST AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT

THIS FIRST AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT (this “Amendment”) is made and entered into as of the tenth (10th) day of March 2006, by and between **E. R. DEVELOPMENT, INC.**, an Alabama corporation (“Mortgagor”), and **FIRST COMMERCIAL BANK**, an Alabama banking corporation (“Mortgagee”).

RECITALS:

A. Pursuant to the terms of that certain Development and Construction Loan Agreement dated March 25, 2004 by and between Mortgagor and Mortgagee, Mortgagor executed (i) that certain Promissory Note dated March 25, 2004 in favor of Mortgagee in the maximum principal amount of \$2,200,000.00 (the “Development Note”), and (ii) that certain Master Note dated March 25, 2004 in favor of Mortgagee in the maximum principal amount of \$1,250,000.00 (the “Construction Note” and together with the Development Note, the “Notes”) the proceeds of which were utilized to fund (i) the acquisition by Mortgagor of certain real property located in Shelby County, Alabama known as Weatherly subdivision (the “Subdivision”) and (ii) the development of a portion of the Subdivision.

B. As security for the Notes, Mortgagor executed in favor of Mortgagee that certain Mortgage and Security Agreement (the “Mortgage”) recorded in the Probate Office of Shelby County, Alabama (the “Probate Office”) as Instrument #20040325000153390.

C. Subsequent to the recording of the Mortgage, Mortgagee has executed in favor of Mortgagor a Partial Release dated January 12, 2006 (the “Partial Release”), to discharge certain

THIS INSTRUMENT SECURES PRINCIPAL INDEBTEDNESS TALLING \$4,400,000.00. MORTGAGE RECORDING TAX HAS PREVIOUSLY BEEN PAID ON \$3,450,000 OF SAID INDEBTEDNESS AND MORTGAGE TAX IS CURRENTLY PAYABLE ON THE REMAINING \$950,000.00 OF SAID INDEBTEDNESS.

property described therein from the lien and operation of the Mortgage, which Partial Release was recorded in the Probate Office as Instrument #20060126000042720.

D. At Mortgagor's request, Mortgagee has agreed to increase, consolidate, amend and restate the Development Note and the Construction Note pursuant to a certain Consolidated, Amended and Restated Promissory Note of even date herewith in the maximum principal amount of \$4,400,000.00 (the "Amended and Restated Note") executed by Mortgagor in favor of Mortgagee.

E. Mortgagor and Mortgagee desire to amend the Mortgage so that the Mortgage will continue to secure the Notes, as consolidated, amended and restated by the Amended and Restated Note.

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 Notes, as consolidated, amended and restated by the Amended and Restated Note, and any and all renewals, extensions, modifications, substitutes or increases of the Amended and Restated Note, or any part thereof.

2. The "Loan Documents" and the "Note", each as defined in the Mortgage, shall hereafter collectively include the Notes, as consolidated, amended and restated by the Amended and Restated Note, and any and all renewals, extensions, modifications, substitutes or increases of the Amended and Restated Note, or any part thereof.

3. The "Mortgaged Property", as defined in the Mortgage, shall from and after the date of the Partial Release, exclude the property released in the Partial Release.

4. Section 51 of the Mortgage is hereby deleted in its entirety.

5. The occurrence of an Event of Default under the Amended and Restated Note shall constitute an Event of Default under the Mortgage.

6. The "Permitted Encumbrances" shall hereafter mean the items set forth on Exhibit A attached hereto.

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

8. Mortgagor and Mortgagee agree that all other terms of the Mortgage shall remain unchanged 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:

E. R. DEVELOPMENT, INC.

By: [Signature]
Name: JACK FIGRELLA, III
Its: PRESIDENT

MORTGAGEE:

FIRST COMMERCIAL BANK

By: [Signature]
Name: John A. Mark
Its: Senior Vice President

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that JACK FIORELLA III, whose name as PRESIDENT of E. R. DEVELOPMENT, 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 13th day of MARCH, 2006.

Judi Bruce
Notary Public

Notary Public, Alabama, State at Large
My Commission Expires June 3, 2008

[NOTARIAL SEAL]

My commission expires: _____

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John A. Marks, whose name as Senior 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 10th day of March, 2006.

Leann C. Cox
Notary Public

NOTARY PUBLIC, STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES JUNE 3, 2009
BONDED THRU NOTARY PUBLIC UNDERWRITERS

[NOTARY SEAL]

My Commission expires: _____



20060317000124860 5/5 \$1448.00
Shelby Cnty Judge of Probate, AL
03/17/2006 11:35:14AM FILED/CERT

EXHIBIT A

Permitted Encumbrances

1. Ad valorem taxes for the year 2006 and subsequent years.
2. Easements and building lines shown on recorded map.
3. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto.
4. Restrictions appearing of record in Instrument No. 2000-14750 in said Probate Office.
5. Restrictions appearing of record in Instrument No. 2000-38937.
6. Easement for Egress/Ingress and Public Utilities as set forth in Instrument No. 1999-47153.