

STATE OF ALABAMA)
SHELBY COUNTY)


20120206000043810 1/8 \$34.00
Shelby Cnty Judge of Probate, AL
02/06/2012 11:41:59 AM FILED/CERT

Return to:
Christine Keifer Borton
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, Alabama 35203-2618

Space Above Line for Processing Data_____

RBC Bank

**Modification Agreement – Mortgage
(Cover Page)**

From: THORNTON NEW HOME SALES, INC., as successor by merger to Chesser Plantation, Inc., with a business/mailling address of 3570 Grandview Parkway, Suite 100, Birmingham, Alabama 35243

To: RBC BANK (USA), as successor by merger to First American Bank, with a business/mailling address of 11011 Richmond Ave., Suite 850, Houston, Texas 77042, which mailing address is the place to which all notices and communications should be sent to Bank regarding this Modification Agreement.

Date: January 27, 2012
(Effective Date: January 20, 2012)

Cross Reference to Recorded Documents Modified: Accommodation Mortgage dated May 21, 2007 and recorded as Instrument No. 20070529000248090 in the Probate Office of Shelby County, Alabama

RBC Bank (USA)

MODIFICATION AGREEMENT – MORTGAGE

THIS MODIFICATION AGREEMENT – MORTGAGE (“Modification Agreement”), dated as of the 27th day of January, 2012, and effective as of the 20th day of January, 2012, by **THORNTON NEW HOME SALES, INC.**, an Alabama corporation, as successor by merger to Chesser Plantation, Inc. (“Mortgagor”, whether one or more), with a mailing address of 3570 Grandview Parkway, Suite 100, Birmingham, Alabama 35243, and **RBC BANK (USA)**, a North Carolina banking corporation, as successor by merger to First American Bank (“Bank”), with a mailing address of 11011 Richmond Ave., Suite 850, Houston, Texas 77042

- A. Thornton Construction Company, Inc. (“Obligor”, whether one or more) has made and issued to Bank its promissory note(s) (collectively, the “Notes”) in the original principal amount and dated as indicated on **Attachment 1** attached hereto.
- B. If so indicated on **Attachment 1**, the Notes are secured and the security is generally as described on **Attachment 1**.
- C. The Notes, any security documents described on **Attachment 1** and any other loan and security documents that are outstanding with respect to the extension of credit evidenced by the Notes, even if not listed on **Attachment 1**, are hereinafter collectively referred to as the “Contract” and the Contract is hereby incorporated herein as a part of this Modification Agreement.
- D. Bank and Mortgagor mutually desire to modify the provisions of the Contract in the manner hereinafter set out, it being specifically understood and agreed that, except as herein modified, the terms and provisions of the Contract and the individual instruments, documents and agreements that make up the Contract shall remain unchanged and the Contract, as herein modified, shall continue in full force and effect as therein and herein written.

NOW, THEREFORE, Bank and Mortgagor, in consideration of the premises and the sum of One Dollar (\$1.00) to each in hand paid by the other, receipt and sufficiency of which are hereby acknowledged by each, do hereby agree as follows:

Section 1. Modification. The Contract shall be, and the same is, modified in the manner set forth in **Attachment 2**.

Section 2. Effect of Modification. Nothing contained in this Modification Agreement shall in any way impair the security now held for the indebtedness evidenced by the Contract or the lien priority thereof, nor waive, annul, vary or affect any provision, condition, covenant and agreement contained in the Contract, nor affect or impair any rights, powers and remedies under the Contract, except as herein specifically modified to do any one or more of the foregoing. If any provision in this Modification Agreement shall be interpreted or applied by a court or other tribunal with personal and subject matter jurisdiction over the parties hereto and the Contract, as modified, so as to impair the security now held for the indebtedness or lien priority thereof, or do any one or more of any of the foregoing, such provision shall be ineffective to the extent it causes an impairment of such security or the lien priority thereof or causes any of such other consequences, or the application thereof shall be in a manner and to an extent which does not impair such security or the lien priority thereof, or result in the occurrence of any of the other consequences. This Modification Agreement does not extend the expiration dates or enlarge the terms of any property, physical damage, credit and any other insurance written in connection with or financed by said Contract.

Section 3. Financing Statements. Mortgagor irrevocably authorizes Bank to file such financing statements as may be reasonably necessary to protect, in Bank’s opinion, Bank’s security interests and liens and, to the extent Bank reasonably deems necessary or appropriate, to sign the name of Mortgagor with the same force and effect as if signed by Mortgagor and to make public in financing statements and other public filings such information regarding



Mortgagor as Bank reasonably deems necessary or appropriate, provided that Bank will not intentionally include federal tax identification numbers or social security numbers in such public filings.

Section 4. Credit Investigations; Bank's Responsibilities. Bank is irrevocably authorized by Mortgagor to make and have made such credit investigations as it deems appropriate to evaluate Mortgagor's credit, personal and financial standing and employment, and Mortgagor authorizes Bank to share with consumer reporting agencies and creditors its experiences with Mortgagor and other information in Bank's possession relative to Mortgagor, except as prohibited by law. Bank shall not have any obligation or responsibility to do any of the following: **(1) protect and preserve any collateral and other security given or to be given in connection with the Contract, as herein modified, against the rights of third persons having an interest therein; (2) provide information to third persons relative to the Contract, as herein modified, Bank's liens and security interests in any collateral and other security, or otherwise with respect to Mortgagor; and (3) subordinate its liens and security interests in any collateral and other security to the interests of any third persons or to enter into control agreements relative to such collateral and other security.**

Section 5. Usury. Bank does not intend to and shall not reserve, charge and collect interest, fees and charges under the Contract, as herein modified, in excess of the maximum rates and amounts permitted by applicable law. If any interest, fees and charges are reserved, charged and collected in excess of the maximum rates and amounts, appropriate adjustments shall be made by Bank and to the extent paid, the excess shall be returned to the person making such a payment.

Section 6. Documentary Stamps, etc. To the extent not prohibited by law and notwithstanding who is liable for payment of the taxes and fees, Mortgagor shall pay, on Bank's demand, all intangible taxes, documentary stamp taxes, excise taxes and other similar taxes assessed, charged and required to be paid in connection with this Modification Agreement, and any future extension, renewal and modification of the Contract, or assessed, charged and required to be paid in connection with any of the loan documents which make up the Contract.

Section 7. Anti-Terrorism. Mortgagor represents, warrants and covenants to Bank as follows: (1) Mortgagor (a) is not and shall not become a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) does not engage in and shall not engage in any dealings or transactions prohibited by Section 2 of such executive order, and is not and shall not otherwise become associated with any such person in any manner violative of Section 2, (c) is not and shall not become a person on the list of Specially Designated Nationals and Blocked Persons, and (d) is not and shall not become subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order; (2) Mortgagor is and shall remain in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001); and (3) Mortgagor has not and shall not use all or any part of the extension of credit evidenced by the Note, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended..

Section 8. Costs and Expenses. All of the costs and expenses incurred by Bank in connection with this Modification Agreement shall be paid by Mortgagor upon the request of and at the time of demand for payment thereof made by Bank on Mortgagor. As used herein, "costs and expenses" include, without limitation, reasonable attorneys' fees and fees of legal assistants, and reasonable fees of accountants, engineers, surveyors, appraisers and other professionals or experts – and all references to attorneys' fees or fees of legal assistants, or fees of accountants, engineers, surveyors, appraisers or other professionals or experts shall mean reasonable fees.

Section 9. Maintenance of Records. Bank is authorized to maintain, store and otherwise retain this Modification Agreement and the other documents constituting the Contract in their original, inscribed tangible forms or records

thereof in an electronic medium or other non-tangible medium which permits such records to be retrieved in perceivable forms.

Section 10. **Waiver of Jury Trial.** Mortgagor, to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to this Modification Agreement and waives any right to a trial by jury in any action or proceeding arising from or related to the Contract, as herein modified.

Section 11. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State whose laws govern the Contract, excepting, however, its conflict of law provisions.

Section 12. **Reservation of Rights; Entire Agreement.** Bank does hereby reserve all rights and remedies it may have against all parties secondarily liable for repayment of the indebtedness evidenced by the Contract. The Contract, as herein modified, contains the entire agreement of the parties and the undersigned do hereby ratify and confirm the terms of the Contract, all of which shall remain in full force and effect, as modified herein. This Modification Agreement shall be binding upon any assignee and successor in interest of the parties hereto. Mortgagor waives and will not assert against any transferee and assignee of Bank any claims, defenses, set-offs and rights of recoupment existing as of the effective date of this Modification Agreement which Mortgagor could assert against Bank, except defenses which Mortgagor cannot waive. All references herein to the "Modification Agreement" include any supplemental agreements filed of record to reflect modifications of any of the instruments, documents and other agreements making up the Contract that are of record.

(Signatures On Next Page)

The undersigned have executed this Modification Agreement under seal as of the day and year first above stated.

BANK:

RBC BANK (USA)

By: Traniece Peterson
Print Name: Traniece Peterson
Title: Vice President

ACKNOWLEDGMENT

STATE OF TEXAS)

COUNTY OF HARRIS)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Traniece Peterson, whose name as Vice President of RBC Bank (USA), a North Carolina banking corporation, is signed to the foregoing Modification Agreement –Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Modification Agreement – Mortgage, he/she, 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 30 day of January, 2012.

Stacey Guynes
Notary Public

My Commission Expires: 7-5-13



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MORTGAGOR:

THORNTON NEW HOME SALES, INC.

By:

Print Name: William L. Thornton III

Title: Chief Executive Officer

Witness:

Print Name:

ACKNOWLEDGMENT

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that William L. Thornton III, whose name as Chief Executive Officer of Thornton New Home Sales, Inc., an Alabama corporation, is signed to the foregoing Modification Agreement –Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Modification Agreement – Mortgage, 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 27th day of January, 2012.

Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: June 14, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS



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**Attachment 1
To
Modification Agreement**

1. Describe Promissory Notes (Date, Original Amount, Current Amount and all Modifications): (1) Promissory Note dated May 21, 2007 executed by the Borrower in favor of the Lender in the original principal amount of \$533,540.00, with a balance as of January 20, 2012 of \$338.839.44; (2) Forbearance Agreement dated November 9, 2010, as amended by that certain First Amendment to Forbearance Agreement effective January 20, 2012.

2. Describe Security Documents (Type, Date and if recorded, Recording Information): Accommodation Mortgage dated May 21, 2007 and recorded as Instrument No. 20070529000248090 in the Probate Office of Shelby County, Alabama.

**Attachment 2
To
Modification Agreement**


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The Contract shall be, and the same is, modified as follows:

1. The section of the Mortgage which provides “**LOT RELEASE AGREEMENT: \$41,042.00 per lot.**” shall be deleted in its entirety and replaced with the following:

LOT RELEASE AGREEMENT: The Lender agrees to simultaneously release from the lien of this mortgage any lot described above in exchange for payment in an amount equal to the greater of (i) 100% of the net sales proceeds from a sale of said lot or (ii) \$27,500.00 per lot.