

STATE OF ALABAMA  
COUNTY OF SHELBY

LOAN # 74017137

804

## **ASSUMPTION AGREEMENT**

**THIS ASSUMPTION AGREEMENT** is entered into by **NEWCASTLE PROPERTIES, LIMITED LIABILITY COMPANY** (also known as **NEWCASTLE PROPERTIES, LLC**) whose address is 3978 Parkwood Road, Bessemer, Alabama 35022 (hereinafter "Assumptor") for the benefit of **ALIAN BANK, a division of USAMERIBANK** (hereinafter "Bank").

**WHEREAS**, Bank made a loan (the "Loan") to **CALERA LAND HOLDINGS, LIMITED LIABILITY COMPANY** (also known as **CALERA LAND HOLDINGS, LLC**) (hereinafter "Original Borrower"), which is currently evidenced by that certain Commercial Promissory Note executed by Original Borrower and delivered to Bank on July 5, 2010 (hereinafter, along with all change in term agreements, amendments, renewals, and extensions thereof including those executed by Assumptor, the "Note").

**WHEREAS**, the Loan was secured in part by a Commercial Construction Real Estate Mortgage dated October 1, 2009 from Original Borrower to Bank, and which is recorded as Instrument 20091028000403770 in the Office of the Judge of Probate of Shelby County, Alabama (hereinafter the "Mortgage"), along with that certain Assignment of Leases and Rents (the "Assignment") recorded in Instrument 20091028000403780.

**WHEREAS**, the Original Borrower mortgaged, granted, and conveyed to Bank, with power of sale, the property described in the Mortgage, including the Realty described below:

Lots 25, 28 and 29, according to the Amended Map of Calera Commons Townhomes, as recorded in Map Book 38, Page 62, in the Probate Office of Shelby County, Alabama.

**WHEREAS**, Assumptor desires to acquire the Realty, and in connection therewith assume the Loan made by Bank to Original Borrower.

**WHEREAS**, Bank and Assumptor are agreeable to this assumption, provided Assumptor assumes the Loan and enters into this Assumption Agreement.

**NOW THEREFORE**, in consideration of the premises, to induce Bank to consent to Assumptor's assumption of the Loan, and for \$10.00 and other good and valuable consideration, it is agreed as follows:

1. **ASSUMPTION OF THE LOAN:** Assumptor assumes the Loan and the obligation to pay the amount outstanding on the Loan in accordance with the terms of the Note. Assumptor further assumes and agrees to pay the indebtedness and perform every act and obligations of



Original Borrower under the terms of the Note, Mortgage, Assignment, and any and all other documents pertaining to the Loan or executed in connection with the Note, Mortgage, and Assignment (hereinafter collectively the "Loan Documents") in the same manner and with the same effect as though they had originally joined in the execution thereof. Upon execution of this agreement, and the assumption of these obligations, Assumptor shall become a "Borrower" and a "Mortgagor" as those terms are defined in the Loan Documents.

2. **NO RELEASE OF ORIGINAL BORROWER OR GUARANTORS:** Glenn C. Siddle and NEWCASTLE CONSTRUCTION, INC. (hereinafter jointly, severally, and collectively the "Guarantors") and Original Borrower are not released from their obligations evidenced by the Loan Documents, and nothing contained herein should be in any way construed as a release of Original Borrower and/or Guarantors, and by the execution hereof, Guarantors among other things, guarantee to Bank the full and prompt payment of the Loan, the Note, and all loans, overdrafts, notes, bills, and all other debts, obligations, and liabilities of every kind and description, whether now owing or hereafter arising out of credit previously, contemporaneously, or hereafter granted by Bank to the Assumptor, whether arising from dealings between the Bank and the Assumptor, or from dealings by which the Bank may become, in any manner whatever, a creditor of the Assumptor. Guarantors further agree to be, without deduction by reason of setoff, defense, or counterclaim of the Assumptor, primarily liable for the due performance and prompt payment of all of the obligations of the Assumptor to Bank, no matter when or how arising, whether under a note, or any other past, present or future agreement with Bank, or otherwise, including debts and obligations incurred by the Assumptor to others and pledged, sold, transferred, assigned and/or in which security interests are granted to Bank for any purpose whatsoever, and specifically including any and all interest, attorney fees, and cost pertaining thereto, or which accrue after an order for relief is entered against Assumptor in any Bankruptcy proceedings. Guarantors further consent to and hereby waives any and all notice of the making of any modification, amendment, renewal or extension of the Note or any note or agreement or any supplement thereto; the making of any other agreement; the incurring of any other debts or obligations by the Assumptor to Bank or others and/or of the pledge, sale, transfer, and/or assignment thereof; the granting of security interests therein to Bank; the granting to the Assumptor or to any obligor or debtor of any obligation or debts assigned to Bank, of any extensions of time to make any payments to perform or discharge any of Assumptor's obligations (or waive such performances and/or discharge); the compounding, compromising, and/or adjusting of any claim against the Assumptor or any such obligor or debtor; the accepting or releasing of any security either of Assumptor or of any third party; and all other notices which the Guarantors are entitled. No act on Bank's part and nothing other than the full payment, performances, and discharge of all of Assumptor's obligations shall operate to discharge or satisfy the liability of the Guarantors hereunder. The liability of the Guarantors hereunder is primary, direct and unconditional and may be enforced without first resorting to any rights or remedies Bank may have against the Assumptor, any other person, any other entity, or against any security. Guarantors further agree that this agreement, and all obligations guaranteed or secured hereby, shall remain in full force and effect and in its original tenor at all times hereinafter during the term hereof, notwithstanding i) the unenforceability, non-existence, invalidity, or non-perfection of any of the obligations, or any instrument or agreement guaranteeing or securing the obligations, or of any lien, pledge, assignment, security interest or conveyance given as security for the obligations; ii) the failure of Bank to pursue any collateral securing the obligations or the failure to



file a claim against the Assumptor or any other guarantor of the obligation in any proceeding pertaining to the death, insolvency, or bankruptcy of such person or entity; or iii) any action or undertakings by, or against, Bank or Assumptor or concerning any collateral which is secured, pledged or assigned to the Bank in connection with the obligation in any proceeding in the United States Bankruptcy Court; including without limitation, matters relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by the Bank pursuant to any Chapter of the Bankruptcy Code, as may be applicable from time to time.

3. **TAXES, ASSESSMENTS, AND OTHER CHARGES:** Assumptor will pay all taxes, assessments, or governmental charges levied, assessed, or imposed against Assumptor or Assumptor's properties or arising out of Assumptor's operations promptly as they become due and payable, provided, however, that if Assumptor shall have set aside on Assumptor's books reserves deemed adequate therefor, Assumptor shall have the right to contest in good faith, by appropriate proceedings, any such taxes, assessments or governmental charges or levies, and pending such contest may delay or defer the payment thereof unless thereby the property in which Bank has a mortgage or security interest will be in danger of being forfeited or lost.

4. **INCORPORATION OF LOAN DOCUMENTS:** Assumptor acknowledges receipt of a copy of all the Loan Documents, and agrees to be bound under the terms of each and every Loan Document, just as if Assumptor executed each Loan Document. Assumptor will comply with each and every term, condition, agreement, representation, and covenant in the Loan Documents, just as if Assumptor executed the same.

5. **COST AND EXPENSES:** Assumptor agrees to pay all recording fees, reasonable fees, (including a reasonable fee of the attorneys retained by Bank to prepare or review the instruments for this obligation) and all other reasonable expenses and costs of every kind which may be incurred by Bank in the making of this assumption, and in maintaining unimpaired its security and lien, or otherwise connected with or growing out of this transaction.

6. **HEADINGS, WAIVERS, SURVIVAL OF COVENANTS, MISCELLANEOUS:**

6.1. The headings of the articles, sections, paragraphs, and subdivision of this Assumption Agreement are for convenience or reference only, and are not to be considered a part hereof, and shall not limit or affect any of the terms hereof.

6.2. All agreements and representations, made herein shall be deemed to be material and relied on by Bank, notwithstanding any investigation made by or on behalf of Bank, and shall survive the execution and delivery to Bank of this Assumption Agreement, or any agreement referred to herein.

6.3. No delay or failure on Bank's part in exercising any right, privilege, or option hereunder or under any other written agreement to which Assumptor is a party, shall operate as a waiver of such right, privilege, or option and no waiver whatsoever shall be valid unless in writing signed by Bank and then only to the extent therein set forth.

6.4. ASSUMPTOR CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN BIRMINGHAM, ALABAMA AND WAIVES ANY OBJECTION ASSUMPTOR MAY HAVE BASED UPON IMPROPER VENUE OR FORUM NON CONVENIENS OR TO THE CONDUCT OF ANY PROCEEDINGS IN ANY SUCH COURT. IN ANY JUDICIAL PROCEEDING BROUGHT WITH RESPECT TO THIS ASSUMPTION AGREEMENT, THE NOTE, THE MORTGAGE OR THE ASSIGNMENT, ASSUMPTOR WAIVES ANY RIGHT TO TRIAL BY JURY.

6.5. This Assumption Agreement, and the Loan Documents shall continue in full force and effect until terminated by full payment of all of Assumptor's Obligations to Bank.

6.6. This Assumption Agreement amends the Loan Documents as specifically stated above. This is an amendment to such documents and not a novation thereof. All terms and conditions of such agreements, not specifically amended herein, or hereby reaffirmed, ratified, and shall continue in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 9th day of May, 2012.

NEWCASTLE PROPERTIES, LIMITED LIABILITY COMPANY (also known as NEWCASTLE PROPERTIES, LLC), an Alabama limited liability company

By: Glenn Siddle  
Print Name: Glenn Siddle  
Title: Manager

The undersigned being the Guarantors, do hereby acknowledge and consent to this assumption, and in connection with this assumption, hereby agree to section 2 hereof and confirm their obligations as to the Loan and reconfirm, re-ratify and re-state the guaranty they delivered to Bank just as if same was fully set forth herein.

Glenn Siddle L.S.  
Glenn C. Siddle

NEWCASTLE CONSTRUCTION, INC.

By: Glenn Siddle  
Print Name: Glenn C. Siddle  
Title: President



STATE OF ALABAMA   )  
JEFFERSON COUNTY   )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Glenn C. Siddle, whose name as member of NEWCASTLE PROPERTIES, LIMITED LIABILITY COMPANY (also known as 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, as such member, and with full authority, executed the same voluntarily, as an act of said company, acting in his capacity as aforesaid.

Given under my hand and official seal, this the 9 day of May, 2012.

Donna B Coleman

NOTARY PUBLIC

My Commission Expires: 8-31-2014

THIS INSTRUMENT PREPARED BY AND AFTER  
RECORDATION SHOULD BE RETURNED TO:

Heather E. Ward

ENGEL, HAIRSTON & JOHANSON, P.C.

109 North 20th Street, Fourth Floor

P.O. Box 11405

Birmingham, Alabama 35202

(205) 328-4600