

20110712000202740 1/9 \$37.00  
Shelby Cnty Judge of Probate, AL  
07/12/2011 03:18:12 PM FILED/CERT

**THIS INSTRUMENT PREPARED BY  
AND RETURN TO:**

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
Attention: Eric Pruitt  
1600 Wachovia Tower  
420 20th Street North  
Birmingham, Alabama 35203  
(205) 328-0480

**Note to Recorder: This Instrument  
Modifies Mortgages Recorded as  
Instrument Nos. 20070330000145450  
and 20070330000145430**

**MODIFICATION OF SECURITY INSTRUMENTS AND CROSS-  
COLLATERALIZATION AND CROSS-DEFAULT AGREEMENT**

This **MODIFICATION OF SECURITY INSTRUMENTS AND CROSS-COLLATERALIZATION AND CROSS-DEFAULT AGREEMENT** (this "Agreement") is made effective as of the 11 day of October, 2010 (the "Effective Date"), by and between **WELLS FARGO BANK, N.A.**, a national banking association, successor by merger to Wachovia Bank, National Association ("Lender"), **LACO WOODWORKS, INC.**, an Alabama corporation ("Borrower"), **COLE PROPERTIES, LLC**, an Alabama limited liability company ("Cole Properties", and together with Borrower, collectively, "Obligors").

**RECITALS**

A. Borrower is indebted to Lender for a loan in the original principal amount of \$750,000.00 (the "LOC Loan") pursuant to a Loan Agreement dated March 28, 2007, executed by and between Borrower and Lender (as assumed, amended and modified from time to time, the "Loan Agreement").

B. The LOC Loan is evidenced by, among other things, that certain Promissory Note dated March 10, 2009, made by Borrower payable to Lender in the original principal amount of \$750,000.00, which renewed, extended, and/or modified that certain Promissory Note dated February 19, 2008, in the original principal amount of \$750,000.00, which renewed, extended, and/or modified that certain Promissory Note dated March 22, 2007, in the original principal amount of \$750,000.00 (as assumed, amended and modified from time to time, collectively, the "LOC Note").

C. The LOC Loan is secured by, among other things, that certain Mortgage dated March 28, 2007, executed by Borrower in favor of Lender, and recorded in the Office of the Judge of Probate of Shelby County, Alabama on March 30, 2007, at Instrument Number 20070330000145450 (as assumed, amended and modified from time to time, the "LOC Mortgage").

D. The Loan Agreement, LOC Note, LOC Mortgage, and all other documents evidencing, referring to, relating to, or securing the LOC Loan, are referred to herein, collectively, as the "LOC Loan Documents."

E. Borrower is indebted to Lender for a loan in the original principal amount of \$201,000.00 ("Loan II").

F. Loan II is evidenced by that certain Promissory Note dated March 28, 2007, made by Borrower payable to Lender in the original principal amount of \$201,000.00 (as assumed, amended and modified from time to time, "Note II").

G. Loan II is secured by, among other things, that certain Security Agreement dated March 28, 2007, executed by Borrower in favor of Lender (as assumed, amended and modified from time to time, "Security Agreement II").

H. Note II, Security Agreement II, and all other documents evidencing, referring to, relating to, or securing Loan II, are referred to herein, collectively, as the "Loan II Documents."

I. Borrower is indebted to Lender for a loan in the original principal amount of \$384,000.00 ("Loan III").

J. Loan III is evidenced by that certain Promissory Note dated January 31, 2008, made by Borrower payable to Lender in the original principal amount of \$384,000.00 (as assumed, amended and modified from time to time, "Note III").

K. Loan III is secured by, among other things, that certain Security Agreement dated January 31, 2008, executed by Borrower in favor of Lender as assumed, amended and modified from time to time, "Security Agreement III").

L. Note III and Security Agreement III, and all other documents evidencing, referring to, relating to, or securing Loan III, are referred to herein, collectively, as the "Loan III Documents."

M. Borrower is indebted to Lender for a loan in the original principal amount of \$400,000.00 ("Loan IV", and together with the LOC Loan, Loan II, and Loan III, collectively, the "Laco Loans").

N. Loan IV is evidenced by that certain Promissory Note dated February 20, 2008, made by Borrower payable to Lender in the original principal amount of \$400,000.00 (as



assumed, amended and modified from time to time, "Note IV").

O. Loan IV is secured by, among other things, that certain Security Agreement dated February 20, 2008, executed by Borrower in favor of Lender as assumed, amended and modified from time to time, "Security Agreement IV").

P. Note IV, Security Agreement IV, and all other documents evidencing, referring to, relating to, or securing Loan IV, are referred to herein, collectively, as the "Loan IV Documents." The LOC Loan Documents, Loan II Documents, Loan III Documents, and Loan IV Documents are referred to herein, collectively, as the "Laco Loan Documents".

Q. Cole Properties is indebted to Lender for a loan in the original principal amount of \$887,000.00 (the "Cole Properties Loan").

R. The Cole Properties Loan is evidenced by that certain Promissory Note dated March 28, 2007, made by Cole Properties payable to Lender in the original principal amount of \$887,000.00 (as assumed, amended and modified from time to time, the "Cole Properties Note").

S. The Cole Properties Loan is secured by, among other things, that certain Mortgage dated March 28, 2007, executed by Borrower in favor of Lender, and recorded in the Office of the Judge of Probate of Shelby County, Alabama on March 30, 2007, at Instrument Number 20070330000145430 (as assumed, amended and modified from time to time, the "Cole Properties Mortgage").

T. The Cole Properties Note, Cole Properties Mortgage, and all other documents evidencing, referring to, relating to, or securing the Cole Properties Loan, are referred to herein, collectively, as the "Cole Properties Loan Documents."

U. The Laco Loans and the Cole Properties Loan are referred to herein, collectively, as the "Loans". The Laco Loan Documents and the Cole Properties Loan Documents are referred to herein, collectively, as the "Loan Documents." The LOC Mortgage, Cole Properties Mortgage, Security Agreement II, Security Agreement III, and Security Agreement IV are referred to herein, collectively, as the "Security Instruments." All of the real property and personal property securing the Loans, including, without limitation, the real property and personal property described in the Security Instruments, are referred to herein, collectively, as the "Collateral".

V. All outstanding principal, accrued interest, and late fees that remain unpaid under the Loan Documents are referred to herein, collectively, as the "Indebtedness." Obligors are also obligated to reimburse Lender for the costs and expenses incurred by Lender in connection with Obligors' obligations to Lender, including without limitation, attorneys' fees and other costs of collection (together with the Indebtedness, collectively, the "Obligations").

W. The Loans are further evidenced and modified by, among other things, that certain Extension and Modification Agreement, of even date herewith, executed by and among Obligors,



Lender, Robert W. Cole and Sheila Cole (the "Modification Agreement").

X. All terms not defined herein shall have the meaning ascribed to those terms in the Loan Documents.

Y. Pursuant to the Modification Agreement, Obligors and Lender have agreed, among other things, to cross-collateralize and cross-default the Loans.

Z. The parties execute this Agreement to implement the agreement of the parties outlined in the Modification Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligors agree with Lender, and Lender agrees with Obligors, as follows:

1. Cross-Default. Pursuant to the terms and conditions of the Modification Agreement, all of the Loans are hereby cross-defaulted with one another. Obligors agree that the occurrence of an "Event of Default" pursuant to any of the Loan Documents shall constitute an immediate Event of Default under all of the Loan Documents.

2. Cross-Collateralization.

(a) All of the Loans are hereby cross-collateralized with one another, and Obligors agree that all of the Collateral of every kind described in the Loan Documents shall secure, on a pari passu basis with all other collateral securing the Loans, the entirety of the Obligations.

(b) Obligors hereby agree that the Security Instruments are each hereby amended to provide that they shall now secure all of the Obligations of Obligors under all of the Loan Documents. Upon foreclosure of any single Security Instrument or the collection of any leases or rents under any single Security Instrument, any excess proceeds remaining after payment of the Obligations shall be applied to payment of the indebtedness of Obligors under the respective Loan Documents in such order as Lender may determine. Obligors agree that counterparts of this Agreement may be recorded among the land records where each Security Instrument is recorded to evidence such amendments.

(c) As long as any of the Obligations are outstanding, the Collateral shall continue to secure all of the outstanding Loans.

3. No Oral Agreements. The Loan Documents, this Agreement, and the documents executed in connection with this Agreement, represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.



4. Controlling Law. This Agreement shall be governed by the laws of the State of Alabama.

5. Waiver of Jury Trial. OBLIGORS HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR OBLIGORS WITH RESPECT TO THE LOAN DOCUMENTS, THE RELATED LOAN DOCUMENTS, OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. OBLIGORS AGREE THAT LENDER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF OBLIGORS IRREVOCABLY TO WAIVE THEIR RIGHT TO TRIAL BY JURY AS AN INDUCEMENT OF LENDER TO MODIFY THE LOANS AND THE RELATED LOANS, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HERE) BETWEEN ANY BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

6. Reaffirmation of Loan Documents. Except as modified by this Agreement, Obligors hereby jointly and severally ratify and reaffirm all of the terms and conditions of the Loan Documents to which they are parties, any prior agreements and all other documents executed in connection therewith, and such terms and conditions shall continue in full force and effect. Obligors acknowledge the validity and enforceability of the security interests granted in favor of the Lender, and Obligors acknowledge that the security interests are properly perfected. Obligors agree, at the request of Lender, to execute and consent to the recording or filing of any new or additional security agreements or UCC-1 financing statements or any other documentation required to perfect or continue the perfection of such security interests, consistent with Article 9 of the Uniform Commercial Code, or any other applicable law. Obligors acknowledge and agree that they are indebted to Lender for repayment of all of the Obligations, including all accrued interest, costs, fees (including attorneys' fees), and expenses. The parties agree that it is their intention that nothing herein shall be construed to extinguish, release or discharge or constitute, create or effect a novation of, or an agreement to extinguish, any of the obligations, indebtedness and liabilities of Obligors or any other party under the provisions of the Loan Documents.

7. Miscellaneous.

(a) This Agreement is being given as additional collateral to secure the Obligations of Obligors under the Loan Documents.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.


(c) Obligors agree to execute any and all documents reasonably necessary to effect the terms and conditions of this Agreement.

(d) This Agreement may be executed in any number of counterparts by the different parties on separate counterparts. Each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

(e) Each undertaking of the Obligors herein contained shall be the joint and several undertaking of each of the Obligors, and it is specifically agreed that Lender may enforce the provisions hereof with respect to any one or more of the Obligors without seeking to enforce the same as to all or any other Obligor. Each of the Obligors hereby waives any requirement of joinder of all or any other of the parties hereto in any suit or proceeding to enforce the provisions hereof.

(f) No determination by any court, governmental body or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

[SIGNATURE PAGES FOLLOW]

  
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IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals,  
all as of the day and year first above written.

ACCEPTED AND AGREED TO AS OF THE 11<sup>th</sup> DAY OF October, 2010.

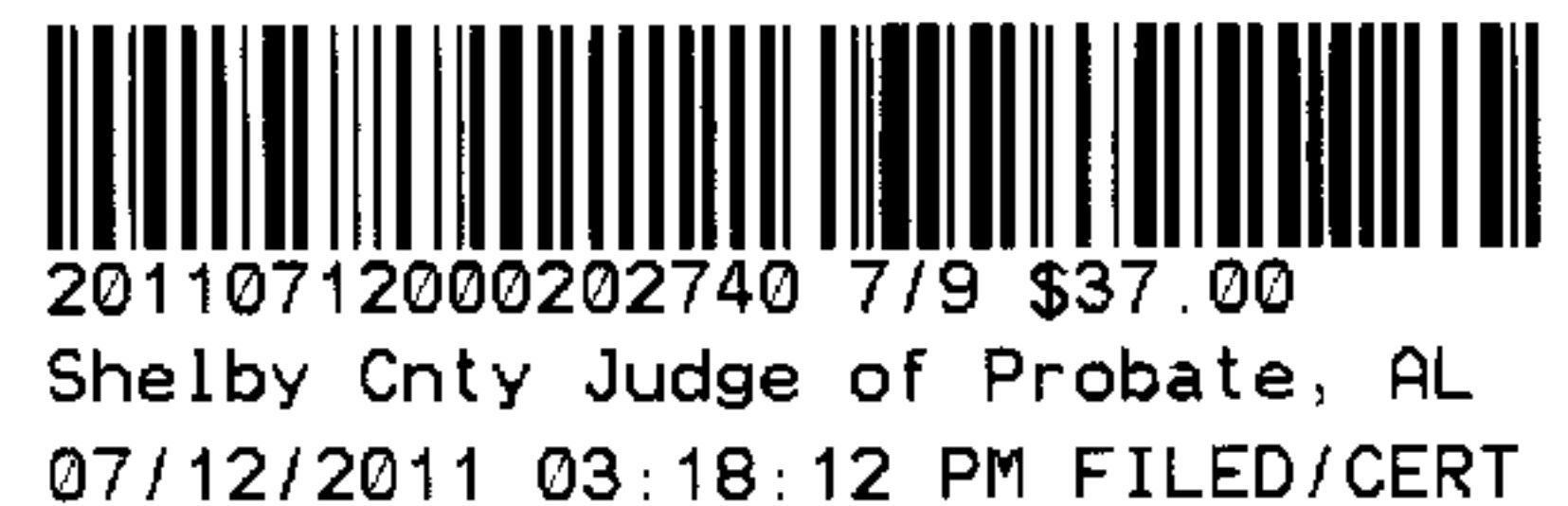
**OBLIGORS:**

**LACO WOODWORKS, INC.**

By: R.W. Cole

Print Name: R.W. Cole

Its: President



**COLE PROPERTIES, LLC**

By: R.W. Cole

Print Name: R.W. Cole

Its: President

**LENDER:**

**WELLS FARGO BANK, N.A.**

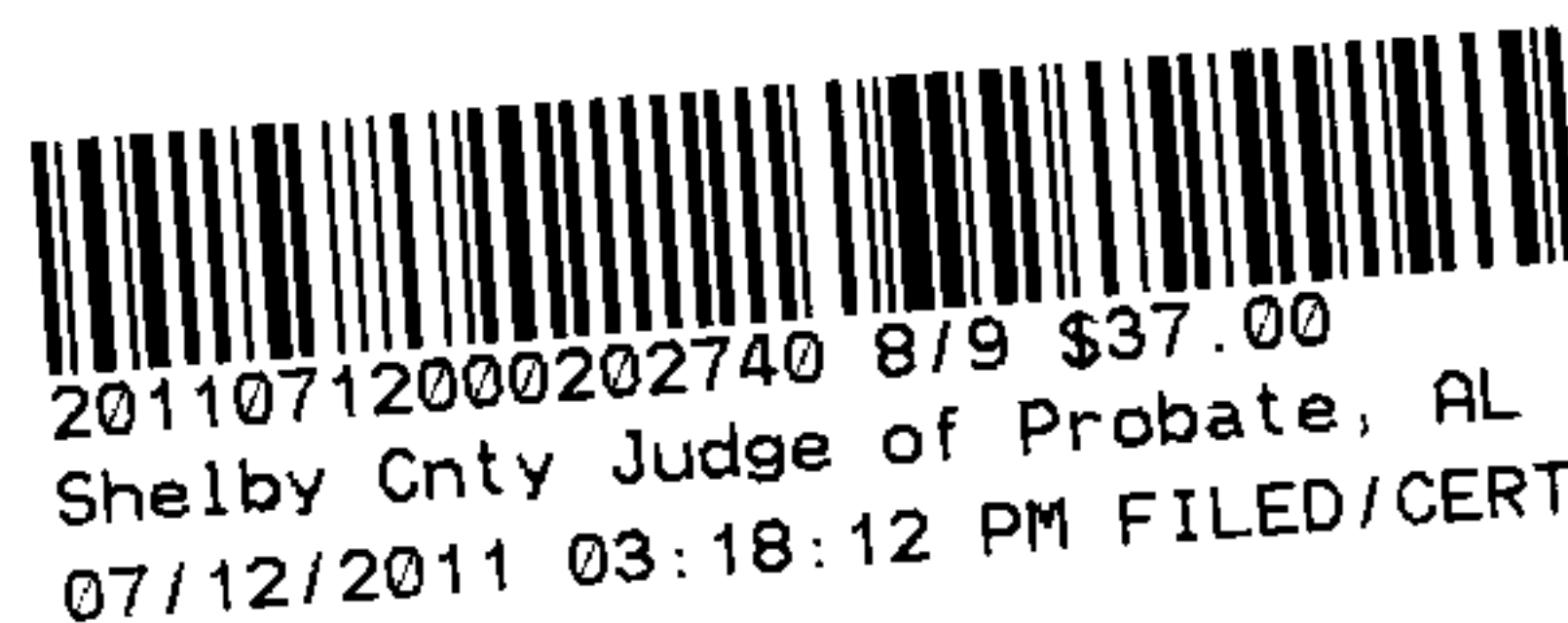
By: Steve Smith

Print Name: Steve Smith

Its: Vice President

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_



I, a notary public in and for said County and State, hereby certify that R.W. Cole, whose name as President of Laco Woodworks, Inc., a 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.

Witness my hand and official seal, this 11<sup>th</sup> day of October, 2010.

Notary Seal

Debra S. Hall, Notary Public

Debra S. Hall  
(Printed Name of Notary)

My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Jan 2, 2011  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_

I, a notary public in and for said County and State, hereby certify that R.W. Cole, whose name as President of Cole Properties, LLC, a 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Witness my hand and official seal, this 11<sup>th</sup> day of October, 2010.

Notary Seal

Debra S. Hall, Notary Public

Debra S. Hall  
(Printed Name of Notary)

My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Jan 2, 2011  
BONDED THRU NOTARY PUBLIC UNDERWRITERS



STATE OF ALABAMA

COUNTY OF Jefferson

I, a notary public in and for said County and State, hereby certify that Steve Smith, whose name as Vice President of Wells Fargo Bank, N.A., 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said bank.

Witness my hand and official seal, this 25<sup>th</sup> day of October, 2010.

Notary Seal

Jill Marie Vann, Notary Public

Jill Marie Vann  
(Printed Name of Notary)

My Commission Expires: My Commission Expires June 01, 2011

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