

STATE OF ALABAMA )  
:  
SHELBY COUNTY )

**FIRST MODIFICATION TO LOAN DOCUMENTS**

THIS AGREEMENT made as of the 7<sup>th</sup> day of August, 2002, by and between 280 PLAZA, LLC, an Alabama limited liability company; ALLISTON PROPERTIES, L.L.C., an Alabama limited liability company; and INVESTMENT PARTNERS, INC., an Alabama corporation ("Borrowers"), R Leon Alliston and David B. Keith ("Guarantors") (Borrowers and Guarantors are sometimes referred to as "Obligors"), and ALAMERICA BANK ("Lender").

**RECITALS:**

1. Lender is the holder of a Promissory Note in the face amount of \$900,000.00, made by Borrowers, dated September 6, 2001 (the "Note"). The Note is secured by various documents and instruments all dated September 6, 2001, unless otherwise indicated, including (*inter alia*) the following, all as modified by this agreement:

1. Mortgage and Security Agreement recorded as Instrument #2001-39179 in the Probate Office of Shelby County, Alabama (the "Indenture").
2. Environmental Indemnification executed by Borrowers.
3. Guaranty executed by Guarantors.

All the documents and instruments referred to or described in this Paragraph A, and all other documents and instruments further securing the Note, as modified herein, are referred to as the "Loan Documents." The real and personal properties pledged and mortgaged under the Loan Documents are referred to as the "Project."

4. Pursuant to Paragraph 24 of the Indenture, Parcels II and III were released from the lien of the Indenture on condition (*inter alia*) that the Borrowers pledge a certificate of deposit as replacement collateral. Borrowers have requested Lender to release the pledge of such certificate of deposit and the Lender is willing to do so upon receipt of replacement collateral. The purpose of this document is to amend the Indenture to add the collateral described on Exhibit A-1 attached hereto.

If not defined herein, capitalized terms used herein shall have the meanings given to them in the Loan Documents.

**WITNESSETH:**

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. **Indenture.** The Exhibit A attached to the Indenture is hereby replaced with the Exhibit A-1 attached hereto. Borrowers grant, bargain, convey, mortgage and transfer to Lender the property described on Exhibit A-1 hereto.

**This Instrument Prepared by:**

Guy V. Martin, Jr., Esq.  
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#2 Metroplex Drive, Suite 102  
Birmingham, Alabama 35209

2. **Guaranty.** Without limiting the foregoing, Guarantors consent to this agreement.

2. **Representations and Warranties.** Obligors represent and warrant to Lender that the following are true, correct and complete as of the date of this agreement:

2.1 **Due Organization, Authority.** Borrower is duly organized and validly existing under the state in which such Borrower is stated as being organized herein and in good standing under the laws of such state and has power adequate to carry on its businesses in each such State as presently conducted, to own and/or lease the Properties, to make and enter into those Loan Documents executed by Borrower and to carry out the transactions contemplated therein.

2.2 **Execution, Delivery and Effect of Loan Documents.** Obligors represent (as to its own entity and on its own behalf) that the Loan Documents have each been duly authorized, executed and delivered by Obligors, as the case may be, that each is a legal, valid and binding obligation of Obligors, enforceable in accordance with its terms, that there are no defenses, counterclaims, or set-offs to any of the Loan Documents, and that upon default Lender shall be entitled to exercise any one or more remedies under any one or more of the Loan Documents including without limitation suit, receivership, foreclosure, and/or other remedies available under law or equity.

2.3 **Other Obligations.** No Obligor is in violation of any term or provision of any document governing its organization or existence or in default under any material instruments or obligations relating to the leases executed by any Obligor of portions of (or space in) the Properties or the personal or real property or other thing of value secured by the Loan Documents (the "Collateral"). No tenant or other party has asserted any claim or default relating to any such lease or to any of the Collateral. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any material breach of, or constitute a material default under, any contract, agreement, document or other instrument to which any Obligor is a party or by which any Obligor may be bound or affected, and do not and will not violate or contravene any laws to which any Obligor is subject; nor do any such instruments impose or contemplate any obligations which are or will be materially inconsistent with the Loan Documents.

2.4 **Legal Actions.** There are no material actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of any Obligor's knowledge and belief, threatened, against or affecting any Obligor, its business or the Collateral, or investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of any Obligor's knowledge and belief, threatened against or affecting any Obligor, any Obligor's business or the Collateral, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender or which if resolved adversely to Obligor would not have a material adverse effect on any Obligor or the Collateral. No Obligor is in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting any such Obligor or the Collateral.

2.5 **Financial Statements.** All statements, financial or otherwise, submitted to Lender in connection with the loan evidenced by the Note ("Loan") are true, correct and complete in all material respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (or other basis of accounting practices permitted by Lender) and fairly present the financial condition of the parties or entities covered by such statement as of the date thereof. Since the date thereof, no Obligor has experienced any material, adverse change in its finances, business, operations, affairs or prospects.

2.6 **Title to Collateral.** Obligors represent that Borrower has good and clear record and marketable title to the Collateral, free of all liens, encumbrances or restrictions other than the exceptions reflected in the title policies heretofore delivered to and approved by Lender ("Permitted Encumbrances").

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2.7 Compliance with Laws and Private Covenants. The Collateral complies in all material respects with all laws. Obligors have examined and are familiar with the Permitted Encumbrances and there now exists no material violation thereof. Obligors have no notice that any of the Improvements are inconsistent with any easement over the Collateral or encroach upon adjacent property.

2.8 Hazardous Waste. To the best knowledge and belief of Obligors, no release of any hazardous waste or hazardous substance (as defined under applicable laws) is present on, in, under, or at the Collateral, nor has any Obligor received any notice from any governmental agency or from any other person with respect to any such hazardous waste or substance.

3 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.

**"BORROWER:"**

280 PLAZA, LLC, an Alabama limited liability company

By: R. Leon Alliston [SEAL]  
R. Leon Alliston, Manager

By: David B. Keith [SEAL]  
David B. Keith, Manager

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

By: R. Leon Alliston [SEAL]  
R. Leon Alliston, Member

INVESTMENT PARTNERS, INC., an Alabama corporation

By: David B. Keith [SEAL]  
David B. Keith, President

**"LENDER:"**

ALAMERICA BANK

By: Robert E. Nesbitt [SEAL]  
Name: Robert E. Nesbitt  
Its: PRESIDENT

This Instrument Prepared by:

Guy V. Martin, Jr., Esq.  
Martin, Rawson & Woosley, P.C.  
#2 Metroplex Drive, Suite 102  
Birmingham, Alabama 35209



STATE OF ALABAMA                    )  
COUNTY OF Jefferson                    ):

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that R. Leon Alliston, as Manager of 280 PLAZA, LLC, 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 said instrument, he executed the same voluntarily as said officer of said limited liability company on the day the same bears date. Given under my hand and official seal this 7th day of August, 2002.

Mas W. [Signature]  
Notary Public  
My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: OCTOBER 3, 2004**

STATE OF ALABAMA                    )  
COUNTY OF Jefferson                    ):

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that David B. Keith, as Manager of 280 PLAZA, LLC, 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 said instrument, he executed the same voluntarily as said officer of said limited liability company on the day the same bears date. Given under my hand and official seal this 7th day of August, 2002.

Mas W. [Signature]  
Notary Public  
My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: OCTOBER 3, 2004**

STATE OF ALABAMA                    )  
COUNTY OF Jefferson                    ):

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that R. Leon Alliston, as Member of ALLISTON 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 said instrument, he executed the same voluntarily as said officer of said limited liability company on the day the same bears date. Given under my hand and official seal this 7th day of August, 2002.

Mas W. [Signature]  
Notary Public  
My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: OCTOBER 3, 2004**

This Instrument Prepared by:

Guy V. Martin, Jr., Esq.  
Martin, Rawson & Woosley, P.C.  
#2 Metroplex Drive, Suite 102  
Birmingham, Alabama 35209

STATE OF ALABAMA )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that David B. Keith, as President of INVESTMENT PARTNERS, 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 executed the same voluntarily as said officer of said corporation on the day the same bears date. Given under my hand and official seal this 7<sup>th</sup> day of August, 2002.

Massey  
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: OCTOBER 3, 2004  
My Commission Expires: OCTOBER 3, 2004

[NOTARIAL SEAL]

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Robert E. Nesbitt, as President of Alamerica Bank, 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 executed the same voluntarily on behalf of said banking institution on the day the same bears date. Given under my hand and official seal this 7<sup>th</sup> day of ~~June~~ August, 2002.

Louise A. Wood  
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: June 28, 2006  
My Commission Expires THRU NOTARY PUBLIC UNDERWRITERS

This Instrument Prepared by:

Guy V. Martin, Jr., Esq.  
Martin, Rawson & Woosley, P.C.  
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## Exhibit "A"

### **Parcel I**

Lot 9-C, according to the Map of 280 Plaza, as recorded in Map Book 29, Page 138, in the Office of the Judge of Probate of Shelby County, Alabama, being a Resurvey of Lots 9A and 9B of a Resurvey of Lot 8A, Cahaba Park South and Lot 9, Cahaba Park South.

### **Parcel II**

Lot 407, according to the Map of Highland Lakes, 4<sup>th</sup> Sector, Phase I, an Eddleman Community, as recorded in Map Book 19, Page 79 A & B, in the Probate Office of Shelby County, Alabama.

Together with a non exclusive easement to use the private roadways, common area all as more particularly described in the Declaration of Easements and Master Protective Covenants for Highland Lakes, a Residential Subdivision, recorded as Instrument No. 1994-07111, in the Probate Office of Shelby County, Alabama, and the Declaration of Covenants Conditions and Restrictions for Highland Lakes, a Residential Subdivision, 4<sup>th</sup> Sector, recorded as Instrument No. 1995-1906 recorded in the Probate Office of Shelby County, Alabama (which, together with all amendments thereto, is hereinafter collectively referred to as, the "Declaration").

Mineral and mining rights excepted.