

STATE OF ALABAMA)
 :
SHELBY COUNTY)

79

**SECOND MODIFICATION TO MORTGAGE
AND OTHER LOAN DOCUMENTS**

THIS AGREEMENT made as of the 16th day of JUNE, 1989, by and between MARK-POINT PROPERTIES, INC., an Alabama corporation ("Borrower"), EDDIE HUBERT GILMORE, CLAUDE M. FOUNTAIN, ROBERT E. PADEN, and RANDALL J. GILMORE ("Guarantors") and AMSOUTH BANK N.A., a national banking association ("Lender").

RECITALS:

A. The Lender is the holder of a Promissory Note in the principal amount of \$1,700,000.00 dated July 15, 1988, made by Borrower in favor of Lender (referred to as the "Note"). The loan evidenced by the Note is referred to as the "Loan." The Note is secured by various documents and instruments executed in favor of Lender including but not limited to the following:

1. Mortgage and Security Agreement (the "Mortgage") executed by Borrower dated July 15, 1988, recorded in Real Book 195, Page 306, in the Probate Office of Shelby County, Alabama.
2. Assignment of Rents and Leases (the "Assignment") executed by Borrower dated July 15, 1988, recorded in Real Book 195, Page 322, in the Probate Office of Shelby County, Alabama.
3. UCC-1 Financing Statement filed with the Secretary of State of Alabama, file number A289353R.
4. UCC-1 Financing Statement filed with the Judge of Probate of Shelby County, file number 020718.

All the documents and instruments referred to or described in this Paragraph A, together with this instrument and all other documents further securing the Note, are referred to as the "Loan Documents." The real property described in and conveyed under the Mortgage is referred to collectively as the "Property."

B. The Note, Mortgage and other Loan Documents were amended by a First Modification to Mortgage and Other Loan Documents (the "First Modification"), dated January 30, 1989, executed by Borrower, Guarantors, C. Wayne Thornton and Lender, and recorded in Real Book 226, Page 118, in the Probate Office of Shelby County, Alabama. The First Modification, inter alia, increased the amount of the Loan by \$150,000 to \$1,850,000. All references to the terms "Note," "Mortgage" and

TICOR TITLE AGENCY, INC.

"Loan Documents" refer to the Note, Mortgage and Loan Documents as amended by the First Modification.

C. This modification agreement increases the face amount of the Note and contains various other covenants and agreements respecting the foregoing transaction, as more particularly set forth below.

W I T N E S S E T H:

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

1. **Modification to Promissory Note.**

- (a) **Loan Amount.** The Note is modified hereby to increase the face amount thereof by \$175,000 to \$2,025,000. All references in the Note and the other Loan Documents to the words "\$1,850,000" and "ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS" are deleted and the words "\$2,025,000" and "TWO MILLION TWENTY-FIVE THOUSAND AND NO/100 DOLLARS" are substituted in lieu thereof, respectively.
- (b) **Maturity Date.** The Note is further modified by deleting Paragraph 2 therefrom and by substituting in lieu thereof the following Paragraph 2:

2. **Maturity.** The principal balance hereunder, together with interest as aforesaid, and all other indebtedness secured under this Note and all the Loan Documents described below, shall be due and payable on the "Maturity Date" which shall be September 1, 1989.

2. **Release of Guarantor.** The Lender hereby releases C. Wayne Thornton from liability under the Loan Documents.

3. **References to Loan Documents.** All references in the Loan Documents to the terms "Note," "Mortgage" "Loan Documents" shall refer to the Note, Mortgage and Loan Documents as amended by this instrument.

3. **Ratification.** Except as expressly modified herein, all of the terms, covenants, conditions, agreements and stipulations of the Loan Documents shall remain in full force and effect and are hereby ratified and confirmed by the Borrower and by each of the undersigned Guarantors.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first above written.

ATTEST:

By: [Signature]
Name: Robert E. Paden
Its: Secretary

"BORROWER":

MARK-POINT PROPERTIES, INC.,
an Alabama corporation

By: Eddie Hubert Gilmore [SEAL]
Name: EDDIE HUBERT GILMORE
Its: PRESIDENT

WITNESS:

[Signature]
Sandy H. McLaughlin

"GUARANTORS:"

Eddie Hubert Gilmore [SEAL]
Eddie Hubert Gilmore

WITNESS:

[Signature]
Claude M. Fountain

Claude M. Fountain [SEAL]
Claude M. Fountain

WITNESS:

[Signature]
Robert E. Paden

[Signature] [SEAL]
Robert E. Paden

WITNESS:

[Signature]
Sandy H. McLaughlin

Randall J. Gilmore [SEAL]
Randall J. Gilmore

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ATTEST:

By: [Signature]
Name: DOROTHY J. PERRY
Its: ASSISTANT VICE PRESIDENT

"LENDER:

AMSOUTH BANK N.A., a national banking
association

By: [Signature]
Name: Robert E Nesbitt
Its: Vice President

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STATE OF ALABAMA)
COUNTY OF)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that EDDIE HUBERT GILMORE whose name as PRESIDENT of MARK-POINT PROPERTIES, INC., an Alabama 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 on the day the same bears date.

GIVEN under my hand and official seal of office, this 16th day of June, 1989.

[NOTARIAL SEAL]

James H. McLaughlin
Notary Public

My Commission Expires: March 28, 1993

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STATE OF ALABAMA)
COUNTY OF)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Eddie Hubert Gilmore, 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 instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office, this 16th day of June, 1989.

[NOTARIAL SEAL]

James H. McLaughlin
Notary Public

My Commission Expires: March 28, 1993

STATE OF ALABAMA)

COUNTY OF)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that **Claude M. Fountain**, 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 instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office, this 16 day of June, 1989.

[NOTARIAL SEAL]

Henry Jean August
Notary Public

My Commission Expires: 7-2-89

STATE OF ALABAMA)

COUNTY OF)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that **Robert E. Paden**, 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 instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office, this 16 day of June, 1989.

[NOTARIAL SEAL]

Henry Jean August
Notary Public

My Commission Expires: 7-2-89

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STATE OF ALABAMA)
COUNTY OF)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that **Randall J. Gilmore**, 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 instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office, this 16th day of June, 1989.

[NOTARIAL SEAL]

Larry D. McLaughlin
Notary Public

My Commission Expires: March 28, 1993

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, a Notary Public in and for said County in said State, hereby certify that **Robert E. Nesbitt**, whose name as **Vice President** of AmSouth Bank N.A., a national banking association, 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 banking association.

Given under my hand and official seal this 16th day of June, 1989.

[NOTARIAL SEAL]

Lisa Ann Hartsfield
Notary Public

My Commission Expires: 4-18-90

STATE OF ALA. SHERIFF
I CERTIFY THAT
INSTRUMENT WAS FILED

89 JUL -6 AM 10:08

William C. Jones, Jr.
JUDGE OF PROBATE

1. Deed Tax \$ _____
2. Mtg. Tax 262.50
3. Recording Fee 17.50
4. Indexing Fee 5.00
TOTAL 285.00