

26
230

Prepared by/Return to:
John W. Monroe, Jr.
Emmanuel, Sheppard & Condon
30 S. Spring St.
Pensacola, FL 32502
Telephone: (800) 433-6581
File No.: A0458-116585 rfk


20070709000321920 1/6 \$849.20
Shelby Cnty Judge of Probate, AL
07/09/2007 12:04:25PM FILED/CERT

WITH RESPECT TO THE ALABAMA MORTGAGE TAX, THIS INSTRUMENT IS GIVEN TO SECURE AN ADVANCE IN THE AMOUNT OF \$548,800.00 SECURED BY PROPERTY IN MADISON COUNTY.

LOAN MODIFICATION AND SPREADER AGREEMENT

(Alabama)

THIS LOAN MODIFICATION AND SPREADER AGREEMENT ("Agreement") is made as of the 29th day of June, 2007, by Adams Homes, L.L.C., an Alabama Limited Liability Company ("Borrower"), whose address is 3000 Gulf Breeze Parkway, Gulf Breeze, Florida 32563, in favor of IndyMac Bank, F.S.B. ("Lender"), whose address is 155 North Lake Ave. LK-11-19, Pasadena, California 91101.

Recitals

A. On June 30, 2005, Borrower executed in favor of Lender a Promissory Note (the "Note") in the original principal amount of \$60,000,000.00 evidencing the Loan (the "Loan") in said amount. Subsequently, Borrower executed in favor of Lender First Mortgages and Security Agreements, (collectively the "Mortgage") encumbering property in the State of Alabama securing payment of the Note recorded January 11, 2006 in Instrument No. 948898, the records of the Judge of Probate for Baldwin County, Alabama, encumbering certain real property located in said County as described in the Mortgage; recorded January 27, 2006, in Book 2006, Page 5616, the records of the Judge of Probate for Limestone County, Alabama, encumbering certain real property located in said County as described in the Mortgage; recorded January 17, 2006, in Instrument No. 20060117000028680, the records of the Judge of Probate for Madison County, Alabama, encumbering certain real property located in said County as described in the Mortgage; recorded January 13, 2006, in Book 5904, Page 1006, the records of the Judge of Probate for Mobile County, Alabama, encumbering certain real property located in said County as described in the Mortgage; recorded January 23, 2006 in Instrument No. 20060123000035250, the records of the Judge of Probate for Shelby County, Alabama, encumbering certain real property located in said County as described in the Mortgage. Simultaneously with the execution and recording of the Mortgage, Borrower executed in favor of Lender Assignments of Rents, Leases, Contracts and Permits (collectively the "Assignment") recorded January 11, 2006, in Instrument No. 948899, of the records of the Judge of Probate for Baldwin County, Alabama; recorded January 27, 2006, in Book 2006, Page 5633, of the records of the Judge of Probate for Limestone County, Alabama; recorded January 17, 2006, in Instrument No. 20060117000028690, the records of the Judge of Probate for Madison County, Alabama; recorded January 13, 2006 in Book 5904, Page 1024, of the records of the Judge of Probate for Mobile County, Alabama; recorded January 23, 2006, in Instrument No. 20060123000035260, of the records of the Judge of Probate for Shelby County, Alabama, subsequently, Borrower executed Corrective First Mortgages and Security Agreements correcting scrivener's errors in the mortgage (such Corrective First Mortgages and Security Agreements are hereafter included in the term "Mortgages") which are recorded in Instrument No. **1000816**, the records of the Judge of Probate for **Baldwin** County, Alabama, in **Book 2006, Page 60936**, the records of the Judge of Probate for **Limestone** County, Alabama, in Instrument No. **20060921000642150**, the records of the Judge of Probate for **Madison** County, Alabama, in **Book 6060, Page 1527**, the records of the Judge of Probate for **Mobile** County, Alabama, in Instrument No. **20061004000491100**, the records of the Judge of Probate for **Shelby** County, Alabama.

B. The Note, Mortgage, Assignment, and all other documents and instruments executed or delivered in connection with the Loan are, hereafter, collectively referred to as the "Loan Documents."

C. Borrower desires to spread the lien of the Mortgage to encumber certain additional real property and, subject to compliance by the Borrower with all of the applicable conditions of the Loan Documents, Lender is willing to accept such spreader.

D. This agreement is made to secure an additional advance as referenced above for mortgaged property previously encumbered by this mortgage.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

Terms

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated herein by reference. Capitalized terms which are not otherwise defined herein shall have those meanings set forth in the Loan Documents.

2. Modification of Mortgage. To secure to Lender (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions and modifications thereof, (b) the repayment of any Future Advances, with interest thereon, made by Lender to Borrower pursuant to paragraph 21 of the Mortgage, (c) the payment of all other sums, with interest thereon, advanced in accordance with any of the Loan Documents, (d) the performance and the covenants and agreements of Borrower contained in the Loan Documents, Borrower does hereby mortgage, grant, convey and assign to Lender the parcel(s) of land in the State of Alabama described in Exhibit "A" (the "Additional Land") attached hereto, together with all buildings, improvements and tenements now or hereafter erected on such land, and all vacated alleys and streets abutting such land, and all easements, rights, appurtenances, rents, and royalties appurtenant to such land, and all fixtures, machinery, equipment, building materials, appliances and goods of every nature whatsoever now or hereafter located in or on, or used or intended to be used in connection with such land, all of which, including all replacements and additions thereto, for all purposes shall be and remain part of the Mortgaged Property, as that term is defined in the Mortgage, as fully as though such land and property was described in the Mortgage at the time of its execution and delivery. Borrower hereby further acknowledges and agrees that the lien of the Mortgage is hereby spread to such Additional Land and property so as to encumber all of such Additional Land and property.

3. Modification of Assignment. The Assignment is hereby modified (i) to include the Additional Land in the Property, as defined in the Assignment, so that all of the assignments made by the Borrower in the Assignment shall also encumber the Additional Land and (ii) Borrower acknowledges and agrees that the lien of the Assignment is hereby spread to the Additional Land with the same force and effect as if the Additional Land had been described in the Assignment at the time of its execution and delivery.

4. Affirmation of Loan Documents, Warranties and Representations. Borrower hereby ratifies and affirms the Loan Documents and the representations and warranties set forth therein and represents and warrants that same, together with all matters set forth in any affidavits executed in connection with the Loan Documents, are and remain true and correct in all respects. Borrower hereby (i) acknowledges that Lender has performed all of its obligations under the Loan Documents; (ii) acknowledges that it has no claims, defenses or rights of setoff against Lender or as to the validity or enforceability of the Loan Documents or any of them, or any other documents executed in connection therewith; and (iii) waives, discharges and releases forever any and all existing claims, actions, causes of action, demands, defenses or rights of setoff, whether in contract, tort or otherwise (collectively, the "Claims"), which Borrower might have against Lender or Lender's officers, directors, shareholders, agents or employees, or the successors or assigns of any of the foregoing, or which may affect the enforceability by Lender of Lender's rights and remedies under any of the Loan Documents including, without limitation, any Claims relating to or arising out of the administration or servicing of the Loan and Claims relating to any actions taken under, or with respect to, the Loan Documents, the Mortgaged Property or the

Mortgaged Property's development, condition or operation. Borrower acknowledges and agrees that the affirmations, acknowledgments, waivers and discharges contained in this Section represent an essential part of the consideration bargained for and received by Lender in return for its agreements hereunder.

5. Execution of Documents. Borrower warrants and represents to Lender that the execution, delivery, and performance by Borrower of the Loan Documents and this Agreement: (i) are within the powers and authority of Borrower; (ii) has been duly authorized by all requisite action of Borrower and its directors and shareholders; and (iii) does not require the approval of any governmental authority having jurisdiction over Borrower, its members or the Mortgaged Property.

6. Enforceability of Documents. Borrower warrants and represents to Lender that the Loan Documents and this Agreement: (i) have been duly and validly executed by Borrower; (ii) constitute the valid and legally binding obligations of Borrower, enforceable in accordance with their terms; and (iii) will not violate any provision of law or any order of court or other agency of government, or any indenture, agreement or instrument by which either Borrower, its members, or the Mortgaged Property, or both, are bound or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time, or both) a default under, any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Borrower, except as specifically contemplated by the Loan Documents and this Agreement.

7. Representations as to Claims or Suits. Borrower warrants and represents to Lender that: (i) there are no claims, suits, proceedings or investigations pending or threatened against or affecting Borrower (except as have been disclosed to Lender) or the Mortgaged Property, or both, at law or in equity, or before any governmental, regulatory or administrative agency or instrumentality, and there are no factual occurrences that might reasonably afford a basis for any such claims, suits, proceedings or investigations; and (ii) no judgment, decree or order of any court or governmental or administrative agency or instrumentality has been issued against Borrower or the Mortgaged Property, or both.

8. Reaffirmation of Loan Documents; No Waiver. All of the terms and provisions of the Loan Documents, as modified herein, are hereby ratified and affirmed by Borrower in all respects and all parties shall be bound by their respective obligations thereunder. In the event of any default under the Loan Documents, as modified by this Agreement, Lender shall be entitled to exercise any and all rights and remedies against Borrower as are available at law or in equity. Borrower acknowledges and agrees the Lender shall not be deemed to have waived or relinquished any rights or remedies by reason of this Agreement.

9. Indemnification of Lender. Borrower hereby agrees to indemnify, defend and hold Lender and Lender's officers, directors, shareholders, agents and employees harmless from and against any and all claims, demands, actions, causes of actions, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, attorneys' fees at trial and appellate levels) of every kind and character, known or unknown, fixed or contingent, asserted against or incurred by Lender at any time by reason of or arising out of: (i) the breach of any representation or warranty set forth in this Agreement; (ii) the failure of Borrower to perform any obligation under the Loan Documents or this Agreement as and when due; or (iii) the ownership, construction, occupancy, operation, use, maintenance, repair or replacement of the Mortgaged Property prior to the date upon which all sums and obligations due under the Loan Documents have been fully paid and performed and the Mortgage has been satisfied, or Lender becomes the owner of the Mortgaged Property (by way of foreclosure, deed-in-lieu of foreclosure or otherwise), whichever shall occur first. The provisions of this Section shall survive payment and satisfaction of the Loan Documents and the succession by Lender to title to the Mortgaged Property and shall inure to the benefit of Lender, its successors and assigns.

10. Miscellaneous.

10.1. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

10.2. Benefit. All of the terms, covenants and provisions herein are and shall be binding upon, and shall inure to the benefit of, the respective parties and their respective heirs, personal representatives, successors and assigns.

10.3. No Further Modification; Lien Priority. Except as expressly modified herein, the Loan Documents and all other documents executed in connection therewith shall not be deemed modified or amended. All Loan Documents (including this Agreement) shall be read together as constituting a single transaction. Nothing contained in this Agreement shall be construed to alter or affect the priority of the lien created by the Loan Documents nor shall any provision of this Agreement be construed to conflict with the agreement of Lender and Borrower that the lien of the Loan Documents be maintained and preserved and be superior to any and all other encumbrances and interests affecting the Mortgaged Property.

10.4. Costs and Expenses. Borrower agrees to pay, upon demand, Lender's costs and expenses incurred in connection with this Agreement including, without limitation, reasonable attorneys' fees and costs.

10.5. Governing Law; Invalidity; Entire Agreement. This Agreement shall be construed in accordance with the laws of the State of Alabama. In the event a court of competent jurisdiction shall deem any part or provision hereof to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions, all of which shall remain in full force and effect. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and merges and supersedes all prior or contemporaneous negotiations, discussions, agreements and understandings with respect to same.

10.6. Acknowledgment of Counsel Representation. Each party acknowledges that it has been represented by counsel of its choice in the negotiation, drafting, preparation, review and execution of this Agreement and has relied solely upon its counsel's advice and instructions. No representations or warranties have been made by Lender or relied upon by Borrower with respect to this Agreement. The parties acknowledge that all of the terms and conditions of this Agreement were negotiated at arms-length and without fraud, duress, undue influence or coercion of any kind. Neither this Agreement nor any other document shall be more strictly construed against one party than the other by virtue of the fact that it may have been physically prepared by one party or its counsel.

10.7. Captions; Use of Terms. Captions are for convenience only and shall not be used to define or limit the scope of any provision hereof. The terms "hereby," "hereof," "hereto," "hereunder," and similar terms refer to this Agreement in its entirety and not solely to the particular Section in which the term is used.

10.8. Time of Essence. The parties agree that time shall be of the essence as to all matters set forth in this Agreement.

10.9. Notices. Any notice, request, demand, consent, approval or other communication provided or permitted hereunder shall be in writing and shall be hand-delivered (and receipted for), given by facsimile (with telephonic confirmation of receipt) or sent by United States first-class certified or registered mail, return receipt requested and postage prepaid, addressed to the party for whom it is intended at the addresses set forth on the first page of this Agreement; provided, however, that either party may change its address for purposes of receipt of any such communication by giving at least ten (10) days written notice of such change to the other party in the manner set forth in this Section. Any notice hand-delivered shall be deemed received upon delivery and any notice mailed in accordance with the above provision shall be deemed received and effective upon mailing. Notice from counsel for one party to the other shall be deemed notice hereunder.

10.10. Waiver of Trial by Jury. BORROWER AND LENDER, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT ANY OR ALL OF THEM MAY HAVE TO

TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON THIS AGREEMENT OR THE LOAN DOCUMENTS, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, ANY OR ALL OF THE LOAN DOCUMENTS OR ANY OTHER DOCUMENT, INSTRUMENT OR AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MODIFY THE LOAN DOCUMENTS AND EXECUTE AND DELIVER THIS AGREEMENT.

IN WITNESS WHEREOF, this Agreement has been duly executed on the day and date first set forth above.

Witnesses:

Borrower:

Adams Homes, L.L.C.,
An Alabama Limited Liability Company

Mary C Hart
Name: MARY C. HART

By: Glenn H. Schneiter
Name: Glenn H. Schneiter
Title: Assistant Controller

Rebecca F. Kates
Name: REBECCA F. KATES

(Corporate Seal)


20070709000321920 5/6 \$849.20
Shelby Cnty Judge of Probate, AL
07/09/2007 12:04:25PM FILED/CERT

STATE OF FLORIDA)
) ss.
COUNTY OF ESCAMBIA)

I, the undersigned Notary Public, in and for said State and County, do hereby certify that Glenn H. Schneiter, whose name as Assistant Controller of Adams Homes, L.L.C., an Alabama Limited Liability Company, is signed to the above and 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 company on the day the same bears date.

Given under my hand and official seal of office on this 29th day of June, 2007.

Rebecca F. Kates
NOTARY PUBLIC

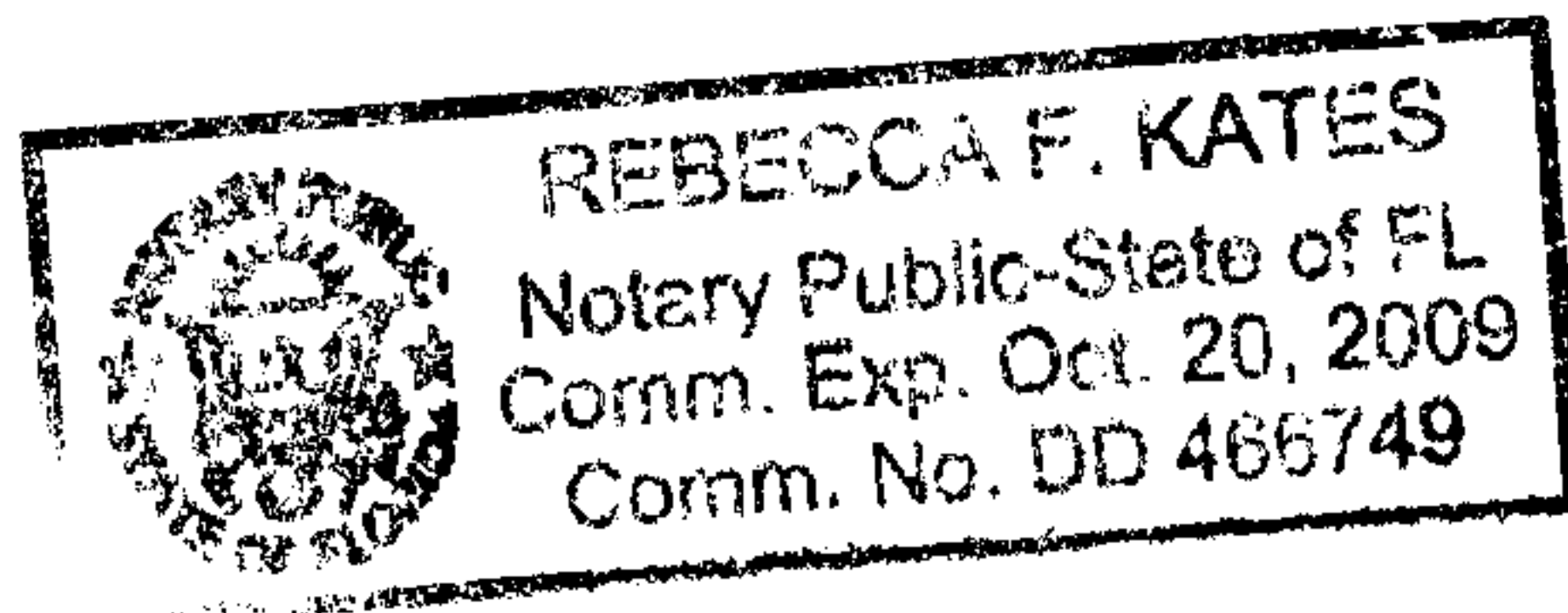


Exhibit "A"

Lots 6, 103 and 104, Lakes at Hidden Forest Phase 1, according to the plat thereof, as recorded in Map Book 36, Page 115, in the Office of the Judge of Probate of Shelby County, Alabama.

Lot 166, The Lakes at Hidden Forest, Phase 2, according to the plat thereof, recorded in Map Book 37, Page 122 A & B, as recorded in the Office of the Judge of Probate of Shelby County, Alabama.


20070709000321920 6/6 \$849.20
Shelby Cnty Judge of Probate, AL
07/09/2007 12:04:25PM FILED/CERT