

3/15/11 9:35:29  
DK T BK 3,283 PG 604  
DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK  
-0-

CC 3/15/11 9:36:10  
CC DK P BK 143 PG 136  
-0- DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

3/22/11 10:41:34  
DK T BK 3,285 PG 372  
DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

PREPARED BY AND  
AFTER RECORDING, RETURN TO:  
Milton "Dee" Hobbs, MS BAR No. 101924  
Harris Shelton Hanover Walsh, PLLC  
999 S. Shady Grove Road, Suite 300  
Memphis, Tennessee 38120  
(901)682-1455

3/22/11 10:42:27  
DK P BK 143 PG 281  
DESOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

**LOAN ASSUMPTION, MODIFICATION AND EXTENSION AGREEMENT**

THIS LOAN ASSUMPTION, MODIFICATION AND EXTENSION AGREEMENT (the "Agreement") is made and entered into as of the 25 day of February 2011, by and among FAXON GILLIS HOMES INC., a Tennessee corporation (the "Original Borrower"), SHAG INVESTMENTS, LLC, a Tennessee limited liability company, having an address of 825 Timber Creek Drive, Cordova, TN 38018/ Tel. (901) 759-7000 ("New Borrower") and INDEPENDENT BANK, a Tennessee banking corporation, with an office at 5050 Poplar Avenue, Suite 110, Memphis, TN 38157/ Tel. (901) 844-5050 ("Lender").

WITNESSETH:

WHEREAS, by certain Promissory Note dated December 5, 2008 from Original Borrower as maker payable to the order of Lender, its successors and/or assigns (the "Note"), Original Borrower promised to pay to Lender the original principal sum of ONE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED FIFTY and NO/100 DOLLARS (\$100,000.00) (the "Loan"), together with interest at the rate stated therein, on the terms set forth therein; and

WHEREAS, the Note, together with any modifications, extensions or renewals thereof, is secured by that certain Deed of Trust dated December 5, 2008, from Original Borrower for the benefit of Lender (the "Deed of Trust") of record in Book 2972, Page 321 in the Desoto County, Mississippi Chancery Court Clerk's Office, by which Original Borrower conveyed certain real property together with improvements located thereon as more particularly described in said Deed of Trust, in trust to M. Anderson Cobb, Jr., Trustee, for the benefit of Lender; and

WHEREAS, the Note, together with any modifications, extensions or renewals thereof, is further secured by that certain Assignment of Rents dated December 5, 2008 from Original

Borrower to Lender (the "Assignment of Rents") of record in Book 129, Page 631 in the Desoto County, Mississippi Chancery Court Clerk's Office by which Original Borrower granted and assigned all its right, title, and interest in the rents to certain real property together with improvements located thereon as more particularly described in said Assignment of Rents.

WHEREAS, Original Borrower conveyed all of its right, title and interest in to the property described in the Deed of Trust (the "Property") by that certain Warranty Deed dated of even date herewith and recorded at Instrument Number \_\_\_\_\_ in said Register's Office; and  
\*Book 653, Page 392

WHEREAS New Borrower has agreed to assume all obligations of Original Borrower under the Note, Deed of Trust and all other documents and instruments evidencing or securing the Loan, and New Borrower and Original Borrower have requested that Lender consent to said assignment and assumption; and

WHEREAS, as a condition to the Lender's consent to the assignment and assumption of the Loan obligations from Original Borrower to New Borrower, Lender is requiring that Original Borrower pay down the outstanding principal balance of the Note by \$6,184.00, and thereafter, that the Note be modified and extended on the terms and conditions set forth herein; and

WHEREAS, New Borrower has requested, and Lender has agreed, to modify the terms of the Loan as reflected in the Note and Deed of Trust to, among other things, (i) reflect that New Borrower hereby assumes all obligations of Maker under the Note, (ii) extend the Maturity Date to December 31, 2013, and (iii) to all other things more particularly set forth herein, all on the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises as set forth herein, the mutual covenants and agreements hereinafter set out, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the parties as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated herein by reference as if set forth fully herein.
2. Acknowledgment of Debt. It is hereby acknowledged that the current outstanding principal balance due under the Note prior to the principal payment reduction is ONE HUNDRED EIGHT THOUSAND TWO HUNDRED FIFTY and NO/100 DOLLARS (\$108,250.00).
3. New Outstanding Principal Balance. As of the date hereof, and following receipt of the principal payment reduction from Original Borrower in the amount of \$6,184.00, the outstanding principal balance of the Note shall be ONE HUNDRED TWO THOUSAND SIXTY-SIX and No/100 DOLLARS (\$102,066.00).
4. Assumption of Obligations by New Borrower. New Borrower hereby assumes and agrees to be bound by all obligations, responsibilities and liabilities of Original Borrower as

Borrower under the Note, , the Assignment of Rents, and under Deed of Trust and any other documents and instruments executed in connection with the Loan (together with the Note and Deed of Trust, the "Loan Documents"). New Borrower hereby waives any rights or defenses Original Borrower may have had under any of the Loan Documents, or at law or in equity, with respect to the repayment of the indebtedness or assertion of any rights of Lender or otherwise, and New Borrower hereby agrees to repay the Note and perform all obligations of Borrower set forth therein, all of which obligations, responsibilities and liabilities are incorporated herein by reference.

5. Modification of Note. The Note is hereby modified as follows:
  - A. The Principal balance of the Note is hereby modified to reflect the current outstanding balance of ONE HUNDRED TWO THOUSAND SIXTY-SIX and No/100 DOLLARS (\$102,066.00).
  - B. The Maturity Date in the Notes is hereby extended until December 31, 2013.

The remaining terms and obligations in the Notes are not modified.

6. Modification to Deed of Trust. All references to the Note and the indebtedness set forth in the Deed of Trust shall be modified to include the Note as hereby modified and extended. All references to the Maturity Date stated in the Deed of Trust shall be modified to December 31, 2013. All references to Borrower or Grantor shall hereafter be New Borrower.
7. Modification to Assignment of Rents. All references to the Note and the indebtedness set forth in the Assignment of rents shall be modified to include the Note as hereby modified and extended. All references to the Maturity Date stated in the Assignments of Rent shall be modified to December 31, 2013. All references to Borrower or Grantor shall hereafter be New Borrower.
8. Further Default by New Borrower. The parties further agree that a default under the Note or Deed of Trust, or any other Loan Document, as hereby modified, shall entitle Lender, at its sole option, to exercise any and all of the rights available to it upon the occurrence of a default.
9. Reaffirmation of Obligations. Any provision in Note, Deed of Trust or any other Loan Document which are inconsistent with the provisions of this Agreement are hereby modified and amended to conform herewith, and as so modified and amended, each and all of such provisions are hereby ratified, approved and confirmed in all respects.
10. Reaffirmation of Obligations of New Borrower. New Borrower hereby executes this Agreement, in addition to any other provision set forth herein, to affirm and continue all obligations of Original Borrower set forth in the Note, Assignment of Rents, and Deed of Trust. All provisions set forth in the Note, Assignment of Rents, Deed of Trust and any

other Loan Document are hereby ratified, approved and confirmed in all respects by New Borrower.

11. New Borrower's Representations and Warranties. As an inducement to Lender to enter into this Agreement, New Borrower does hereby ratify, represent and warrant to Lender that (a) any and all representations and warranties made by Original Borrower in the Note, Assignment of Rents, and Deed of Trust, the terms of which are incorporated herein by reference, are true, correct and complete in all material respects as of the date of this Agreement; (b) Lender holds a valid and perfected first priority security interest in the collateral described in the Deed of Trust; (c) there are no existing offsets, defenses or counter-claims to the obligations of Original Borrower or New Borrower under the Note or the Deed of Trust; and (d) the Note and the Deed of Trust represent the valid and binding obligations of New Borrower enforceable in accordance with their terms.
12. Documents Unchanged. In all other respects, the Note, Deed of Trust, Assignment of Rents, and all other Loan Documents remain unchanged and are hereby ratified by the parties.
13. Counterpart Execution. This Agreement may be executed in multiple counterparts, each one of which shall be deemed an original, but all of which shall be considered together as one and the same instrument. Further, in making proof of this Agreement, it shall not be necessary to produce or account for more than one (1) such counterpart. Execution by party of a signature page hereto shall constitute due execution and shall create a valid, binding obligation of the party so signing, and it shall not be necessary or required that the signatures of all parties appear on a single signature page hereto.
14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.
15. Modification of Agreement. This Agreement may be modified or amended only in writing signed by each of the parties hereto.
16. Not a Release or Novation. Nothing herein shall be deemed to be a novation, or a release or discharge of any security for the Note.
17. Covenants of New Borrower. The New Borrower promises to pay the Note; to pay any and all present and future indebtedness secured by the Deed of Trust; to keep and perform all of the covenants, terms and conditions contained in the Note and Deed of Trust (as modified herein) and/or in all instruments now or hereafter evidencing or securing the indebtedness evidenced by the Note or secured by the Deed of Trust, in default of any of which the holder of the Note, at its option, may declare the entire indebtedness, including all interest evidenced thereby accelerated and matured for all purposes, and may proceed to exercise, at its option, any right or privilege granted in the Note, Deed of Trust, any other Loan Document, or by law.
18. Successors and/or Assigns. The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, transferees and assigns.

19. Release of certain guarantors. W. Jerry Gillis, Joanne D. Gutowsky, Samuel S. Davidson, and Charles Labarreare ("Guarantors") executed those certain Guaranty Agreements dated January 5, 2011 (each and collectively, the "Guarantees"), by which among other things, Guarantors guaranteed the payment and performance of Original Borrower under the Note. As a condition to the assumption by New Borrower, New Borrower and Original Borrower have requested that Lender release Guarantors from their guaranteed obligations under the Guarantees. As consideration for such release, W. Jerry Gillis ("Gillis") has executed that Unlimited Guaranty dated of even date herewith whereby Gillis has unconditionally guaranteed the payment and performance by New Borrower of the Note and the Loan Documents. Upon execution hereof by all parties, and upon execution by Gillis of the Unlimited Guarantee, Guarantors are thereafter released from their guaranteed obligations under the Guarantees.
20. Joinder of Gillis. Gillis joins herein for the sole purpose of acknowledging the modifications and extensions set forth herein. Gillis further acknowledges and agrees that that nothing herein shall serve as a novation of Gillis' Unlimited Guaranty.

[SIGNATURES ON FOLLOWING PAGE]

**COUNTERPART SIGNATURE PAGE TO  
LOAN ASSUMPTION, MODIFICATION AND EXTENSION AGREEMENT**

**FAXONGILLIS HOMES, INC., as Original Borrower  
SHAG INVESTMENTS, LLC, as New Borrower  
INDEPENDENT BANK, as Lender  
DATED AS OF FEBRUARY 25, 2011**

IN WITNESS WHEREOF, the undersigned have caused the execution of this Loan Modification Agreement by its duly authorized officer as of the date first set forth above.

**ORIGINAL BORROWER:**

**FAXONGILLIS HOMES, INC.,**  
a Tennessee corporation

By: W. Jerry Gillis  
W. Jerry Gillis  
Its Chairman

**NEW BORROWER:**

**SHAG INVESTMENTS, LLC,**  
a Tennessee limited liability company

By: W. Jerry Gillis  
Name: W. JERRY GILLIS  
Its Chief Executive manager

**LENDER:**

**INDEPENDENT BANK,**  
a Tennessee banking corporation

By: Michael Taylor  
MICHAEL TAYLOR  
Its Vice President

**GILLIS:**

W. Jerry Gillis  
W. JERRY GILLIS

**ACKNOWLEDGMENT ORIGINAL BORROWER**

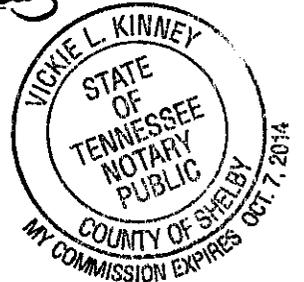
STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared W. Jerry Gillis, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon acknowledge that he is the Chairman of FAXONGILLIS HOMES, INC. a Tennessee corporation, with within named bargainor, and that he, in his capacity as Chairman, executed the foregoing instrument for the purposes therein contained by signing his name as such Chairman as their free act and deed.

WITNESS my hand and seal at office this 25<sup>th</sup> day of February, 2011.

Vickie L. Kinney  
Notary Public

My commission expires: \_\_\_\_\_



**ACKNOWLEDGMENT NEW BORROWER**

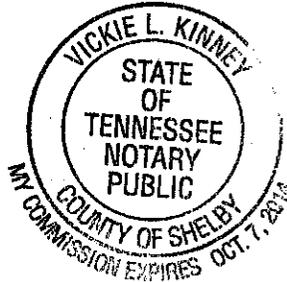
STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared W. Jerry Gillis, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon acknowledge that he is the Chief Executive Manager of SHAG INVESTMENTS, LLC, a Tennessee limited liability company, with within named bargainor, and that he, in his capacity as Chief Executive Manager executed the foregoing instrument for the purposes therein contained by signing his name as such Chief Executive Manager of the limited liability company as their free act and deed.

WITNESS my hand and seal at office this 25<sup>th</sup> day of February, 2011.

Vickie L. Kinney  
Notary Public

My commission expires: \_\_\_\_\_



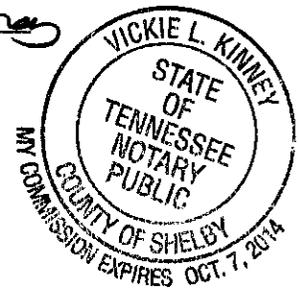
**ACKNOWLEDGMENT LENDER**

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared Michael Taylor, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon acknowledge that he is the Vice President of INDEPENDENT BANK, a Tennessee banking corporation, with within named bargainor, and that he, in his capacity as Vice President of INDEPENDENT BANK, executed the foregoing instrument for the purposes therein contained by signing his name as such Vice President of the bank as their free act and deed.

WITNESS my hand and seal at office this 25<sup>th</sup> day of February, 2011.

Vickie L. Kinney  
Notary Public



My commission expires: \_\_\_\_\_

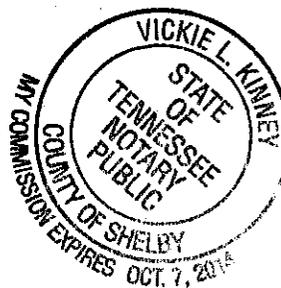
**ACKNOWLEDGMENT OF GILLIS**

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared W. JERRY GILLIS, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon acknowledge that he executed the foregoing instrument for the purposes therein contained by signing his name as his free act and deed.

WITNESS my hand and seal at office this 25<sup>th</sup> day of February, 2011.

Vickie L. Kinney  
Notary Public



My commission expires: \_\_\_\_\_

SCHEDULE 1

<u>NOTE NO.</u>	<u>COLLATERAL</u>	<u>DEED OF TRUST INST. NO.</u>	<u>ASG'NT OF RENT INST. NO.</u>
70043	7501 Shelby Cross Cir.	01813088	08131089
70045	1317 Heathcliff	08150064	08150065
70046	7121 Kings Grant CV.	08160267	08160268
70048	1963 Mount Badon	09050380	09050381
70049	2256 W. Germantown Sq.	09079758	09079759
70050	9157 Acadia Place	09137280	09137281
70051	4726 Buckhead	10003838	10003539
70052	9014 River Pine Dr.	11004720	11004721
70053	1340 Chrysalis Lane	11004662	11004663

SCHEDULE 2

<u>NOTE NO.</u>	<u>COLLATERAL</u>	<u>CURRENT PRINCIPAL BALANCE</u>	<u>PAY DOWN</u>
70043	7501 Shelby Cross Cir.	\$94,000.00	\$5370.00
70045	1317 Heathcliff	\$69,750.00	\$3,985.00
70046	7121 Kings Grant CV.	\$80,455.00	\$4,596.00
70048	1963 Mount Badon	\$139,415.00	\$7,965.00
70049	2256 W. Germantown Sq.	\$139,750.00	\$7,984.00
70050	9157 Acadia Place	\$113,715.00	\$6,613.00
70051	4726 Buckhead	\$115,750.00	\$6,613.00
70052	9014 River Pine Dr.	\$178,500.00	\$10,198.00
70053	1340 Chrysalis Lane	\$185,700.00	\$10,609.00
		<hr/>	
		\$1,117,035.00	\$63,816.00