



Prepared by and return to:

Aliant Bank, a division of USAmeriBank
Birmingham – Corporate Office
1100 Corporate Parkway
Meadow Brook Corporate Park
Birmingham, AL 35242



20130221000074360 1/9 \$36.00
Shelby Cnty Judge of Probate, AL
02/21/2013 02:00:54 PM FILED/CERT

CROSS DEFAULT/CROSS COLLATERALIZATION AGREEMENT

THIS CROSS DEFAULT/COLLATERALIZATION AGREEMENT (the "Agreement") is made and entered into on December 5, 2012, by and between **G & S Development, LLC**, an Alabama limited liability company (collectively "Borrower 1"), **G & S Properties, LLC** an Alabama limited liability company ("Borrower 2") and **Gregory B. Metcalf** (the "Guarantor") and **ALIENT BANK**, a division of **USAMERIBANK**, a Florida banking corporation, (the "Lender").

RECITALS

A. Borrower 1 is indebted to Lender as evidenced by a certain Commercial Promissory Note dated November 19, 2009 from Borrower 1 to Lender in the original amount of \$460,408.30 as renewed, modified or extended thereafter. ("Note 1").

B. Note 1, together with all documents and instruments delivered with respect thereto, are hereinafter referred to as the (Loan 1 Documents), described on Exhibit "A" attached hereto and made a part thereof.

C. Borrower 2 is indebted to Lender as evidenced by a certain Commercial Promissory Note dated as of October 6, 2008 in the original principal amount of \$1,200,000.00 as renewed, modified or extended thereafter. ("Note 2").

D. Repayment of the indebtedness evidenced by the Note 2 is secured by various security instruments as described on Exhibit "C" attached hereto and made a part hereof, which together with all documents and instruments delivered with respect thereto are hereinafter referred to as the ("Loan 2 Documents"), which encumber the real property described on Exhibit "D", attached hereto and made a part hereof the ("Real Property").

E. Note 1 and Note 2 are hereinafter sometimes together referred to as the "Notes".

F. The Loan 1 Documents and Loan 2 Documents are hereinafter sometimes together referred to as the "Loan Documents".

MORTGAGE PRIVELEGE TAX IN THE AMOUNT OF \$900.00 HAS BEEN COLLECTED AND WERE AFFIXED TO THE ORIGINAL MORTGAGE RECORDED ON NOVEMBER 27, 2007 BY INSTRUMENT #20071127000538440 IN THE OFFICE OF THE JUDGE OF PROBATE IN SHELBY COUNTY, ALABAMA. MORTGAGE PRIVELEGE TAX IN THE AMOUNT OF \$1,800.00 HAS BEEN COLLECTED AND WERE AFFIXED TO THE ORIGINAL MORTGAGE RECORDED ON OCTOBER 14, 2008 BY INSTRUMENT #20081014000405140 IN THE OFFICE OF THE JUDGE OF PROBATE IN SHELBY COUNTY, ALABAMA. MORTGAGE PRIVELEGE TAX IN THE AMOUNT OF \$225.00 HAS BEEN COLLECTED AND WERE AFFIXED TO MODIFICATION AGREEMENT-MORTGAGE RECORDED ON DECEMBER 10, 2010 BY INSTRUMENT #20101210000415170 IN THE OFFICE OF THE JUDGE OF PROBATE IN SHELBY COUNTY, ALABAMA.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and Lender agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein.

2. Cross-Default Cross Collateralization. Both of the Notes shall be deemed to be in default in the event of any default made by Borrower 1 or Borrower 2 in connection with either one of the Notes or any one of the Loan Documents. Each and every one of the Loan Documents shall be deemed to be in default in the event of any default made by Borrower 1 or Borrower 2 in connection with either one of the Notes or any one of the Loan Documents. All references in all documents hereinabove mentioned to "loans" or "indebtedness" or "amounts secured" shall be deemed to include, but not be limited to, the entire indebtedness described in the Note 1 and the Note 2, as may be hereinafter modified, amended, increased or renewed together with all other indebtedness of every kind owing by Borrower 1 or Borrower 2 to Lender, whether now existing or hereafter incurred, direct or indirect, and whether the indebtedness is from time to time reduced and thereafter increased or entirely extinguished and thereafter reincurred, and including any sums advanced and any expenses incurred by Lender pursuant to the Loan Documents or any other note or evidence of indebtedness.

All collateral named in each and every one of the Loan Documents shall be collateral for both the Notes. The proceeds received by Lender from such collateral whether by liquidation or otherwise shall be applied to such Notes and in such order as Lender may determine in Lender's sole discretion.

3. Ratification. Except as modified and amended hereby, the terms and conditions of the Notes and the Loan Documents and all other documents executed with respect thereto are hereby ratified and affirmed and shall remain in full force and effect.

4. Novation. It is the intent of the parties that this instrument shall not constitute a novation and shall in no way adversely affect the lien priority of the Loan Documents. In the event that this Agreement, or any part hereof, shall be construed by a court of competent jurisdiction as operating to affect the lien priority of the Loan Documents over claims which would otherwise be subordinate thereto then to the extent that this Agreement is so construed to create an additional charge or burden upon the collateral encumbered, and to the extent that third persons acquiring an interest in such property between the time of execution of the Loan Documents and the execution hereof, are prejudiced thereby, this Agreement or such portion hereof, as shall be so construed, shall be void and of no force and effect and this Agreement shall constitute, as to that portion, a subordinate lien on the collateral, incorporating by reference the terms of the Loan Documents and at such time the Loan Documents shall be enforced pursuant to the terms therein contained independent of this Agreement; provided, however, that notwithstanding the foregoing, the parties hereto, as between themselves, shall be bound by all terms and conditions hereof until all indebtedness owing from Borrower 1 or Borrower 2 to the Lender shall have been paid in full.

5. Warranties and Representations.

a. Borrower 1 and Borrower 2 hereby affirms, warrant and represent that all of the warranties and representations made by Borrower 1 and Borrower 2 in the Notes and Loan Documents described herein are true and correct as of the date hereof, that Borrower 1 and Borrower 2 are not in default of any of the Loan Documents or Notes nor aware of any default with respect thereto.

b. There is no claim, cause of action or set-off against Lender arising from any of the Loan Documents referred to in this Agreement, and Borrower 1 and Borrower 2 hereby waive and release Lender from any and all claims which may have arisen pursuant to the Loan Documents.

6. Miscellaneous.

a. Paragraph headings used herein are for convenience only and shall not be construed as controlling the scope of any provisions hereof.

b. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

c. Time is of the essence of this Agreement.

d. In the event that Lender resorts to litigation to enforce this Agreement, all costs of such litigation, to include reasonable attorney's fees through all trials, appeals and proceedings, to include, without limitation, any proceedings pursuant to the bankruptcy laws of the United States, shall be paid by Borrower 1 and Borrower 2.

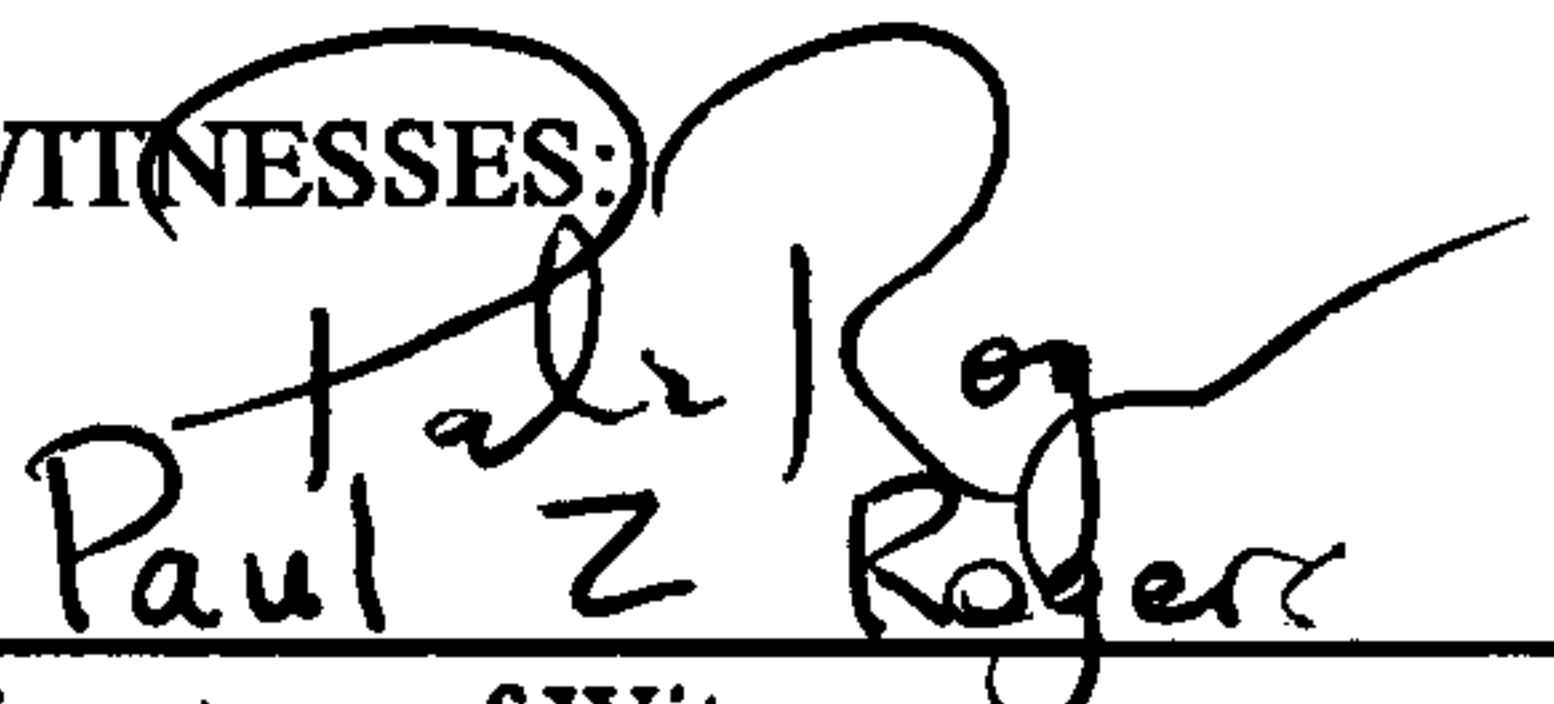
e. This Agreement shall inure to the benefit of and be binding upon the parties hereto as well as their successors and assigns, heirs and personal representatives.

f. This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing at such counterpart.

IN WITNESS WHEREOF, the undersigned has signed and delivered this Agreement on the date above written.

BORROWER 1

WITNESSES:



Signature of Witness

Paul Z Rogers


Print or type Name of Witness



Signature of Witness

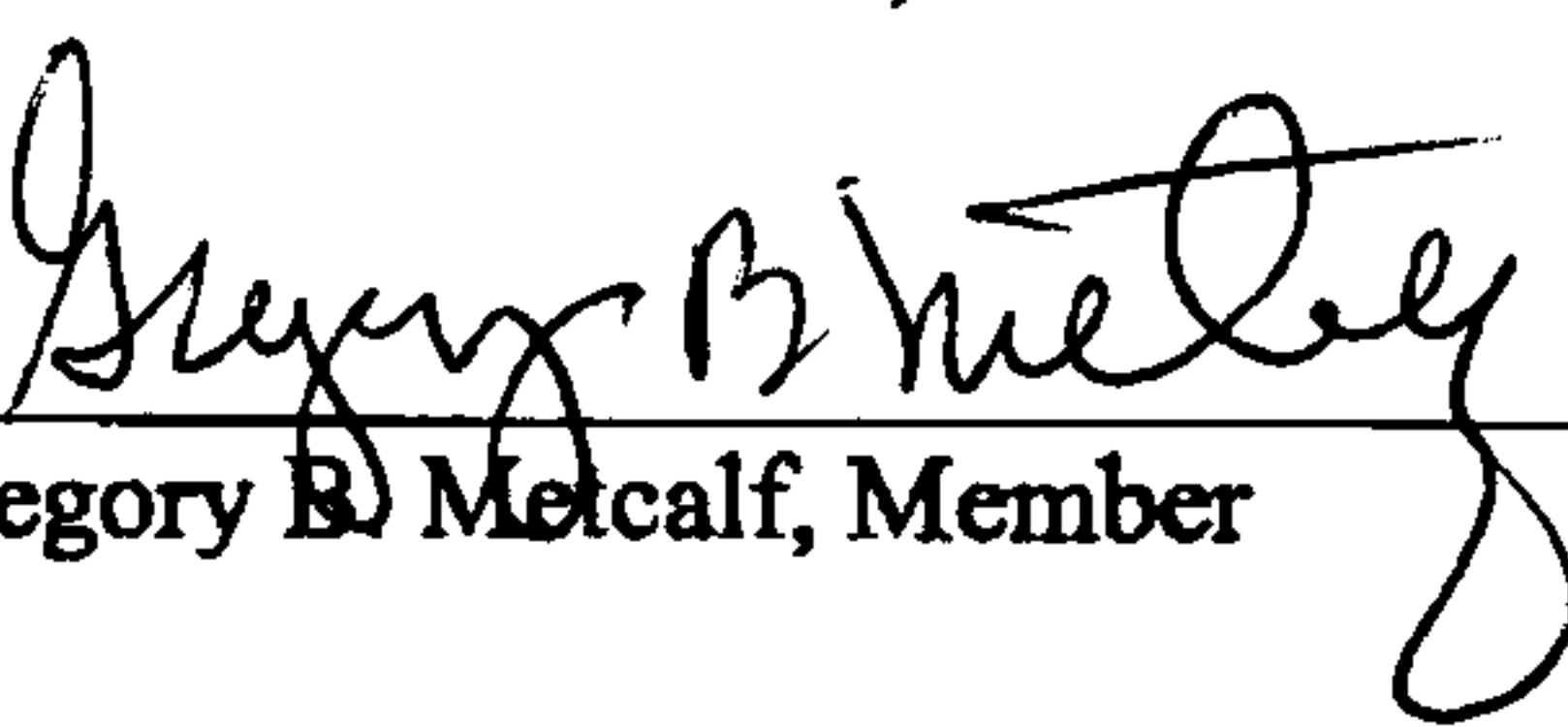
Paul Z Rogers

Print or type Name of Witness


Sylvia Rickett

Print or type Name of Witness

G & S DEVELOPMENT, LLC

By: 

Gregory B. Metcalf, Member



BORROWER 2

WITNESSES:


Signature of Witness

Paul Z Rogers
Print or type Name of Witness


Signature of Witness

Paul Z Rogers
Print or type Name of Witness


Sylvia Rackett
Print or type Name of Witness

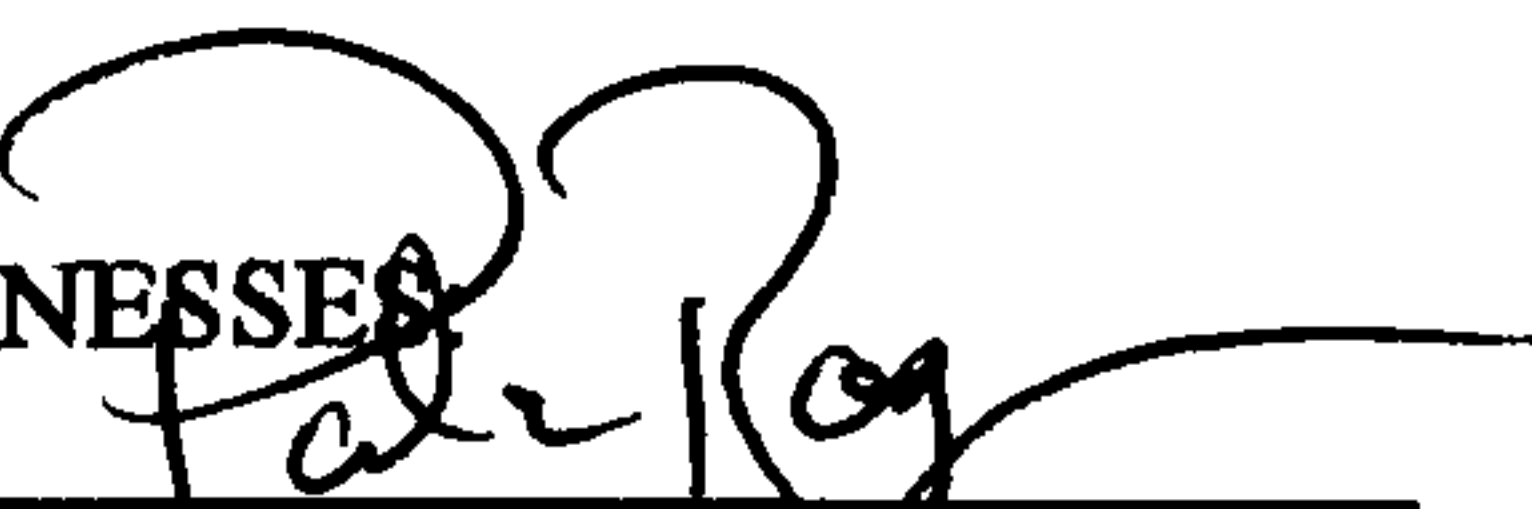
G & S PROPERTIES, LLC

By: 
Gregory B. Metcalf, Member

JOINDER BY GUARANTORS:

Guarantor joins in this Agreement for the purpose of consenting to the terms and conditions of said Agreement and to acknowledge and agree that Guarantor is liable for the repayment of the Notes as set forth herein and under the terms of the Loan Documents and pursuant to the terms and conditions of the Guaranty Agreements dated November 13, 2007, October 6, 2008, July 5, 2009 and of even date from said Guarantor to Lender in connection with both Notes.


GUARANTOR:

WITNESSES: 
Signature of Witness

Paul Z Rogers
Print or type Name of Witness


Signature of Witness

Sylvia Rackett
Print or type Name of Witness


Gregory B. Metcalf



LIMITED LIABILITY COMPANY OR CORPORATE ACKNOWLEDGMENT
(Cross Default/Cross Collateralization Agreement)

State of Alabama

County of Shelby

I, the undersigned authority, a Notary Public in and for said State, hereby certify that Gregory B. Metcalf, Member for G & S Development, LLC and G & S Properties, LLC, 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 Cross Default/Cross Collateralization Agreement, he as Member and with full authority, executed the same voluntarily for and as the act of said Manager on the day the same bears date.

Given under my hand and official seal this 31st day of January, 2013.

Connie Channia
Signature of Notary

Connie Channia
Printed Name

My Commission Expires: 11-2-2013
(SEAL)

INDIVIDUAL ACKNOWLEDGMENT
(Cross Default/Cross Collateralization Agreement)

State of Alabama

County of Shelby

I, the undersigned authority, a Notary Public in and for said State, hereby certify that Gregory B. Metcalf, whose name is signed to the foregoing Cross Default/Cross Collateralization Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Cross Default/Cross Collateralization Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 31st day of January, 2013.

Connie Channia
Signature of Notary

Connie Channia
Printed Name

My Commission Expires: 11-2-2013

(SEAL)

EXHIBIT "A"

- Commercial Promissory Note dated November 19, 2009 in the amount of \$460,408.30, Commercial Promissory Note dated November 5, 2010 in the amount of \$460,408.30, Commercial Promissory Note dated December 5, 2011 in the amount of \$460,408.30 and Renewal Promissory Note of even date to Aliant Bank, a division of USAmeriBank by merger dated December 30, 2011, in the amount of \$460,408.30.
- Real Estate Mortgage dated November 13, 2007 and recorded on November 27, 2007 by Instrument #20071127000538440 in the Office of the Judge of Probate in Shelby County, Alabama.
- Corrective Real Estate Mortgage dated November 13, 2007 and recorded on January 12, 2009 by Instrument #20090112500000009540 in the Office of the Judge of Probate in Shelby County, Alabama.
- Loan Modification Agreement dated June 26, 2009 and recorded on July 30, 2009 by Instrument #200907300000293020 in the Office of the Judge of Probate in Shelby County, Alabama.
- Business Loan Agreement dated December 5, 2010
- Business Loan Agreement dated December 5, 2011
- Business Loan Agreement of even date.
- Along with all other ancillary documents

Initials:


GBM

EXHIBIT "B"

Parcel I:

Lots 1, 2 and 3, according to the Survey of Bear Holler Sector 1, as recorded in Map Book 38, Page 103, in the Probate Office of Shelby County, Alabama.

Parcel II:

Lot 4A, according to a Resurvey of Lots 4, 5 and 6 Bear Holler Sector 1, as recorded in Map Book 39, Page 40, in the Probate Office of Shelby County, Alabama.

Initials:


GBM

EXHIBIT "C"

- Commercial Promissory Note dated October 6, 2008 in the amount of \$1,200,000.00, Commercial Promissory Note dated July 5, 2009 in the amount of \$1,200,000.00 and Commercial Promissory Note dated December 6, 2010 in the amount of \$1,350,000.00.
- Commercial Construction Real Estate Mortgage dated October 6, 2008 and recorded on October 14, 2008 by Instrument #20081014000405140 in the Office of the Judge of Probate in Shelby County, Alabama.
- Modification Agreement-Mortgage dated December 6, 2010 and recorded on December 10, 2010 by Instrument #20101210000415170 in the Office of the Judge of Probate in Shelby County, Alabama.
- Assignment of Leases and Rents dated October 6, 2008 and recorded on October 14, 2008 by Instrument #2008101140000405150 in the Office of The Judge of Probate in Shelby County, Alabama.
- UCC Financing Statement filed with the Uniform Commercial Code Division on October 28, 2008 in Book 08-0684436 FS in the Office of the Secretary of State, State of Alabama.
- Commercial Security Agreement dated October 6, 2008.
- Business Loan Agreement dated December 6, 2010.
- Along with all other ancillary documents

Initials:


GBM



EXHIBIT "D"

Part of the Northwest ¼ of the Northeast ¼ of Section 30, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: From the Northeast corner of said Section 30, run in a Westerly direction along the North line of said Section for a distance of 1,371.25 feet to a point of intersection with the Southeast right of way line of Shelby County Highway #11; thence turn an angle to the right of 180 deg. and run in an Easterly direction for a distance of 558.33 feet; thence turn an angle to the right of 89 deg. 28 min. 28 sec. and run in a Southerly direction for a distance of 67.43 feet to the point of beginning; thence continue last mentioned course for a distance of 342.70 feet; thence turn an angle to the right of 71 deg. 31 min. 55 sec. and run in a Southwesterly direction for a distance for of 117.00 feet to a point of curve, said curve being concave in a Northerly direction and having a central angle of 56 deg. 11 min. and a radius of 251.02 feet; thence turn an angle to the right and run along the arc of said curve for a distance of 246.15 feet to the point of ending of said curve; thence run in a Northwesterly direction along a line tangent to end of said curve for a distance of 58.00 feet; thence turn an angle to the right of 56 deg. 21 min. 37 sec. and run in a Northeasterly direction for a distance of 319.35 feet; thence turn an angle to the right of 74 deg. 26 min. and 23 sec. and run in an Easterly direction for a distance of 302.25 feet to the point of beginning; being situated in Shelby County, Alabama.

Initials: 
GBM