

Note to Clerk of Court: Mortgage filing privilege taxes have previously been paid on the current maximum principal indebtedness of \$5,000,000.00 in connection with the recordation of that certain Accommodation Mortgage dated March 10, 2008 and recorded with the Office of the Judge of Probate of Shelby County, Alabama, as Instrument No. 20080317000107280. This First Amendment to Accommodation Mortgage is given to amend the above-referenced instrument by adding real estate to the property subject thereto. The amount of the indebtedness secured by the above-referenced instrument has not increased.

STATE OF ALABAMA)
SHELBY COUNTY)

**FIRST AMENDMENT TO ACCOMMODATION MORTGAGE
AND PROMISSORY NOTE**

THIS FIRST AMENDMENT TO ACCOMMODATION MORTGAGE AND PROMISSORY NOTE ("this Amendment") is entered into as of the 6th day of June, 2008 (the "Effective Date"), by and between **THORNTON NEW HOME SALES, INC.**, an Alabama corporation (the "Mortgagor"), and **FIRST AMERICAN BANK**, an Alabama banking corporation (the "Mortgagee").

Recitals

A. The Mortgagee has previously made a loan (the "Loan") to Thornton Construction Company, Inc. (the "Borrower") in the original maximum principal amount of \$5,000,000.00. The Loan is evidenced by that certain Promissory Note dated March 10, 2008 executed by the Borrower in favor of the Mortgagee (the "Note").

B. The Loan is secured by, among other things, a pledge of the Mortgagor's interest in certain real estate located in Shelby County, Alabama (the "Original Property"), pursuant to that certain Accommodation Mortgage dated March 10, 2008 and recorded in the Office of the Judge of Probate of Shelby County, Alabama, as Instrument No. 20080317000107280 (the "Mortgage").

C. The Mortgagor has acquired certain additional real estate located in Shelby County, Alabama, as more particularly described on Exhibit A attached hereto (the "Additional Property").

D. The Mortgagor has agreed to pledge the Additional Property as additional security for all Debt secured by and described in the Mortgage. In connection therewith, and in order to evidence that the Loan is secured by the Additional Property pursuant to the Mortgage, the Mortgagor has agreed to execute and deliver this Amendment to the Mortgagee.

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 Mortgagee hereby amend the Mortgage as follows:

1. Capitalized terms used in this Amendment and not otherwise defined herein have the respective meanings attributed thereto in the Mortgage, as amended by this Amendment.

2. From and after the Effective Date, the term "Real Estate", as defined and described in the Mortgage, shall include both: (i) the Original Property described in the Mortgage; and (ii) the Additional Property described on Exhibit A attached hereto. The Mortgagor does hereby mortgage, grant, bargain, sell and convey, with power of sale under the Mortgagee, its successors and assigns, all of the Mortgagor's right, title and interest now or hereafter acquired in and to the Real Estate (including the Original Property and the Additional Property), including all estates, rights, tenements, hereditaments, privileges, easements and appurtenances of any kind benefiting said Real Estate, all means of access to and from said Real Estate, whether public or private and all water and mineral rights. To have and to hold said Real Estate and all the estate, right, title and interest, in law and in equity, of the Mortgagee's in and to said Real Estate unto the Mortgagee, its successors and assigns, forever.

3. The Additional Property is and shall be subject to the terms of the Mortgage as fully as if the Additional Property had been included in the description of the Real Estate at the time the Mortgage was executed.

4. The Mortgagor warrants and represents that it is lawfully seized of the Real Estate, that the Mortgagor has the legal right to convey and encumber the same, and that the Real Estate is free and clear of all liens and encumbrances. The Mortgagor further warrants and represents that it has received adequate consideration in exchange for its agreement to execute this Amendment. The Mortgagor further warrants and will forever defend all and singular the Real Estate and title thereto to the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

5. All other provisions of the Loan documents that are inconsistent with this Amendment are hereby modified so as to be consistent herewith. By way of example and not limitation, the Note is hereby amended to provide that it is secured by the Mortgage, as amended by this Amendment.

6. Except as specifically modified and amended hereby, each of the Loan documents, including the Mortgage, shall remain in full force and effect in accordance with their respective terms.

7. Notwithstanding the execution of this Amendment, all of the Debt secured by the Mortgage shall remain in full force and effect, as modified hereby; and the Mortgagor agrees that as to the Real Estate, nothing contained in this Amendment shall be construed to constitute a

novation of the Debt secured by the Mortgage, or to release, satisfy, discharge, terminate or otherwise affect or impair in any manner whatsoever (a) the validity or enforceability of the Debt secured by the Mortgage; (b) the liens, security interests, assignments and conveyances effected by the Loan documents, or the priority thereof; (c) the liability of any maker, endorser, surety, guarantor or other person that may now or hereafter be liable under or on account of the promissory note evidencing the Loan or the Loan documents; or (d) any other security or instrument now or hereafter held by the Mortgagee as security for or as evidence of any of the above-described indebtedness.


8. The Mortgagor represents and warrants that all representations and warranties made in the Mortgage are true and correct as of the date of this Agreement, and no event of default, or circumstances that with notice or lapse of time or both would constitute an event of default thereunder, has occurred or is continuing.

9. Any provision of this Amendment or any other Loan document referenced herein that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.


[signature page to follow]

IN WITNESS WHEREOF, the undersigned has executed this Amendment or caused this Amendment to be executed in its name and on its behalf by its duly authorized representative, all as of the date first set forth above.

THORNTON NEW HOME SALES, INC.

By: 
Its: _____ Vice President

FIRST AMERICAN BANK

By: 
Its: _____ Senior Vice President

THIS INSTRUMENT PREPARED BY:

Matthew W. Grill
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203
(205) 254-1000

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Steven R. Chester, whose name as Vice President of **THORNTON NEW HOME SALES, 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/she, 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 10th day of June, 2008.

Nancy Alesano
Notary Public

[AFFIX SEAL]

My Commission Expires:
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 16, 2011
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 Chris Cotton, whose name as Sr. Vice President of **FIRST AMERICAN 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal, this the 10th day of June, 2008.

Nancy Alesano
Notary Public

AFFIX SEAL

My Commission Expires:
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 16, 2011
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EXHIBIT A

Lots 55, 56, 57, 58, 85, 86, 89, 90, 91, 92, 93, 94, 95 and 96, according to the Map and Survey of Dunnavant Square, as recorded in Map Book 39, Page 119 A, B & C, in the Office of the Judge of Probate of Shelby County, Alabama.



20080623000256030 6/6 \$27.00
Shelby Cnty Judge of Probate, AL
06/23/2008 03:30:09PM FILED/CERT