

STATE OF ALABAMA

COUNTY OF SHELBY

FIRST AMENDMENT TO MORTGAGE

This First Amendment made this 3 day of August, 2001, between **COMPASS BANK**, an Alabama banking corporation (the "Lender"), and **SOUTHMARK PROPERTIES, L.L.C.**, an Alabama limited liability company and **INTERSTATE RESTAURANT INVESTORS, L.L.P.**, an Alabama limited liability partnership (individually and collectively, the "**Borrower**").

WHEREAS, in connection with a loan from Lender to Borrower in the principal amount of \$6,261,000.00 (the "Loan"), Borrower delivered or caused to be delivered to Lender, among other documents (collectively, the "Loan Documents"), the following documents: (i) Promissory Note from Borrower to Lender dated December 28, 2000 in the amount of \$6,261,000.00 (the "Note"), (ii) Construction Loan Agreement from Borrower to Lender dated December 28, 2000, as amended by First Amendment thereto dated January 17, 2001 (collectively, the "Loan Agreement"); (iii) Future Advance Accommodation Mortgage, Assignment of Rents and Leases, and Security Agreement (Alabama) from Pelham Parkway, L.L.C. dated December 28, 2000, recorded in the Office of the Judge of Probate of Shelby County, Alabama, at Instrument No. 2001-00471 (the "Accommodation Mortgage"); and (iv) **Future Advance Mortgage, Assignment of Rents and Leases, and Security Agreement (Alabama) from Borrower to Lender dated January 17, 2001, recorded in the Office of the Judge of Probate of Shelby County, Alabama, at Instrument No. 2001-10124 (the "Mortgage");** and

WHEREAS, Lender and Borrower desire to amend the Mortgage as set forth herein.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lender agree that the Mortgage is amended as follows:

1. **Exhibit A** to the Mortgage is amended to add the parcel of real property described on **Exhibit A-1** hereto (the "**Additional Land**"), which Additional Land shall in all respects be considered as part of the Mortgaged Property under said Mortgage to the same extent as if originally included under the real property described in said **Exhibit A**. For good and valuable consideration, Borrower does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the Additional Land, to secure the same indebtedness (however described) as set forth in the Mortgage and under the same terms, conditions, warranties and representations as set forth in the Mortgage, all of which are hereby adopted by reference.
2. Except as modified herein, all other terms and conditions of the Mortgage shall remain in full force and effect.

08/07/2001-32964
08:27 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
DO5 MSB 24.00

Alabama Title

Inst # 2001-32964

IN WITNESS WHEREOF, Borrower and Lender have caused this First Amendment to be executed as of the day and year first set forth above.

LENDER:

WITNESS:

COMPASS BANK

W. R. Robertson

By: Martin R. Braun
Its: Asst. VP

WITNESS:

BORROWER:

SOUTHMARK PROPERTIES, L.L.C.,
an Alabama limited liability company

Judith Lemskey

By: James A. Bruno
James A. Bruno, its Manager

WITNESS:

**INTERSTATE RESTAURANT
INVESTORS, L.L.P.,**
an Alabama limited liability partnership

Judith Lemskey

By: John M. Geever
John McGeever, its Partner

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, JUDITH ANN LEMSKY, a notary public in and for said county in said state, hereby certify that **James A. Bruno**, whose name as Manager of **SOUTHMARK PROPERTIES, L.L.C.**, an Alabama limited liability company, 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, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 2nd day of August, 2001.

Judith Ann Lemsky
Notary Public

[Notarial Seal]

My Commission Expires: 1-11-03

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, JUDITH ANN LEMSKY, a notary public in and for said county in said state, hereby certify that **John McGeever**, whose name as Partner of **INTERSTATE RESTAURANT INVESTORS, L.L.P.**, an Alabama limited liability 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 such instrument, he, as such Partner and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand and official seal this 2nd day of August, 2001.

Judith Ann Lemsky
Notary Public

[Notarial Seal]

My Commission Expires: 1-11-03

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Cassandra McMath Sherman, a notary public in and for said county in said state, hereby certify that Martin Brown, whose name as Asst Vice Pres of **COMPASS BANK**, an Alabama banking 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 such 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 4th day of August, 2001.

Cassandra McMath Sherman
Notary Public

MY COMMISSION EXPIRES JULY 28, 2005

[Notarial Seal]

My Commission Expires: _____

THIS INSTRUMENT PREPARED BY:

Randolph H. Lanier
BALCH & BINGHAM LLP
1901 Sixth Avenue North
Suite 2600
Birmingham, Alabama 35203
(205) 251-8100

**EXHIBIT A-1
TO FIRST AMENDMENT TO MORTGAGE**

Description of Additional Land

Parcel IC

A parcel of land situated in the NW ¼ of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the NW corner of above said Section, Township and Range; thence South 87 deg. 46 min. 0 sec. East, a distance of 1669.02 feet; thence South 18 deg. 40 min. 0 sec. West, a distance of 190.46 feet; thence South 11 deg. 40 min. 0 sec. West, a distance of 369.40 feet; thence North 81 deg. 15 min. 0 sec. East, a distance of 37.50 feet; thence South 14 deg. 37 min. 0 sec. West, a distance of 75.0 feet; thence South 81 deg. 15 min. 0 sec. West, a distance of 37.50 feet to the point of beginning; thence South 11 deg. 50 min. 58 sec. West, a distance of 209.97 feet; thence South 80 deg. 18 min. 20 sec. West, a distance of 235.40 feet; thence North 06 deg. 19 min. 57 sec. East a distance of 207.57 feet; thence North 81 dg. 15 min. 00 sec. East, a distance of 255.23 feet to the point of beginning; being situated in Shelby County, Alabama.

Inst. # 2001-32964

08/07/2001-32964
09:27 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
005 MSB 24.00