

## FIFTH MODIFICATION TO LOAN DOCUMENTS

THIS AGREEMENT made as of the 30th day of September, 1992, is by and between AMSOUTH BANK, N.A., a national banking association ("Lender"), and JACK WHITSON KIDD ("Kidd") and M. MILLER GORRIE ("Gorrie") (hereafter Kidd and Gorrie are sometimes referred to as "Borrowers" or as the "Obligors").

### R E C I T A L S:

A. Lender and Borrowers executed an Agreement to Assume, Amend and Restate Construction Loan Agreement (the "Loan Agreement") on February 23, 1988 (FMS Development Corporation also signed the Loan Agreement but was released from liability thereunder). The Loan Agreement secured four notes (the "Construction Notes"), being described in the Loan Agreement as the First Note, Second Note, Third Note, and Fourth Note, in the face amounts of \$836,000, \$928,000, \$1,120,000, and \$928,000, respectively. The Construction Notes are further secured by various other Loan Documents defined in the Loan Agreement, including without limitation, (i) a Deed of Trust, Construction Mortgage, Security Agreement and Assignment of Rents and Leases dated October 22, 1987, recorded in Book 3428, Page 892, Official Records of Hamilton County, Tennessee, as amended by instrument dated February 23, 1988, recorded in Book 3468, Page 829, said records; (ii) a Deed of Trust, Construction Mortgage, Security Agreement and Assignment of Rents and Leases dated October 22, 1987, recorded in Book 3415, Page 84, Official Records of Hamilton County, Tennessee, as amended by instrument dated February 23, 1988, recorded in Deed Book 3468, Page 838, and refiled for record on April 12, 1988, in Book 3471, Page 582, said records; (iii) a Deed to Secure Debt, Security Agreement and Assignment of Rents and Leases dated October 22, 1987, recorded in Deed Book 351, Page 477, of the Official Records of Catoosa County, Georgia, as amended by instrument dated February 23, 1988, recorded in Deed Book 355, Page 151, and as further amended by instrument dated September 27, 1988, recorded in Deed Book 363, at Page 559, said records; and (iv) a Deed of Trust, Construction Mortgage, Security Agreement and Assignment of Rents and Leases dated October 22, 1987, recorded in Book 3428, Page 461, Official Records of Hamilton County, Tennessee, as amended by instrument dated February 23, 1988, recorded in Book 3468, Page 847, said records.

All of the documents and instruments referred to or described in Paragraph A, together with all other documents further securing the Construction Notes, as modified by the First Modification to Loan Documents dated December 18, 1990, executed by Borrowers and Lender (the "First Modification"), as modified by Second Modification to Loan Documents dated February 21, 1991 (the "Second Modification"), as modified by Third Modification to Loan Documents dated as of June 30, 1992 (the "Third Modification"), and as further modified by Fourth Modification to Loan Documents dated as of August 20, 1992 (the "Fourth Modification") are referred to as the "Construction Loan Documents."

*James Odum*

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B. Lender is also the holder of a Master Note in the amount of \$500,000 (the "Master Note") dated September 27, 1988, made by Borrowers in favor of Lender, which Master Note is secured by various documents and instruments executed in favor of Lender, including but not limited to, the following: (i) a Deed of Trust, Construction Mortgage, Security Agreement and Assignment of Rents and Leases dated September 27, 1988, recorded in Book 3538, Page 150, Official Records of Hamilton County, Tennessee, and (ii) a Deed to Secure Debt, Security Agreement and Assignment of Rents and Leases dated September 27, 1988, recorded in Deed Book 363, Page 560, in the Official Records of Catoosa County, Georgia.

All of the documents and instruments referred to or described in Paragraph B, together with all other documents further securing the Master Note, as modified by the First Modification, the Second Modification, the Third Modification, and the Fourth Modification, are referred to as the "Line of Credit Loan Documents."

C. On May 31, 1989, Borrowers executed and delivered to Lender a Promissory Note in the principal amount of \$1,775,000 (the "Cahaba Valley Self Storage Note"), a Mortgage, Security Agreement and Assignment of Rents and Leases, recorded in Volume 241, at Page 341, in the Office of the Judge of Probate of Shelby County, Alabama, in connection with a loan to finance 400 mini-warehouse units known as Cahaba Valley Self Storage.

All of the documents and instruments referred to in Paragraph C will be referred to as the "Cahaba Valley Self Storage Loan Documents."

D. On February 21, 1991, Kidd delivered to Lender a Junior Mortgage on two parcels of real property, located in Trussville, Alabama, and in Hoover, Alabama (the "Junior Mortgage"), to secure the Secured Obligations enumerated below.

E. By instrument dated August 18, 1988, and recorded in Book 3521, Page 962, Borrowers obtained an easement for the use of a detention or holding pond, and other privileges (the "Holding Pond Easement"), useful to the operation of one of the mini-warehouses located in Hamilton County, Tennessee, which Holding Pond Easement Borrowers wish to submit to the lien of Lender's Deed of Trust.

F. As used in this Agreement, the term "Notes" shall refer to (i) the Construction Notes, (ii) the Master Note and (iii) the Cahaba Valley Self Storage Note.

The term "Security Documents" shall refer to (i) this instrument, (ii) the First Modification, (iii) the Second Modification, (iv) the Third Modification, (v) the Fourth Modification, (vi) the Construction Loan Documents, (vii) the Line of Credit Loan Documents, (viii) the Junior Mortgage, (ix) the



Cahaba Valley Self Storage Loan Documents, (x) all other guarantees, pledges, financing statements, and other documents executed by or on behalf of any Obligor in favor of Lender to evidence or secure any of the Notes, (xi) any other loan documents or loan agreements executed by or on behalf of either Obligor in favor of Lender arising from or connected with, directly or indirectly, the real or personal properties or security secured by the Security Documents (the "Properties"), and (xii) all supplements, renewals, restatements, and other modifications to the foregoing, all as modified by this Agreement.

The term "Secured Obligations" shall refer to all the indebtednesses, debts, and obligations to Lender of any Obligor or guarantor, and any other person, evidenced by the Notes and secured by any of the Security Documents, including without limitation existing indebtednesses, future advances, liquidated, unliquidated, and contingent obligations.

G. The purposes of this Agreement are to modify the Cahaba Valley Self Storage Note by changing the rate of interest and the amount of the monthly payments and to fix the rate of interest to be paid over the remaining term of the Note.

**WITNESSETH:**

**NOW, THEREFORE,** in consideration of One and No/100 Dollar (\$1.00), the agreements contained herein, and other due, good, and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Kidd, Gorrie, and Lender agree as follows:

1. **Modification of the Cahaba Valley Self Storage Note.** The Cahaba Valley Self Storage Note, as amended, is further modified as follows:

(a) Paragraph A. is hereby DELETED and the following substituted therefor:

**A. Interest.** Beginning October 1, 1992, interest shall accrue at the rate of seven and one-half per cent (7.50%) per annum. Interest shall be computed hereunder with respect to each day during the term of this Note by multiplying the outstanding principal balance hereunder at the close of business on that day (or on the most recent day on which Lender was open for business) by a daily interest factor, which daily interest factor shall be calculated by dividing the aforesaid interest rate per annum by 360. Interest so computed shall accrue for each and every day (365 days per year, 366 days per leap year) on which any indebtedness remains outstanding hereunder.

- (b) Paragraph B. is hereby DELETED and the following substituted therefor:

**B. Principal.** Commencing November 1, 1992, and on the same day each month thereafter, principal and interest shall be paid in equal monthly installments of FOURTEEN THOUSAND TWO HUNDRED NINETY-NINE AND 28/100 DOLLARS (\$14,299.28) (based upon a twenty-year amortization of principal and interest), until June 15, 1995 (the "Maturity Date"), when the entire remaining principal balance, plus accrued interest, shall be due and payable in full. Borrower acknowledges that this note does not self-amortize, and that a substantial BALLOON payment shall be due and payable on the Maturity Date.

2. **Liability/Assignment.** Borrowers shall continue to be jointly and severally liable under each of the Notes, notwithstanding any provision to the contrary in any Security Document. If a default exists under the Security Documents and the Secured Obligations are paid in full by Gorrie, Lender agrees to assign to Gorrie, without recourse, all of the right, title and interest of Lender in and to the Security Documents. Kidd consents to such agreement and assignment.

3. **No Waiver.** Obligors agree that neither Lender's execution of this Agreement nor any other instrument, nor any forbearance, act, failure, delay, or omission by Lender, including without limitation any delay in exercising any rights or remedies under the Security Documents with respect to any default or otherwise, constitutes a waiver of, or precludes Lender from exercising, any right, power or privilege granted in the Security Documents; and Obligors confirm that the Security Documents state the entire agreement between the parties, that no agreements, representations, or understandings (verbal or written) binding upon Lender exist other than as stated in the Security Documents (as modified herewith).

4. **Miscellaneous.** Except as expressly modified herein, all of the terms, covenants, conditions, agreements and stipulations of the Security Documents shall remain in full force and effect and are hereby ratified and confirmed by each Obligor. The term "Obligor" refers to each Obligor and every Obligor. Nothing herein shall constitute a waiver by Lender of any default, whether known or unknown, under the Security Documents. No action, inaction, indulgence, waiver, consent or agreement respecting payment of the Notes or any portion thereof, or with respect to any other matter relating to the loan evidenced by the Notes (the "Loan"), shall require or imply any future action, inaction, indulgence, waiver, consent or agreement by Lender. Obligors acknowledge that Lender has made no agreement respecting the maturity date of the Notes

(unless expressly stated herein) or to grant any future indulgence, waiver, or consent with respect to the Loan or any matter relating to the Loan, and that Obligors have no defenses, setoffs, claims, counterclaims or causes of action with respect to the Notes or Security Documents or payment of the indebtedness evidenced and secured thereby.

IN WITNESS WHEREOF, the undersigned have set forth their hands and seals as of the 30th day of September, 1992.

**BORROWERS**

Signed, sealed and delivered  
in the presence of:

Joan Black  
Witness

Jack Whitson Kidd (SEAL)  
Jack Whitson Kidd

Signed, sealed and delivered  
in the presence of:

Connie J. Boone  
Witness

M. Miller Gorrie (SEAL)  
M. Miller Gorrie

**LENDER**

AMSOUTH BANK N.A., a national  
banking association

Signed, sealed and delivered  
in the presence of:

Kimberly J. Stockton  
Witness

By: William P. Barnes (SEAL)  
Name: William P. Barnes  
Its: Assistant Vice President

Signed, sealed and delivered  
in the presence of:

Kimberly J. Stockton  
Witness

ATTEST:

By: Dorothy J. Perry (SEAL)  
Name: Dorothy J. Perry  
Its: ASSISTANT VICE PRESIDENT



STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Jack Whitson Kidd, 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 this the 30<sup>th</sup> day of September, 1992.

*Amey Alexander Lloyd*  
Notary Public

My commission expires: 4/26/93

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that M. Miller Gorrie, 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 this the 30<sup>th</sup> day of September, 1992.

*Susan L. Petus*  
Notary Public

My commission expires: 5/15/93

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that William P. Barnes and Dorothy J. Perry, whose names as Asst. Vice President and Asst. Vice President, respectively, of AmSouth Bank, N.A., 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, as such officers and with full authority, executed the same voluntarily for and as the act of said AmSouth Bank, N.A.

Given under my hand and official seal this the 30th day of September, 1992.

Amy Alexander Lloyd  
Notary Public

My commission expires: 4/26/93

THIS INSTRUMENT WAS PREPARED BY:

James J. Odom, Jr.

P. O. Box 11244

Birmingham, Alabama 35202-1244

Inst # 1992-23407

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