

**RE: Mortgage and Security Agreement (the "Mortgage") dated January 14, 1992 from Treetop Enterprises, Inc. to NationsBank of Georgia, N.A., recorded in Book 382, Page 945, in the Office of the Judge of Probate of Shelby County, Alabama; and Assignment of Lessor's Interest in Leases (the "Assignment") dated January 14, 1992 from Treetop Enterprises, Inc. to NationsBank of Georgia, N.A., recorded in Book 383, Page 92, aforesaid records**

**MODIFICATION OF**  
**MORTGAGE AND SECURITY AGREEMENT AND**  
**OF ASSIGNMENT OF LESSOR'S INTEREST IN LEASES**

**THIS MODIFICATION OF MORTGAGE AND SECURITY AGREEMENT AND OF ASSIGNMENT OF LESSOR'S INTEREST IN LEASES (this "Modification") is made and entered into as of December 24, 1992 by and between TREETOP ENTERPRISES, INC. ("Borrower"), a Tennessee corporation, and NATIONSBANK OF GEORGIA, N.A. ("Lender").**

**WITNESSETH:**

**WHEREAS, Borrower made and granted in favor of Lender a certain Mortgage and Security Agreement as referenced above and defined as the "Mortgage", covering certain property located in the county and state referenced above, more particularly described in the Mortgage (the "Property"), which Mortgage is incorporated herein by this reference; and**

**WHEREAS, Borrower also made and granted in favor of Lender a certain Assignment of Lessor's Interest in Leases as referenced above and defined as the "Assignment", covering the leases and rents of the Property, which Assignment is incorporated herein by this reference; and**

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SHELBY COUNTY JUDGE OF PROBATE  
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**WHEREAS**, the Mortgage and the Assignment secure, among other obligations, a Note made by Borrower in favor of Lender dated January 14, 1992 in the face principal amount of \$12,850,000.00 (the "Existing Note") and all other indebtedness now or thereafter arising and owed by Borrower to Lender; and

**WHEREAS**, as of the date hereof the aggregate outstanding principal balance of the Existing Note is approximately \$12,370,000.00; and

**WHEREAS**, Borrower has requested that Lender make a further loan to Borrower, and Lender has agreed to make such further loan to Borrower, which loan is evidenced by a Note dated of even date herewith executed in favor of Lender in the original principal amount of \$3,700,000.00 (the "New Note"); and

**WHEREAS**, Borrower and Lender have entered into a modification of the Existing Note to extend the final payment date thereof; and

**WHEREAS**, the New Note and the loan evidenced thereby are secured by all of the collateral which secures the Existing Note; and

**WHEREAS**, Borrower and Lender desire to modify the Mortgage and the Assignment as more particularly hereinafter set forth in order to confirm that the Mortgage and the Assignment secure both the Existing Note and the New Note;

**NOW THEREFORE**, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender have agreed and do hereby agree as follows:

1. **Secured Note.** The "Note", as defined in the Mortgage and the Assignment, shall from and after the date hereof be deemed to refer to, collectively, (a) the Existing Note in the original principal amount of Twelve Million Eight Hundred Fifty Thousand and No/100 Dollars (\$12,850,000.00), dated January 14, 1992 made by Borrower in favor of Lender, as modified by Note Modification Agreement between Borrower and Lender of even date herewith, (b) the New Note in the original principal amount of Three Million Seven Hundred Thousand and No/100 Dollars (\$3,700,000.00), dated of even date herewith made by Borrower in favor of Lender, and (c) all extensions, renewals, amendments, modifications and consolidations thereof; and all references therein to the "Note" shall be deemed to refer to the Note as redefined above. The Mortgage shall continue to secure all other obligations and indebtedness as therein set forth.

2. **Maturity Date.** The final payment date of the Existing Note shall be January 15, 1998 and the final payment date of the New Note shall be December 30, 1997.

3. **Reaffirmation.** As amended hereby, the Mortgage, the Assignment and the other documents which evidence or secure the indebtedness secured thereby (the "Loan Documents") shall remain in full force and effect and all covenants, agreements, warranties, representations and other terms and provisions thereof, as amended hereby, are hereby ratified, confirmed,

reaffirmed and republished, and are hereby incorporated by reference. Without limiting the foregoing, Borrower hereby reconfirms the conveyance of the Property and all other collateral items conveyed, granted, transferred, assigned or encumbered in the Mortgage, the Assignment and other Loan Documents including, but not limited to, the conveyance of security title in the Property and, absolutely and irrevocably, an assignment of the rents, issues and profits of the Property, with a reservation only to Borrower of a conditional right, as a license, to collect the rents, issues and profits of the Premises until an event of default shall occur under the Mortgage, the Assignment, the Note or any other Loan Document.

4. **No Novation.** THE PARTIES DO NOT INTEND THIS MODIFICATION NOR THE TRANSACTIONS CONTEMPLATED HEREBY TO BE, AND THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL NOT BE CONSTRUED TO BE, A NOVATION OF ANY OF THE OBLIGATIONS OWING BY THE BORROWER UNDER OR IN CONNECTION WITH THE EXISTING NOTE AND LOAN DOCUMENTS. FURTHER, THE PARTIES DO NOT INTEND THIS MODIFICATION NOR THE TRANSACTIONS CONTEMPLATED HEREBY TO AFFECT THE PRIORITY OF ANY OF THE LENDER'S LIENS IN ANY OF THE COLLATERAL SECURING THE EXISTING NOTE IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, THE LIENS, SECURITY INTERESTS AND ENCUMBRANCES CREATED BY THE MORTGAGE AND THE ASSIGNMENT.

5. **No Offsets or Defenses.** Borrower neither has nor claims any offset, defense, claim or counterclaim against Lender or with respect to the Existing Note, the New Note, the Mortgage, the Assignment, the other Loan Documents, the loans evidenced thereby or the Property; and if any such offset, defense, claim or counterclaim exists, Borrower hereby irrevocably waives the right to assert such matter.

6. **Successors and Assigns.** This Modification shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors in title and assigns, subject, however, to all restrictions on transfer and encumbrance set forth in the Mortgage.



IN WITNESS WHEREOF, this Modification has been duly executed and sealed by the parties the day and year first above written.

Signed, sealed and delivered  
as to Borrower in the presence of:

James C. Dale III  
Witness  
Paul Shauke  
Witness

**BORROWER:**

**TREETOP ENTERPRISES,  
INC., a Tennessee corporation**

By: [Signature]  
Name: W. E. Ezell, III  
Title: PRESIDENT

Attest: [Signature]  
Name: S. TOMMY HATCH  
Title: CORPORATE SECRETARY

(CORPORATE SEAL)

**ACKNOWLEDGMENT**

**STATE OF TENNESSEE**  
**COUNTY OF Davidson**

PERSONALLY appeared before me, the undersigned authority, in and for said county and state, within my jurisdiction, the within named W. E. Ezell III and S. Tommy Hatch, who acknowledged that they are President and Secretary, respectively, of Treetop Enterprises, Inc., a Tennessee corporation and that for and on behalf of said corporation, and as its act and deed, they signed, sealed and delivered the above and foregoing instrument of writing for the purposes mentioned on the day and year therein mentioned, after first having been duly authorized by said corporation to do so.

GIVEN under my hand and official seal of office as of this 5<sup>th</sup> day of January, 1993.

[Signature]  
Notary Public

My Commission Expires:

7/27/96

(NOTARIAL SEAL)

Signed, sealed and delivered  
as to Lender in the presence of:

Elen Schmidt

Witness

Marie Jones

Witness

LENDER:

NATIONSBANK OF GEORGIA, N. A.

By: Barbara J. Mathis

Name: Barbara J. Mathis

Title: Vice President

(BANK SEAL)

### ACKNOWLEDGMENT

STATE OF GEORGIA  
COUNTY OF FULTON

PERSONALLY appeared before me, the undersigned authority, in and for said county and state, within my jurisdiction, the within named Barbara J. Mathis who acknowledged that (s)he is the Vice President of NationsBank of Georgia, N. A., a national banking association, and that for and on behalf of said national banking association, and as its act and deed, (s)he signed, sealed and delivered the above and foregoing instrument of writing for the purposes mentioned on the day and year therein mentioned, after first having been duly authorized by said banking association to do so.

GIVEN under my hand and official seal of office as of this 13<sup>TH</sup> day of January, 1993.

Darja A. Rodgers  
Notary Public

My Commission Expires:

Notary Public, Fulton County, Georgia  
My Commission Expires Feb. 25, 1994

(NOTARIAL SEAL)

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