

STATE OF ALABAMA)
SHELBY COUNTY)

LOAN MODIFICATION AGREEMENT

THIS LOAN MODIFICATION AGREEMENT is dated as of August 10, 1996, among **BROOKLINE, LTD.**, a Tennessee limited partnership (the "Borrower"), **REGENCY SAVINGS BANK, F.S.B.** (the "Lender"), **IBEX, INC.**, a corporation ("IBEX"), **BERRY N. SHIRLEY** (the "Guarantor").

RECITALS

On July 28, 1989, the Borrower borrowed the sum of \$950,000 (the "Loan") from Goldome Credit Corporation ("Goldome"), which Loan is evidenced by a Promissory Note dated July 28, 1989 (the "1989 Note"). The Loan and the 1989 Note were amended by an Amended and Restated Promissory Note dated November 1, 1993, in the amount of \$1,068,391.25 (the "1993 Note"), and by a Loan Modification Agreement and Amendment to Loan Documents dated as of October 22, 1993 (the "1993 Modification Agreement").

The Loan is secured by a Real Estate Mortgage dated as of July 28, 1989, which is recorded at Real Volume 249, Page 287, as amended by First Amendment to Mortgage dated April 1, 1991, which instrument is recorded at Instrument 1994-01164. The Loan is further secured by (i) a Collateral Assignment of Rents and Leases which is recorded at Real Volume 249, Page 303, (ii) a Security Agreement dated as of July 28, 1989, and (iii) UCC-1 Financing Statements. All references to recording information being in the Office of the Judge of Probate of Shelby County, Alabama.

The Loan and the 1993 Note are further secured by (i) an Indemnity Agreement Regarding Hazardous Materials dated as of July 28, 1989 (the "Hazardous Materials Indemnity"), and (ii) a Guaranty Agreement dated as of July 28, 1989. The 1993 Note, the Mortgage, as amended, the Security Agreement, the Collateral Assignment of Rents and Leases, the UCC-1 Financing Statements, the 1993 Modification Agreement, the Management Fee Subordination Agreement dated as of August 10, 1996, the Hazardous Materials Indemnity, the 1989 Guaranty Agreement, the Guaranty Agreement dated as of August 10, 1996 (the "1996 Guaranty"), and all other instruments and documents evidencing or securing the Loan and the 1993 Note (including to the extent required by the context, any document or instrument superceded or amended by any of the foregoing) shall be hereinafter collectively referred to as the "Loan Documents".

The Loan, the Notes, and the Loan Documents were sold and assigned to the Lender by instrument recorded on October 31, 1994 at No. 1994-32563.

The Loan and the 1993 Note have matured by their terms and the parties wish to extend and modify the Loan, the 1993 Note, and the Loan Documents, as provided herein.

Inst # 1997-07000

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SHELBY COUNTY JUDGE OF PROBATE
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NOW, THEREFORE, be it agreed among the parties hereto as follows:

1. **Acknowledgment of Indebtedness.** The Borrower, IBEX, and the Guarantor acknowledge that as of August 10, 1996, the Borrower is indebted to the Lender under the Loan Documents in the amount of \$1,042,028.22, plus late charges in the amount of \$3,135.76, and accrued interest through August 10, 1996 in the amount of \$6,946.85. The Borrower shall repay the indebtedness pursuant to the terms and conditions of this Agreement and the Second Amended and Restated Promissory Note referenced below (the "1996 Note").

2. **Representations and Warranties.** The Borrower, IBEX and the Guarantor represent and warrant as follows: All representations and warranties contained in the Loan Documents are true, correct and complete as of the date hereof; All financial statements heretofore delivered to the Lender were true and correct in all aspects as of the date delivered to the Lender; Neither the Borrower, IBEX, nor the Guarantor, is in default with respect to any of its covenants under any of the Loan Documents, nor is there any condition which with the passage of time or giving of notice or both would become a default under any of the Loan Documents; There are no defenses to the enforcement of this Agreement, the 1996 Note, or any of the Loan Documents.

3. **Water, Sewer and Utility Assessments and Lien.** The Borrower or Freemont, Inc., is presently indebted to the City of Helena, Alabama (together with any applicable agency, board or department, the "City") in the approximate amount of \$18,760.98 ("Utility Charges"), which represents unpaid impact fees, sewer and water charges and related items. The Borrower's contention is that the debt is owed by Freemont. A suit has been filed to collect the Utility Charges, which suit has been placed on an administrative docket pursuant to a payment agreement between Freemont and the City. This agreement provides for monthly payments on the Utility Charges in the amount of \$743.75, payable on the 10th day of each month. Prior to closing of the loan modification, the Borrower will pay all past due monthly payments, if any, through and including the November 1996 payment. The Borrower agrees to pay, or cause to be paid, all monthly payments on the Utility Charges when due. The Lender may, but is not required to, pay any delinquent monthly payment on the Utility Charges. If the City obtains a judgment in its suit or commences a foreclosure or similar action, the Lender may, but is not required to, pay all or a part of the Utility Charges. Any such payment shall be deemed to be an advance under this Agreement, the Note and the Loan Documents, shall be a debt secured by the Loan Documents, and shall be promptly paid by the Borrower, together with interest thereon at the After-Maturity Rate.

4. **Releases.** The Borrower, IBEX, and the Guarantor release, relinquish and waive any and all claims that they have or might have against the Lender, or any predecessor lender, or any of the officers, directors, employees, representatives, agents, attorneys, parent or subsidiary entities, or affiliates of any thereof, arising out of, or in connection with the Loan, the Loan Documents, this Agreement or any of the documents or transactions relating thereto, whether known or unknown, except for a dispute concerning an alleged miscalculation of principal applied from the November 10, 1993 payment, which amount is approximately \$5000. The Borrower, IBEX and the Guarantor covenant and agree that they will not assert or seek to assert any claim, offset, defense, recoupment,

counterclaim or cross-claim of any kind or nature whatsoever with respect to the Loan, the 1996 Note, the Loan Documents or this Agreement.

5. **Modification of Loan.** The Borrower shall execute a Second Amended and Restated Promissory Note with the following terms and conditions: The principal amount shall be \$1,042,028.22. The Maturity date shall be August 10, 1999. The interest rate shall be the *Wall Street Journal* prime rate plus two per cent (2%), adjusted daily. The principal and interest shall be amortized over 25 years, with a balloon payment due at maturity. The monthly payments of principal and interest shall be re-computed whenever the prime rate changes. The amount of principal and interest shall initially be \$9653.17 per month, plus an escrow for taxes and insurance (currently estimated to be \$692.65 per month). The Borrower shall pay at closing an extension fee in the amount of \$10,420.28, which is equal to 1% of the loan amount.

6. **Amended and Restated Note.** The Borrower shall execute a Second Amended and Restated Promissory Note in the form attached hereto.

7. **Guaranty Agreement.** The Guarantor shall execute a Guaranty Agreement (the "1996 Guaranty") in the form attached hereto jointly and severally guaranteeing the full amount of the Loan.

8. **Management Fee Subordination.** IBEX consents to the modification of the Loan Documents and to the extension of the maturity date of the Note and the Loan. IBEX shall execute and deliver a Management Fee Subordination Agreement in the form attached hereto.

9. **Effect on Loan Documents.** Each of the Loan Documents and the 1993 Modification Agreement shall be deemed amended to the extent necessary to effect and carry out the intent of this Agreement. Except as set forth herein, in the 1996 Note, or in the 1996 Guaranty, the Loan Documents are not amended or modified and remain in force and effect in accordance with their respective terms and shall continue to evidence, secure, guarantee, or relate to, as the case may be, the Loan and the 1996 Note. Nothing in this Agreement, the 1996 Note or the 1996 Guaranty shall in any way terminate, release, reduce, modify or amend the obligations of the guarantors under the 1989 Guaranty, which remain in force and effect. Nor shall any of the transactions contemplated in the Loan Documents constitute an accord and satisfaction or novation with respect to any obligations guaranteed by the 1989 Guaranty.

10. **Assent and Ratification.** The Borrower, the Guarantor and IBEX (i) consent to the modification of the Loan Documents, (ii) consent to and ratify all of the documents, actions and transactions heretofore done or executed on the behalf of any of them, and (iii) waive any defect in the approval or execution of any of the documents referred to herein. The Borrower reaffirms its obligations under the Hazardous Materials Indemnity and warrants to the Lender that all of the representations and warranties were true on the date of execution and are true today. Shirley joins in the Hazardous Materials Indemnity, represents and warrants that all of the representations and warranties therein were true on the date of execution and are true today, and jointly and severally

covenants to perform all of the covenants, agreements and obligations of an Indemnitor thereunder.

11. **Events of Default.** Each of the following shall be an "Event of Default" under this Agreement:

- (a) failure by the Borrower or the Guarantor to make any payment required to be made to the Lender, as and when such payment shall become due and payable;
- (b) failure by the Borrower or the Guarantor to perform or observe any agreement or covenant on its part contained in any of the Loan Documents [other than the covenants and agreements referred to in the preceding clause (a) of this section], which failure shall have continued for a period of ten (10) days after written notice to such party;
- (c) any warranty, representation or other statement by or on behalf of the Borrower or the Guarantor contained in any Loan Document or in any other certificate or document furnished by such party being false or misleading in any material respect at the time made;
- (d) a default or an event of default under any of the Loan Documents;
- (e) failure by the Borrower to make any regular monthly payment with respect to the Utility Charges, when such payment is due;
- (f) commencement of a foreclosure or similar action against the Borrower or the Property, or the filing of a lien against the Property, with respect to the Utility Charges;
- (g) a default under, or an event of default as defined in, any instrument or agreement of the Borrower or the Guarantor evidencing indebtedness for money borrowed which results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;
- (h) the entry against the Borrower or the Guarantor of any final judgment, decree or order for the payment of money and the continuation of such judgment, decree or order unsatisfied and in effect without a stay of execution for a period of thirty (30) days;
- (i) the death, dissolution or termination of existence of the Borrower or the Guarantor;
or
- (j) the bankruptcy or insolvency of the Borrower or the Guarantor or the inability or the failure by the Borrower or the Guarantor generally to pay his debts as such debts become due.

12. **Severability.** The provisions of this Agreement are severable. In the event any provision hereof is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13. **Governing Law.** This Agreement has been made and delivered in the State of Alabama and shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Alabama. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under such law.

14. **Entire Agreement; Counterparts.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof, and it may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

15. **Amendments.** This Amendment cannot be altered, modified, or amended except in writing signed by all of the parties hereto.

16. **Binding Effect.** This Loan Modification Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.

17. **Additional Documentation; Expenses.** The Borrower and IBEX agree to provide certified resolutions properly authorizing this Agreement, the 1996 Note, the modification of the Loan, and the transactions contemplated herein, in form and substance satisfactory to the Lender. The Borrower, IBEX, and the Guarantor agree to execute and deliver all such instruments, financing statements and other documents as the Lender may request to effectuate, evidence, validate or perfect this modification. The Borrower shall pay all recording fees and other expenses of this modification, including without limitation, title insurance premiums or fees, survey costs, appraisal fees and expenses, legal expenses, recording fees and taxes.

18. **Notices.** All notices herein authorized or required to be given to the parties hereto shall be sent by hand delivery, certified mail, registered mail or overnight express, postage prepaid to the addresses set forth below or to such other address as the parties may designate from time to time in accordance with the terms of this subparagraph:

To the Borrower:

Brookline, Ltd.
P.O. Box 360867
Birmingham, AL 35210

To: IBEX:

IBEX, Inc.
P.O. Box 360867
Birmingham, AL 35210

To the Lender:

Regency Savings Bank, F.S.B.
Attn: Commercial Loan Dept.
11 West Madison
Oak Park, IL 60302

To the Guarantor:

Berry N. Shirley
P.O. Box 360867
Birmingham, AL 35210

IN WITNESS WHEREOF, the parties have caused this Agreement to be dated and effective as of August 10, 1996, although executed on the 25 day of February, 1997.

BROOKLINE, LTD.,
an Alabama limited partnership

By: Vantage Capital, Inc.
Its General Partner

By: [Signature]
Its: President

REGENCY SAVINGS BANK

By: Steven L. Wedman
Its Assistant Vice President

IBEX, INC.
a corporation

By: [Signature]
Its: President

GUARANTOR:

[Signature]

This instrument is identical to an instrument which was executed on November 8, 1996, but lost in the mails prior to recordation.

This instrument prepared by:
James L. Richey
2117 16th Avenue South
Birmingham, AL 35205

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Berry N. Shirley, whose name as President of **Vantage Capital, Inc.**, as general partner of **BROOKLINE, LTD**, a Tennessee limited partnership, 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 the said instrument, he, executed the same voluntarily as general partner of said limited partnership.

Given under my hand and official seal of office, this 20th day of February, 1997.

[NOTARIAL SEAL]

[Signature]
Notary Public
My Commission Expires: 8/23/97

STATE OF ILLINOIS)

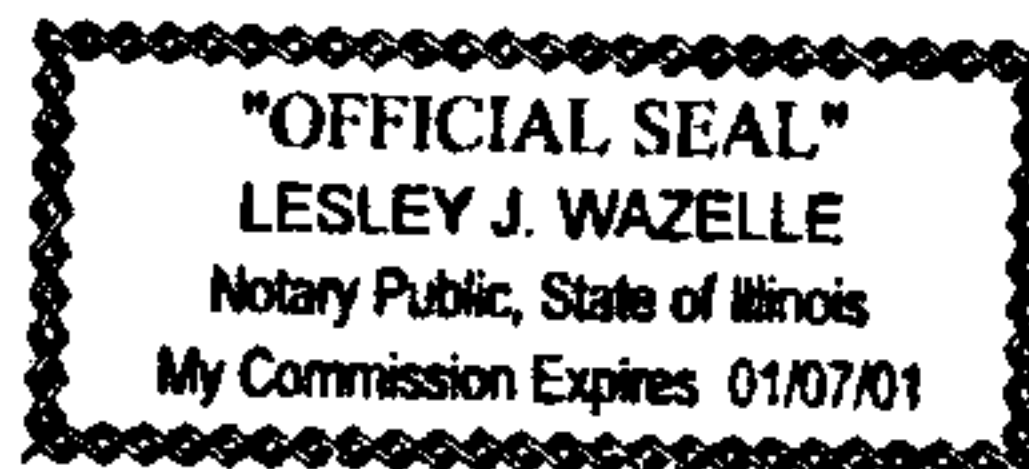
Cook COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that STEVEN R. WEDLAN, whose name as ASSISTANT V. PRESIDENT of **REGENCY SAVINGS BANK, F.S.B.**, 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 the said instrument, he, executed the same voluntarily as officer said corporation.

Given under my hand and official seal of office, this 25th day of February, 1997.

[NOTARIAL SEAL]

[Signature]
Notary Public
My Commission Expires: 01-07-01



STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Berry N. Shirley, whose name as President of **IBEX, 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 the said instrument, he, executed the same voluntarily as the act of said corporation.

Given under my hand and official seal of office, this 20th day of February, 1997.

[NOTARIAL SEAL]

James L. Shirley
Notary Public
My Commission Expires: 8/23/97

STATE OF Alabama)

COUNTY OF Jefferson)

I, the undersigned, the Notary Public in and for said county in said state, hereby certify that **BERRY N. SHIRLEY**, 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 such instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office, this 20th day of February, 1997.

[NOTARIAL SEAL]

James L. Shirley
Notary Public
My commission expires: 8/23/97

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SHELBY COUNTY JUDGE OF PROBATE
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