

**This Instrument Prepared by:**  
Felton W. Smith  
Balch & Bingham  
P. O. Box 306  
Birmingham, Alabama 35233

Inst # 1995-03479

02/08/1995-03479  
10:06 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
006 #00 829.05

STATE OF ALABAMA

SHELBY COUNTY

### LOAN MODIFICATION AGREEMENT AND MORTGAGE AMENDMENT

THIS LOAN MODIFICATION AGREEMENT AND MORTGAGE AMENDMENT is entered into as of February 7, 1995, by and between **COMPASS BANK**, an Alabama banking corporation ("Lender"), and **BENCO, L.L.C.**, an Alabama limited liability company ("Borrower"), and **WALTER T. COKER** and **THELMA COKER** (collectively, "Guarantors").

#### WITNESSETH:

WHEREAS, on January 4, 1995, Lender extended a land acquisition loan to Borrower in the amount of \$261,300.00 (the "Original Loan") pursuant to a Promissory Note dated January 4, 1995 (the "Note"), a Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement in the amount of \$261,300.00, which was recorded as Instrument No. 1995-01056, in the Office of the Judge of Probate of Shelby County, Alabama (the "Mortgage"), and other documents executed in connection therewith; and

WHEREAS, the Mortgage provides that the Mortgage secures all future obligations and liabilities of Borrower to Lender until actual cancellation of the Mortgage on the probate records of Shelby County, Alabama, and the Mortgage has not been so cancelled; and

WHEREAS, Borrower has requested that Lender advance additional funds (the "Additional Advance"; together with the Original Loan, the "Loan") to Borrower to be used for the development of the property subject to the Mortgage (the "Mortgaged Property"); and

WHEREAS, Lender has agreed to extend the Loan in accordance with the terms and subject to the conditions set forth in this Agreement and the other Loan Documents (as defined below).

#### AGREEMENT

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

A. Execution of Loan Agreement and Additional Loan Documents. Contemporaneously with the execution of this Agreement, Borrower and Lender have executed that certain Construction Loan Agreement dated of even date herewith (the "Loan Agreement"). Borrower and Lender agree that the Loan shall be disbursed, secured, administered and otherwise governed by the terms and conditions of the Loan Agreement. In addition to the Loan Agreement, Borrower, Guarantors and other parties have executed and delivered to Lender other documents evidencing, securing, guaranteeing or otherwise relating to the Loan. Such other documents, together with the Note, this Agreement, the Loan Agreement and the Mortgage, and as any of the same are hereby or may in the future be amended, modified, extended, replaced or renewed, are herein referred to as the "Loan Documents."

B. Amendment of Note. The Note is hereby amended as follows:

1. On page one, in paragraph 1, the phrase "Two Hundred Sixty One Thousand Three Hundred and no/100 Dollars (\$261,300.00)" is hereby deleted and the following inserted in lieu thereof: "Eight Hundred Thousand and No/100 Dollars (\$800,000.00)".

2. On page one, in paragraph 3, in the last sentence thereof, the phrase "set forth in Section 11 hereof" is added immediately after the phrase "continue to bear interest".

3. On page two, a new paragraph 11 hereby is added to read in its entirety as follows: "11. **Post Default Rate.** Notwithstanding anything to the contrary contained in this Promissory Note or any other Loan Document, any principal amounts outstanding hereunder after maturity or earlier acceleration of the indebtedness evidenced hereby shall bear interest at a rate equal to four (4) percentage points above Compass Bank Prime from time to time prevailing at Bank."

4. All references in the Note to the "Mortgage", "loan agreement", "Loan Documents" and any other defined or capitalized term contained therein shall be deemed to be references to the same as may be amended or modified by this Agreement or as may be set forth in the Loan Agreement.

5. The Note, as amended hereby, is hereby restated, republished and affirmed by Borrower in its entirety, including, without limitation, each and every representation, promise, covenant and agreement made by Borrower therein.

C. Amendment of Mortgage. The Mortgage is hereby amended as follows:

1. On page one, in the first "Whereas" clause, the phrase "Two Hundred Sixty-One Thousand Three Hundred AND no/100 DOLLARS (\$261,300.00)" is hereby deleted and the following inserted in lieu thereof: "Eight Hundred Thousand and No/100 Dollars (\$800,000.00)."

2. One page thirteen, the following sentence shall be added to paragraph 5.09: "(a) Notwithstanding the inclusion in this Mortgage of provisions regarding default and Events of Default, the Borrower acknowledges and agrees that the indebtedness secured by this Mortgage is payable on demand."

3. All references in the Mortgage to the "Project", "Loan", "Loan Amount", "Loan Documents", "Collateral", "Mortgaged Property", "Construction Budget" and any other defined or capitalized term contained therein shall be deemed to be references to the same as may be amended or modified by this Agreement or as may be set forth in the Loan Agreement.

4. The Mortgage, as amended hereby, is hereby restated, republished and affirmed by Borrower in its entirety, including, without limitation, each and every representation, warranty, covenant and agreement made by Borrower therein.

D. Representations and Warranties. Each and every representation, warranty, covenant and agreement contained in the Loan Documents is hereby reaffirmed as of the date hereof. Borrower hereby represents, warrants and certifies to Lender that no Event of Default nor any condition nor any event that with notice or lapse of time or both would constitute an Event of Default, has occurred and is continuing under any of the Loan Documents or the Loan, and that Borrower has no offsets or claims against Lender arising under, related to, or connected with the Loan, the Loan Agreement or any of the other Loan Documents.

E. Expenses. Borrower shall pay any recording and all other expenses incurred by Lender and Borrower in connection with the modification of the Loan and amendment of the Loan Documents and any other transactions contemplated hereby, including, without limitation, title or other insurance premiums, survey costs, legal expenses, and recording fees and taxes.

F. Effect on Loan Documents. Each of the Loan Documents shall be deemed amended as set forth hereinabove and to the extent necessary to carry out the intent of this Agreement and, except as expressly set forth herein, all of the Loan Documents shall remain in full force and effect in accordance with their respective terms and shall continue to evidence, secure, guarantee or relate to, as the case may be, the Loan.

G. Execution by Guarantors. Guarantors have executed this Agreement to acknowledge and evidence their consent to the transactions contemplated hereby, including the Loan and the amendments to the Loan Documents as described herein.

H. Severability. In case any one or more of the covenants, agreements, terms or provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining covenants, agreements, terms or provisions contained herein shall in no way be prejudiced, diminished or otherwise affected thereby.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly and properly executed as of the date first set forth above.

**BORROWER:**

**BENCO, L.L.C.**

**WITNESS:**

Sue Arshie

By: Walter T. Coker  
Walter T. Coker  
Its Member

**WITNESS:**

Sue Arshie

By: Thelma Coker  
Thelma Coker  
Its Member

**LENDER:**

**COMPASS BANK**

**WITNESS:**

Sue Arshie

By: Lawrence M. King  
Its: Real Estate Officer

**GUARANTORS:**

**WITNESS:**

Sue Arshie

Walter T. Coker  
**WALTER T. COKER**

Sue Arshie

Thelma Coker  
**THELMA COKER**

STATE OF ALABAMA

COUNTY OF Jefferson

I, Lisa R. Ezell, a notary public in and for said county in said state, hereby certify that Walter T. Coker and Thelma Coker, whose names as Members of **BENCO, L.L.C.**, an Alabama limited liability company, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of such instrument, they, as such Members and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 7<sup>th</sup> day of February, 1995.

Lisa R. Ezell  
Notary Public

[ Notarial Seal ]

My Commission Expires: 7/2/95

STATE OF ALABAMA

COUNTY OF Jefferson

I, Lisa R. Ezell, a notary public in and for said county in said state, hereby certify that Travis G. McKay, whose name as Real Estate Officer of **COMPASS BANK**, an Alabama state banking 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 such instrument, he, 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 7<sup>th</sup> day of February, 1995.

Lisa R. Ezell  
Notary Public

[ Notarial Seal ]

My Commission Expires: 7/2/95

STATE OF ALABAMA

COUNTY OF Jefferson

I, Lisa R Ezell, a notary public in and for said county in said state, hereby certify that **WALTER T. COKER**, 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 such instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 7<sup>th</sup> day of February, 1995.

Lisa R. Ezell  
Notary Public

[ Notarial Seal ]

My Commission Expires: 7/2/95

Inst # 1995-03479

STATE OF ALABAMA

COUNTY OF Jefferson

I, Lisa R. Ezell, a notary public in and for said county in said state, hereby certify that **THELMA COKER**, 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 such instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 7<sup>th</sup> day of February, 1995.

Lisa R. Ezell  
Notary Public

[ Notarial Seal ]

My Commission Expires: 7/2/95

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