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ASSUMPTION AND MODIFICATION AGREEMENT

THIS ASSUMPTION AND MODIFICATION AGREEMENT entered into on the 9<sup>th</sup> day of March, 1988, executed by and between DRP Company, Inc., an Alabama corporation, (hereinafter "Borrower"), Joe A. Scotch, Jr., and Wayne J. Scotch (hereinafter "Assumptor") and National Bank of Commerce of Birmingham (hereinafter "Lender").

W I T N E S S E T H:

WHEREAS, Lender is the present holder of a note ("Note") executed by Borrower in the principal sum of \$600,000 dated January 6, 1987, which Note is secured by (i) a certain mortgage of even date therewith and recorded in Real Volume 3067 at Page 190 in the Office of the Judge of Probate of Jefferson County, Alabama, and in Real Book 109, Page 596 in the Probate Office of Shelby County, Alabama (hereinafter "Mortgage"); (ii) Assignment of Leases, Rents and Profits recorded in Real Volume 3067 at Page 194 in the Office of the Judge of Probate of Jefferson County, Alabama, and in Real Book 109, Page 600 in the Probate Office of Shelby County, Alabama (hereinafter "Assignment of Leases"); (iii) UCC Financing Statement between Borrower, as debtor, and Lender, as secured party, filed for record on January 7, 1987, under UCC #610626 Jefferson County, Alabama, and #15914 Book 15, Page 14, Shelby County, Alabama, also recorded with the Secretary of State under File No. A228681R (the "UCCs"); (iv) Construction Loan Agreement, (the Mortgage, Assignment of

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Natl. Bank of  
Commerce  
P.O. 10886

Leases, Construction Loan Agreement and UCCs collectively sometimes referred to as "Loan Documents"); and

WHEREAS, the Loan Documents were further secured by the Guaranty Agreement of Morris D. Blumenthal, Jr. and Donald L. Blumenthal; and

WHEREAS, Borrower proposes to sell the real estate described on the attached Exhibit "A" hereto (the "Real Estate") to Assumptor and Assumptor desires to assume all the obligations of the Borrower in the Note and other Loan Documents as part of the consideration for the conveyance to the Assumptor of the Real Estate covered by the Mortgage; and

WHEREAS, Lender is willing to consent to the conveyance of the Real Estate and the assumption of the indebtedness by Assumptor subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Ten Dollars (\$10.00) and other valuable consideration, the sufficiency of which is hereby acknowledged, it is hereby agreed among the parties as follows:

1. Lender does hereby consent to the sale and conveyance of the Real Estate by Borrower to Assumptor subject to the provisions asserted herein.

2. Assumptor acknowledges that the Mortgage is a first valid prior lien against the Real Estate and that the Mortgage, Note and other Loan Documents are fully enforceable

under the laws of the State of Alabama and in accordance with their respective terms.

3. The Real Estate shall remain in all respects subject to the lien of the Mortgage and other Loan Documents. Nothing herein contained or done pursuant hereto shall affect or be construed to affect the lien, charge or encumbrance of or conveyance affected by the Mortgage or the priority thereof over other liens, charges, encumbrances or conveyance to release or affect the liability of any party or parties whomsoever who may now or hereafter be liable hereunder or on account of the Note and/or Mortgage; nor shall anything herein contained or done in pursuance hereof affect or be construed to affect any other loan document held by Lender as additional security for or evidence of the aforesaid indebtedness, including, but not limited to, the Guaranty Agreements of Morris D. Blumenthal, Jr. and Donald L. Blumenthal.

4. The Assumptor does hereby assume and agree to pay the indebtedness evidenced by the Note and secured by the Mortgage and other Loan Documents and further agrees to perform all of the obligations provided for therein and to be subject to and comply with all terms and conditions thereof. It is agreed and understood that as of March 1, 1988, the principal balance of the loan is \$593,617.44, which remains to be paid in installments of principal and interest of \$5,790.18 under the terms of the Note and Mortgage, that the

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Note provides for a balloon payment to be paid on or before the first day of July, 1994. In the event of a foreclosure of the Mortgage or other Loan Documents and the sale of the Real Estate pursuant to such foreclosure (whether by judicial sale or otherwise), for an amount less than the unpaid balance of the principal and interest due on the Note and all other obligations owing by virtue of the Mortgage, both Assumptor and Borrower will be liable for all deficiencies resulting thereunder.

5. The Borrower remains fully liable for all the obligations provided for in the Note and other Loan Documents. Morris D. Blumenthal, Jr., and Donald L. Blumenthal remain fully liable under their respective Guaranties.

6. As an accommodation to the parties, and to perfect a "like-kind" exchange, title to the Real Estate will pass through James T. Parsons, who will take title subject to the mortgage of Lender. Simultaneously therewith, Parsons will deed the Real Estate to Assumptor who will agree to assume and pay the obligations of the Note and Mortgage. All the parties hereto agree that Parsons will assume no liability to Lender for taking title to the Real Estate, and such will not constitute an event of default of the Mortgage. However, in so doing, Lender shall retain full recourse against Borrower and Assumptor as more particularly defined herein.

7. Borrower and Assumptor acknowledge and confirm that there exists no second mortgage or other lien subsequent to the Mortgage held by Lender.

8. Assumptor certifies and acknowledges that there exists a "due on sale" provision in the Mortgage with regard to future transfers of the Real Estate. It is understood and agreed that Lender has the absolute right to withhold approval of any subsequent sale of the Real Estate and that the execution of this modification agreement in no way shall be considered as a waiver of the due on sale clause for future transactions.

9. In consideration of Lender granting consent to the sale of the Real Estate to Assumptor, Borrower agrees to pay to Lender the sum of \$2500.00 as a transfer fee which said transfer fee shall be paid simultaneous with the execution hereof.

10. This Agreement shall be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.

11. Whenever used, the singular number shall include the plural, the plural the singular, the use of any gender shall include all genders.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and date first above written.

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DRP COMPANY, INC.

BY: Donald L. Blumenthal  
ITS Pres.

Joe A. Scotch Jr.  
JOE A. SCOTCH, JR.  
Wayne J. Scotch  
WAYNE J. SCOTCH

NATIONAL BANK OF COMMERCE  
OF BIRMINGHAM

BY: Donald W. Young  
ITS vice President

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned authority, in and for said county in said state, hereby certify that Donald L. Blumenthal whose name as President of DRP Company, Inc., a 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 said 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 9<sup>th</sup> day of March, 1988.

M. L. J. Bon  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 9-24-88

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned authority, in and for said county in said state, hereby certify that JOE A. SCOTCH, JR. and WAYNE J. SCOTCH, whose names 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 said instrument they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 9<sup>th</sup> day of  
March, 1988.

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 9-24-88

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned authority, in and for said county in  
said state, hereby certify that DAVID W. FARR  
whose name as Vice President of National Bank of Commerce of  
Birmingham, a 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 said  
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 9<sup>th</sup> day of  
March, 1988.

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 9-24-88

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EXHIBIT "A"

Lots 7-B and 7-C, according to a Resurvey, as recorded in Map Book 150, Page 55, in the Probate Office of Jefferson County, Alabama, and Map Book 10, Page 28, in the Probate Office of Shelby County, Alabama, of Lots 6 & 7, Cahaba Park South.

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STATE OF ALABAMA  
COUNTY OF JEFFERSON

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RECORDED  
INDEXED

*[Signature]*

STATE OF ALABAMA  
COUNTY OF JEFFERSON  
NOTARY PUBLIC

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*[Signature]*  
JUDGE OF PROBATE

22.00

1. Deed Tax	\$ —
2. Mtg. Tax	—
3. Recording Fee	22.00
4. Indexing Fee	2.00
TOTAL	24.00