

1/10/2012 4:00

STATE OF ALABAMA)
COUNTY OF SHELBY)

LOAN ASSUMPTION AGREEMENT

THIS LOAN ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of the 25th day of October, 2011 (the "Effective Date") by and between **NEWCASTLE CONSTRUCTION, INC.**, an Alabama corporation (the "Borrower"), **NEWCASTLE PROPERTIES, LLC**, an Alabama limited liability company (the "Assumptor"), **GLENN C. SIDDLE**, an individual ("Guarantor"), and **NATIONAL BANK OF COMMERCE** (formerly known as Red Mountain Bank, N.A.), a national banking association (the "Lender").

Recitals

A. Alabama Trust Bank, N.A. (the "Original Lender") made a loan to the Borrower in the original principal amount of \$92,800.00 (the "Loan"). The Loan (Lot 36 cc) was subsequently assigned to the Lender. The Loan is evidenced by certain Promissory Note dated February 4, 2008 in the original principal amount of \$92,800.00 executed by the Borrower in favor of the Lender (the "Note").

B. The Loan is secured by, among other things: (i) that certain Mortgage and Security Agreement dated February 4, 2008 (the "Mortgage") on real property located in Shelby County, Alabama (the "Property"), recorded in the Probate Office of Shelby County, Alabama, as Instrument No. 20080205000046220; and (ii) that certain Assignment of Rents and Leases dated December 29, 2008, recorded in the Probate Office of Shelby County, Alabama, as Instrument No. 20090107000004840 (the "ARL"). The Mortgage and ARL were assigned by the Original Lender to the Lender pursuant to that certain instrument recorded in the Probate Office of Shelby County, Alabama, as Instrument No. 20080818000330410 and Instrument No. 20090204000035120.

C. The Borrower's Loan obligations are absolutely and unconditionally guaranteed by Guarantor pursuant to that certain Continuing Guaranty dated February 4, 2008 (the "Guaranty Agreement") (collectively, this Agreement, Note, Mortgage, ARL and Guaranty Agreement may hereinafter be referred to as the "Loan Documents").

D. The Borrower has previously conveyed the Property to the Assumptor. The Lender has been asked to consent to: (i) the assumption by the Assumptor of the obligations of the Borrower under the Note, Mortgage and ARL; and (ii) the transfer of Property to the Assumptor. The Lender has also been asked to waive any right that the Lender may have as the secured party under the Mortgage and other Loan Documents to declare a default under the terms of the Loan Documents based solely on the transfer of such Property by the Borrower to the Assumptor.



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E. The Lender has agreed to such requests subject to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Acknowledgement of Recitals. The parties hereto expressly acknowledge and agree that the foregoing "Recitals" are true, correct and complete.

2. Assumption of the Loans. As of the Effective Date, the Assumptor agrees to and does hereby unconditionally assume and agree to perform all of the obligations, covenants, agreements and liabilities of the Borrower set forth in each of the Note, Mortgage and ARL, whether as "Borrower", "Maker", "Grantor", "Debtor", "Assignor", or "Indemnitor", including without limitation, payment of all sums due under the Note. As of the date of this Agreement, Assumptor further agrees to abide by and be bound by all of the terms of the Note, Mortgage and ARL, all as though each of the Note, Mortgage and ARL had been made, executed and delivered by the Assumptor. The Assumptor acknowledges that it has taken title to the Property subject to the Lender's interest therein as created and governed by the Mortgage. As of the Effective Date, the Assumptor agrees to perform each and every term, covenant and condition of and as Borrower under the Note, Mortgage and ARL. Nothing in this Agreement shall: (i) release or impair the Note; (ii) prevent the Lender from exercising any other remedy against the Property; (iii) constitute a substitution or novation of any of the Loan Documents; or (iv) prevent or in any way hinder the Lender from exercising its remedies in respect to any collateral securing the Loan against any obligors or guarantors of the Loan, except as otherwise set forth herein. The Assumptor further agrees to assume all indemnification obligations of the Borrower relating to the Property that are contained in the Note, Mortgage and ARL.

3. Representations and Warranties. Without limitation of any of the obligations, representations, warranties and liabilities assumed by the Assumptor in and pursuant to this Agreement and the Note, Mortgage and ARL, each of the Borrower and the Assumptor represents and warrants to the Lender as of the Effective Date that:

(a) As of the date hereof, the Note has an unpaid principal balance of \$82,350.20;

(b) The Mortgage is a valid first priority lien on the Property;

(c) There are no defenses, offsets or counterclaims to any of the Loan Documents;

(d) Except as otherwise amended hereby, all provisions of the Note, Mortgage and ARL, as of the Effective Date, are in full force and effect and are, by virtue thereof, enforceable against the Assumptor in accordance with their respective terms;

(e) There are no defaults by the Borrower or the Guarantor under the provisions of any of the Loan Documents, nor does such party know of any facts or circumstances, which, with the passage of time, or the giving of notice, or both, would result in a default under such documents;

(f) The Assumptor is not insolvent and will not be rendered insolvent as a consequence of the acquisition of the Property and the other transactions that are the subject of this Agreement;

(g) The Assumptor has the corporate power and authority to execute, deliver, enter into and perform in accordance with this Agreement, Note, Mortgage and ARL. Upon execution and delivery hereof and thereof, this Agreement, Note, Mortgage and ARL will constitute valid and binding obligations of the Assumptor, enforceable in accordance with their respective terms, except to the extent the validity and binding nature may be limited or otherwise affected by bankruptcy, moratorium or similar laws affecting creditor's rights, and the Note will be entitled to the benefits of this Agreement and the other Loan Documents;

(h) Each of such parties has filed or caused to be filed all federal, state and local tax returns, which are required to be filed by them, and have paid or caused to be paid all taxes as shown on said returns or on any assessment received by them, to the extent that such taxes have become due;

(i) There are no subordinate liens of any kind covering or relating to the Property, nor are there any mechanics' or materialmen's liens or liens for taxes or assessments encumbering the Property that are due and payable, nor has notice of a lien or notice of intent to file a lien been received;

(j) Upon transfer of the Property, the Assumptor will become the owner in fee of the Property, free and clear from any leases or contracts affecting the Property, other than the Loan Documents;

(k) The Assumptor possesses such licenses and permits as is required for the conduct of his business. No approval, consent, or authorization of any governmental authority which has not heretofore been obtained is necessary for the execution or delivery by the Assumptor of this Agreement or the Note, Mortgage or ARL, or for the performance by the Assumptor of any of the terms or conditions hereof or thereof;

(l) The Property and the use which the Assumptor contemplates therefor comply with all applicable restrictive covenants, zoning ordinances, building codes, applicable health and environmental laws and regulations, and all other applicable laws, rules and regulations. There are no suits, proceedings or investigations pending or threatened against or affecting the Assumptor which, if adversely determined, would have a material adverse affect on the Assumptor; nor is such party aware of any suits, proceedings or investigations pending or threatened against or affecting the Property at law or in equity, or before or by a governmental or

administrative agency or instrumentality, which, if adversely determined, would have a material adverse affect on the Assumptor or the Property;

(m) The execution, delivery and performance of this Agreement and the assumption of each of the Note, Mortgage and ARL do not contravene any law, order, decree, rule, or regulation to which such party is subject; and


(n) Each of said parties hereby certifies that it has thoroughly reviewed the provisions of this Agreement and the Loan Documents, that it has been advised and represented by counsel of its or his own choice in this transaction, and that it understands and consents to the provisions of such instruments.

4. Consent to Transfer. In reliance upon the representations and warranties of Borrower and the Assumptor contained in this Agreement, the Lender hereby consents to the Borrower's transfer of the Property to the Assumptor and waives the violations, if any, of provisions of the Mortgage and other Loan Documents resulting therefrom, subject to the strict performance by the Assumptor of each and every term of this Agreement; provided, however, this consent and waiver shall constitute neither a waiver of any other provision of the Mortgage or any of the other Loan Documents, nor a waiver of the provisions of the Mortgage or any of the other Loan Documents with respect to future transactions involving the Property.

5. Costs. The Assumptor agrees to pay all fees and costs (including attorneys' fees) incurred by the Lender in connection with the Lender's consent to and approval of the transfer of the Property.

6. Waiver. By entering into this Agreement or any other agreement executed in connection herewith, the Lender is not and shall not be construed as waiving any event of default or breach now or hereafter existing or occurring under the Loan Documents. Regardless of when the parties' respective obligations begin to accrue or end, with respect to facts or events having occurred prior to the date hereof, which with the passage of time or the giving of notice, or both, could result in a default under the Loan Documents (a "Prior Default"), the Lender shall not be estopped from accelerating the Loan if such Prior Default had, or could have, a material adverse affect on the Property and such Prior Default remains uncured following written notice to the Assumptor, specifying the fact or event giving rise to the Prior Default and providing the Assumptor thirty (30) days to cure same.

7. Release of Borrower Under the Loan. In reliance upon the representations and warranties of Borrower and the Assumptor contained in this Agreement, the Lender hereby releases the Borrower from any and all obligations under the Loan under any of the Loan Documents. Provided, however, the Guarantors shall not be released from his obligations under any of the Loan Documents.


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8. Guarantor Consent. The Guarantor agrees to execute this Agreement as guarantor in order to evidence his consent to the terms of this Agreement. Nothing contained herein shall be deemed to require that the Guarantor consent to the terms of this Agreement, it being expressly recognized that the Guarantor has agreed that such consent is not required.

9. Notice for Assumptor. All notices, requests, demands, or other communications required or permitted to the Assumptor under this Agreement or the Loan Documents shall be provided in accordance with the Loan Documents at the address set forth below:

Newcastle Properties, LLC
3978 PARKWOOD ROAD SE
BESSEMER, ALABAMA 35022
Attention: Glenn C. Siddle
Facsimile: _____

10. General Provisions.

(a) This Agreement shall be construed according to and governed by the laws of the State of Alabama, without regard to its conflicts of law principles;

(b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, such invalid, illegal or unenforceable provision will be deemed omitted and all other provisions of this Agreement shall remain in full force and effect;

(c) This Agreement contains the entire agreement between all of the parties hereto and is intended to be an integration of all prior agreements, conditions or undertakings between all the parties hereto with respect to the transfer of the Property by the Borrower to the Assumptor;

(d) No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties hereto;

(e) The captions contained in this Agreement are for convenience of reference only and in no event define, describe or limit the scope or intent of this Agreement or any of the provisions or terms thereof;

(f) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns;

(g) The Borrower and the Assumptor, by their execution of this Agreement, hereby acknowledge and covenant that a default, a breach of a representation or warranty, or the failure to fulfill any covenant under this Agreement by the Borrower or the Assumptor, will constitute an event of default under the Loan Documents and the Lender shall be entitled to all remedies provided and contained in the Loan Documents as if such remedies were fully set out herein;

(h) This Agreement and the other documents now or hereafter executed in connection with this Agreement are deemed to be "Loan Documents" as that term is defined herein and deemed to be "Security Documents" as that term is used in the Note.

(i) This Agreement may be executed in whole or in counterparts, each of which shall be an original but all of which, when taken together, shall constitute but one agreement.

[signature page to follow]



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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"BORROWER":

NEWCASTLE CONSTRUCTION, INC.

By: Glenn C. Siddle
Name: Glenn C. Siddle
Its: President

"ASSUMPTOR":

NEWCASTLE PROPERTIES, LLC

By: Glenn C. Siddle
Name: Glenn C. Siddle
Its: Member

"GUARANTOR":

Glenn C. Siddle
GLENN C. SIDDLE



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“LENDER”:

NATIONAL BANK OF COMMERCE



By: _____

Name: _____ Chris Cotton

Its: _____ Senior Vice President



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STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Glenn C. Siddle, whose name as President of NEWCASTLE CONSTRUCTION, 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 executed the same voluntarily on behalf of said corporation.

Given under my hand and official seal this the 25th day of October, 2011.

Patricia K. Depina day
Notary Public

AFFIX SEAL

My commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 14, 2015
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
COUNTY OF Shelby)


I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Glenn C. Siddle, whose name as Member of NEWCASTLE PROPERTIES, LLC, an Alabama 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 said instrument, he executed the same voluntarily on behalf of said limited liability company.

Given under my hand and official seal this the 25th day of October, 2011.

Patricia K. Depina day
Notary Public

AFFIX SEAL

My commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 14, 2015
BONDED THRU NOTARY PUBLIC UNDERWRITERS


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STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that GLENN C. SIDDLE, whose name 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 executed the same voluntarily.

Given under my hand and official seal this the 25th day of October, 2011.

Patricia K. Neponadny
Notary Public

AFFIX SEAL

My commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 14, 2015
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 NATIONAL BANK OF COMMERCE (formerly known as Red Mountain 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 said instrument, she executed the same voluntarily on behalf of said national banking association.

Given under my hand and official seal this the 25th day of October, 2011.


Patricia K. Neponadny
Notary Public

AFFIX SEAL

My commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 14, 2015
BONDED THRU NOTARY PUBLIC UNDERWRITERS

This instrument was prepared by:

Matthew W. Grill, Esq.
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, Alabama 35203-2602
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