

Inst # 2002-04554

01/25/2002-04554

03:45 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
011 MEL

CROSS REFERENCE:
INSTRUMENT NUMBER 2001-01682
INSTRUMENT NUMBER 2001-01683
IN THE OFFICE OF THE JUDGE OF
PROBATE OF SHELBY COUNTY, ALABAMA
INSTRUMENT NUMBER 200101/4521
INSTRUMENT NUMBER 200101/4522
INSTRUMENT NUMBER
IN THE OFFICE OF THE JUDGE OF
PROBATE OF JEFFERSON COUNTY, ALABAMA

**MODIFICATION AGREEMENT TO MORTGAGE AND SECURITY AGREEMENTS AND TO
ASSIGNMENTS OF LEASES AND RENTS TO INCLUDE
CROSS DEFAULT AND CROSS COLLATERALIZATION AGREEMENT,
WITH NO EXTENSION OF THE MATURITY OF THE EXISTING INDEBTEDNESS**

This is an agreement dated the 22nd day of January, 2002, by and between AUDIT TRAIL, INC. AS INTERMEDIARY FOR SOLID EQUITIES INC. U/A DATED JANUARY 9, 2001, ("Audit 1/01"), AUDIT TRAIL, INC., a Georgia corporation, as intermediary for Solid Equities, Inc., under agreement dated November 19, 2001, ("Audit 11/01"), SOLID EQUITIES, INC., a Georgia corporation, ("Borrower"), GEORGE R.C. KINGSTON and KELVIN R. DAVIDSON, (collectively, "Guarantor"), and COLONIAL BANK ("Lender"), 390 W. Crogan Street, Lawrenceville, Georgia 30045.

RECITALS:

WHEREAS, Lender has extended a certain loan this date ("New Loan") to Borrower evidenced by promissory note payable to Lender in the original maximum principal amount of \$275,000.00 ("275,000 Note"), which indebtedness matures according to its terms on December 22, 2004, secured by:

- (1) that certain Mortgage and Security Agreement of even date from Borrower to Lender granting a security interest in certain real property located in the City of Gardendale, County of Jefferson, State of Alabama, being known as 1224 Decatur Highway, and being more particularly described in Exhibit "I" attached hereto and by this reference made a part hereof, ("New Mortgage"); and
- (2) that certain Assignment of Leases and Rents of even date from Borrower to Lender relative to such real property ("New Assignment"), said New Mortgage and New Assignment being recorded in the Office of the Judge of Probate of Jefferson County, Alabama, on or about the date hereof, with the payment of mortgage tax in the amount of \$412.50; and

WHEREAS, on November 19, 2001, Lender extended a certain loan ("675,000 Loan") to Borrower evidenced by promissory note payable to Lender in the original maximum principal amount of \$675,000.00

("675,000 Note"), which indebtedness matures according to its terms on October 19, 2004, secured by:

- (1) that certain Mortgage and Security Agreement of said date from Audit 11/01 to Lender granting a security interest in certain real property located in the City of Homewood, County of Jefferson, State of Alabama, being known as 824 Green Springs Highway, and being more particularly described in Exhibit "II" attached hereto and by this reference made a part hereof, ("675 Mortgage"); and
- (2) that certain Assignment of Leases and Rents of said date from Audit 11/01 to Lender relative to such real property ("675 Assignment"), said 675 Mortgage and 675 Assignment being recorded in the Office of the Judge of Probate of Jefferson County, Alabama, on or about the date thereof, with the payment of mortgage tax in the amount of \$1,012.50; and
- (3) that certain Deed to Secure Debt, Assignment of Rents and Security Agreement dated November 28, 2001, from Audit 11/28 to Lender conveying title to certain real property located in DeKalb County, Georgia, ("DeKalb Property") being more particularly described in Exhibit "III" attached hereto, being recorded in Deed Book 12713, Page 771, DeKalb County, Georgia Records ("DeKalb Mortgage");
- (4) that certain Assignment of Leases and Rents dated November 28, 2001, from Audit 11/28 to Lender relative to such real property, being recorded in Deed Book 12713, Page 784, aforesaid Records ("DeKalb Assignment"); and

WHEREAS, on January 9, 2001, Lender extended a certain loan ("Prior Loan"; hereinafter the New Loan, \$675,000 Loan and the Prior Loan are collectively referred to as "Loan" or "Loans") to Borrower evidenced by promissory note payable to Lender in the original maximum principal amount of \$925,000.00 ("925,000 Note"), which indebtedness matures according to its terms on December 9, 2003, secured by, inter alia,:

- (1) that certain Mortgage and Security Agreement dated January 9, 2001, from Audit 1/01 to Lender granting a security interest in certain real properties located in Jefferson County, State of Alabama and in Shelby County, State of Alabama, said properties being more particularly described in Exhibit "IV" attached hereto and by this reference made a part hereof, being filed for record on January 12, 2001, under Instrument Number 200101/4521, in the Office of the Judge of Probate of Jefferson County, State of Alabama, and also recorded January 17, 2001, under Instrument Number 2001-01682, in the Office of the Judge of Probate of Shelby County, State of Alabama, ("Prior Mortgage"), upon which mortgage tax in the amount of \$1,387.50 was paid to the Judge of Probate of Jefferson County;
- (2) that certain Assignment of Leases and Rents dated January 9, 2001, from Audit 1/01 to Lender relative to the real property located in Jefferson County, State of Alabama, being filed for record on January 12, 2001, under Instrument Number 200101/4522, in the Office of the Judge of Probate of Jefferson County, State of Alabama, ("Prior Jefferson Assignment"); and
- (3) that certain Assignment of Leases and Rents dated January 9, 2001, from Audit 1/01 to Lender relative to the real property located in Shelby County, State of Alabama,

being filed for record on January 17, 2001, under Instrument Number 2001-01683, in the Office of the Judge of Probate of Shelby County, State of Alabama, ("Prior Shelby Assignment"); (hereinafter the New Mortgage, the New Assignment, the 675 Mortgage and 675 Assignment, the Prior Mortgage, the Prior Jefferson Assignment, the Prior Shelby Assignment, the DeKalb Mortgage and the DeKalb Assignment, together with any and all real and personal property described therein, are collectively referred to as "Collateral");

WHEREAS, the Guarantor has guaranteed the Loans pursuant to Guaranty of Payment and Performance agreements dated January 9, 2001, November 19, 2001, and January 22, 2002 (collectively "Guaranty Agreement"); and

WHEREAS, a condition of Lender to extend the New Loan is that the parties enter into this agreement pursuant to which the New Loan, 675 Loan and the Prior Loan from Lender to Borrower are cross collateralized and cross defaulted; and

WHEREAS, each of the parties hereto is directly benefitted by the Loan, the parties are desirous of setting forth the terms of their agreement herein.

WHEREFORE, for and in consideration of the mutual covenants and benefits to the parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged as adequate consideration to support the agreements herein set forth, the parties agree as follows:

1. Any event of default as defined in any present or future promissory note, loan agreement, security agreement, or mortgage from Borrower, Audit 1/01, Audit 11/01 or Guarantor to Lender, or the \$275,000 Note, \$675,000 Note, the \$925,000 Note, or other document or instrument given by Borrower, Audit 1/01, Audit 11/01 or Guarantor in connection with any of the Loans as modified to date, together with any future renewals, modifications or extensions thereof, (collectively, the "Loan Documents") shall constitute a default under each and every one of the Loans and Loan Documents.

2. The Collateral and any other real or personal property now or in the future pledged to Lender as collateral for any one of the Loans are and shall be collateral and security for each and every one of the Loans, and such documents and agreements shall be deemed amended to conform herewith.

3. Nothing contained herein shall in any way impair the rights of the Lender granted in the Loan Documents. Further, each and every of the Loan Documents shall remain a separate obligation of the parties thereto, and each and every of said documents shall be separately enforceable according to its terms until all outstanding indebtedness owing from Borrower has been paid in full. Further, Lender may, at its election, institute separate or collective proceedings with respect to each of the Loan Documents simultaneously or in such order and at such times as the Lender shall elect. The pendency or any proceeding with respect to any of the Loan Documents shall not be grounds for abatement of or for hindering, delaying or preventing any proceeding with respect to any other such documents. Default under each of the Loan Documents shall constitute a separate cause of action.

4. Audit 1/01, Borrower and Lender expressly agree that the 675 Mortgage, 675 Assignment, Prior Mortgage, the Prior Shelby Assignment, the Prior Jefferson Assignment, the DeKalb Mortgage and the DeKalb Assignment are hereby modified to reflect that they

shall secure, in addition to those obligations secured by the original or previously modified terms, the New Loan, together with any and all future modifications, renewals or extensions thereof.

5. Notwithstanding anything contained herein to the contrary, the maturity date of the Prior Loan and \$675,000 Loan remains the same.

6. All of the terms, conditions and warranties contained within the \$925,000 Note, the \$675,000 Note, the Prior Mortgage, the 675 Mortgage, the DeKalb Mortgage, the Prior Shelby Assignment, the 675 Assignment, the DeKalb Assignment, the Prior Jefferson Assignment and all other documents executed in connection with the Prior Loan and the \$675,000 Loan (hereinafter "Prior Loan Documents") shall remain in full force and effect in exact accordance with the terms thereof excepting only as herein or previously modified in writing executed by the parties thereto. All of the Prior Loan Documents shall be deemed modified hereby to reflect that the New Loan, the \$675,000 Loan and the Prior Loan are cross defaulted and cross collateralized pursuant to the provisions contained herein.

7. The parties acknowledge and agree that this shall not constitute a novation of the obligations or liabilities under the Loan Documents or of any other notes from Borrower to Lender and the documents executed in connection therewith or a release of any collateral or security therefor or a waiver of any rights or remedies of the Lender thereunder, such rights being specifically reserved by Lender. Further, Borrower, Audit 1/01 and Audit 11/01 hereby ratify, confirm and acknowledge each of its warranties and obligations contained within the Loan Documents and Guarantor does expressly consent to such matters and hereby ratifies, confirms and acknowledges each warranty and obligation of the Guarantor contained within the Guaranty Agreement and any Loan Documents.

8. This agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, representatives and assigns.

9. This agreement amends and restates that certain Modification Agreement to Mortgage and Security Agreements and to Assignments of Leases and Rents to Include Cross Default and Cross Collateralization Agreement dated November 19, 2001, by and between the parties hereto. To the extent there is any conflict between said two agreements, this agreement shall control.

In Witness Whereof, the parties have hereunto set their hands and seals the day and year first above written.

"BORROWER":

Signed, sealed and delivered
this 22 day of January,
2002, in the presence of:

SOLID EQUITIES, INC., a
Georgia corporation

Diane J. Whitman
Witness (as to all)

By: George R.C. Kingston
George R.C. Kingston
President

Marvin M. Rice
Notary Public (as to all)

By: Kelvin R. Davidson
Kelvin R. Davidson
Vice President

My Commission Expires:

(CORPORATE SEAL)

Marvin M. Rice
NOTARY PUBLIC
FORSYTH COUNTY, GEORGIA
EXPIRES AUG. 3, 2002
[NOTARIAL SEAL]
Date of Execution by Notary:
1/22/02

"GUARANTOR":

George R.C. Kingston (SEAL)
GEORGE R.C. KINGSTON

Kelvin R. Davidson (SEAL)
KELVIN R. DAVIDSON

"AUDIT 1/01":

Signed, sealed and delivered
this 21st day of January,
2002, in the presence of:

Kathleen J. C.
Witness (as to all)

AUDIT TRAIL, INC. AS
INTERMEDIARY FOR SOLID EQUITIES,
INC. U/A DATED JANUARY 9, 2001

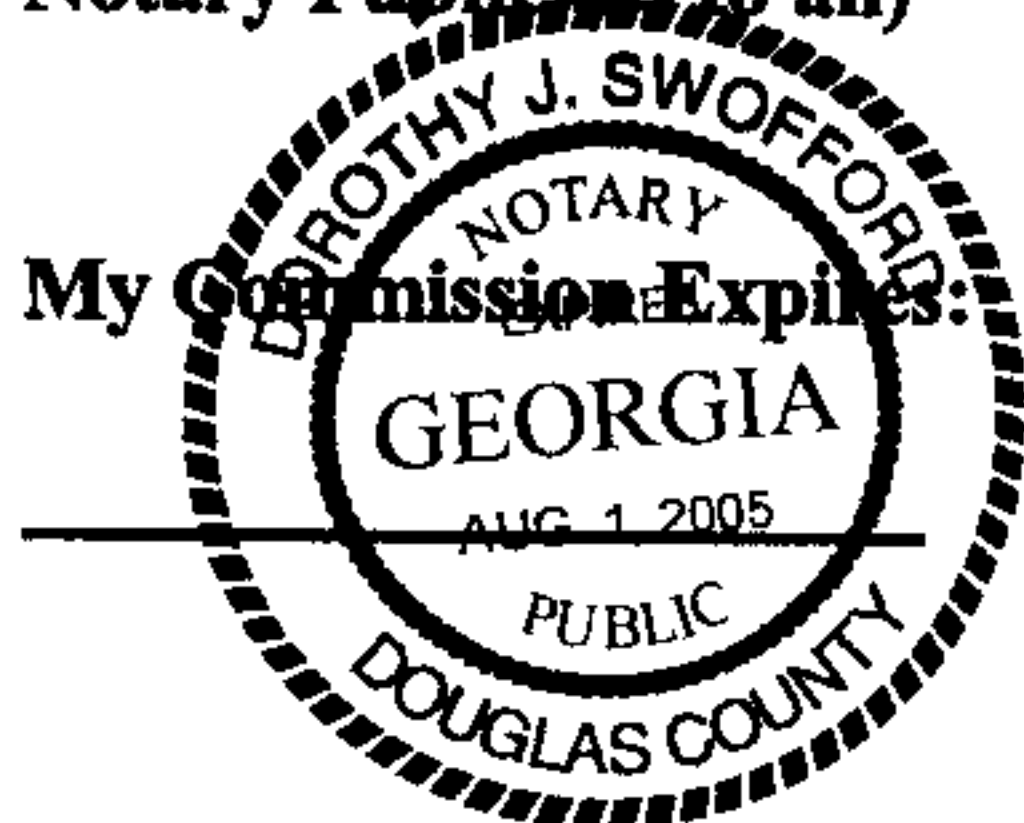
By: Walter P. Rowe
Walter P. Rowe
Vice President

(CORPORATE SEAL)

"AUDIT 11/01":

Dorothy J. Swofford
Notary Public (as to all)

My Commission Expires:



[NOTARIAL SEAL]

Date of Execution by Notary:

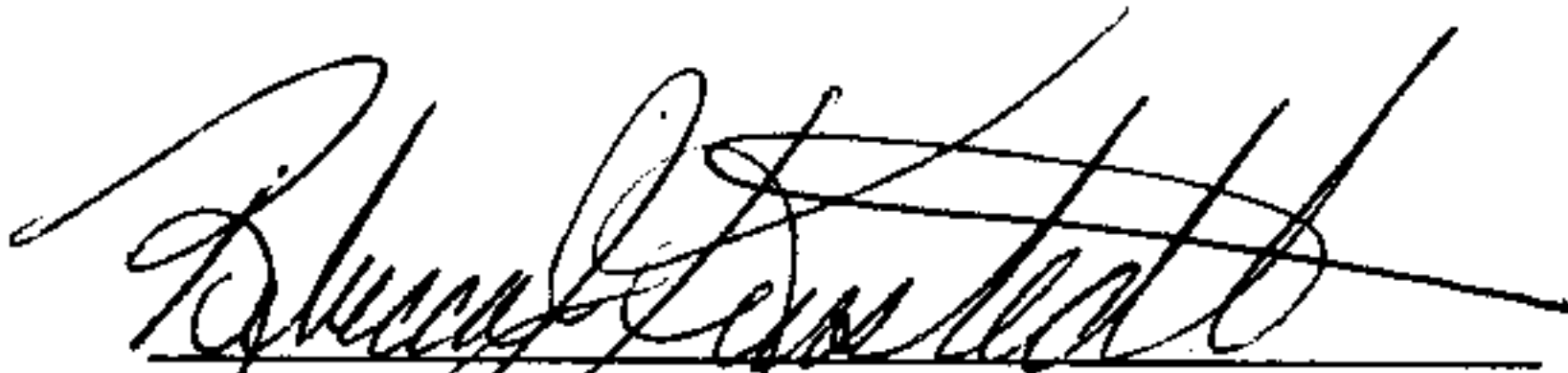
1/21/02

AUDIT TRAIL, INC., a Georgia
corporation, as intermediary
for Solid Equities, Inc.,
under agreement dated
November 19, 2001

By: Walter P. Rowe
Walter P. Rowe
Vice President

(CORPORATE SEAL)

Signed, sealed and delivered
this 22 day of January,
2002, in the presence of:


Witness


Notary Public

My Commission Expires:

11-9-04

Notary Public, Gwinnett County, Georgia
My Commission Expires Nov. 9, 2004

[NOTARIAL SEAL]

Date of Execution by Notary:

1-22-02

"LENDER":

COLONIAL BANK


By: 
Title: Vice President
(BANK SEAL)

EXHIBIT "I" /

Lots 4 and 5 and North 1/2 of 6, Block 1, according to the Survey of N.M. Leonard and Robbie L. Leonard, as recorded in Map Book 33, Page 20, in the Probate Office of Jefferson County, Alabama.

EXHIBIT "II"

Parcel I

Commencing at the southwest corner of the NE 1/4 of the NE 1/4, Section 23, Township 18 South, Range 3 West and run thence Northerly along the West boundary of said 1/4-1/4 section for 265.92 feet to the point of beginning; thence continue Northerly along the last stated course for 84.58 feet; thence 68 degrees 52 minutes right and run Northeasterly for 91.90 feet to a point on the Westerly right of way line of the Green Springs Road; thence 80 degrees 28 minutes right and run Southeasterly along said Westerly right of way line for 80.00 feet; thence right 99 degrees 32 minutes and run Southwesterly for 135.62 feet to the point of beginning, Jefferson County, Alabama.

Parcel II

Commence at the SW corner of the NE 1/4 of NE 1/4 Section 23, Township 18 South, Range 3 West, thence northerly along the west line of said 1/4-1/4 section 192.48 feet to the point of beginning, thence continue northerly 73.44 feet, thence right 68 degrees 52 minutes in a northeasterly direction 135.62 feet to the westerly right of way line of Green Springs Road, thence 80 degrees 28 minutes along the west side of said road for 70 feet, thence right 99 degrees 43 minutes for 173.56 feet to the point of beginning.

EXHIBIT III

LEGAL DESCRIPTION

ALL THAT TRACT or parcel of land lying and being in Land Lot 70 of the 18th District of DeKalb County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, COMMENCE at an iron pin found at the common corner of Land Lots 69, 70, 93 and 94; thence South 85 degrees 57 minutes 30 seconds East a distance of 951.62 feet to an iron pin found; thence South 01 degree 38 minutes 25 seconds West a distance of 563.01 feet to an iron pin set and the TRUE POINT OF BEGINNING; thence South 01 degree 38 minutes 25 seconds West a distance of 115.00 feet to an iron pin found; thence North 87 degrees 41 minutes 23 seconds East a distance of 90.10 feet to an iron pin found; thence South 02 degrees 03 minutes 30 seconds East a distance of 297.94 feet to an iron pin found on the northerly right of way (75 foot to centerline) of Memorial Drive (State Route 10); thence North 87 degrees 37 minutes 02 seconds East along said northerly right of way of Memorial Drive a distance of 208.97 feet to an iron pin found, said iron pin found being 954.9 feet along said right of way from the westerly 70 foot right of way of Hambrick Road; thence North 08 degrees 17 minutes 15 seconds West a distance of 364.30 feet to an iron pin found; thence North 08 degrees 25 minutes 01 second West a distance of 50.18 feet to an iron pin set; thence South 87 degrees 43 minutes 53 seconds West a distance of 246.56 feet to an iron pin set and the true point of beginning. Said above described tract containing 1.993 acres.

The above described property is shown on a Boundary and Topo Survey for General Mills Restaurants, Inc. dated September 25, 1990, prepared by William D. Shaw, Georgia Registered Land Surveyor No. 2162, which plat of survey by reference thereto is incorporated in this description.

EXHIBIT "IV"

AS TO TRACT I:

Commence at the Southwest corner of the SW 1/4 of the NE 1/4 of Section 18, Township 17 South, Range 3 West, situated in Jefferson County, Alabama; thence run in an Easterly direction along the south line of said 1/4 - 1/4 Section a distance of 89.2 feet to the centerline of the Bankhead Super Highway (U.S. Highway #78 West); thence turn 55 degrees 30 minutes to the right and run in a Southeasterly direction a distance of 30.84 feet to a point; thence turn 90 degrees 00 minutes to the left and run in a Northeasterly direction a distance of 90.0 feet to a point which is on the Easterly right of way line of said Highway and point of beginning; thence run along the same course North 59 degrees 32 minutes 55 seconds East, 135.00 feet; thence South 30 degrees 26 minutes 59 seconds East, 136.55 feet; thence South 57 degrees 33 minutes 48 seconds West, 135.08 feet to a point on the Easterly R.O.W. of Forestdale Boulevard (U.S. Highway #78); thence along said R.O.W. North 30 degrees 26 minutes 59 seconds West, 141.23 feet to the point of beginning. All lying in the SW 1/4, NE 1/4 and the NW 1/4, SE 1/4 of Section 18, Township 17 South, Range 3 West, Jefferson County, Alabama.

AS TO TRACT II:

Lot 1, according to Shoney's Inc. Survey of Roebuck, as recorded in Map Book 168, Page 53, in the Probate Office of Jefferson County, Alabama.

AS TO TRACT III:

A parcel of land situated in the Southwest quarter of Section 25, the Southeast quarter of Section 26, the Northeast quarter of Section 35, and the Northwest quarter of Section 36, all in Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southwest corner of said Section 25; thence Easterly along the South line of said Section 130.60 feet to the Westerly right of way line of U.S. Highway 31 and the point of beginning of the parcel herein described; thence turn an angle to the left of 74 degrees 13 minutes 10 seconds and run Northeasterly along said right of way line 26.00 feet; thence leaving said right of way line turn an interior angle of 72 degrees 31 minutes 29 seconds (72 degrees 25 minutes 19 seconds of Record) and run Southwesterly 248.43 feet (248.11 feet of Record) to the Easterly right of way of the Louisville Nashville Railroad; Thence turn an interior angle of 99 degrees 40 minutes 53 seconds (99 degrees 40 minutes 41 seconds of Record) and run Southwesterly along said Right of way line 112.00 feet; thence leaving said right of way line turn an interior angle of 82 degrees 40 minutes 40 seconds (82 degrees 45 minutes 05 seconds of Record) and run Southeasterly 228.45 feet (229.09 feet of Record) to the Westerly right of way line of U.S. Highway #31; thence turn an interior angle of 105 degrees 49 minutes 08 seconds (105 degrees 51 minutes 05 seconds of Record) and run Northeasterly along said right of way line 100.00 feet to the point of beginning.

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